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December 27, 1996

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

WASHINGTON, DC

WHEN: January 28, 1997 at 9:00 am

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW
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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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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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. 250
Friday, December 27, 1996

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Parts 5, 11 and 18

Prices and Availability of Federal Register Publications; Acceptance of Digital Signatures

AGENCY: Administrative Committee of the Federal Register.

ACTION: Final rule with request for comments.

SUMMARY: The Administrative Committee of the Federal Register (ACFR) announces changes to the prices charged for Federal Register publications. The price changes apply to the daily Federal Register, the Federal Register Index and LSA (List of CFR Sections Affected), the Code of Federal Regulations (CFR) and the Weekly Compilation of Presidential Documents. These price changes are necessary to accurately reflect certain increases and decreases in the Government Printing Office's (GPO) current cost of production and distribution of these publications.

These regulations also make certain technical amendments to acknowledge the official status and availability of the Administrative Committee's online editions of the Federal Register and The United States Government Manual on the GPO Access service. In addition, the regulations are amended to permit original Federal Register documents to be authenticated by digital signatures. This action will enable the Office of the Federal Register (OFR) to participate in selected pilot projects.

DATES: These regulations are effective January 27, 1997. Comments will be accepted through February 25, 1997.

ADDRESSES: Comments may be submitted by U.S. Mail: Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408; by private delivery services: Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20002; by fax: 202–523–6866; by electronic mail: info@fedreg.nara.gov.

FOR FURTHER INFORMATION CONTACT: Michael White at 202–523–4534.

SUPPLEMENTARY INFORMATION: The Administrative Committee of the Federal Register, which establishes prices for Federal Register publications, has determined that it must make price adjustments to certain Federal Register publications to accurately reflect the current costs of production and distribution. These regulations will increase the subscription rates for the paper editions of the daily Federal Register, the Federal Register Index and LSA (List of CFR Sections Affected), the Code of Federal Regulations (CFR) and the Weekly Compilation of Presidential Documents. The subscription rate and the single copy price charged for the microfiche edition of the daily Federal Register will decrease and the subscription rate for the microfiche edition of the CFR will decrease.

On September 1, 1992, the Administrative Committee announced that it had adopted a policy for requiring full cost recovery to ensure that revenues from subscriptions and single issue sales would keep pace with increased costs attributable to printing and labor expenses at the GPO plant and postal rate increases (57 FR 40024). The Administrative Committee resolved to adjust prices over a period of several years and to conduct an annual review to determine the rate of increase necessary to gradually bring prices into alignment with costs. Since 1992, the Administrative Committee has periodically adjusted the prices of Federal Register publications pursuant to its annual pricing review. In 1995, the Administrative Committee found it unnecessary to make any price adjustments, based on GPO's cost estimates.

After reviewing GPO's current analysis of its production and distribution costs over the past two years and estimates for calendar year 1997, the Administrative Committee has determined that increases in the prices to be charged for the paper editions of Federal Register publications ranging from 4 to 12 per cent are necessary to achieve full cost recovery. The increased prices reflected in amendments to 1 CFR part 11 in this final rule are primarily attributable to labor charges, paper prices, equipment costs and postal rate increases.

Production of the microfiche editions of the Federal Register and CFR are subject to a competitive bidding process that determines the prices to be charged. As a result of that process, subscription rates for the microfiche edition of the Federal Register will decrease by nearly 50 per cent and single copy prices will decrease by 33 per cent, and CFR subscription rates will decrease by 6.5 per cent.

The following rates are effective as of January 1, 1997. The annual subscription rates for the Federal Register paper edition are increased to $555, or $607 for a combined Federal Register, Federal Register Index and LSA (List of CFR Sections Affected) subscription. The annual subscription price of the microfiche edition of the Federal Register, including the Federal Register Index and LSA, is decreased to $220. The price for single copies of the daily Federal Register microfiche edition is decreased to $1. The annual subscription price for the Federal Register Index is increased to $25. The annual subscription price for the monthly LSA is increased to $27. The annual subscription rates for a full set of the Code of Federal Regulations are increased to $951 for the paper edition and decreased to $247 for the microfiche edition. The annual subscription rates for the Weekly Compilation of Presidential Documents are increased to $80 for delivery by non-priority mail, and $137 for delivery by first-class mail.

In addition to the price changes contained in this document, the Administrative Committee is updating its regulations to acknowledge the official status and availability of the Administrative Committee's online editions of the Federal Register and The United States Government Manual. The Administrative Committee has resolved that the American public should have greater access to essential information on the structure, functions and actions of its Government through the Federal Register system. The Administrative Committee has general authority under 44 U.S.C. section 1506 to determine the manner and form for publishing the Federal Register and its special editions. The Government Printing

Office Electronic Information Access Enhancement Act of 1993 (GPO Access), 44 U.S.C. 4101, provided additional authority for the Administrative Committee to expand public access to Federal Register publications, beginning with the inauguration of online Federal Register service on June 8, 1994.

Accordingly, 1 CFR part 5 is amended by adding a section to state that the Administrative Committee publishes the daily Federal Register in three official formats, including the online edition on GPO Access. In part 11, a reference to subscription prices for the online edition of the Federal Register, which is now available to the public at no charge, is eliminated. It is replaced by a paragraph citing the availability of the online service. Part 11 is further revised to cite the availability of the online edition of The United States Government Manual on GPO Access to reflect the Administrative Committee's commitment to provide access to the Manual in electronic form.

In addition, the regulations in 1 CFR part 18 are amended to permit original Federal Register documents to be submitted in electronic form and to be authenticated by digital signatures. The Federal Register Act, at 44 U.S.C. 1503, requires agencies to submit original documents to the OFR for publication in the Federal Register but does not define the term ''original'' document. Original documents are currently defined in ACFR regulations by provisions that require originals to be submitted in manuscript form and to be authenticated by ink signatures. The amendments to part 18 expand the definition of an original document to include electronic documents submitted by telecommunication that are authenticated by digital signatures.

This action establishes the legal basis for OFR to accept documents in electronic form so that the OFR and GPO may participate in selected pilot programs currently under development. If the pilot programs are successful in establishing a government-wide Public Key Infrastructure for Federal agencies and a consensus on technical standards and specifications, the OFR and GPO will adapt their production processes to permit certain electronic documents to be published on a regular basis. However, during the pilot phase, the OFR will only accept electronic documents for publication in the Federal Register from agencies participating in selected pilot programs.

The Administrative Committee's last price change regulation, published at 59 FR 48989 on September 26, 1994, invited public comment on the pricing structure of Federal Register publications. No pricing related comments were received. Customers who called to inquire about the online Federal Register, published daily on the GPO Access service since June 8, 1994, as referenced in the September 26, 1994 final rule, were referred to the GPO Access User Support Team. Complete information on free public access to the online editions of the Federal Register, The United States Government Manual and other Federal Register publications on the GPO Access service Wide Area Information Server (WAIS) may be obtained by consulting introductory page II of the paper edition of the daily Federal Register; by Internet e-mail at gpoaccess@gpo.gov; by telephone at 202–512–1530; or by fax at 202–512–1262. Internet users can access the database by using the World Wide Web. The GPO's home page address for Federal Register publications is: http://www.access.gpo.gov/su_docs/aces/aces140.html. The OFR home page address is: http://www.nara.gov/nara/fedreg/fedreg.html. The Administrative Committee continues to welcome comments on Federal Register publications and prices.

The Administrative Committee has not published a notice of proposed rulemaking on the revised price schedule, as permitted by 5 U.S.C. 553(b)(B) when there is good cause not to publish a proposed rule and obtain comments from interested persons. The Administrative Committee has determined that publication of a proposed rule is unnecessary. The Administrative Committee has authority under 44 U.S.C. 1506 to set the prices to be charged for Federal Register subscriptions and individual copies. To the extent possible, the Administrative Committee sets prices to recover only the actual cost of producing and distributing Federal Register publications. The revised prices are based on an in-depth cost study conducted by GPO for the Administrative Committee.

Because only actual prior costs and conservative estimates of future costs were considered in setting the revised price schedule, and because of the requirement that GPO must recover its production and distribution costs, the Administrative Committee has determined that there is good cause for promulgating this final rule without a prior notice of proposed rulemaking. The changes to ACFR regulations relating to submission of electronic documents are procedural rules which are not subject to notice and comment under 5 U.S.C. 553(b)(A).

This regulatory action has been reviewed by the Office of Management and Budget's Office of Information and Regulatory Affairs under Executive Order 12866. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to rate increases necessary to recover the costs of the Government of printing and distributing these publications.

List of Subjects

1 CFR Part 5

Administrative practice and procedure, Federal Register, Government publications.

1 CFR Part 11

Code of Federal Regulations, Federal Register, Government publications, Organizations and functions (Government agencies)

1 CFR Part 18

Administrative practice and procedure, Federal Register.

For the reasons discussed in the preamble, the Administrative Committee of the Federal Register amends parts 5, 11 and 18 of chapter I of title 1 of the Code of Federal Regulations as set forth below:

PART 5—GENERAL

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

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

2. Amend part 5 by adding § 5.10 to read as follows:

§ 5.10 Forms of publication.

Pursuant to section 1506 of title 44, United States Code, the Administrative Committee publishes the Federal Register in the following formats: paper; microfiche; and online on GPO Access (44 U.S.C. 4101).

PART 11—SUBSCRIPTIONS

1. The authority citation for part 11 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

2. Amend § 11.1 by revising the first sentence to read as follows:

§ 11.1 Subscription by the public.

The Government Printing Office produces the paper and microfiche editions of the publications described in § 2.5 of this chapter, and the Superintendent of Documents, Government Printing Office, Washington, DC 20402, makes them available for sale to the public.* * *

3. Revise § 11.2 to read as follows:

§ 11.2 Federal Register.

(a) Daily issues are provided to subscribers by mail for $555 per year in paper form. A combined subscription consisting of the daily issues, the monthly Federal Register Index, and the monthly LSA (List of CFR Sections Affected) is provided to subscribers by mail for $607 per year in paper form or $220 per year in microfiche form. Six month subscriptions to the paper and microfiche editions are also available at one-half the annual rate. Limited quantities of current or recent issues may be obtained for $8 per copy in paper form or $1 per copy in microfiche form.

(b) The online edition of the Federal Register, issued under the authority of the Administrative Committee, is available on GPO Access, a service of the Government Printing Office (44 U.S.C. 4101).

4. Revise § 11.3 to read as follows:

§ 11.3 Code of Federal Regulations (CFR)

A complete set is provided to subscribers by mail for $951 per year for the bound, paper edition or $247 per year for the microfiche edition. Individual volumes of the bound, paper edition of the Code are sold at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of an individual volume in microfiche form is $1 per copy.

5. In § 11.4, add a second sentence to read as follows:

§ 11.4 The United States Government Manual.

* * * * *

The online edition of the Manual, issued under the authority of the Administrative Committee, is available on GPO Access, a service of the Government Printing Office (44 U.S.C. 4101).

6. Revise § 11.6 to read as follows:

§ 11.6 Weekly Compilation of Presidential Documents.

Copies in paper form are provided to subscribers for $80 per year by non-priority mail or $137 per year by first-class mail. The price of an individual copy in paper form is $3.

7. Revise § 11.7 to read as follows:

§ 11.7 Federal Register Index.

The annual subscription price for the monthly Federal Register Index, purchased separately, in paper form, is $25.

8. Revise § 11.8 to read as follows:

§ 11.8 LSA (List of CFR Sections Affected).

The annual subscription price for the monthly LSA (List of CFR Sections Affected), purchased separately, in paper form, is $27.

PART 18—PREPARATION AND TRANSMITTAL OF DOCUMENTS GENERALLY

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

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

2. in § 18.4, add paragraph (c) to read as follows:

§ 18.4 Form of document.

* * * * *

(c) Original documents submitted by telecommunication and authenticated by digital signatures consistent with applicable Federal standards and Office of the Federal Register technical specifications may be accepted for publication.[3]

3. In § 18.7, add a third sentence to read as follows:

§ 18.7 Signature.

* * * * *

Documents submitted under § 18.4(c) may be authenticated as original documents by digital signatures.

John W. Carlin,
Chairman.
Michael F. DiMario,
Member.
Rosemary Hart,
Member.
Janet Reno,
Attorney General.
John W. Carlin,
Archivist of the United States.

[FR Doc. 96–32865 Filed 12–26–96; 8:45 am]

BILLING CODE 1505–02–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 410

RIN 3206–AF99

Training

AGENCY: Office of Personnel Management.

ACTION: Correction to final rule.

SUMMARY: The Office of Personnel Management referenced an incorrect reference in § 410.306(c). This document corrects this error.

EFFECTIVE DATE: December 17, 1996.

FOR FURTHER INFORMATION CONTACT: Judith Lombard, 202–606–2431, EMAIL jmlombar@opm.gov, or FAX 202–606–2394.

SUPPLEMENTARY INFORMATION: Accordingly, page 66194, third column, § 410.306(c) of the final rule published on December 17, 1996, is corrected to read as follows:

(c) Subject to the prohibitions of § 410.308(a) of this part, an agency may pay all or part of the training expenses of students hired under the Student Career Experience Program (see 5 CFR § 213.3202(d)(10)).

Jacquline D. Carter,
Federal Regulations Liaison Officer.

[FR Doc. 96–32856 Filed 12–26–96; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 278

RIN 0584–AC00

Food Stamp Program: Revisions in Use and Disclosure Rules Involving the Sharing of Information Provided by Retail and Wholesale Food Concerns with Other Federal and State Agencies

AGENCY: Food and Consumer Service, USDA

ACTION: Final rule.

SUMMARY: This rulemaking implements certain provisions in two different laws which expand the authority of the United States Department of Agriculture's Food and Consumer Service (FCS) to share information provided by applicants and firms participating as authorized retail food stores or wholesale food concerns in the Food Stamp Program (FSP) with other Federal and State government agencies.

The intent of this final rule is to enable better administration and enforcement of the Food Stamp Act of 1977, as amended (the Act), or any other Federal or State law and regulations issued under the Act or any other Federal or State law. This rule provides new criteria to govern the sharing of such information and new criminal penalties for unauthorized use. It also implements the Secretary of Agriculture's new authority to share employer identification numbers (EINs) and Social Security numbers (SSNs) of applicants and firms participating in the FSP with other Federal agencies.

Finally, this rule makes technical changes to correct an error in regulatory reference and also to reflect changes made by the Department of the Treasury

[3] At present, submission of documents by telecommunication is limited to selected pilot projects.

in a parallel rule that does not change the substance of the affected provisions.

EFFECTIVE DATE: Provisions in this rule are effective and will be implemented beginning February 25, 1997.

FOR FURTHER INFORMATION CONTACT: Questions regarding this final rule should be addressed to Suzanne Fecteau, Food and Consumer Service, Chief, Redemption Management Branch, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or by telephone at (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice to 7 CFR part 3015 subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires inter-governmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. § 601–612). William E. Ludwig, the Administrator of the Food and Consumer Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities; however, it may have a significant effect on a limited number of small entities that violate State or Federal laws.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule has preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule also has retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for Program retailers and wholesalers— administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

On May 12, 1995, the Department published a proposed rule at 60 FR 25625, to implement section 203 of the Food Stamp Program Improvements Act of 1994, Public Law 103–225. Section 203 revises section 9(c) of the Food Stamp Act of 1977, as amended, to expand FCS' authority to share information provided by applicants and participating retail food concerns—including information about food stamp redemptions, retail food sales, and store ownership—with other Federal and State law enforcement and investigative agencies. It covers certain information provided on authorization applications, as well as additional supporting information submitted to document store eligibility to participate in the FSP. This information can be shared for the purpose of administering and enforcing the Food Stamp Act, as well as the enforcement of any other Federal or State laws, and the regulations issued under this Act or such other laws.

The sharing of EINs and SSNs is not covered by Public Law 103–225 or by Section 9(c) of the Food Stamp Act of 1977, as amended. The sharing of EINs and SSNs is covered in section 316 of the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296, and is also implemented by this rule. Section 316 revises section 6109(f) of the Internal Revenue Code of 1986, and section 205(c)(2)(C) of the Social Security Act, to expand FCS' authority to verify and match SSNs and EINs with other Federal agencies or instrumentalities of the United States to more effectively administer and enforce the FSP, as well as other Federal laws and regulations.

For currently authorized firms, the provisions of this rule are effective February 25, 1997 and will be implemented beginning February 25, 1997. Because of the legal notice requirements related to the use of EINs and SSNs, currently authorized firms will receive notices of the expanded information sharing provisions of this rule, and will be given the opportunity to withdraw from FSP participation if they do not want to be subject to these new provisions. Firms that remain authorized 60-days after the date of the notice, will be subject to the information sharing provisions. However, firms that withdraw or were disqualified from FSP participation prior to the implementation date on the notice will not be subject to the expanded information sharing provisions of this rule, unless such firms participate in the FSP at a future date subsequent to implementation of this rule.

Comments were solicited on the provisions of the proposed rulemaking through June 12, 1995. This final action addresses the commentors' concerns. Readers should refer to the proposed rule for a more complete understanding of this final action.

The Department received three comment letters on the proposed rule, two representing Federal agencies and one representing a State agency. All three commentors were supportive of the proposed provisions, and two offered constructive suggestions to clarify certain provisions of the proposed rule.

A State agency commented that the proposed rule will assist law enforcement and investigative agencies in their efforts to investigate food stamp trafficking, as well as other crimes associated with trafficking.

A Federal agency commented on the need to clarify certain requirements in the proposed rule regarding how information is requested. The proposed rule required that requests be submitted in writing and include the specific provisions of laws and regulations being enforced. The recommendation was that written requests include electronic communications. This commentor also recommended that the final rule allow standing agreements between FCS and other agencies to document that such information is being accessed for *bona fide* law enforcement purposes, without citing specific provisions of law.

It is the view of the Department that written requests include electronic communications. The Department also believes that formal agreements between government agencies may be a better way to document the *bona fide* need for the information. In such situations, individual written requests for access to FCS information may not be necessary. The Department has made this clear in the final rule by adding the appropriate language.

The Department of Agriculture's Office of Inspector General (OIG) expressed concern that the proposed rule restricted its authority to share information for enforcement of the Food Stamp Act, while other government entities could access information to enforce all laws and regulations under their respective jurisdictions. OIG also requested that the final rule include language to give it special authority to release information in certain circumstances.

The Department agrees that OIG and other USDA agencies may be allowed access to information needed to enforce Departmental laws and regulations. Appropriate clarifying language is included in the final rule. Authority for OIG or other agencies to release FCS information will be addressed in written agreements with individual agencies.

OIG was also concerned about the effective date of this rule. The proposed rule provides that stores authorized to participate in the FSP on August 15, 1994, and stores authorized after that date will be subject to the rule. OIG was concerned that a possible interpretation might be that stores initially authorized before August 15, 1994, that continue participating after implementation, would not be subject to this rule. This was not the Department's intent; thus, the final rule states that all stores participating in the FSP after implementation shall be subject to the provisions in this rule. This rule also affects unauthorized entities and individuals accepting and redeeming food stamps illegally, except that the sharing of EINs and SSNs for such firms will be limited to those firms which were previously sanctioned or convicted under section 12 or 15 of the Food Stamp Act of 1977, as amended (7 U.S.C. 2021 or 2024).

The Department has made minor revisions to clarify the meaning of a few provisions in the proposed rule in order to avoid any confusion. A reference to ''applicant'' under paragraph (q) that was inappropriate has been replaced with the appropriate term, ''retail food store.'' The Department also clarified a reference in the proposed rule involving the Special Supplemental Food Program for Women, Infants and Children (WIC). Current regulations afford WIC special information sharing status. This rule's expanded information sharing negates the need to treat WIC as a special situation; therefore, the sentence involving the treatment of WIC in the proposed rule has been removed.

The Department has also added clarifying language to clearly distinguish between the two different laws implemented by this rule. One law (amending the Food Stamp Act) addresses information, excluding SSNs and EINs, provided by applicants and participating firms that can be shared with both Federal and State law enforcement or investigative agencies. The other law (amending the Social Security Act and the Internal Revenue Code) addresses information involving SSNs and EINs that can only be shared with certain Federal agencies and instrumentalities of the United States. Clarifying language has also been added to the final rule to define ''a law enforcement or investigative agency'' and ''an FCS initiated match.'' Editorial changes in the final rule were also made to provide a more orderly presentation.

Finally, because a regulation published on October 15, 1996 redesignated paragraph (q) to (r) in § 278.1, this rule makes the conforming changes.

List of Subjects in 7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries—retail, Groceries, General line—wholesaler, Penalties.

Accordingly, 7 CFR part 278 is amended as follows:

PART 278—[AMENDED]

1. The authority citation for 7 CFR part 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2032

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

2. In § 278.1:

a. The heading and the introductory text of paragraph (r) is revised;

b. Paragraphs (r)(1) and (r)(2) are redesignated as paragraphs (r)(2) and (r)(3), respectively, and a new paragraph (r)(1) is added;

c. Newly redesignated paragraphs (r)(2)(i), (r)(2)(ii), (r)(3)(i), and (r)(3)(ii) are revised;

d. Newly redesignated paragraph (r)(2)(iii) is amended by adding after the word ''Department'' in the first sentence the words ''or any agency or instrumentality of the United States'' and by removing the designation ''(c)(2)'' following the references to ''§ 301.6109–2'' and ''(26 CFR 301.6109–2)'' and adding in its place the designation (d)(2);

e. Newly redesignated paragraph (r)(2)(iv) is amended by adding after the word ''Department'' the words ''or maintained by any agency or instrumentality of the United States'', by removing the references to ''§ 278.1(s)(1)(ii)'' and ''§ 278.1 (r)(1)(iv)'' and adding in their place references to ''paragraph (r)(2)(ii) of this section'' and ''paragraph (r)(2)(iv) of this section'', and by removing the designation ''(d)'' following the references to ''§ 301.6109–2'' and ''(26 CFR 301.6109)'' and adding in its place the designation (e);

f. Newly redesignated paragraph (r)(2)(v) is amended by removing the designation ''(e)'' after the references to ''§ 301.6109–2'' and ''(26 CFR 301.6109–2)'' and adding in its place the designation (f);

g. Newly redesignated paragraph (r)(3)(iv) is amended by removing the reference ''§ 278.1(q)(2)(iv)'' and adding in its place the reference ''paragraph (r)(3)(iv) of this section''; and

h. A new paragraph (r)(4) is added.

The revisions and additions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(r) *Use and disclosure of information provided by firms.* With the exception of EINs and SSNs, the contents of an initial application, or other information required to be submitted by retail food stores and wholesale food concerns to determine continued eligibility, such as ownership information and sales and redemption data, may be disclosed to and used by Federal and State law enforcement and investigative agencies for the purpose of administering or enforcing the Food Stamp Act or any other Federal or State law, and the regulations issued under the Food Stamp Act or such other law. Such disclosure and use shall also include companies or individuals under contract for the operation by, or on behalf of FCS to accomplish an FCS function. Such purposes include the audit and examination of such information by the Comptroller General of the United States authorized by any other provision of law. Any person who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by Federal law or regulations any information obtained under this paragraph shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. Safeguards with respect to employee identification numbers (EINs) are contained in paragraph (r)(2) of this section. Safeguards with respect to Social Security numbers (SSNs) are contained in paragraph (r)(3) of this section.

(1) *Criteria for requesting information.* FCS shall determine what information can be disclosed and which government

agencies have access to that information based on the following criteria:

(i) Federal and State law enforcement or investigative agencies or instrumentalities administering or enforcing specified Federal and State laws, or regulations issued under those laws, have access to certain information maintained by FCS. Such agencies or instrumentalities must have among their responsibilities the enforcement of law or the investigation of suspected violations of law. However, only certain Federal entities have access to information involving SSNs and EINs in accordance with paragraph (r)(1)(ii) of this section;

(ii) Except for SSNs and EINs, information provided to FCS by applicants and authorized firms participating in the FSP may be disclosed and used by qualifying Federal and State entities in accordance with paragraph (r)(1)(i) of this section. The disclosure of SSNs and EINs is limited only to qualifying Federal agencies or instrumentalities which otherwise have access to SSNs and EINs based on law and routine use. Release of information under this paragraph shall be limited to information relevant to the administration or enforcement of the specified laws and regulations, as determined by FCS;

(iii) Requests for information must be submitted in writing, including electronic communication, and must clearly indicate the specific provision of law or regulations which would be administered or enforced by access to requested information, and the relevance of the information to those purposes. If a formal agreement exists between FCS and another agency or instrumentality, individual written requests may be unnecessary. FCS may request additional information if needed to clarify a request;

(iv) Disclosure by FCS is limited to: Information about applicant stores and concerns with applications on file; information about authorized stores participating in the FSP; and information about unauthorized entities or individuals illegally accepting or redeeming food stamps;

(v) Requests for information disclosure by FCS may involve a specific store or concern, or some or all stores and concerns covered by paragraph (r)(1)(iv) of this section. In addition, FCS may sign agreements allowing certain government entities direct access to appropriate FCS data, with access to EINs and SSNs limited only to other Federal agencies and instrumentalities that otherwise have access to such numbers.

(2) *Employer identification numbers.* (i) The Department may have access to the EINs obtained pursuant to paragraph (b)(5) of this section for the purpose of establishing and maintaining a list of the names and EINs of the stores and concerns for use in determining those applicants who previously have been sanctioned or convicted under sections 12 and 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2021 or 2024). The Department also may share EINs with other Federal agencies and instrumentalities that otherwise have access to EINs if the Department determines that such sharing would assist in verifying and matching such information against information maintained by such other agency or instrumentality. Any such information shared pursuant to this paragraph may be used by the Department or such other agency or instrumentality for the purpose of effective administration and enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. See Treas. Reg. § 301.6109–2 (b) and (c) (26 CFR 301.6109–2 (b) and (c)).

(ii) The only persons permitted access to EINs obtained pursuant to paragraph (b) of this section are officers and employees of the United States, who otherwise have access and whose duties or responsibilities require access to the EINs for the administration or enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. See Treas. Reg. § 301.6109–2(d)(1) (26 CFR 301.6109–2(d)(1)).

* * * * *

(3) *Social Security numbers.* (i) The Department may have access to SSNs obtained pursuant to paragraph (b)(5) of this section for the purpose of establishing and maintaining a list of names and SSNs of stores and concerns for use in determining those applicants who previously have been sanctioned or convicted under section 12 or 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2021 or 2024). The Department may use this determination of sanctions and convictions in administering sections 12 and 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2018, 2021). The Department also may share SSNs with other Federal agencies and instrumentalities if the Department determines that such sharing would assist in verifying and matching such information against information maintained by the Department or such other agency or instrumentality. Any such information shared pursuant to this paragraph shall be used for the purpose of effective administration and enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws.

(ii) The only persons permitted access to SSNs obtained pursuant to paragraph (b) of this section are officers and employees of the United States, who otherwise have access, and whose duties or responsibilities require access to the SSNs for the administration or enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. Such access shall also include companies or individuals under contract for the operation by, or on behalf of FCS to accomplish an FCS function.

* * * * *

(4) *FCS initiated matches.* Under the restrictions noted in paragraph (r) of this section, FCS will periodically initiate cross matches of retailer data with other Federal and State agencies' files for the purpose of verifying information provided by applicant and participating firms, and for the purposes of administering and enforcing other Federal or State laws. Such matches could involve all firms participating after implementation for the purpose of verifying information such as, but not limited to, SSNs and retail sales data.

* * * * *

3. In § 278.9, a new paragraph (l) is added to read as follows:

§ 278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns and insured financial institutions.

* * * * *

(l) *Amendment No. 335.* Expanded authority to use and disclose information about firms participating in the FSP under CFR 278.1(r) for currently authorized firms is effective and will be implemented beginning February 25, 1997 but not before 60-days after the date of notices to such firms, notifying them of the changes. The only exception to the above is that such disclosure of information shall not apply to firms that are withdrawn or are disqualified from FSP participation prior to implementation, unless such firms participate in the FSP at a future date subsequent to the implementation date.

Dated: December 18, 1996.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 96–32998 Filed 12–26–96; 8:45 am]

BILLING CODE 3410–30–U

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 95–044–2]

The Importation of Ratites and Hatching Eggs of Ratites

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal import regulations to relieve certain restrictions on the importation of ratites and hatching eggs of ratites into the United States from Canada. We believe that these actions can be taken without increasing the risk of introducing poultry or livestock diseases into the United States. Additionally, we are allowing adult ostriches from any country to be imported, in accordance with the regulations, through the New York Animal Import Center, based on space availability. Currently, with certain exceptions, ostriches may not be imported into the United States if they exceed either 36 inches in height or 30 pounds in weight. We are making this change after determining that the New York Animal Import Center has the facilities and trained personnel to handle adult ostriches. We believe that these amendments will facilitate the importation into the United States of ratites and hatching eggs of ratites while ensuring the continued protection of the health of livestock and poultry in the United States.

EFFECTIVE DATE: January 27, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–5097.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as ''the regulations'') govern the importation into the United States of certain animals and birds, including ostriches and other flightless birds known as ratites, and their hatching eggs, to prevent the introduction of communicable diseases of livestock and poultry.

Section 92.101 of the regulations, among other things, imposes general restrictions on the importation of ratites and hatching eggs of ratites. Paragraph (b)(3)(i) of § 92.101 requires that all ratites, except ratites imported as zoological birds, and all hatching eggs of ratites entering the United States must originate from certified pen-raised flocks and must be identified. Ratites must be identified by means of a microchip implant, hatching eggs of ratites by marking on the shell. Paragraph (b)(3)(i) also requires certain recordkeeping, reporting, and inspections related to the flock and premises of origin. Paragraph (b)(3)(ii) of § 92.101 prohibits, with certain exceptions, the importation of ostriches more than 36 inches in height or 30 pounds in weight at the time of arrival in the United States.

Section 92.103 of the regulations, among other things, requires that an importer submit a completed import permit application to import ratites or hatching eggs of ratites into the United States. The import permit application provides, among other things, information on the name and location of the quarantine facility in the United States that will maintain the ratites or hatching eggs of ratites during the mandatory quarantine period.

Section 92.104 of the regulations, among other things, requires that ratites and their hatching eggs offered for importation from any part of the world be accompanied by a certificate issued by a full-time salaried veterinary officer of the national government of the exporting country or issued by a veterinarian authorized or accredited by the national government of the exporting country and endorsed by a full-time salaried veterinary officer of the national government of that country. The certificate must state, among other things, that ratites and their hatching eggs offered for importation have been inspected and found free of evidence of communicable diseases and are identified in accordance with the provisions in § 92.101.

Section 92.105 of the regulations, among other things, specifies requirements for the inspection of ratites and hatching eggs of ratites at the port of entry in the United States. Paragraph (a) of § 92.105, among other things, allows hatching eggs of ratites to be offered for importation into the United States at any international airport, or any land-border port within 20 miles of an international airport, serviced by Customs. In addition, hatching eggs of ratites may be shipped, in bond, from the port of first arrival to the Customs port of entry where the eggs will be inspected and quarantined. Paragraph (c) of § 92.105 provides that ratites, other than hatching eggs of ratites, imported from any part of the world must be inspected by a veterinary inspector of the Animal and Plant Health Inspection Service (APHIS) at a listed port of entry. The ports of entry listed for ostriches are New York, NY; Stewart Airport, Newburgh, NY; and Miami, FL. The ports of entry listed for ratites other than ostriches are New York, NY; Stewart Airport, Newburgh, NY; Miami, FL; and Honolulu, HI.

Section 92.106 of the regulations, among other things, imposes quarantine requirements on ratites and hatching eggs of ratites. Paragraph (b)(1) of § 92.106, among other things, requires ratites imported from any part of the world to be quarantined upon arrival for a minimum of 30 days to determine the ratites' freedom from ectoparasites and communicable diseases. Paragraph (b)(3) of § 92.106 requires that ratites be treated for ectoparasites during the quarantine by an inspector until the inspector determines that the ratites are free of ectoparasites. Paragraph (b)(2) of § 92.106, among other things, requires hatching eggs of ratites imported from any part of the world to be quarantined upon arrival, incubated for approximately 42 days, and held in quarantine for a minimum of 30 days following the hatch of the last chick in the lot, to determine the ratites' freedom from communicable diseases. Additionally, the ratites and hatching eggs of ratites must be tested for and found free of viral diseases of poultry, including exotic Newcastle disease.

On June 3, 1996, we published in the Federal Register (61 FR 27797–27802, Docket No. 95–044–1) a proposal to amend the regulations by exempting certain ratites and hatching eggs of ratites from Canada from quarantine requirements upon arrival in the United States; exempting ratites imported from Canada for consignment directly to slaughter in the United States from the requirement in § 92.104(c)(8) that the ratites be treated for ectoparasites within 3 to 14 days before they are exported from Canada; exempting Canadian ratite flocks from the pen-raised requirement and the identification and recordkeeping requirements in § 92.101(b)(3); allowing ratites from Canada that are exempt from quarantine upon arrival to be offered for importation at a number of ports, in addition to the ports listed in § 92.105(c); exempting ratites and hatching eggs of ratites from Canada from the import permit requirements found in § 92.103 if the ratites and hatching eggs qualify for exemption from quarantine upon arrival in the United States and enter the United States at a Canadian land border port, as listed in § 92.203(b); and allowing ostriches greater than 36 inches in height or 30 pounds in weight to be imported into the United States from any country through the port of New

York, NY, or through Stewart Airport, Newburgh, NY, and be quarantined at the New York Animal Import Center (NYAIC), based on space availability.

We solicited comments concerning our proposal for 60 days ending August 2, 1996. We received two comments, one from a government agency and the other from a representative of industry, by that date. The concerns of these commenters are discussed below by topic.

Ports of Entry

One commenter explained that under the regulations of the U.S. Fish and Wildlife Service, Department of the Interior, wildlife may only be imported into the United States through certain ports. Because the U.S. Fish and Wildlife Service includes ratites in their definition of wildlife, ratites may therefore only be imported into the United States through these specific ports. The commenter explained that certain ports that we proposed as additional ports for the entry of Canadian ratites and hatching eggs of ratites conflict with the ports listed as eligible ports for wildlife in the U.S. Fish and Wildlife Service regulations. Specifically, conflicts arise because the U.S. Fish and Wildlife Service limits the importation of species protected under the Convention on International Trade in Endangered Species, the Endangered Species Act, or other Federal wildlife laws requiring permits to certain ports and because the U.S. Fish and Wildlife Service does not allow the importation of wildlife through several of the ports that we had proposed as additional ports for the importation of Canadian ratites and hatching eggs of ratites.

In response to this comment, we are removing the ports of Jacksonville, FL; Port Canaveral, FL; St. Petersburg-Clearwater, FL; Portland, ME; Great Falls, MT; Opheim, MT; Alexandria Bay, NY; Galveston, TX; Lyndon, WA; Oroville, WA; Spokane, WA; and Tacoma, WA, from the list of ports through which Canadian ratites and their hatching eggs may enter the United States. We are also adding to the regulations a statement, which currently appears on the import permit issued by APHIS for ratites and their hatching eggs, that Canadian ratites and their hatching eggs intended for importation into the United States must meet all applicable requirements of the United States Fish and Wildlife Service contained in Title 50, subchapter B, of the Code of Federal Regulations.

Ratite References

One commenter suggested that throughout the proposal, we consistently use the general term ''ratites,'' rather than specify members of the ratite family such as ''ostriches.'' Alternatively, the commenter requested that where specific members of the ratite family are named, then each member, such as ''emus,'' ''rheas,'' and ''kiwis,'' should also be listed.

Where appropriate, we used the general reference ''ratite'' in the proposal. The term ''ratites'' is defined in the regulations as ''cassowaries, emus, kiwis, ostriches, and rheas.'' When we used the specific term ''ostrich,'' as in the proposal to allow ostriches greater than 36 inches in height or 30 pounds in weight to be imported into the United States from any country through the port of New York, NY, or through Stewart Airport, Newburgh, NY, and be quarantined at the New York Animal Import Center, based on space availability, we intended to specify ostriches only. Therefore, we are making no changes to the rule based on this comment.

Ratite Meat and Byproducts

One commenter asked that we also relieve restrictions on ratite meat and ratite byproducts, such as ratite hides and all ratite eggs, from Canada.

Currently, the regulations in 9 CFR 94.6 restrict the entry of carcasses, or parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from countries where exotic Newcastle disease (END) or *S. enteritidis,* phage type 4, is considered to exist. Canada is considered free of both END and *S. enteritidis,* phage type 4; therefore, the importation of ratite carcasses, or parts or products of ratite carcasses, and ratite eggs (other than hatching eggs) from Canada are not restricted under APHIS regulations.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule relieves some restrictions on the importation into the United States of ratites and hatching eggs of ratites from Canada and on the importation into the United States of adult ostriches. We anticipate that this rule will affect only the ostrich industry because very few ratites other than ostriches have been imported into the United States since first being allowed in 1986.

Ostrich production in the United States has been growing rapidly over the last few years. According to a recent estimate, there are approximately 6,000 to 7,000 ostrich owners and more than 70,000 breeding ostriches in the United States. Each farm owns an average of 8 to 10 adult ostriches, but each farm's holdings can range anywhere from 2 to 200 adult ostriches. All of these farms are considered small entities by Small Business Administration standards (annual gross receipts of less than $500,000). The American Ostrich Association reports its membership at 3,650 as of September 1995.

Over the last 2 to 3 years, the supply of ostriches in the United States has steadily increased, which has greatly reduced domestic prices. For example, in 1992, market prices for ostriches of different ages ranged as follows: 3-month-old chicks sold for approximately $6,000 a pair; 6-month-old chicks sold for $8,000 to $15,000 a pair; yearlings sold for $12,000 to $25,000 a pair; 2-year-olds sold for $25,000 to $40,000 a pair; and adults (breeding pairs) sold for $40,000 up to $100,000 a pair, depending upon proven breeding capabilities. Recent market prices for ostriches of different ages show a dramatic decrease from the market prices of 1992; estimates of 1995 market prices for ostriches of different ages are as follows: 3-month-old chicks sell for approximately $1,300 a pair; 6-month-old chicks sell for approximately $2,150 a pair; yearlings sell for approximately $4,300 a pair; 2-year-olds sell for approximately $8,600 a pair; and adults (breeding pairs) sell for approximately $14,700 a pair, depending upon proven breeding capabilities. Further, when compared to the market prices listed above for 1995, the estimated market prices for the first quarter of 1996 show approximately a fifty percent decrease in the market prices for ostriches in all age categories.

No live ratites have been imported into the United States from any country since April of 1994. Removing the quarantine and other requirements for Canadian ratites and their hatching eggs could encourage imports by decreasing the cost of importing these ratites and hatching eggs. However, because of the decrease in market prices described above, we do not expect a heavy volume of ostriches or other ratites from Canada to be imported into the United States as a result of this rule.

In addition, though the hatching eggs of ratites are more readily available, are cheaper to transport, and can be

quarantined at private facilities, historically only about 26 percent of the imported eggs (this includes fertile and infertile eggs) have hatched chicks that survived beyond 30 days. Despite being a financially dangerous option, importers continue to import hatching eggs and are trying to improve their rate of hatch and chick survival. However, because of the relatively low hatch and survival rate and the reduced market prices of ostriches of different ages, we do not expect a heavy volume of the hatching eggs of ratites from Canada to be imported into the United States as a result of this rule.

Any imports from Canada that might result from this rule could cause a further decline in the domestic prices of ratites in the United States. However, we expect that domestic ratite importers will benefit by having fewer restrictions on Canadian imports. Over the short term, the proposed changes in the regulations might have a minor adverse economic impact on domestic ostrich producers. Over the long term, we expect the domestic ratite industry to benefit from any imports that may occur because reduced ostrich prices could lead to larger domestic populations of ostriches, benefiting consumers of ostriches and ostrich products. A larger domestic ratite population could further enhance the economic viability of commercial ratite breeding, slaughter, feather, and leather markets.

We expect that the economic effect of allowing the importation of adult ostriches from all countries into the United States through the New York Animal Import Center will be insignificant because of the drastic decrease in the market prices of ostriches.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 92.101 [Amended]

2. Section 92.101 is amended as follows:

a. By removing paragraph (b)(3)(ii).

b. By redesignating paragraphs as follows:

Old designation	New designation
(b)(3)(i) introductory text.	(b)(3) introductory text.
(b)(3)(i)(A)	(b)(3)(i)
(b)(3)(i)(B)	(b)(3)(ii)
(b)(3)(i)(C)	(b)(3)(iii)
(b)(3)(i)(D)	(b)(3)(iv)
(b)(3)(i)(D)(*1*)	(b)(3)(iv)(A)
(b)(3)(i)(D)(*2*)	(b)(3)(iv)(B)
(b)(3)(i)(D)(*3*)	(b)(3)(iv)(C)
(b)(3)(i)(E)	(b)(3)(v)
(b)(3)(i)(F)	(b)(3)(vi)
(b)(3)(i)(G)	(b)(3)(vii)
(b)(3)(i)(H)	(b)(3)(viii)
(b)(3)(i)(I)	(b)(3)(ix)
(b)(3)(i)(J)	(b)(3)(x)
(b)(3)(i)(K)	(b)(3)(xi)
(b)(3)(i)(L)	(b)(3)(xii)

c. By revising the introductory text of newly redesignated paragraph (b)(3) to read as set forth below.

d. In newly designated paragraph (b)(3)(vi), by removing the reference ''(b)(3)(i)(D)'' and adding ''(b)(3)(iv)'' in its place.

e. In newly designated paragraph (b)(3)(vii), by removing the reference ''(b)(3)(i)(B)'' and adding ''(b)(3)(ii)'' in its place, and by removing the reference ''(b)(3)(i)(C)'' and adding ''(b)(3)(iii)'' in its place.

f. In newly designated paragraph (b)(3)(x), the first sentence, by removing the reference ''(b)(3)(i)(B)'' and adding ''(b)(3)(ii)'' in its place, and by removing the reference ''(b)(3)(i)(C)'' and adding ''(b)(3)(iii)'' in its place.

g. In newly designated paragraph (b)(3)(x), the fourth sentence, by removing the reference ''(b)(3)(i)(E)'' and adding ''(b)(3)(v)'' in its place.

§ 92.101 General prohibitions; exceptions.

* * * * *

(b) * * *

(3) Except for ratites imported as zoological birds, and ratites and ratite hatching eggs imported from Canada in accordance with § 92.107, ratites and hatching eggs of ratites may not be imported into the United States unless the following conditions are met:

* * * * *

§ 92.102 [Amended]

3. Section 92.102(c) is amended by removing the reference ''§ 92.105(a)'' and adding ''§ 92.105'' in its place.

4. Section 92.103 is amended as follows:

a. In paragraph (a)(1), the first sentence, by removing the reference ''92.214'' and adding ''92.107(b)'' in its place.

b. By revising paragraphs (a)(1)(xiii), (a)(2)(iii), and (a)(2)(iv) to read as set forth below.

c. In paragraph (a)(2)(v), by removing ''§ 92.101 (b)(3)(i)(G) and (b)(3)(i)(J)'' and adding ''§ 92.101(b)(3)'' in its place; and by removing ''§ 92.101 (b)(3)(i)(B) and (b)(3)(i)(C)'' and adding ''§ 92.101(b)(3)'' in its place.

d. At the end of the section, by adding an OMB control number to read as set forth below.

§ 92.103 Import permits for birds; and reservation fees for space at quarantine facilities maintained by APHIS.

(a) * * *

(1) * * *

(xiii) In addition, the application for a permit to import ratites or hatching eggs of ratites, except for ratites and hatching eggs of ratites imported from Canada in accordance with § 92.107, shall specify the number of ratites or hatching eggs intended for importation, the size of the flock of origin, and the location of the premises where the flock of origin is kept; and shall state that, from the date of application through the date of export, APHIS representatives shall be granted access to the premises where the flock of origin is kept. (For ratites intended for importation as zoological birds, the flock of origin shall be the ratites intended for importation.)

(2) * * *

(iii) In addition, a permit to import ratites or hatching eggs of ratites, except for ratites or hatching eggs of ratites imported from Canada in accordance with § 92.107, will be denied or withdrawn unless APHIS representatives are granted access to the premises where the flock of origin is kept (or, in the case of zoological birds, to the premises where the birds are kept), from the date of the application for the permit through the date of export.

(iv) Except for ratites intended for importation as zoological birds and ratites and hatching eggs of ratites imported from Canada in accordance with § 92.107, a permit to import ratites or hatching eggs of ratites will be denied or withdrawn unless an APHIS representative has visited the premises where the flock of origin is kept within the 12-month period before the intended importation and has determined that the flock is pen-raised and contains sufficient breeding pairs to produce the number of ratites or hatching eggs intended for importation.

* * * * *

(Approved by the Office of Management and Budget under control number 0579–0040)

5. Section 92.104 is amended as follows:

a. By revising paragraphs (c)(2), (c)(8), (c)(13), (c)(14), (c)(15), (c)(16), (d)(2), (d)(9), (d)(10), and (d)(11) to read as set forth below.

b. At the end of the section, by adding an OMB control number to read as set forth below.

§ 92.104 Certificates for pet birds, commercial birds, zoological birds, and research birds.

* * * * *

(c) * * *

(2) That, except when the certificate is for zoological birds or ratites imported from Canada in accordance with § 92.107, the flock of origin is pen-raised and the ratites covered by the certificate were produced and maintained in that flock;

* * * * *

(8) That, except as provided in § 92.107 for ratites imported from Canada for immediate slaughter, the ratites were treated at least 3 days but not more than 14 days before being loaded for shipment to the United States with a pesticide of a type and concentration sufficient to kill ectoparasites on the ratites;

* * * * *

(13) That the number of ratites and hatching eggs of ratites exported from the flock of origin has not exceeded the ceiling required to be established under § 92.101(b)(3)(ix);

(14) That all the ratites and hatching eggs of ratites in the flock from which the ratites come were identified in accordance with § 92.101(b)(3);

(15) Except for ratites imported from Canada in accordance with § 92.107, the number of ratite laying hens in the flock from which the ratites come;

(16) For ratites required to be treated prior to shipment with a pesticide for ectoparasites, the certificate must also state the name, concentration, and date of administration of the pesticide used to treat the ratites;

* * * * *

(d) * * *

(2) That, except when the certificate is for hatching eggs of ratites imported from Canada in accordance with § 92.107, the flock of origin is pen-raised, and the hatching eggs covered by the certificate were produced by that flock;

* * * * *

(9) That the number of ratites and hatching eggs of ratites exported from the flock of origin has not exceeded the ceiling required to be established under § 92.101(b)(3)(ix);

(10) That all the ratites and hatching eggs of ratites in the flock from which the hatching eggs come were identified in accordance with § 92.101(b)(3);

(11) Except for hatching eggs of ratites imported from Canada in accordance with § 92.107, the number of ratite laying hens in the flock from which the hatching eggs come.

(Approved by the Office of Management and Budget under control number 0579–0040)

6. Section 92.105 is amended as follows:

a. By revising paragraph (a) to read as set forth below.

b. In paragraph (c), by revising the introductory text and paragraph (c)(1) to read as set forth below.

§ 92.105 Inspection at the port of entry.

(a) All commercial birds, zoological birds, and research birds, including hatching eggs of ratites, but excluding other ratites, imported into the United States, must be inspected by the port veterinarian at the Customs port of entry, which may be any international airport, or any land-border port within 20 miles of an international airport, serviced by Customs, as well as, for Canadian-origin hatching eggs of ratites, ports listed in § 92.107 (c). However, hatching eggs of ratites may be shipped, in bond, from the port of first arrival to the Customs port of entry at which they will be quarantined, for inspection, at that port.

* * * * *

(c) Ratites, other than hatching eggs of ratites, imported from any part of the world must be inspected at the Customs port of entry by a veterinary inspector of APHIS and, except as provided in § 92.107(b) for ratites imported from Canada, shall be permitted entry only at one of the following ports of entry:

(1) Ostriches:

(i) Up to 36 inches in height (as measured from the top of the head to the base of the feet) or 30 pounds in weight: New York, NY; Stewart Airport, Newburgh, NY; and Miami, FL.

(ii) Exceeding 36 inches in height or 30 pounds in weight: New York, NY, and Stewart Airport, Newburgh, NY.

* * * * *

§ 92.106 [Amended]

7. Section 92.106 is amended as follows:

a. In paragraph (b)(1), the first sentence, by adding the words, ''except as provided in § 92.107,'' immediately following the words ''any part of the world''.

b. In paragraph (b)(2), the first sentence, by adding the words, ''except as provided in § 92.107,'' immediately following the words ''any part of the world''.

8. Section 92.107 is amended as follows:

a. By adding the paragraph designation ''(a)'' immediately preceding the words ''*In-bond shipments from Canada.*''

b. By adding new paragraphs (b) and (c) to read as follows:

§ 92.107 Special provisions.

* * * * *

(b) *Ratites from Canada*. Ratites that were hatched and raised in Canada or ratites that were legally imported into Canada and, upon arrival in Canada, were quarantined for a minimum of 28 days at a Canadian quarantine facility and remained in Canada for an additional 60 days following completion of quarantine may be imported into the United States:

(1) Without being quarantined upon arrival in the United States; and

(2) At any of the following ports of entry: Anchorage, AK; Fairbanks, AK; Los Angeles, CA; San Diego, CA; Denver, CO; Miami, FL; Tampa, FL; Atlanta, GA; Honolulu, HI; Eastport, ID; Chicago, IL; New Orleans, LA; Boston, MA; Baltimore, MD; Houlton, ME; Jackman, ME; Detroit, MI; Port Huron, MI; Sault Ste. Marie, MI; Minneapolis, MN; Raymond, MT; Sweetgrass, MT; Buffalo, NY; Champlain, NY; New York, NY; Stewart Airport, Newburgh, NY; Dunseith, ND; Pembina, ND; Portal, ND; Portland, OR; San Juan, PR; Houston,

TX; Highgate Springs, VT; Blaine, WA; Seattle, WA; and Sumas, WA; and

(3) If offered for entry at a Canadian land border port listed in § 92.203(b), without an import permit; and

(4) If consigned directly to slaughter from the port of entry, without being treated for ectoparasites within 3 to 14 days before shipment to the United States, as otherwise required by § 92.104(c)(8); and

(5) If in compliance with all of the applicable regulations of the U.S. Fish and Wildlife Service contained in Title 50, subchapter B, of the Code of Federal Regulations.

(c) *Ratite eggs from Canada.* Hatching eggs of ratites that were laid in Canada may be imported into the United States:

(1) Without being quarantined upon arrival in the United States; and

(2) At any of the ports of entry listed in paragraph (b)(2) of this section or authorized by § 92.105(a); and

(3) If offered for entry at a Canadian land border port listed in § 92.203(b), without an import permit; and

(4) If in compliance with all of the applicable regulations of the U.S. Fish and Wildlife Service contained in Title 50, subchapter B, of the Code of Federal Regulations.

Done in Washington, DC, this 19th day of December 1996.

A. Strating,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–32898 Filed 12–26–96; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 707

Organization and Operations of Federal Credit Unions; Truth in Savings

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board is implementing two provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. First, the Board is raising the threshold of credit union board of directors' approval of loans to officials from $10,000 to $20,000. Second, the Board is permanently exempting small, nonautomated credit unions from Truth in Savings compliance.

DATES: This final rule is effective December 27, 1996.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Sparky Conrey, Staff Attorney, Office of General Counsel, telephone (703) 518–6540, and Jodee Wuerker, Compliance Officer, Office of Examination and Insurance, telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION:

(1) Loans to Officials

On September 30, 1996, the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (the ''Act'') was enacted. Section 2306 of the Act amended sections 107(5)(A) (iv) and (v) of the Federal Credit Union Act, by raising the threshold of loans to officials that require credit union board of director approval from $10,000 to $20,000. 12 U.S.C. 1757(5)(A) (iv) and (v). These statutory provisions are currently implemented in section 701.21(d) (1) and (4) of NCUA's Rules and Regulations. 12 CFR 701.21(d) (1) and (4). The $10,000 amount is changed to $20,000 in these two sections. All other portions of the rules regarding loans to officials remain the same.

(2) Truth in Savings

Background

NCUA has previously extended the compliance date three times of part 707, which implements the Truth in Savings Act (TISA), for certain small, nonautomated credit unions. Each time, the NCUA Board took into consideration the limited resources of the exempted credit unions. The last extension was due to expire on January 1, 1997. 60 FR 57173 (November 14, 1995).

Section 2604(c) of the Act exempts from TISA requirements ''any nonautomated credit union that was not required to comply with the [TISA] as of the date of enactment of the [Act], pursuant to the determination of the [NCUA] Board.'' The NCUA Board has previously exempted nonautomated and insufficiently automated credit unions with an asset size of $2 million or less as reported to, or determined by, NCUA. An exemption had been supported by NCUA, the Department of the Treasury, and credit union trade associations in Congressional hearings and other legislative action, citing the hardships that would befall the small, nonautomated credit unions if TISA compliance became mandatory. These hardships potentially include: increased mergers of the affected credit unions into larger credit unions; increased voluntary liquidations; loss of volunteer support; allocation of credit union resources from member services to compliance; the expense, complications, and logistics of automating in order to comply; and loss of credit union services to members. Subsequently, Congress provided a TISA exemption for small, nonautomated credit unions.

The NCUA Board is concerned with the continued viability of small credit unions and the provision of continued financial services to their members. Ten years ago, credit unions under $2 million in size made up about two-thirds (10,564) of all federally insured credit unions. Today, such credit unions number only 3,401, about thirty percent of federally insured credit unions. In addition, the assets of today's 3,401 smallest credit unions are .9 percent of total assets in all credit unions, while credit unions of $2 million or less accounted for 7.7 percent of total assets ten years ago. The average credit union today has $28 million in assets, compared to $5 million ten years ago.

Because the Act recognizes the difficulty that small credit unions face in complying with the many requirements of the TISA, especially the calculation requirements, statutory relief is provided. It is important to note that this relief is available to a very small segment of credit unions. Almost four-fifths of credit unions with $2 million or less in assets are automated or have in-house data processing. NCUA has determined that there are about 704 credit unions under $2 million in assets that report having manual recordkeeping systems. Analogously, NCUA has also determined that there are about 607 credit unions under $2 million in assets that have no compensated employees. (These numbers do not include the approximately 645 non-federally insured credit unions that do not submit 5300 reports.) The actual number of credit unions exempt from TISA and part 707 is estimated by NCUA staff to be fewer than 1,000. Although the statutory exemption is permanent in nature, NCUA encourages exempted credit unions to continue to comply with the spirit and intent of TISA by providing full and fair account disclosures to members. Even with the extension, many small, nonautomated credit union activities comply with the purposes of TISA: to enable credit union members and potential members to make informed decisions about credit union accounts and to make meaningful comparisons with accounts at other financial institutions.

Definition of Nonautomated

The NCUA Board has decided to implement the Act's exemption for nonautomated credit unions by

amending the coverage provisions of paragraph 707.1(c) and by adding a new Comment 707.1(c)–3 to Appendix C, Official Staff Interpretations. No application is necessary in order to obtain the exemption. However, as required by the Act, NCUA does determine a credit union's legibility for the exemption. Credit unions may contact the appropriate Regional Office to verify their use of the exemption.

By the term ''nonautomated status'' NCUA means those credit unions without adequate and sufficient in-house or vendor-provided computer or data processing capacity and capability to establish, operate and maintain a share and loan software program able to timely and accurately process all member transactions on all member accounts at the credit union. Thus, some exempted credit unions do have some computer capacity, such as a word processor or a computer with insufficient memory and power capabilities to operate a complete, up-to-date share and loan software program. Since these credit unions are not sufficiently automated for Truth in Savings purposes, it is the determination of the NCUA Board that such credit unions are entitled to the Act's exemption. NCUA generally has used the year-end NCUA Form 5300 report to determine the requisite nonautomation status and asset size for those credit unions filing Form 5300 reports that have been eligible for the previous TISA compliance date extensions. Credit unions which do not file Form 5300 reports are currently permitted to prove nonautomation status and asset size by other means, such as verified self-certifications, certifications by appropriate state supervisory authorities, and other equivalent forms of proof. In the future, NCUA will use a combination of these methods to determine eligibility for the TISA exemption.

Operation of Exemption

The Act authorizes the NCUA Board to determine the extent and operation of the TISA exemption. All credit unions that were exempt from TISA regulation as a result of the prior NCUA compliance date extensions as of September 30, 1996, are exempt. These are credit unions with $2 million or less in assets, after subtracting any nonmember deposits, that are nonautomated as determined by the NCUA Board. If any of these credit unions grow to have more than $2 million in assets as of December 31 of any year, the NCUA Board will require such credit unions to comply with TISA and part 707 on January 1 one year after the December 31st (in other words, the credit union will have at least one year to prepare for compliance). Similarly, if a credit union becomes sufficiently automated to operate a complete share and loan system, such credit union will be entitled to the same compliance phase-in period. For example, if a credit union grows to over $2 million in assets on December 31, 1997 (or if it becomes sufficiently automated on December 31, 1997), it must begin compliance with TISA and part 707 on January 1, 1999. The NCUA Board believes that a previously exempt small credit union will need time to draft account disclosures, install TISA compliance software into its share and loan system, test its share and loan system, and make other decisions regarding its automation. By granting at least one full year before the previously exempt credit union must comply with TISA, the Board believes that it is allowing sufficient time for such a credit union to ease into TISA compliance. Also, if a new credit union is chartered with less than $2 million in assets, it will be eligible for the exemption until it no longer meets exemption eligibility criteria.

(3) Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). This rule will not have a significant economic impact on a substantial number of small credit unions and therefore a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB). 60 FR 44978 (August 29, 1995).

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This regulation makes no significant changes with respect to state credit unions since a temporary exemption is being made permanent. Therefore the rule will not materially affect state interests.

Administrative Procedure Act

The amendments and interpretation made to this part are not subject to the notice and comment provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq. The amendments and interpretation implement new effective statutory requirements. In addition, no major changes are contemplated, or made, by this action since a temporary exemption is merely being made permanent. Therefore, the NCUA Board has determined that, in this case, the APA notice and comment procedures for these amendments and interpretation are impracticable, unnecessary, and contrary to the public interest. 5 U.S.C. 553(b)(3)(B).

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 707

Advertising, Credit unions, Consumer protection, Interest, Interest rates, Truth in savings.

By the National Credit Union Administration Board on December 19, 1996.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR parts 701 and 707 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and Public Law 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.21 is amended by revising the first sentence in paragraph (d)(1) and paragraph (d)(4) is amended by revising the introductory text to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(d) Loans and lines of credit to officials

(1) *Purpose.* Sections 107(5)(A) (iv) and (v) of the Act require the approval of the board of directors of the Federal credit union in any case where the aggregate of loans to an official and loans on which the official serves as endorser or guarantor exceeds $20,000 plus pledged shares. * * *

* * * * *

(4) *Board of Directors' review.* The board of directors shall, in any case, review and approve or deny an application on which an official is a

direct obligor, or endorser, cosigner or guarantor if the following computation produces a total in excess of $20,000:
* * * * *

PART 707—TRUTH IN SAVINGS

3. The authority citation for part 707 continues to read as follows:

Authority: 12 U.S.C. 4311.

4. Section 707.1 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 707.1 Authority, purpose, coverage, and effect on state laws.

* * * * *

(c) Coverage. This part applies to all credit unions whose accounts are either insured by, or eligible to be insured by, the National Credit Union Share Insurance Fund, except for any credit union that has been designated as a corporate credit union by the National Credit Union Administration and any credit union that has $2 million or less in assets, after subtracting any nonmember deposits, and is determined to be nonautomated by the National Credit Union Administration. * * *
* * * * *

5. Appendix C to part 707 is amended under paragraph 707.1(c), by adding a new paragraph 3 to read as follows:

Appendix C to Part 707—Official Staff Interpretations

* * * * *

§ 707.1 Authority, Purpose, Coverage and Effect on State Laws.

* * * * *

(c) *Coverage*

* * * * *

3. *Nonautomated credit unions.* Nonautomated credit unions with an asset size of $2 million or less, after subtracting any nonmember deposits, are exempt from TISA and part 707. NCUA defines a ''nonautomated credit union'' as a credit union without sufficient data processing capability and capacity to establish, operate and maintain a share and loan software system to timely and accurately process all account transactions of all members. The nonautomated credit union exemption is available to all credit unions meeting the asset size and automation standards of this comment, including newly chartered credit unions. If any of the credit unions eligible for this exemption grow to have more than $2 million in assets as of December 31 of any year, the NCUA Board will require such credit unions to comply with TISA and part 707 on January 1 of one year after such credit union loses its exemption eligibility. Similarly, if a credit union becomes sufficiently automated to operate a complete share and loan system, such credit union will be entitled to the same compliance phase-in period.

* * * * *

[FR Doc. 96–32748 Filed 12–26–96; 8:45 am]
BILLING CODE 7535–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 900

[No. 96–92]

Description of Organization and Functions

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending the description of the agency's organization and functions contained in its regulations, as required by the Freedom of Information Act (FOIA). The changes have been made to further the efficiency and productivity of the agency.

DATES: This final rule shall be effective on December 27, 1996.

FOR FURTHER INFORMATION CONTACT: David A. Guy, Associate General Counsel, Office of General Counsel, (202) 408–2536, Federal Housing Finance Board, 1777 F Street, NW. Washington DC 20006.

SUPPLEMENTARY INFORMATION: Pursuant to section 552(a) of the FOIA, the Finance Board is required to publish in the Federal Register a description of the agency's organization and functions. *See* 5 U.S.C. 552(a)(1)(A)–(B). A description of the Finance Board's organizations and functions appears in part 900 of the Code of Federal Regulations. *See* 12 CFR Part 900. This final rule is intended to give public notice of changes to the Finance Board's organization and allocation of functions. The changes have been made to further the efficiency and productivity of the agency.

The public notice-and-comment requirements of the Administrative Procedure Act (APA) do not apply to the regulatory amendments contained in this final rule because the amendments relate exclusively to the organization of the agency. *See* 5 U.S.C. 553(b)(1)(A). Therefore, these amendments are being adopted as a final rule, effective on the date of publication.

Because this rule will be not be issued in the form of a notice of proposed rulemaking, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601.

List of Subjects in 12 CFR Part 900

Organization and functions (Government agencies).

Accordingly, title 12, chapter IX, part 900, Code of Federal Regulations, is hereby amended as follows:

PART 900—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

1. The authority citation for part 900 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1422b(a).

2. Sections 900.12 through 900.19 are revised to read as follows:

§ 900.12 Office of the Managing Director.

(a) The Managing Director is the Finance Board's chief operating officer. By order of the Chairperson, the Managing Director has been delegated the authority and power necessary and convenient to effect the day-to-day management, functioning, and organization of the Finance Board, including the authority to appoint, remove, promote, direct, set compensation for, and pay Finance Board personnel. The Managing Director is authorized to execute documents on behalf of the Board of Directors, including regulations, resolutions, or orders duly passed by the Board of Directors. The Managing Director is also the Finance Board's Chief Information Officer.

(b) The Executive Secretariat is a division within the Office of the Managing Director. The Executive Secretary is the recording officer for the Board of Directors and is responsible for maintaining the Finance Board's records, including copies of all resolutions and rules adopted by the Board of Directors and orders issued by the Chairperson. The Executive Secretary also is responsible for the preparation and maintenance of the minutes or other records of all official actions and proceedings of the Board of Directors, and is responsible for the official seals of the Finance Board. This division also is responsible for the agency's Freedom of Information Act, Privacy Act, and Records Management Programs. The Executive Secretary is the primary liaison with the Office of the Federal Register.

(c) The District Banks Secretariat is a division within the Office of the Managing Director responsible for administering the election of directors of the Banks and for maintaining records on each of the Banks' policies and marketing activities.

§ 900.13 Office of Policy.

(a) The Office of Policy coordinates the Finance Board's policy development activities and provides advice to the Chairperson and the Board of Directors on the economic, financial, housing and community and economic development, and competitive environments in which the Bank System and its members operate. The responsibilities of the Office of Policy include:

(1) Analysis and modeling of the financial performance of the Banks;

(2) Collection and analysis of financial data in order to prepare the Bank System's annual combined financial reports and other periodic reports on Bank System operations;

(3) Collection and analysis of data on the housing and community and economic development activities of the Banks;

(4) Analysis of the Banks' performance under the Affordable Housing Program and the Community Investment Program;

(5)Analysis of policy issues arising under the Affordable Housing Program and the Community Investment Program;

(6) Preparation of the Monthly Survey of Rates and Terms of Conventional One-Family Nonfarm Mortgage Loans and determination of the conforming loan limit for Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) purchases and guarantees; and

(7) Review of the Banks' quarterly dividend recommendations.

(b) The Office of Policy is the Finance Board's primary liaison with the Banks' Chief Financial Officers concerning financial management issues, the Banks' Community Investment Officers concerning community and economic development, the Banks' Advisory Councils concerning Bank System support of affordable housing, and the Bank System's fiscal agent, the Office of Finance. It prepares the annual reports to Congress and to the Banks' Advisory Councils concerning Bank System support for low-income housing and community development.

§ 900.14 Office of Supervision.

The Office of Supervision oversees the Banks, the Office of Finance and the Financing Corporation to ensure that they operate in a financially safe and sound manner, that the Banks are carrying out their housing and community and economic development finance mission and are in compliance with applicable statutes and regulations, as well as Finance Board policies and orders. The responsibilities of the Office of Supervision include:

(a) The conduct of examinations, at least annually, of the Banks, the Office of Finance and the Financing Corporation and the furnishing of reports thereon to the Chairpersons of their Boards of Directors;

(b) The follow-up and resolution of outstanding examination issues;

(c) Liaison with each Bank's audit committee and the review and evaluation of the work of each Bank's internal audit staff;

(d) The monitoring of Bank and System interest rate risk, financial trends and mission-related activities; and

(e) The review of Community Support Statements of Bank System members.

§ 900.15 Office of General Counsel.

The General Counsel is the chief legal officer of the Finance Board. The Office of General Counsel provides advice to the Board of Directors, the Chairperson, and other Finance Board officials, on interpretations of statutes and regulations. The Office of General Counsel prepares all legal documents on behalf of the Finance Board and prepares opinions, regulations, and memoranda of law. It represents the Finance Board in all administrative adjudicatory proceedings before the Board of Directors. The Chairman appoints the Finance Board's Designated Agency Ethics Official from the staff of the Office of General Counsel.

§ 900.16 Office of Inspector General.

The Inspector General is subject to, and operates under, the provisions of the Inspector General Act of 1978, as amended (5 U.S.C. app. 3). The Inspector General reports to and is under the general supervision of the Chairperson. The Inspector General's responsibilities under the Inspector General Act include providing policy direction for, and conducting, supervising, and coordinating audits and investigations relating to the programs and operations of the Finance Board, and recommending policies for promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the Finance Board's programs and operations. The Inspector General prepares and furnishes to the Chairman for transmittal to the Congress semiannual reports on the activities of the Office of Inspector General.

§ 900.17 Office of Congressional Affairs.

The Office of Congressional Affairs is responsible for ensuring the effective coordination and communication with the Congress and interest groups, and for briefing the Chairperson, the other Directors, and the Managing Director, on legislative issues before Congress pertaining to the Finance Board, the Bank System, and the Financing Corporation.

§ 900.18 Office of Public Affairs.

The Office of Public Affairs is responsible for the dissemination of information about the Finance Board to the public and the news media. The Office of Public Affairs is the Finance Board's primary liaison with news reporters. It also responds to general inquiries about the activities of the Finance Board.

§ 900.19 Office of Resource Management.

The Office of Resource Management advises the Chairperson and the Board of Directors on internal agency management and organization and provides support services to the agency and to individual employees. The responsibilities of the Office of Resource Management include:

(a) Developing and managing agency policies and procedures governing employment and personnel action requirements, compensation and agency payroll requirements, travel, awards, insurance, retirement benefits, and other employee benefits;

(b) Providing support for all facility and supply requirements;

(c) Agency procurement and contracting programs;

(d) Agency financial management, budgeting and accounting; and

(e) Coordinating the design, programming, operation, and maintenance of the Finance Board's electronic data systems.

§§ 900.20, 900.21 [Removed]

3. Sections 900.20 and 900.21 are removed.

Dated: December 11, 1996.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 96–32373 Filed 12–26–96; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–58–AD; Amendment 39–9852; AD 96–25–09]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires modification of the thrust reverser doors, and replacement of the Collins multifunction display units (MFDU) with new MFDU's. This amendment also requires installation of a placard if the replacement of the MFDU is accomplished prior to modification of the thrust reverser door. This amendment is prompted by a report that cracks were found in the flanges of the main hinge fittings of the horizontal stabilizer, which were caused by higher than anticipated loads induced during thrust reverser operation. The actions specified by this AD are intended to ensure the structural integrity of the horizontal stabilizer by reducing the thrust reverser loads on the horizontal stabilizer.

DATES: Effective January 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 31, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the Federal Register on December 4, 1995 (60 FR 62051). That action proposed to require modification of the thrust reverser doors. That action also proposed to require replacement of certain Collins multifunction display units (MFDU) with certain new MFDU's, and installation of a placard if the replacement of the MFDU is accomplished prior to modification of the thrust reverser door.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed AD.

Request To Revise Compliance Time

One commenter requests that the compliance time for accomplishing the modification be revised from the proposed ''prior to the accumulation of 15,000 total flight cycles or within 1 year after the effective date of the AD, whichever is later,'' to ''prior to the accumulation of 16,000 total flight cycles or within 2 years after the effective date of the AD, whichever is later.'' This commenter states that the interval for its regular heavy maintenance (''Q'' check) is expected to be escalated in the near future to 16,000 flight hours/cycles; if the compliance time of the AD is extended likewise, it will allow this commenter to modify its fleet of affected airplanes during this regularly scheduled heavy maintenance interval. The commenter notes that, since the modification takes approximately 300 work hours to complete, it would be more economical to accomplish the modification during regularly scheduled maintenance, rather than having to schedule special times for the modification to be done. The commenter also states that, if it were required to bring its airplanes in for modification at a time other than the ''Q'' check interval, the associated costs would be far more than what the FAA indicated in its ''cost impact'' information that appeared in the preamble to the notice. Further, this commenter states that 6 of its 40 affected airplanes already have gone through their ''Q'' checks without having the modification installed; and if those 6 airplanes were required to be modified within 1 year, this commenter would sustain significant economic and logistical burdens.

The FAA does not concur with the commenter's request. The compliance time specified in the notice was developed in consultation with both the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, and Fokker. Based on fatigue test results and analysis of the effects of the thrust reverser loads on adjacent structure, the FAA has determined that 15,000 flight cycles is the maximum number of cycles that these airplanes can be allowed to operate prior to modification without compromising safety. The commenter has submitted no technical data to justify its request for an extension of this limit by 1,000 additional flight cycles. Although the FAA does consider the maintenance schedules of affected operators when developing appropriate compliance times for AD actions, it does not revise AD's merely to accommodate individual operators' maintenance schedules.

Additionally, the FAA disagrees with the commenter's statement that the modification takes 300 work hours to complete. The cost impact information that appeared in the preamble to the notice (and in this final rule, below) indicated that only 127 work hours were necessary to complete the modification. That figure was based on information provided by the manufacturer, and was conservatively estimated based on performing options that take the longest time to accomplish. Further, the manufacturer estimates that the total elapsed time necessary to accomplish the modification is only 67 hours, since more than one person can perform the work.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 102 Fokker Model F28 Mark 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 127 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $19,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,715,240, or $26,620 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish

those actions in the future if this AD were not adopted.

Regulatory Impact

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

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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–25–09 Fokker: Amendment 39–9852. Docket 95–NM–58–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11460 inclusive, 11463 through 11469 inclusive, 11471, 11474, 11476, 11478, and 11479; 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

(a) Prior to the accumulation of 15,000 total flight cycles, or within 1 year after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD concurrently, except as provided by paragraph (b) of this AD.

(1) Modify the thrust reverser doors in accordance with Fokker Service Bulletin SBF100–78–010, Revision 1, dated April 26, 1994; and

(2) Replace the Collins multifunction display units (MFDU) having part number (P/N) 622–8047–412 or 622–8047–422 with new MFDU's having P/N 622–8047–414 or 622–8047–423, respectively; as applicable; in accordance with Fokker Service Bulletin SBF100–31–036, dated February 7, 1994.

(b) Paragraph (a)(2) of this AD may be accomplished prior to paragraph (a)(1) of this AD provided that a placard is installed on the main instrument panel in accordance with Fokker Service Bulletin SBF100–31–038, dated April 26, 1994, and removed, prior to further flight, after accomplishment of the requirements of paragraph (a)(1) of this AD.

(c) For airplanes that have been modified in accordance with paragraphs (a)(1) and (a)(2) of this AD: No person may install a Grumman Aerospace aft engine cowling having part number 1159P41440 on any airplane unless it has been previously modified in accordance with Fokker Component Service Bulletin P41440–78–02, dated December 17, 1993, as revised by Fokker Component Service Bulletin Change Notification P41440–78–02/001, dated February 25, 1995.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on November 28, 1995.

(f) The actions shall be done in accordance with Fokker Service Bulletin SBF100–31–036, dated February 7, 1994; Fokker Service Bulletin SBF100–31–038, dated April 26, 1994; and Fokker Service Bulletin SBF100–78–010, Revision 1, dated April 26, 1994, which contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
1–6, 8, 10, 11	1	April 26, 1994.
7, 9, 12–14 ...	Original	February 7, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 31, 1997.

Issued in Renton, Washington, on December 5, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31526 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–135–AD; Amendment 39–9857; AD 96–25–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –30, and –40 Series Airplanes, and KC–10 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, -30, and -40 series airplanes, and KC–10 (military) series airplanes, that requires repetitive high frequency eddy current (HFEC) inspections to detect cracks in the number 4 banjo fitting on the rear spar of the vertical stabilizer, and repair and modification of the vertical stabilizer, if necessary. It also requires the installation of a modification as terminating action for the repetitive inspections. This amendment is prompted by reports of failed attach

bolts and cracking found in the area of the number 4 banjo fitting, which were caused by higher than normal operating stresses. The actions specified by this AD are intended to prevent reduction in the structural integrity of this fitting due to failed bolts and cracking.

DATES: Effective January 31, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 31, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5224; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –30, and –40 series airplanes, and KC–10 (military) series airplanes was published in the Federal Register on August 29, 1996 (61 FR 47375). That action proposed to require repetitive high frequency eddy current (HFEC) inspections to detect cracks in the number 4 banjo fitting on the rear spar of the vertical stabilizer, and repair and modification of the vertical stabilizer, if necessary. It also proposed to require the installation of a modification as terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Allow Use of Additional Service Information

Several commenters request that the proposal be revised to allow the terminating modification to be accomplished in accordance with earlier versions of McDonnell Douglas Service Bulletin DC10–54–096. Although the proposal only referenced Revision 03 of this service bulletin as the appropriate source of service information, these commenters contend that the modification as described in the original issue of the service bulletin (dated March 23, 1989), as well as Revision 01 (dated September 17, 1990) and Revision 02 (dated May 5, 1995), is equivalent to that described in Revision 03. Since certain of these commenters have already installed the modification on their airplanes in accordance with the earlier revisions of the service bulletin, they want to ensure that they will receive credit for having complied with the proposed terminating action.

The FAA concurs, and has included all of the revisions in final rule as acceptable sources of service information for compliance with the terminating modification requirements of the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 376 Model DC–10–10, –30, and –40 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 230 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish each required inspection; the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection requirement on U.S. operators is estimated to be $27,600, or $120 per airplane, per inspection.

It will take approximately 34 hours to accomplish the terminating modification. Required parts will cost approximately $3,875 per airplane for ''Group 1'' airplanes, and approximately $3,427 per airplane for ''Group 2'' airplanes. Based on these figures, the cost impact of the modification requirement on U.S. operators is estimated to be $5,915 per Group 1 airplane and $5,467 per Group 2 airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that some operators have already accomplished the terminating modification on airplanes in their fleets; therefore, the future cost impact of this AD is expected to be reduced by the amount associated with each previously modified airplane.

Regulatory Impact

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

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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–25–14 McDonnell Douglas: Amendment 39–9857. Docket 96–NM–135–AD.

Applicability: Model DC–10–10, –30, and –40 series airplanes, and KC–10 (military) series airplanes; as listed in McDonnell Douglas Service Bulletin DC10–54–096, Revision 03, dated February 6, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reduction in the structural integrity of the number 4 banjo fitting on the rear spar of the vertical stabilizer, which could ultimately result in a reduction in the ability to control the airplane during flight and ground operations, accomplish the following:

(a) Prior to the accumulation of 5,000 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracks in the upper and lower surface of the aft flange of the number 4 banjo fitting on the rear spar of the vertical stabilizer, in accordance with McDonnell Douglas Service Bulletin DC10–54–096, Revision 03, dated February 6, 1996.

(1) If no crack is found, repeat the HFEC inspection thereafter at intervals not to exceed 1,500 landings.

(2) If any crack is found, prior to further flight, repair the crack and install the modification in accordance with the service bulletin.

(b) Within 5 years after the effective date of this AD, modify the vertical stabilizer in the area of the number 4 banjo fitting on the rear spar, in accordance with any of the revisions of McDonnell Douglas Service Bulletin DC10–54–096 specified in TABLE 1 of this AD. Accomplishment of this modification constitutes terminating action for the repetitive HFEC inspections required by paragraph (a)(1) of this AD.

TABLE 1.—MCDONNELL DOUGLAS SERVICE BULLETIN DC10–54–096

Revision level	Issue date
(Original Issue)	March 23, 1989.
Revision 1	September 17, 1990.
Revision 2	May 5, 1995.
Revision 03	February 6, 1996.

(c) 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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(d) 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.

(e) The inspections shall be done in accordance with McDonnell Douglas Service Bulletin DC10–54–096, Revision 03, dated February 6, 1996. The modification shall be done in accordance with any of the following versions of McDonnell Douglas Service Bulletin DC10–54–096:

Revision level	Issue date
(Original Issue)	March 23, 1989.
Revision 1	September 17, 1990.
Revision 2	May 5, 1995.
Revision 03	February 6, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 31, 1997.

Issued in Renton, Washington, on December 6, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31608 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–271–AD; Amendment 39–9856; AD 96–25–13]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 series airplanes, that requires a high frequency eddy current inspection to detect cracks of the boundary angle and joint angle of the rear pressure bulkhead, and repair, if necessary. This amendment also requires modification of the rear pressure bulkhead of the fuselage. This amendment is prompted by a report of fatigue cracking in the rear pressure bulkhead of the fuselage. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the fuselage and, consequently, lead to the rapid decompression of the pressurized area of the airplane.

DATES: Effective January 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 31, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes was published as a supplemental notice of proposed rulemaking in the Federal Register on October 31, 1996 (61 FR 56169). That action proposed to require a high frequency eddy current inspection to detect cracks of the boundary angle and joint angle of the rear pressure bulkhead, and repair, if necessary. That action also proposed to require modification of the rear pressure bulkhead of the fuselage.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 40 Model 4101 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $96,000, or $2,400 per airplane.

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

Regulatory Impact

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

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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–25–13 JETSTREAM AIRCRAFT LIMITED: Amendment 39–9856. Docket 95–NM–271–AD.

Applicability: Model 4101 airplanes, constructors numbers 41004 through 41047 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking in the rear pressure bulkhead, which could result in reduced structural integrity of the fuselage and, consequently, lead to the rapid decompression of the pressurized area of the airplane, accomplish the following:

(a) Prior to the accumulation of 10,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with Jetstream Service Bulletin J41–53–020, Revision 1, dated June 4, 1996.

(1) Perform a high frequency eddy current inspection to detect cracks of the boundary angle and joint angle of the rear pressure bulkhead, in accordance with the service bulletin. If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Modify the rear pressure bulkhead of the fuselage (Jetstream Modification JM41382A), in accordance with the service bulletin.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The inspection and modification shall be done in accordance with Jetstream Service Bulletin J41–53–020, Revision 1, dated June 4, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 31, 1997.

Issued in Renton, Washington, on December 6, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–31605 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–244–AD; Amendment 39–9861; AD 96–25–18]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767 series airplanes, that requires inspections of the components of the leading edge outboard slat; replacement of the control rod end, if necessary; and various follow-on actions. This amendment is prompted by reports of skewed panels of the outboard leading edge slat due to failure of a corroded rotary actuator or the control rod. The actions specified by this AD are intended to prevent such conditions, which could result in reduced controllability of the airplane and damage to or cracking of the leading edge slats or the fixed leading edge of the wing.

DATES: Effective January 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 31, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 767 series airplanes was published in the Federal Register on December 13, 1995 (60 FR 63992). That action proposed to require inspections of the components of the leading edge outboard slat; replacement of the control rod end, if necessary; and various follow-on actions.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed rule.

Request To Revise the Description of the Addressed Unsafe Condition

One commenter notes that the description of the cause of the addressed unsafe condition that appeared in the Summary and Discussion sections of the preamble to the notice states that ''* * * the cause of the skewed panels is attributed to either corrosion of the rotary actuator, cracking of the control rod, or incorrect clearance of the overtravel stop * * * .'' The commenter suggests that a more accurate description of the cause would be ''* * * failure of a corroded rotary actuator, due to excessive loads caused by the incorrect clearance of the overtravel stop, or failure of the control rod.''

The FAA concurs and has revised the appropriate sections of this preamble to specify this language.

Requests To Extend the Compliance Time for Inspections Performed Previously

Several commenters request that the compliance time for paragraphs (a), (b), and (c) of the proposal be revised to allow credit for visual inspections performed previously within 6,000 hours time-in-service, or 18 months, whichever occurs later. One commenter submitted an identical request, but for inspections performed previously within 5,500 hours time-in-service. Two other commenters narrowed this request to apply to only paragraph (b) of the proposal. These commenters state that, as the NPRM is currently worded, it penalizes operators who promptly started accomplishing Boeing Service Bulletin 767–27A0137 after its issuance on May 18, 1995. These commenters assert that their suggested compliance times will coincide with the repetitive inspection requirements of the proposal.

The FAA concurs with the commenters' request to allow credit for all inspections accomplished prior to the effective date of this AD. The FAA has re-reviewed the recommended compliance time in the subject service bulletin and the proposed AD. The FAA does not intend that operators be penalized for accomplishing the actions specified in Boeing Service Bulletin 767–27A0137 in an expeditious manner. Although the service bulletin recommends that credit be allowed only for inspections accomplished previously within 3,000 hours time-in-service, the FAA finds that no data exist to warrant limiting credit for such inspections to 3,000 hours. Therefore, the FAA has removed the phrase ''unless previously accomplished within the last 3,000 hours time-in-service prior to the effective date of this AD'' from paragraphs (a), (b), and (c) of the final rule. In the case of this AD, if the initial inspection has been accomplished prior to the effective date of the AD, this AD does not require that it be repeated. However, the AD does require that repetitive inspections be conducted thereafter at intervals not to exceed 6,000 hours time-in-service, and that other follow-on actions be accomplished when indicated.

Request to Extend the Compliance Time for Slat Adjustment

One commenter requests that the compliance time for adjustment of the stop clearance, as specified in paragraph (a)(2) of the proposal, be extended from the proposed 500 hours time-in-service to 3,000 hours time-in-service. This commenter asserts that the time for accomplishing this adjustment of the slats with incorrect clearance at the overtravel stop should not be more stringent than the time for accomplishing the replacement of the rotary actuator if no clearance is found to exist (specified in proposed paragraph (a)(3) as 3,000 hours time-in-service).

The FAA does not concur with the commenter's request to extend the compliance time for the slat adjustment; nor does the FAA agree that the compliance time for adjustment of the slats is more stringent than that for replacement of the actuator and gearbox. Paragraph (a)(2) of the AD requires the proper adjustment of the stop clearance within 500 flight hours after the initial inspection if that inspection reveals that some clearance exists, but not the correct clearance; the inspection is then to be repeated thereafter at intervals of 6,000 hours time-in-service. However, the FAA points out that paragraph (a)(3) of the AD requires adjustment of the stop clearance immediately (prior to further flight) if the inspection reveals that no clearance exists; after this adjustment is accomplished, the replacement of the actuator and gearbox is required within 3,000 hours time-in-service. For cases where some clearance exists, the FAA finds a compliance time of 500 flight hours to be appropriate and warranted, since some clearance may continue to deteriorate until no clearance exists.

Requests to Defer Initial Inspections

Two commenters request that the compliance time for the initial inspections be deferred until Model 767 series airplanes have accumulated 10,000 total hours time-in-service, as recommended in Boeing Service Bulletin 767–27A0137, Revision 1, dated November 30, 1995. One of these commenters states that the history of the Model 767 fleet has shown that, for airplanes that have accumulated 10,000 total hours time-in-service or less, the amount and location of corrosion in the rotary actuators does not adversely affect their strength or function.

The FAA concurs with the commenters' request to defer the initial inspections. The FAA has reviewed and approved Revision 1 of Boeing Service Bulletin 767–27A0137, dated November 30, 1995, as discussed below. The FAA has revised the compliance time of the initial inspection requirements of paragraphs (a), (b), and (c) of the final rule to state ''prior the accumulation of 10,500 total hours time-in-service since date of manufacture, or within 500

hours time-in-service after the effective date of this AD, whichever occurs later . . .'' to coincide with the recommendations of the service bulletin.

Requests to Reference Boeing Service Bulletin 767–27A0137

Several commenters request that the FAA reference Boeing Service Bulletin 767–27A0137, Revision 1, dated November 30, 1995, as the appropriate source of service information for accomplishing the actions required by the proposal.

These commenters point out that, even though the proposal references the Boeing 767 Airplane Maintenance Manual (AMM), Chapter 27–81–20, as the appropriate source of service information, the proposed actions and compliance times of the proposal appear to be consistent with the recommendations of Boeing Service Bulletin 767–27A0137. Two of these commenters point out that the procedures described in the Boeing 767 AMM for accomplishing the inspection requirements of the proposal are not as detailed as those described in Boeing Service Bulletin 767–27A0137. The commenters contend that referencing the subject service bulletin will eliminate the operators' confusion as to which slats are to be inspected.

One of these commenters states that many operators have already accomplished the recommendations of Boeing Service Bulletin 767–27A0137, since it has been available for some time now. However, without specific reference to this service bulletin in the proposal, operators will be hesitant to indicate compliance with the AD without first submitting a request for an alternative method of compliance.

The FAA concurs with the commenters' request to reference Boeing Service Bulletin 767–27A0137 as the appropriate source of service information. The FAA has reviewed and approved Boeing Service Bulletin 767–27A0137, Revision 1, dated November 30, 1995. The service bulletin describes procedures for:

1. A visual inspection to verify proper clearance of the overtravel stop;

2. Adjustment of the stop clearance, and replacement of the rotary actuator and adjacent offset gearbox, if necessary;

3. Repetitive visual inspections to detect external signs of internal corrosion of the rotary actuator of the outboard leading edge slat;

4. Replacement of a certain earlier model rotary actuator with a certain later model rotary actuator, for certain airplanes;

5. Visual inspection(s) to verify proper installation of the control rods of the outboard leading edge slats; and

6. Tightening of the bolts or installing a new lockwire, if any bolt is loose or any lockwire is missing.

The final rule has been revised to include this service bulletin as an additional source of appropriate service information. The final rule also has been revised to indicate the specific numbers of the outboard leading edge slats that are to be inspected.

Operators should note that although the Boeing service bulletin indicates that certain procedures may be accomplished in accordance with an ''operator's equivalent procedure,'' this AD does not permit such procedures to be used unless they have been approved as an alternative method of compliance under the provisions of paragraph (d) of the final rule. Since procedures may vary from operator to operator, the FAA would have no way of knowing whether an ''equivalent'' procedure would provide an acceptable level of safety unless it has been reviewed and verified in accordance with the alternative method of compliance approval process. New NOTES 3, 4, and 5 have been added to this final rule to clarify this information.

Request to Reference Original Version of Service Bulletin

Two commenters request that the proposed rule be revised to cite the original version of Boeing Alert Service Bulletin 767–27A0137, dated May 18, 1995, as an additional source of service information for accomplishing the actions specified in the AD. The FAA concurs and has revised the final rule to include a new ''NOTE 2'' to clarify this point.

Request to Revise the Reference to ''New'' Actuator

Several commenters note that paragraphs (b)(1)(i), (b)(2)(i), and (b)(2)(ii) of the proposal specify replacement of the actuator with a ''new'' actuator having part number (P/N) 256T2120–5 or later. One of these commenters suggests that, in lieu of the word ''new,'' the language in the AD should use the term ''serviceable,'' which would be a more accurate description. This same commenter states that a serviceable actuator, having P/N 256T2120–5 or later, is sufficient when it has been inspected according to the Component Maintenance Manual.

The FAA concurs with this suggestion and has revised the relevant wording of the final rule.

Request to Revise the Cost Impact Statement

One commenter questions the FAA's cost estimate presented in the preamble to the notice. The commenter points out that the cost estimate did not include the cost of replacement of the rotary actuators, having part number (P/N) 256T2120–3 or earlier, with a new rotary actuator, having P/N 256T2120–5 or later.

The FAA finds that clarification of the costs associated with the requirements of this AD is necessary. The FAA points out that the economic analysis of the AD is usually limited only to the cost of actions actually required by the rule. It does not consider the costs of ''on condition'' actions (e.g., ''replace if any sign of internal corrosion is detected''), since those actions would be required to be accomplished, regardless of AD direction, in order to correct an unsafe condition identified in an airplane, and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 612 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 213 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $178,920, or $840 per airplane, per inspection cycle.

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

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–25–18 Boeing: Amendment 39–9861. Docket 95–NM–244–AD.

Applicability: All Model 767 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane and damage to or cracking of the leading edge slats or the fixed leading edge of the wing, accomplish the following:

Note 2: Actions specified in this AD that were accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–27A0137, dated May 18, 1995, are considered acceptable for compliance.

(a) Prior to the accumulation of 10,500 total hours time-in-service, or within 500 hours time-in-service after the effective date of this AD, whichever occurs later: Perform a visual inspection to verify proper clearance of the overtravel stop of the outboard leading edge slats 2, 3, 4, 5, 8, 9, 10, and 11, in accordance with Part I of Boeing Service Bulletin 767–27A0137, Revision 1, dated November 30, 1995, or Chapter 27–81–20 of the Boeing 767 Airplane Maintenance Manual (AMM).

Note 3: Although the Boeing service bulletin indicates that the actions required by this paragraph may be accomplished in accordance with the ''operator's equivalent procedure,'' this AD does not permit use of an ''operator's equivalent procedure'' unless it has been approved as an alternative method of compliance in accordance with paragraph (d) of this AD.

(1) If proper clearance exists, repeat the inspection for proper clearance thereafter at intervals not to exceed 6,000 hours time-in-service or 18 months, whichever occurs later.

(2) If clearance exists, but is incorrect, at the next convenient maintenance interval, but no later than 500 flight hours after accomplishment of the inspection, adjust the stop clearance for the slats in accordance with the service bulletin or AMM. Repeat the inspection for proper clearance thereafter at intervals not to exceed 6,000 hours time-in-service or 18 months, whichever occurs later.

(3) If no clearance exists (i.e., stop contact), prior to further flight, adjust the stop clearance for the slats in accordance with the service bulletin or AMM. After the adjustment, within 3,000 hours time-in-service or 1,500 flight cycles after accomplishing the inspection required by paragraph (a) of this AD, whichever occurs later, replace the rotary actuator and adjacent offset gearbox in accordance with the service bulletin or AMM. After replacement, repeat the inspection for proper clearance at intervals not to exceed 6,000 hours time-in-service or 18 months, whichever occurs later.

(b) Prior to the accumulation of 10,500 total hours time-in-service, or within 500 hours time-in-service after the effective date of this AD: Perform a visual inspection to detect external signs of internal corrosion of the rotary actuator of the outboard leading edge slats 2, 3, 4, 5, 8, 9, 10, and 11, in accordance with Part II of the Boeing Service Bulletin 767–27A0137, Revision 1, dated November 30, 1995, or Chapter 27–81–20 of the Boeing 767 AMM.

Note 4: Although the Boeing service bulletin indicates that the actions required by this paragraph may be accomplished in accordance with the ''operator's equivalent procedure,'' this AD does not permit use of an ''operator's equivalent procedure'' unless it has been approved as an alternative method of compliance in accordance with paragraph (d) of this AD.

(1) If no sign of internal corrosion is detected, accomplish paragraph (b)(1)(i) or (b)(1)(ii) of this AD, as applicable.

(i) For airplanes on which a rotary actuator having part number (P/N) 256T2120–3 or earlier is installed: Within 4,000 flight hours after the effective date of this AD, replace that rotary actuator with a serviceable rotary actuator having P/N 256T2120–5 or later, in accordance with the service bulletin or AMM. After replacement, repeat the inspection of the rotary actuator at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(ii) For airplanes on which a rotary actuator having P/N 256T2120–5 or later is installed: Repeat the inspection of the rotary actuator thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(2) If any sign of internal corrosion is detected, accomplish paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For airplanes on which a rotary actuator having part number (P/N) 256T2120–3 or earlier is installed: Within 4,000 flight hours after the effective date of this AD, replace that rotary actuator with a serviceable rotary actuator having P/N 256T2120–5 or later, in accordance with the service bulletin or AMM. After replacement, repeat the inspection of the rotary actuator at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(ii) For airplanes on which a rotary actuator having P/N 256T2120–5 or later is installed: Within 6,000 flight hours or 18 months after accomplishing the initial inspection required by paragraph (b) of this AD, replace that rotary actuator with a serviceable rotary actuator having P/N 256T2120–5 or later, in accordance with the service bulletin or AMM. After replacement, repeat the inspection required of the rotary actuator at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(c) Prior to the accumulation of 10,500 total hours time-in-service, or within 500 hours time-in-service after the effective date of this AD: Perform a visual inspection to verify proper installation (including loose bolts and missing lockwires) of the control rods of the outboard leading edge slats 2, 3, 4, 5, 8, 9, 10, and 11, in accordance with Part III of the Boeing Service Bulletin 767–27A0137, Revision 1, dated November 30, 1995; or Chapter 27–81–20 of the Boeing 767 AMM.

Note 5: Although the Boeing service bulletin indicates that the actions required by this paragraph may be accomplished in accordance with the ''operator's equivalent procedure,'' this AD does not permit use of an ''operator's equivalent procedure'' unless it has been approved as an alternative method of compliance in accordance with paragraph (d) of this AD.

(1) If all control rods are installed properly, repeat the inspection to verify proper installation thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

(2) If any bolt is loose or any lockwire missing, prior to further flight, tighten the bolt or install a new lockwire, in accordance

with the service bulletin or the AMM. Repeat the inspection to verify proper installation thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

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

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(f) The inspections and replacements shall be done in accordance with Boeing Service Bulletin 767–27A0137, Revision 1, dated November 30, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 31, 1997.

Issued in Renton, Washington, on December 11, 1996.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–32048 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–CE–12–AD; Amendment 39–9865; AD 96–26–02]

RIN 2120–AA64

Airworthiness Directives; FLS Aerospace (Lovaux) Ltd. OA7 Optica Series 300 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain FLS Aerospace (Lovaux) Ltd. OA7 Optica series 300 airplanes equipped with a Hoffman fan, part number HO–E315/122EZ, and fan shaft extension. This AD requires replacing the fan shaft extension with one that incorporates Modification No. B2/MOD/047. The AD results from a quality control review that shows that the four counterbores on the fan shaft extension to engine attachment flange have excessive depths. The actions specified in this AD are intended to prevent cracks from forming in the fan shaft extension flange and subsequent structural failure of this area because of counterbores with excessive depth.

DATES: Effective January 13, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 13, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 20, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–12–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from FLS Aerospace (Lovaux) Ltd., Bournemouth International Airport, Christchurch, Dorset BH23 6NW, England; telephone 0202 500200; facsimile 0202 580567. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–12–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Maurice Kuttler, Program Officer, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (32 2) 508.2715; facsimile (32 2) 230.6899; or Mr. Robert W. Alpiser, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to Issuance of the Proposed AD

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain FLS Aerospace (Lovaux) Ltd. OA7 Optica series 300 airplanes equipped with a Hoffman fan, part number (P/N) HO–E315/122EZ, and fan shaft extension. The CAA for the United Kingdom reports that a manufacturing process error could cause structural failure of the fan shaft extension.

This extension is attached to the engine propeller flange by six bolts. Of the six bushes on the propeller flange, four require a counterbore in the extension propeller flange. A quality control review of the manufacturing process has revealed that the depth of these counterbores on certain OA7 Optica 300 series airplanes equipped with a Hoffman fan, part number P/N HO–E315/122EZ, and fan shaft extension exceed 4.5 millimeters (mm). This could result in cracks forming in the propeller flange with subsequent structural failure of the fan shaft extension.

Applicable Service Information

FLS Aerospace Lovaux Mandatory Service Bulletin (MSB) No. B2/MSB/006, Issue: 1, dated August 22, 1994, specifies the following:

—measuring the depth of the four counterbores on the fan shaft extension to the engine attachment flange;

—inspecting the counterbores and propeller flange for cracks;

—incorporating Repair Drawing R 1299; and

—incorporating Modification B2/MOD/047 on the fan shaft extension.

The CAA of the United Kingdom classified this service bulletin as mandatory and issued CAA AD 010–08–94, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA of the United Kingdom has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA of the United Kingdom; reviewed all available information, including the service information and modification 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 This AD

Since an unsafe condition has been identified that is likely to exist or develop on other FLS Aerospace (Lovaux) Ltd. OA7 Optica series 300 airplanes of the same type design registered in the United States equipped with a Hoffman fan, P/N HO–E315/122EZ, and fan shaft extension, the FAA is issuing an AD. This AD requires replacing the fan shaft extension with one that incorporates Modification No. B2/MOD/047. Accomplishment of the modification would be in accordance with FL Aerospace Lovaux Modification Leaflet No. B2/MOD/047, dated August 31, 1994.

Differences Between This AD, Service Information, and the CAA AD

Both FLS Aerospace Lovaux Mandatory Service Bulletin (MSB) No. B2/MSB/006, Issue: 1, dated August 22, 1994, and CAA AD 010–08–94 specify the following:

—AT 50 HOURS TIME-IN-SERVICE (TIS): inspecting the fan shaft extension to engine attachment flange for cracks and replacing the fan shaft extension if any cracks are found; and measuring the depth of the four counterbores on the fan shaft extension to engine attachment flange incorporating Repair Drawing R 1299 if counterbores exceed a certain depth;

—AT 200 HOURS TIS: incorporating Modification B2/MOD/047 on the fan shaft extension.

Accomplishing the inspection, measurement, and possible repair allow the airplane to be operated until a Modification B2/MOD/047 fan shaft extension is installed. This AD only requires replacing the fan shaft extension. Since no airplanes are currently on the U.S. Register, the FAA has determined to require immediate fan shaft extension replacement on any aircraft obtaining a U.S. airworthiness certificate rather than require the inspection, measurement, and possible repair, and then require the replacement.

Cost Impact

None of the FLS Aerospace (Lovaux) Ltd. OA7 Optica series 300 airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register.

Should an affected airplane be imported and placed on the U.S. Register, accomplishment of the required replacement would take approximately 4 workhours at an average labor charge of $60 per workhour. Parts cost approximately $300 per airplane. Based on these figures, the total cost impact of this AD would be $540 per airplane that would become registered in the United States.

The Effective Date of This AD

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

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

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

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

Regulatory Impact

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

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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

96–26–02 FLS Aerospace (LOVAUX) LTD.: Amendment 39–9865; Docket 96–CE–12–AD.

Applicability: OA7 Optica Series 300 Airplanes (serial numbers 020, 021, and 022), certificated in any category, that are equipped with a Hoffman fan, part number HO–E315/122EZ, and fan shaft extension.

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 (c) 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 prior to further flight after the effective date of this AD, unless already accomplished.

To prevent cracks from forming in the fan shaft extension flange and subsequent structural failure of this area because of counterbores with excessive depth, accomplish the following:

(a) Replace the fan shaft extension with one that incorporates Modification No. B2/MOD/047 in accordance with FL Aerospace Lovaux Modification Leaflet No. B2/MOD/047, dated August 31, 1994. This modification is referenced in FLS Aerospace Lovaux Mandatory Service Bulletin No. B2/MSB/006, Issue: 1, dated August 22, 1994.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division.

(d) The replacement required by this AD shall be done in accordance with FL Aerospace Lovaux Modification Leaflet No. B2/MOD/047, dated August 31, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FLS Aerospace (Lovaux) Ltd., Bournemouth International Airport, Christchurch, Dorset BH23 6NW, England. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9865) becomes effective on January 13, 1997.

Issued in Kansas City, Missouri, on December 16, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–32436 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–ANE–27; Amendment 39–9855; AD 96–25–12]

RIN 2120–AA64

Airworthiness Directives; Sundstrand T–62T–40C Series Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Sundstrand T–62T–40C series auxiliary power units (APUs). This action requires removal from service of certain compressor wheels in accordance with a drawdown schedule, and replacement with serviceable parts, and establishes a new cyclic life limit for the existing compressor wheels. This amendment is prompted by reports of compressor wheel ruptures. The actions specified in this AD are intended to prevent compressor wheel rupture, which could result in an uncontained APU failure and damage to the aircraft.

DATES: Effective January 13, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 13, 1997.

Comments for inclusion in the Rules Docket must be received on or before February 25, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–27, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Sundstrand Aerospace, 4400 Ruffin Rd., P.O. Box 85757, San Diego, CA 92186–5757; telephone (619) 627–6303, fax (619) 627–6473. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5245; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received three reports of compressor wheels, installed on Sundstrand T–62T–40C series auxiliary power units (APUs), that ruptured prior to the published cyclic life limit. Of the three ruptures, two were uncontained. The investigation revealed that the compressor wheels ruptured due to low cycle fatigue. This condition, if not corrected, could result in compressor wheel rupture, which could result in an uncontained APU failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of Sundstrand Aerospace Service Bulletin (SB) No. SB–T–62T–49–120, Revision 2, dated November 5, 1996, Revision 1, dated September 9, 1996, and Original, dated July 22, 1996, that describe procedures for removal from service of certain compressor wheels in accordance with a drawdown schedule, and replacement with new design serviceable parts, and establishes a new cyclic life limit for existing compressor wheels.

Since an unsafe condition has been identified that is likely to exist or develop on other APUs of the same type design, this AD is being issued to prevent compressor wheel rupture. This AD requires removal from service of certain compressor wheels in accordance with a drawdown schedule, and replacement with serviceable parts, and establishes a new cyclic life limit for existing compressor wheels. The actions are required to be accomplished in accordance with the SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All

communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–27.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–25–12 Sundstrand Aerospace: Amendment 39–9855. Docket 96–ANE–27.

Applicability: Sundstrand Aerospace Models T–62T–40C series auxiliary power units (APUs), with compressor wheel, Part Numbers (P/Ns) 162690–1, 165111–1, and 167200–1. These APUs are installed on but not limited to Aerospatiale Super Puma, Boeing 707 series, British Aerospace HS 748 series, Cessna 650 series, Convair 650 and 880 series, Dassault Aviation Falcon 20, 50 and 200 series, de Havilland DHC–7 and DHC–8 series, Embraer 120 series, Fokker F .27 series, Gulfstream Aerospace Corporation 159, 1159, and G–III series, Hawker 700 series, Lockheed Jetstar 731 series, Raytheon Corporate Jets, Inc. BAe 125 series, Sabreliner Corporation NA–265 series aircraft.

Note 1: This airworthiness directive (AD) applies to each APU 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 APUs 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 (c) 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 alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent compressor wheel rupture, which could result in an uncontained APU failure and damage to the aircraft, accomplish the following:

(a) Remove from service compressor wheels in accordance with the procedures described in the Accomplishment Instructions of Sundstrand Aerospace Service Bulletin (SB) No. SB–T–62T–49–120, Revision 2, dated November 5, 1996, Revision 1, dated September 9, 1996, or Original, dated July 22, 1996, and the drawdown schedule described in Table 2 of Revision 2 only, dated November 5, 1996, and replace with serviceable parts.

(b) This AD establishes a new life limit of 6,000 cycles for existing uninstalled compressor wheels, identified as Sundstrand P/Ns 162690–1, 165111–1, and 167200–1.

(c) 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, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) 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 aircraft to a location where the requirements of this AD can be accomplished.

(e) Thereafter, except as provided in paragraphs (c) and (d) of this AD, no alternative replacement time may be approved for compressor wheels, identified as Sundstrand P/Ns 162690–1, 165111–1, and 167200–1.

(f) The actions required by this AD shall be done in accordance with the following Sundstrand Aerospace SBs:

Document No.	Revision	Pages	Date
SB–T–62–T–49–120	2	1–9	Nov. 5, 1996
Total pages: 9.			
SB–T–62–T–49–120	1	1–9	Sept. 9, 1996
Total pages: 9.			
SB–T–62–T–49–120	Original	1–9	July 22, 1996
Total pages: 9.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sundstrand Aerospace, 4400 Ruffin Rd., P.O. Box 85757, San Diego, CA 92186–5757; telephone (619) 627–6303, fax (619) 627–6473. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 13, 1997.

Issued in Burlington, Massachusetts, on December 4, 1996.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–32181 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 419

Trade Regulation Rule Concerning Games of Chance in the Food Retailing and Gasoline Industries

AGENCY: Federal Trade Commission.

ACTION: Repeal of rule.

SUMMARY: The Federal Trade Commission announces the repeal of the Trade Regulation Rule concerning Games of Chance in the Food Retailing and Gasoline Industries. The Commission has reviewed the rulemaking record and determined that due to changes in industry practices, the Rule no longer serves the public interest and should be repealed. This notice contains a Statement of Basis and Purpose for repeal of the Rule.

EFFECTIVE DATE: December 26, 1996.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: John M. Mendenhall, Federal Trade Commission, Cleveland Regional Office, Suite 520A, 668 Euclid Avenue, Cleveland, Ohio 44114, (216) 522–4210.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background

The Commission promulgated the Trade Regulation Rule concerning Games of Chance in the Food Retailing and Gasoline Industries (Games of Chance Rule), 16 CFR Part 419, on August 16, 1969 (34 FR 13302). The purpose of the Rule was to address abuses that were uncovered during Commission and Congressional investigation into the use of games of chance for promotional purposes in the food retailing and gasoline industries. In both industries, it appeared that the winning game pieces were being distributed in a manner not determined by chance but calculated to have maximum promotional impact. In order to prevent future abuses, the Rule required various pending-game and post-game disclosures, as well as certain procedures for operating a game of chance.

Pending-game disclosures included: (1) The number of prizes in each ''category or denomination;'' (2) the odds-of-winning each prize; (3) the number of retail outlets participating in the game; (4) the geographic area covered by the game; and (5) the end date. If the game extended beyond 30 days, the Rule required weekly updating of disclosures of the odds-of-winning and the number of prizes. Post-game disclosures included: (1) The list of winners and the amount or value of each prize; (2) the total number of game pieces distributed; (3) the number of prizes in each ''category or denomination'' that were made available; and (4) the number of prizes actually awarded. Procedural requirements included a hiatus between games; a prohibition against terminating a game prior to distribution of all game pieces; a prohibition against replenishing of game pieces or prizes during a game; and a three-year record-keeping requirement.

The Commission amended the Rule once in 1981. The amendments alleviated some reporting requirements, dropped certain requirements of the ''winners list'' provision, and shortened the required hiatus between games.[1]

After the 1981 amendments, advertising and broadcasting trade associations filed a petition seeking exemption from the disclosure requirements for broadcast advertising of games. The petition asserted that games of chance could not be advertised in the broadcast media if full disclosures regarding prizes and odds of winning were required. In response to the petition, the Commission granted a temporary exemption from disclosure requirements for broadcast advertising.[2]

In a related action, the Commission issued an Advance Notice of Proposed Rulemaking (ANPR) to request comments about whether the Commission should make the exemption permanent and whether to revise other aspects of the Rule.[3] The commenters who responded to the ANPR consisted of members of the supermarket, gasoline, advertising, game promotion, and broadcasting industries, and lawyers with experience in representing such industries.

Based upon comments received in response to the ANPR and the staff's analysis, the Commission published its Notice of Proposed Rulemaking (NPR).[4] The major proposals of the NPR were to amend the Rule to: (1) drop certain disclosures in advertising and promotional materials; (2) raise the threshold for winners lists disclosures to prizes of $50.00 and over; (3) permit replenishment of prize game pieces; and (4) drop the waiting period required between games. In 1995, the Presiding Officer re-opened the record for additional comments, particularly regarding whether there was a continuing need for this Rule.[5]

The Commission received seven comments in response to the NPR and seven in response to the 1995 request for additional comments. These commenters included members of the advertising, broadcasting, game promotion, and game user industries.[6] A number of these commenters urged rescission of the Rule, stating that it discriminated unfairly against certain types of retailers and that there was no record of abuse to justify retaining the Rule.[7] Others urged retention of a modified Rule in order to protect consumers from possible deception.[8] Finally, some commenters stated that if the Commission were to retain the Rule, it should be expanded to include other

[1] 16 CFR 419.1(e), -(f) (1995); 46 FR 36840 (July 16, 1981).

[2] 48 FR 1046 (Jan. 10, 1983).

[3] 48 FR 265 (Jan. 4, 1983).

[4] 53 FR 39103 (Oct. 5, 1988).

[5] 60 FR 38474 (July 26, 1995).

[6] Those filing comments on the NPR included: The Promotion Marketing Association of America, Inc.; CBS; Leo Burnett Company, Inc.; Association of Retail Marketing Services; Incentive Federation, Inc.; Producers Alliance on Rulemaking; and the Food Marketing Institute. No prospective witness filed a request to testify at a hearing, and the Presiding Officer therefore issued a Notification of Cancellation of Public Hearings and Rebuttal Period. 53 FR 39103 (1988). Parties responding to the 1995 notice re-opening the record included: the Food Marketing Institute; the Minnesota Service Station and Convenience Store Association; the National Association of Broadcasters; the National Association of Convenience Stores; The Promotion Marketing Association of America, Inc.; Society of Independent Gasoline Marketers of America; and Triplex Marketing, Inc.

[7] Those urging rescission included: the Food Marketing Institute; the National Association of Convenience Stores; Society of Independent Gasoline Marketers of America; and The Promotion Marketing Association of America, Inc.

[8] Producer's Alliance on Rulemaking; Triplex Marketing, Inc.; and the Minnesota Service Station and Convenience Store Association.

industries in order to remove the discriminatory effect against grocery stores and gasoline stations.[9] As with the response to the ANPR, the Commission received no comments from any public interest groups, government agencies or consumers.

The Final Staff Report[10] and the Presiding Officer's Report[11] on the proposed rulemaking both recommended rescission of the Rule. The reports were placed on the public record and public comments were invited.[12] No public comments were received on the reports and their joint recommendation to the Commission to rescind the Games of Chance Rule. The reasons for repeal of the Rule, as set forth in these two reports, are summarized below.

II. Basis for Repeal of Rule

The Commission has determined to repeal the Games of Chance Rule based on an analysis of the rulemaking record. The Commission bases its rescission on the following reasons:

1. In the 27 years since the Rule was promulgated, there have been no enforcement actions for violations of the Rule. It appears that the abuses that prompted adoption of this Rule have largely disappeared.

2. The Rule has become outdated. It covers only a limited sector of retail businesses that use games of chance in their promotions. During the 1960s, grocery stores and gasoline stations were the primary users of games. Today, however, businesses not covered by the Rule, such as fast food restaurants and soft drink bottlers, use games of chance as much as, or even more often than, those that are covered by the Rule. Generally, even businesses that are not covered voluntarily make some of the more important required disclosures, such as the prizes offered and the odds of winning them.

3. The Rule may have an adverse effect on businesses that must comply with all of the Rule's requirements, but are competing with other firms that are not regulated by the Rule. In recent years, the distinctions between types of retailers have become blurred. Many stores other than traditional grocery stores now sell food items, and grocery stores often sell prepared food like restaurants. Thus, although various retailers sell food, only grocery stores must incur costs to comply with the Rule. This disparity in treatment could be addressed by expanding the Rule to cover all retailers using games of chance. There is, however, no evidentiary basis in the record for expansion.

4. The states are in a good position to control the activities of retailers operating games of chance because such retailers have a physical presence in the states where they do business. Many states traditionally have been involved in the oversight of games of chance and sweepstakes, particularly where such games may violate a state's public policy against commercial lotteries.

5. This rulemaking has generated very little interest, indicating a lack of importance of this Rule in today's marketplace.[13] Significantly, no comments were filed in response to the recommendation of the Presiding Officer's Report and the Final Staff Report that the Commission repeal the Games of Chance Rule.

All of these reasons indicate that the Rule is outdated and no longer necessary to protect consumers. It appears that the costs of the Rule now outweigh its benefits. Should abuses recur in the future, both the Commission and the states can use case-by-case law enforcement to prosecute those engaging in unfair or deceptive practices in the use of games of chance.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated impact of the repeal of the Rule on small businesses.[14] The purpose of a regulatory flexibility analysis is to ensure that the agency considers the impact of a regulatory action on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. However, Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

Because the Games of Chance Rule covers retail food stores and gasoline stations, it may affect a substantial number of small entities. However, repeal of the Rule will not have a significant economic impact upon such entities. Disclosures and record-keeping requirements that are eliminated may involve a small cost savings to such retailers, but the effect will not be significant. Grocery stores and gasoline stations using games of chance, however, will be able to continue making those disclosures deemed most important to their customers or that are required by state law. Moreover, the Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule. Therefore, based on available information, the Commission certifies that repeal of the Games of Chance Rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Games of Chance Rule imposes third-party disclosure and record-keeping requirements that constitute information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Office of Management and Budget (OMB) Control Number 2084–0067. Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure and recordkeeping requirements.

List of Subjects in 16 CFR Part 419

Advertising, Foods, Gambling, Gasoline, Trade practices.

PART 419—[REMOVED]

The Commission, under authority of Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing Part 419.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–33016 Filed 12–26–96; 8:45 am]

BILLING CODE 6750–01–P

[9] E.g., the Food Marketing Institute.

[10] Federal Trade Commission Staff, Final Staff Report to the Federal Trade Commission, Games of Chance in the Food Retailing and Gasoline Industries (1996).

[11] Federal Trade Commission Presiding Officer, Report of the Presiding Officer on a Trade Regulation Rule Proceeding: Proposed Amendment of the Games of Chance Trade Regulation Rule (1996).

[12] 61 FR 29039 (June 7, 1996).

[13] In fact, a survey conducted for the rulemaking staff by Opinion Research Corporation showed that generally consumers do not base shopping decisions on the use of games of chance by retailers. Opinion Research Corporation, Survey to Assess the Effectiveness of the Games of Chance Trade Regulation Rule (1987).

[14] The RFA addresses the impact of rules on ''small entities,'' defined as ''small businesses,'' ''small governmental entities,'' and ''small [not-for-profit] organizations,'' 5 U.S.C. 601. The Games of Chance Rule does not apply to the latter two types of entities.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 96N–0094]

Uniform Compliance Date for Food Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing January 1, 2000, as the uniform compliance date for food labeling regulations that are issued between January 1, 1997, and December 31, 1998. FDA has periodically announced uniform compliance dates for new food labeling requirements to minimize the economic impact of label changes. In 1992, FDA suspended this practice pending the issuance of regulations implementing the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). FDA recently reinstated this practice of with the establishment of a uniform compliance date of January 1, 1998.

DATES: Effective December 27, 1996; written comments by March 13, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION: FDA periodically issues regulations requiring changes in the labeling of food. If the effective dates of these labeling changes were not coordinated, the cumulative economic impact on the food industry of having to respond separately to each change would be substantial. Therefore, the agency periodically has announced uniform compliance dates for new food labeling requirements (see e.g., the Federal Registers of October 19, 1984 (49 FR 41019) and December 24, 1996 (61 FR 67710). Use of a uniform compliance date provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials. This policy serves consumers' interests as well because the cost of multiple short-term label revisions that would otherwise occur would likely be passed on to consumers in the form of higher prices.

During the 1980's and into the early 1990's, FDA periodically issued final rules announcing new uniform compliance dates for food labeling regulations. The agency suspended the issuance of uniform compliance date final rules in 1992 because of the pending issuance of a number of new final regulations implementing the 1990 amendments. Most of these regulations are now in place and effective.

In the Federal Register of April 15, 1996 (61 FR 16422), FDA issued a proposal entitled ''Uniform Compliance Date for Food Labeling Regulations.'' In that document, FDA, among other things, proposed to reinstate its practice of periodically issuing uniform compliance dates as final rules. The comments to the proposal fully supported the agency's doing so. With the publication of this final rule, FDA is reinstating this practice.

The agency has determined under 21 CFR 25.24(a)(11) 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.

FDA has examined the economic implications of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of that rule on small entities.

The establishment of a uniform compliance date does not impose either costs or benefits. For future labeling requirements, FDA will assess the costs and benefits of the uniform compliance date as well as the options of setting alternative dates, especially with regard to the impact on small entities. Therefore, the agency finds that the final rule is not a significant rule as defined by Executive Order 12866. Similarly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. It has also determined that the rule is not a major rule for the purpose of congressional review (Pub. L. 104–121).

This action is not intended to change existing requirements for compliance dates contained in final rules published before publication of this final rule. Therefore, all final FDA regulations published in the Federal Register before December 27, 1996 will still go into effect on the date stated in the respective final rule.

The agency generally encourages industry to comply with new labeling regulations as quickly as feasible, however. Thus, when industry members voluntarily change their labels, it is appropriate that they incorporate any new requirements that have been published as final regulations up to that time.

Because FDA has already provided notice and an opportunity for comment on the practice of establishing uniform compliance dates by issuance of a final rule announcing the date, it finds any further rulemaking unnecessary. Nonetheless, under 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether this uniform compliance date should be modified or revoked.

Interested persons may, on or before March 13, 1997 submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday though Friday. After its review of any comments received to this final rule, FDA will either publish a notice providing its conclusions concerning the comments or will initiate notice and comment rulemaking to modify or revoke the uniform compliance date established by this final rule.

The new uniform compliance date will apply only to final FDA food labeling regulations that require changes in the labeling of food products and that publish after January 1, 1997, and before January 1, 1999. Those regulations will specifically identify January 1, 2000, as their compliance date. All food products subject to the January 1, 2000, compliance date must comply with the

appropriate regulations when initially introduced into interstate commerce on or after January 1, 2000. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 2000, the agency will determine for that regulation an appropriate compliance date, which will be specified when the final regulation is published.

Dated: December 20, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32884 Filed 12–26–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Fomepizole

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 Orphan Medical, Inc. The NADA provides for intravenous use of fomepizole solution as an antidote for ethylene glycol poisoning in dogs.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Orphan Medical, Inc., 13911 Ridgedale Dr., suite 475, Minnetonka, MN 55305, is sponsor of NADA 141–075, which provides for the use of Antizol-Vet™ (sterile injectable fomepizole solution) for use as an antidote for ethylene glycol (antifreeze) poisoning in dogs who have ingested or are suspected of having ingested ethylene glycol. The drug is for veterinary prescription use only. The NADA is approved as of November 25, 1996, and the regulations are amended in part 522 (21 CFR part 522) by adding a new § 522.1004 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Orphan Medical, Inc., has not previously been added to the list of sponsors of approved applications in § 510.600(c) (21 CFR 510.600(c)). At this time, § 510.600(c)(1) and (c)(2) are amended to include entries for the firm.

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)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning November 25, 1996, because no active ingredient (including any ester or salt of the active ingredient) has been previously approved in any other application filed under section 512(b)(1) of the act.

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

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

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 parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for ''Orphan Medical, Inc.,'' and in the table in paragraph (c)(2) by numerically adding a new entry for ''062161'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * * *
Orphan Medical, Inc., 13911 Ridgedale Dr., suite 475, Minnetonka, MN 55305	062161
* * *	* * * *

(2) * * *

Drug labeler code	Firm name and address
*	*
*	*
*	*
*	
062161	Orphan Medical, Inc., 13911 Ridgedale Dr., suite 475, Minnetonka, MN 55305.
*	*
*	*
*	*
*	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

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

4. New § 522.1004 is added to read as follows:

§ 522.1004 Fomepizole.

(a) *Specifications.* Two vials, one containing 1.5 grams fomepizole (1.5 milliliter of 1.0 gram fomepizole per milliliter sterile aqueous solution), and one vial containing 30 milliliters of 0.9 percent sodium chloride injection USP (as a diluent).

(b) *Sponsor.* See 062161 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* 20 milligrams per kilogram initially, 15 milligrams per kilogram at 12 and 24 hours, and 5 milligrams per kilogram at 36 hours.

(2) *Indications for use.* As an antidote for ethylene glycol (antifreeze) poisoning in dogs who have ingested or are suspected of having ingested ethylene glycol.

(3) *Limitations.* Administer intravenously. For use by or on the order of a licensed veterinarian.

Dated: December 16, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–32883 Filed 12–26–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 556 and 558

Animal Drugs, Feeds, and Related Products; Tilmicosin Phosphate Type A Medicated Article

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 Elanco Animal Health. The NADA provides for the use of a Type A medicated article containing tilmicosin phosphate in manufacturing a Type B or Type C medicated feed indicated for the control of swine respiratory disease associated with certain bacterial organisms.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 141–064, which provides for the use of a Type A medicated article containing 90.7 grams (g) of tilmicosin (as tilmicosin phosphate) per pound in manufacturing a Type C medicated feed (181.8 g to 363.6 g of tilmicosin per ton) indicated for the control of swine respiratory disease associated with *Actinobacillus pleuropneumoniae* and *Pasteurella multocida*. The NADA is approved as of December 27, 1996, and the regulations are amended by adding new § 558.618 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, the agency is amending 21 CFR 556.735 to establish a tolerance for residues of tilmicosin in edible swine tissues. As discussed in the freedom of information summary, parent tilmicosin was selected as the marker residue, and liver as the target tissue, for determination of tilmicosin residues in edible swine tissues.

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 qualifies for 3 years of marketing exclusivity for the use of tilmicosin in swine beginning December 27, 1996, because the application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety, or, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) required for the approval of the application and conducted or sponsored by the applicant.

A high performance liquid chromatographic method is available to determine the presence and amount of the marker residue in swine liver. In addition, a high performance liquid chromatographic/mass spectrometric method is available to confirm the presence of the marker residue in liver. Both methods have been validated by FDA and the U.S. Department of Agriculture and are for regulatory purposes. The methods are available for public inspection at the Dockets Management Branch (address above) and are attached to the freedom of information summary for this NADA. Requests for copies of these methods should be made under the Freedom of Information Act.

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.

Tilmicosin phosphate is a new animal drug used in a Type A medicated article to make Type B or Type C medicated feeds. Tilmicosin phosphate is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). Therefore, as provided in 21 CFR 558.4(b), an approved Form FDA 1900 is required for making a Type B or Type C medicated feed containing tilmicosin phosphate as in the approved subject NADA and in newly added § 558.618. Under section 512(m) of the act, as amended by the Animal Drug Availability Act of 1996 (ADAA), Pub. L. 104–250, medicated feed applications have been replaced by feed mill licensing.

Tilmicosin phosphate is limited to use under the professional supervision of a licensed veterinarian. It is the first veterinary feed directive (VFD) drug to be approved since the enactment of the ADAA. Pending issuance of regulations to implement veterinary feed directives, Congress directed FDA to set forth in the new animal drug approval notice required by section 512(i) of the act any necessary conditions relating to the

labeling, advertising, distribution, holding, and use of a VFD drug. Accordingly, this regulation sets forth necessary conditions for tilmicosin phosphate (NADA 141–064) including the information that shall be included in a VFD:

- The name, address, and phone number of the veterinarian and the client;
- Identification of the animals to be treated, including, identification of the species, number of animals, and the location of the animals;
- Date of treatment and, if different, date of prescribing the VFD drug;
- The condition or disease being diagnosed or treated;
- Name of the animal drug;
- Level of animal drug in the feed and the amount of feed;
- Feeding instructions with withdrawal time;
- Any special instructions and cautionary statements necessary for use of the drug in conformance with the approval;
- Expiration date of the VFD;
- Number of refills, if permitted by the approval;
- Signature of the veterinarian; and
- The veterinarian's license number and name of the State issuing the license.

At such time as FDA finalizes general regulations governing VFD drugs, the general regulations may supersede certain specific VFD requirements of this approval regulation.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

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 parts 556 and 558 are 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 556.735 is revised to read as follows:

§ 556.735 Tilmicosin.

A tolerance is established for residues of parent tilmicosin (marker residue) in liver (target tissue) of cattle at 1.2 parts per million (ppm) and of swine at 7.2 ppm.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

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

4. Section 558.4 is amended in paragraph (d) in the ''Category II'' table by alphabetically adding a new entry for ''Tilmicosin'' to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY II

Drug	Assay limits percent[1] Type A	Type B maximum (100x)	Assay limits percent[1] Type B/C[2]
*	* *	*	*
Tilmicosin	90—110	18.2 g/lb (4.0 %).	85—115

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make Type C medicated feed.

* * * * *

5. New § 558.618 is added to read as follows:

§ 558.618 Tilmicosin.

(a) *Approvals.* Type A medicated articles: 90.7 grams of tilmicosin (as tilmicosin phosphate) per pound (200 grams per kilogram) to 000986 in § 510.600(c) of this chapter.

(b) *Special considerations.* Do not use in any feed containing bentonite.

(c) *Related tolerances.* See § 556.735 of this chapter.

(d) *Conditions of use.* It is used in swine feed as follows:

(1) *Amount per ton.* 181.8 grams to 363.6 grams tilmicosin.

(2) *Indications for use.* For the control of swine respiratory disease associated with *Actinobacillus pleuropneumoniae* and *Pasteurella multocida.*

(3) *Limitations.* For use in swine feed only. The safety of tilmicosin has not been established in pregnant swine or swine intended for breeding purposes. Feed continuously as the sole ration for 21-day period, beginning approximately 7 days before an expected disease outbreak. Withdraw 7 days before slaughter. Federal law restricts this drug to use under the professional supervision of a licensed veterinarian. Any animal feed bearing or containing this drug shall be fed to animals only by or upon a lawful veterinary feed directive (VFD) issued by a licensed veterinarian in the course of the veterinarian's professional practice. VFD's for tilmicosin phosphate shall not be refilled.

(4) *VFD Requirements.* This drug and any article or feed manufactured from it shall bear the following cautionary statements: ''Caution: Federal law limits this drug to use under the professional supervision of a licensed veterinarian. Animal feed bearing or containing this veterinary feed directive drug shall be fed to animals only by or upon a lawful veterinary feed directive issued by a licensed veterinarian in the course of the veterinarian's professional practice.'' A VFD shall contain the following information: The name, address, and phone number of the veterinarian and the client; identification of the animals to be treated, including, identification of the species, number of animals, and the location of the animals; date of treatment and, if different, date of prescribing the VFD drug; the condition or disease being diagnosed or treated; name of the animal drug; level of animal drug in feed and amount of feed; feeding instructions with withdrawal time; any special instructions and cautionary statements necessary for use of the drug in conformance with the approval; expiration date of VFD; number of refills, if permitted by approval; signature of the veterinarian; veterinarian's license number and name of the State issuing the license.

Dated: December 17,1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–32881 Filed 12–26–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice 2492]

Privacy Act of 1974; Implementation

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending its regulations by exempting portions of a record system from certain provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a). Certain portions of the Garnishment of Wages

Records (STATE–61) are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f).

EFFECTIVE DATE: January 27, 1997.

FOR FURTHER INFORMATION CONTACT: Celeste Houser-Jackson, 202–647–5061.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the Federal Register (61 FR 53158, October 10, 1996) inviting interested persons to submit comments concerning the proposed regulations. Since no comments were received, the amendment to the Privacy Provisions of the Department of State's Access to Information regulations was formally adopted as published.

List of Subjects in 22 CFR Part 171

Privacy.

PART 171—[AMENDED]

1. The authority citation for Part 171 continues to read as follows:

Authority: The Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; The Administrative Procedure Act, 5 U.S.C. 551, et seq.; The Ethics in Government Act, 5 U.S.C. App. 201; Executive Order 12958, 60 FR 19825; and Executive Order 12600, 52 FR 23781.

§ 171.32 [Amended]

2. In § 171.32, paragraph (j)(2) will be amended by adding ''Garnishment of Wages Records. STATE–61'', after ''Records of the Inspector General and Automated Individual Cross Reference System. STATE–53''.

Dated: December 16, 1996.

Joseph E. Lake,

Acting Assistant Secretary for the Bureau of Administration.

[FR Doc. 96–32739 Filed 12–26–96; 8:45 am]

BILLING CODE 4710–05–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8701]

RIN 1545–AC06

Treatment of Shareholders of Certain Passive Foreign Investment Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations that provide rules for making the deemed sale and deemed dividend elections under section 1291(d)(2). These regulations reflect changes to the law made by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988, and apply to a shareholder of a passive foreign investment company (PFIC) that elects under section 1295 to treat the PFIC as a qualified electing fund (QEF) for a taxable year after the first taxable year during the shareholder's holding period that the foreign corporation was a PFIC.

DATES: These regulations are effective December 27, 1996.

Applicability: For the specific dates of applicability, see §§ 1.1291–9(k) and 1.1291–10(i).

FOR FURTHER INFORMATION CONTACT: Gayle Novig, (202) 622–3880 (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 numbers 1545–1028 and 1545–1304. All of these paperwork requirements will be consolidated under control number 1545–1507. Responses to these collections of information are mandatory.

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 .75 hour to 1 hour, depending on individual circumstances, with an estimated average of .76 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

This document contains final regulations to be added to the Income Tax Regulations (26 CFR part 1) under section 1291(d)(2) of the Internal Revenue Code. The final regulations provide rules for making a deemed sale or deemed dividend election to purge a shareholder's holding period of stock of a PFIC of those taxable years during which the PFIC was not a QEF. The Tax Reform Act of 1986 added section 1291(d)(2)(A), relating to the deemed sale election, effective for taxable years of foreign corporations beginning after December 31, 1986. The Technical and Miscellaneous Revenue Act of 1988 amended section 1291(d)(2) to add new section 1291(d)(2)(B), relating to the deemed dividend election, effective for taxable years of foreign corporations beginning after December 31, 1986.

On March 2, 1988, temporary regulations (TD 8178) relating to the deemed sale election under section 1291(d)(2)(A), in addition to elections under sections 1294, 1295, and 1297, were published in the Federal Register (53 FR 6770). A notice of proposed rulemaking (INTL–941–86) cross-referencing the temporary regulations was also published in the Federal Register for the same day (53 FR 6781).

On April 1, 1992, temporary regulations (TD 8404) relating to both the deemed sale and deemed dividend elections under section 1291(d)(2) (A) and (B), were published in the Federal Register (57 FR 10992). A notice of proposed rulemaking (INTL–941–86; INTL–656–87; INTL–704–87) cross-referencing the temporary regulations was published in the Federal Register for the same day (57 FR 11024).

Written comments responding to these notices were received. No public hearing was held for the notice of proposed rulemaking published on March 2, 1988. A public hearing was held November 23, 1992, for the notice of proposed rulemaking published April 1, 1992. After consideration of all the comments, the proposed regulations under section 1291(d)(2) are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed. Substantive revisions are discussed below. All other revisions are stylistic, and are primarily intended to conform the regulations under § 1.1291–10 to those under § 1.1291–9.

Explanation of Provisions and Revisions and Summary of Comments

1. Introduction

A shareholder of a foreign corporation that qualifies as a PFIC under the

income or asset test of section 1296 is subject to the special interest charge regime of section 1291 with respect to certain distributions by the PFIC and dispositions of the stock of the PFIC. Provided the PFIC complies with certain election requirements, a shareholder may elect under section 1295 to treat the PFIC as a QEF. If the election is made, the shareholder is subject to the current inclusion regime of section 1293. If the shareholder makes the section 1295 election for the first year of its holding period for the foreign corporation during which year the foreign corporation is a PFIC, the shareholder is only subject to PFIC taxation under the current inclusion regime. Such a PFIC is a pedigreed QEF with respect to the shareholder. However, if the shareholder makes the section 1295 election for a later year, the shareholder is subject to both the interest charge regime of section 1291 and the current inclusion regime of section 1293. Such a PFIC is an unpedigreed QEF with respect to the shareholder. To limit its PFIC taxation to the current inclusion regime of section 1293, a shareholder that makes the section 1295 election may also make a section 1291(d)(2) election to purge its holding period of the years, or parts of years, before the effective date of the QEF election during which the foreign corporation was a PFIC (nonQEF years). Thereafter, the PFIC will be treated as a pedigreed QEF with respect to the shareholder.

Section 1291(d)(2) provides two methods to purge the nonQEF years from a shareholder's holding period of PFIC stock. A shareholder may elect under section 1291(d)(2)(A) to be treated as having sold the stock of the PFIC. The gain on the deemed sale is subject to the interest charge regime and therefore taxed as an excess distribution under section 1291. Alternatively, if the PFIC is a controlled foreign corporation (CFC), any U.S. person that is a shareholder of the PFIC may elect under section 1291(d)(2)(B) to be treated as receiving a dividend in the amount of its pro rata share of the post-1986 undistributed earnings and profits of the PFIC. The deemed dividend is taxed to the shareholder as an excess distribution under the interest charge regime. If either election is made, the shareholder's holding period is treated, for purposes of the PFIC rules, as beginning on the date of the deemed sale or dividend (qualification date).

2. Revisions to the Regulations

Section 1.1291–9 provides the rules for making the deemed dividend election under section 1291(d)(2)(B) with respect to a PFIC that is a CFC. Section 1.1291–10 provides the rules for making the deemed sale election under section 1291(d)(2)(A). The final regulations generally follow the proposed regulations with the exceptions described below.

a. Qualification Date

The 1988 temporary regulations under § 1.1291–10T provided that, in general, the date of the deemed sale, referred to as the qualification date, is the first day of the first taxable year of the corporation that it is treated as a QEF under section 1295 (first QEF year). However, the temporary and proposed amendments to § 1.1291–10T published in 1992 changed the qualification date for elections made after May 1, 1992, to the first day of the taxable year for which the shareholder made the QEF election (shareholder's election year). Similarly, under the temporary and proposed § 1.1291–9 regulations, the qualification date is the first day of the shareholder's election year.

Commenters described a potential problem with the designation of the first day of the shareholder's election year as the qualification date where the corporation and the shareholder have different taxable years. In this circumstance, the purging election would not avoid application of the interest charge regime to distributions and dispositions during the period between the first day of the corporation's first QEF year and the first day of the shareholder's election year.

In response to comments, the final regulations adopt the definition of qualification date used in the 1988 temporary regulations for purposes of both the deemed sale and deemed dividend elections made on or after January 27, 1997. For the period after March 31, 1995, to January 26, 1997, the final regulations adopt the definition of qualification date of the 1992 temporary regulations. In addition, the final regulations permit a shareholder that made the deemed sale or deemed dividend election after May 1, 1992 and on or before January 27, 1997 to amend its election and treat the deemed sale or deemed dividend as occurring on the first day of the PFIC's first QEF year, provided the periods of limitations on assessment for the taxable year that includes that date and for the shareholder's election year have not expired.

In response to comments, the final regulations also clarify that if the shareholder's holding period under section 1223 includes the first day of the first QEF year, the shareholder will be treated as holding the stock on that date. Therefore, the shareholder may make a section 1291(d)(2) election for the first QEF year.

b. Elections Made With Respect to Former PFICs

Section 1.1291–9(h) of the proposed regulations provides that a shareholder cannot apply the deemed dividend rules of section 1291(d)(2)(B) to purge PFIC taint, pursuant to section 1297(b)(1), from the stock of a foreign corporation that no longer is a PFIC under either the asset or income test of section 1296(a), but whose stock nevertheless is treated as stock of a PFIC with respect to a shareholder pursuant to section 1297(b)(1) (former PFIC). In addition, the proposed regulations provide that the section 1291(d)(2)(B) election cannot be made with respect to a corporation that will not qualify as a PFIC under section 1296(a)(1) or (2) in the first QEF year.

Several commenters disagreed with the position taken in § 1.1291–9(h) of the proposed regulations. Section 1.1291–9(i)(1) of the final regulations does not accept these comments and adopts the rule of the proposed regulation denying application of the rules of section 1291(d)(2)(B) for purposes of a section 1297(b)(1) election. In addition, § 1.1291–9(i)(2) modifies the rule of proposed regulation § 1.1291–9(h)(2) to clarify that the section 1295 and 1291(d)(2)(B) elections cannot be made with respect to a former PFIC. Section 1.1291–10(h) of the final regulations adopts a similar rule, clarifying that a shareholder of a former PFIC cannot make the section 1295 and 1291(d)(2)(A) elections. Thus, section 1295 and section 1291(d)(2) elections may only be made with respect to a foreign corporation that is a PFIC by definition under section 1296. Accordingly, the deemed sale election of section 1297(b)(1) remains the only means by which a shareholder may purge a former PFIC of its PFIC taint.

c. Qualification as a CFC

The final regulations, in response to comments, clarify that a shareholder may make the deemed dividend election provided the PFIC qualifies as a CFC for its first QEF year.

d. Time for Making the Elections

In response to comments, the final regulations clarify the time for making the deemed sale and dividend elections. The regulations provide that if the shareholder and the PFIC have the same taxable year, and therefore the first day of the shareholder's election year and the qualification date are the same, the shareholder may make the election in the same return in which it makes the

section 1295 election or in an amended return. The regulations also provide that if the shareholder and the PFIC have different taxable years and therefore the qualification date precedes the first day of the shareholder's election year, the shareholder must make the deemed sale or deemed dividend election in an amended return. If the shareholder is making the section 1291(d)(2) election in an amended return, the amended return must be filed within three years of the due date, as extended under section 6081, for the return for the taxable year that includes the qualification date.

e. Post-1986 Accumulated Earnings and Profits

The proposed regulations provide that the shareholder's old holding period for purposes of the PFIC rules ends on the qualification date, but also provide that its new holding period begins on the qualification date. These rules may have caused confusion concerning the last day of the holding period for purposes of determining post-1986 accumulated earnings and profits. The final regulations revise the holding period rules to provide that the shareholder's holding period ends on the day before the qualification date for purposes of calculating the amount of the deemed dividend.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in E.O. 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. These regulations, which have a retroactive effective date, satisfy the Administrative Procedure Act's requirement in section 553(d) for good cause because they provide necessary guidance for the period after March 31, 1995, and because they are not detrimental to taxpayers. These regulations are necessary because they provide taxpayers with the rules needed to make the elections under section 1291(d)(2). Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking preceding these regulations were submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Gayle Novig, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

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 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for section 1.1291–9T and the entry for sections 1.1291–10T, 1.1294–1T, 1.1295–1T, and 1.1297–3T, and by adding entries in numerical order to read as follows:

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

Section 1.1291–9 also issued under 26 U.S.C. 1291(d)(2).

Section 1.1291–10 also issued under 26 U.S.C. 1291(d)(2).

Section 1.1294–1T also issued under 26 U.S.C. 1294.

Section 1.1297–3T also issued under 26 U.S.C. 1297(b)(1). * * *

Par. 2. Section 1.1291–0 is added to read as follows:

§ 1.1291–0 Treatment of shareholders of certain passive foreign investment companies; table of contents.

This section contains a listing of the headings for §§ 1.1291–9 and 1.1291–10.

§ 1.1291–9 Deemed dividend election.

(a) Deemed dividend election.
(1) In general.
(2) Post-1986 earnings and profits defined.
(i) In general.
(ii) Pro rata share of post-1986 earnings and profits attributable to shareholder's stock.
(A) In general.
(B) Reduction for previously taxed amounts.
(b) Who may make the election.
(c) Time for making the election.
(d) Manner of making the election.
(1) In general.
(2) Attachment to Form 8621.
(e) Qualification date.
(1) In general.
(2) Elections made after March 31, 1995, and before January 27, 1997.
(i) In general.
(ii) Exception.
(3) Examples.
(f) Adjustment to basis.
(g) Treatment of holding period.
(h) Coordination with section 959(e).
(i) Election inapplicable to shareholder of former PFIC.
(1) Coordination with section 1297(b)(1).
(2) Former PFIC.
(j) Definitions.
(1) Passive foreign investment company (PFIC).
(2) Types of PFICs.
(i) Qualified electing fund (QEF).
(ii) Pedigreed QEF.
(iii) Unpedigreed QEF.
(iv) Former PFIC.
(3) Shareholder.
(k) Effective date.

§ 1.1291–10 Deemed sale election.

(a) Deemed sale election.
(b) Who may make the election.
(c) Time for making the election.
(d) Manner of making the election.
(e) Qualification date.
(1) In general.
(2) Elections made after March 31, 1995, and before January 27, 1997.
(i) In general.
(ii) Exception.
(f) Adjustments to basis.
(1) In general.
(2) Adjustment to basis for section 1293 inclusion with respect to deemed sale election made after March 31, 1995, and before January 27, 1997.
(g) Treatment of holding period.
(h) Election inapplicable to shareholder of former PFIC.
(i) Effective date.

§ 1.1291–0T [Amended]

Par. 3. Section 1.1291–0T is amended as follows:

1. Remove from the introductory text the language ''1.1291–9T, 1.1291–10T,''.

2. Remove the entries for § 1.1291–9T and § 1.1291–10T from the table.

Par. 4. Section 1.1291–9 is added to read as follows:

§ 1.1291–9 Deemed dividend election.

(a) *Deemed dividend election*—(1) *In general.* This section provides rules for making the election under section 1291(d)(2)(B) (deemed dividend election). Under that section, a shareholder (as defined in paragraph (j)(3) of this section) of a PFIC that is an unpedigreed QEF may elect to include in income as a dividend the shareholder's pro rata share of the post-1986 earnings and profits of the PFIC attributable to the stock held on the qualification date (as defined in paragraph (e) of this section), provided the PFIC is a controlled foreign corporation (CFC) within the meaning of section 957(a) for the taxable year for which the shareholder elects under section 1295 to treat the PFIC as a QEF (section 1295 election). If the shareholder makes the deemed dividend election, the PFIC will become a

pedigreed QEF with respect to the shareholder. The deemed dividend is taxed under section 1291 as an excess distribution received on the qualification date. The excess distribution determined under this paragraph (a) is allocated under section 1291(a)(1)(A) only to those days in the shareholder's holding period during which the foreign corporation qualified as a PFIC. For purposes of the preceding sentence, the holding period of the PFIC stock with respect to which the election is made ends on the day before the qualification date. For the definitions of PFIC, QEF, unpedigreed QEF, and pedigreed QEF, see paragraph (j)(1) and (2) of this section.

(2) *Post-1986 earnings and profits defined*—(i) *In general.* For purposes of this section, the term post-1986 earnings and profits means the undistributed earnings and profits, within the meaning of section 902(c)(1), as of the day before the qualification date, that were accumulated and not distributed in taxable years of the PFIC beginning after 1986 and during which it was a PFIC, but without regard to whether the earnings relate to a period during which the PFIC was a CFC.

(ii) *Pro rata share of post-1986 earnings and profits attributable to shareholder's stock*—(A) *In general.* A shareholder's pro rata share of the post-1986 earnings and profits of the PFIC attributable to the stock held by the shareholder on the qualification date is the amount of post-1986 earnings and profits of the PFIC accumulated during any portion of the shareholder's holding period ending at the close of the day before the qualification date and attributable, under the principles of section 1248 and the regulations under that section, to the PFIC stock held on the qualification date.

(B) *Reduction for previously taxed amounts.* A shareholder's pro rata share of the post-1986 earnings and profits of the PFIC does not include any amount that the shareholder demonstrates to the satisfaction of the Commissioner (in the manner provided in paragraph (d)(2) of this section) was, pursuant to another provision of the law, previously included in the income of the shareholder, or of another U.S. person if the shareholder's holding period of the PFIC stock includes the period during which the stock was held by that other U.S. person.

(b) *Who may make the election.* A shareholder of an unpedigreed QEF that is a CFC for the taxable year of the PFIC for which the shareholder makes the section 1295 election may make the deemed dividend election provided the shareholder held stock of that PFIC on the qualification date. A shareholder is treated as holding stock of the PFIC on the qualification date if its holding period with respect to that stock under section 1223 includes the qualification date. A shareholder may make the deemed dividend election without regard to whether the shareholder is a United States shareholder within the meaning of section 951(b). A deemed dividend election may be made by a shareholder whose pro rata share of the post-1986 earnings and profits of the PFIC attributable to the PFIC stock held on the qualification date is zero.

(c) *Time for making the election.* The shareholder makes the deemed dividend election in the shareholder's return for the taxable year that includes the qualification date. If the shareholder and the PFIC have the same taxable year, the shareholder makes the deemed dividend election in either the original return for the taxable year for which the shareholder makes the section 1295 election, or in an amended return for that year. If the shareholder and the PFIC have different taxable years, the deemed dividend election must be made in an amended return for the taxable year that includes the qualification date. If the deemed dividend election is made in an amended return, the amended return must be filed by a date that is within three years of the due date, as extended under section 6081, of the original return for the taxable year that includes the qualification date.

(d) *Manner of making the election*—(1) *In general.* A shareholder makes the deemed dividend election by filing Form 8621 and the attachment to Form 8621 described in paragraph (d)(2) of this section with the return for the taxable year of the shareholder that includes the qualification date, reporting the deemed dividend as an excess distribution pursuant to section 1291(a)(1), and paying the tax and interest due on the excess distribution. A shareholder that makes the deemed dividend election after the due date of the return (determined without regard to extensions) for the taxable year that includes the qualification date must pay additional interest, pursuant to section 6601, on the amount of the underpayment of tax for that year.

(2) *Attachment to Form 8621.* The shareholder must attach a schedule to Form 8621 that demonstrates the calculation of the shareholder's pro rata share of the post-1986 earnings and profits of the PFIC that is treated as distributed to the shareholder on the qualification date pursuant to this section. If the shareholder is claiming an exclusion from its pro rata share of the post-1986 earnings and profits for an amount previously included in its income or the income of another U.S. person, the shareholder must include the following information:

(i) The name, address, and taxpayer identification number of each U.S. person that previously included an amount in income, the amount previously included in income by each such U.S. person, the provision of the law pursuant to which the amount was previously included in income, and the taxable year of inclusion of each amount; and

(ii) A description of the transaction pursuant to which the shareholder acquired, directly or indirectly, the stock of the PFIC from another U.S. person, and the provisions of law pursuant to which the shareholder's holding period includes the period the other U.S. person held the CFC stock.

(e) *Qualification date*—(1) *In general.* Except as otherwise provided in this paragraph (e), the qualification date is the first day of the PFIC's first taxable year as a QEF (first QEF year).

(2) *Elections made after March 31, 1995, and before January 27, 1997*—(i) *In general.* The qualification date for deemed dividend elections made after March 31, 1995, and before January 27, 1997 is the first day of the shareholder's election year. The shareholder's election year is the taxable year of the shareholder for which it made the section 1295 election.

(ii) *Exception.* A shareholder who made the deemed dividend election after May 1, 1992, and before January 27, 1997 may elect to change its qualification date to the first day of the first QEF year, provided the periods of limitations on assessment for the taxable year that includes that date and for the shareholder's election year have not expired. A shareholder changes the qualification date by filing amended returns, with revised Forms 8621 and the attachments described in paragraph (d)(2) of this section, for the shareholder's election year and the shareholder's taxable year that includes the first day of the first QEF year, and making all appropriate adjustments and payments.

(3) *Examples.* The rules of this paragraph (e) are illustrated by the following examples:

Example 1—(i) *Eligibility to make deemed dividend election.* A is a U.S. person who files its income tax return on a calendar year basis. On January 2, 1994, A purchased one percent of the stock of M, a PFIC with a taxable year ending November 30. M was both a CFC and a PFIC, but not a QEF, for all of its taxable years. On December 3, 1996, M made a distribution to its shareholders. A received $100, all of which A reported in its

1996 return as an excess distribution as provided in section 1291(a)(1). A decides to make the section 1295 election in A's 1997 taxable year to treat M as a QEF effective for M's taxable year beginning December 1, 1996. Because A did not make the section 1295 election in 1994, the first year in its holding period of M stock that M qualified as a PFIC, M would be an unpedigreed QEF and A would be subject to both sections 1291 and 1293. A, however, may elect under section 1291(d)(2) to purge the years M was not a QEF from A's holding period. If A makes the section 1291(d)(2) election, the December 3 distribution will not be taxable under section 1291(a). Because M is a CFC, even though A is not a U.S. shareholder within the meaning of section 951(b), A may make the deemed dividend election under section 1291(d)(2)(B).

(ii) *Making the election.* Under paragraph (e)(1) of this section, the qualification date, and therefore the date of the deemed dividend, is December 1, 1996. Accordingly, to make the deemed dividend election, A must file an amended return for 1996, and include the deemed dividend in income in that year. As a result, M will be a pedigreed QEF as of December 1, 1996, and the December 3, 1996, distribution will not be taxable as an excess distribution. Therefore, in its amended return, A may report the December 3, 1996, distribution consistent with section 1293 and the general rules applicable to corporate distributions.

Example 2. X, a U.S. person, owned a five percent interest in the stock of FC, a PFIC with a taxable year ending June 30. X never made the section 1295 election with respect to FC. X transferred her interest in FC to her granddaughter, Y, a U.S. person, on February 14, 1996. The transfer qualified as a gift for federal income tax purposes, and no gain was recognized on the transfer (see Regulation Project INTL–656–87, published in 1992–1 C.B. 1124; see § 601.601(d)(2)(ii)(*b*) of this chapter). As provided in section 1223(2), Y's holding period includes the period that X held the FC stock. Y decides to make the section 1295 election in her 1996 return to treat FC as a QEF for its taxable year beginning July 1, 1995. However, because Y's holding period includes the period that X held the FC stock, and FC was a PFIC but not a QEF during that period, FC will be an unpedigreed QEF with respect to Y unless Y makes a section 1291(d)(2) election. Although Y did not actually own the stock of FC on the qualification date (July 1, 1995), Y's holding period includes that date. Therefore, provided FC is a CFC for its taxable year beginning July 1, 1995, Y may make a section 1291(d)(2)(B) election to treat FC as a pedigreed QEF.

(f) *Adjustment to basis.* A shareholder that makes the deemed dividend election increases its adjusted basis of the stock of the PFIC owned directly by the shareholder by the amount of the deemed dividend. If the shareholder makes the deemed dividend election with respect to a PFIC of which it is an indirect shareholder, the shareholder's adjusted basis of the stock or other property owned directly by the shareholder, through which ownership of the PFIC is attributed to the shareholder, is increased by the amount of the deemed dividend. In addition, solely for purposes of determining the subsequent treatment under the Code and regulations of a shareholder of the stock of the PFIC, the adjusted basis of the direct owner of the stock of the PFIC is increased by the amount of the deemed dividend.

(g) *Treatment of holding period.* For purposes of applying sections 1291 through 1297 to the shareholder after the deemed dividend, the shareholder's holding period of the stock of the PFIC begins on the qualification date. For other purposes of the Code and regulations, this holding period rule does not apply.

(h) *Coordination with section 959(e).* For purposes of section 959(e), the entire deemed dividend is treated as included in gross income under section 1248(a).

(i) *Election inapplicable to shareholder of former PFIC*— (1) *Coordination with section 1297(b)(1).* The rules of this section do not apply to an election made under section 1297(b)(1).

(2) *Former PFIC.* A shareholder may not make the section 1295 and deemed dividend elections if the foreign corporation is a former PFIC (as defined in paragraph (j)(2)(iv) of this section) with respect to the shareholder. For the rules regarding the election by a shareholder of a former PFIC, see § 1.1297–3T.

(j) *Definitions*—(1) *Passive foreign investment company (PFIC).* A passive foreign investment company (PFIC) is a foreign corporation that satisfies either the income test of section 1296(a)(1) or the asset test of section 1296(a)(2). A corporation will not be treated as a PFIC with respect to a shareholder for those days included in the shareholder's holding period when the shareholder, or a person whose holding period of the stock is included in the shareholder's holding period, was not a United States person within the meaning of section 7701(a)(30).

(2) *Types of PFICs*—(i) *Qualified electing fund (QEF).* A PFIC is a qualified electing fund (QEF) with respect to a shareholder that has elected, under section 1295, to be taxed currently on its share of the PFIC's earnings and profits pursuant to section 1293.

(ii) *Pedigreed QEF.* A PFIC is a pedigreed QEF with respect to a shareholder if the PFIC has been a QEF with respect to the shareholder for all taxable years during which the corporation was a PFIC that are included wholly or partly in the shareholder's holding period of the PFIC stock.

(iii) *Unpedigreed QEF.* A PFIC is an unpedigreed QEF for a taxable year if—

(A) An election under section 1295 is in effect for that year;

(B) The PFIC has been a QEF with respect to the shareholder for at least one, but not all, of the taxable years during which the corporation was a PFIC that are included wholly or partly in the shareholder's holding period of the PFIC stock; and

(C) The shareholder has not made an election under section 1291(d)(2) and this section or § 1.1291–10 with respect to the PFIC to purge the nonQEF years from the shareholder's holding period.

(iv) *Former PFIC.* A foreign corporation is a former PFIC with respect to a shareholder if the corporation satisfies neither the income test of section 1296(a)(1) nor the asset test of section 1296(a)(2), but whose stock, held by that shareholder, is treated as stock of a PFIC, pursuant to section 1297(b)(1), because at any time during the shareholder's holding period of the stock the corporation was a PFIC that was not a QEF.

(3) *Shareholder.* A shareholder is a U.S. person that is a direct or indirect shareholder as defined in Regulation Project INTL–656–87 published in 1992–1 C.B. 1124; see § 601.601(d)(2)(ii)(*b*) of this chapter.

(k) *Effective date.* The rules of this section are applicable as of April 1, 1995.

§ 1.1291–9T [Removed]

Par. 5. Section 1.1291–9T is removed.

Par. 6. Section 1.1291–10 is added to read as follows:

§ 1.1291–10 Deemed sale election.

(a) *Deemed sale election.* This section provides rules for making the election under section 1291(d)(2)(A) (deemed sale election). Under that section, a shareholder (as defined in § 1.1291–9(j)(3)) of a PFIC that is an unpedigreed QEF may elect to recognize gain with respect to the stock of the unpedigreed QEF held on the qualification date (as defined in paragraph (e) of this section). If the shareholder makes the deemed sale election, the PFIC will become a pedigreed QEF with respect to the shareholder. A shareholder that makes the deemed sale election is treated as having sold, for its fair market value, the stock of the PFIC that the shareholder held on the qualification date. The gain recognized on the deemed sale is taxed under section 1291 as an excess

distribution received on the qualification date. In the case of an election made by an indirect shareholder, the amount of gain to be recognized and taxed as an excess distribution is the amount of gain that the direct owner of the stock of the PFIC would have realized on an actual sale or other disposition of the stock of the PFIC indirectly owned by the shareholder. Any loss realized on the deemed sale is not recognized. For the definitions of PFIC, QEF, unpedigreed QEF, and pedigreed QEF, see § 1.1291–9(j) (1) and (2).

(b) *Who may make the election.* A shareholder of an unpedigreed QEF may make the deemed sale election provided the shareholder held stock of that PFIC on the qualification date. A shareholder is treated as holding stock of the PFIC on the qualification date if its holding period with respect to that stock under section 1223 includes the qualification date. A deemed sale election may be made by a shareholder that would realize a loss on the deemed sale.

(c) *Time for making the election.* The shareholder makes the deemed sale election in the shareholder's return for the taxable year that includes the qualification date. If the shareholder and the PFIC have the same taxable year, the shareholder makes the deemed sale election in either the original return for the taxable year for which the shareholder makes the section 1295 election, or in an amended return for that year. If the shareholder and the PFIC have different taxable years, the deemed sale election must be made in an amended return for the taxable year that includes the qualification date. If the deemed sale election is made in an amended return, the amended return must be filed by a date that is within three years of the due date, as extended under section 6081, of the original return for the taxable year that includes the qualification date.

(d) *Manner of making the election.* A shareholder makes the deemed sale election by filing Form 8621 with the return for the taxable year of the shareholder that includes the qualification date, reporting the gain as an excess distribution pursuant to section 1291(a), and paying the tax and interest due on the excess distribution. A shareholder that makes the deemed sale election after the due date of the return (determined without regard to extensions) for the taxable year that includes the qualification date must pay additional interest, pursuant to section 6601, on the amount of the underpayment of tax for that year. A shareholder that realizes a loss on the deemed sale reports the loss on Form 8621, but does not recognize the loss.

(e) *Qualification date*—(1) *In general.* Except as otherwise provided in this paragraph (e), the qualification date is the first day of the PFIC's first taxable year as a QEF (first QEF year).

(2) *Elections made after March 31, 1995, and before January 27, 1997*—(i) *In general.* The qualification date for deemed sale elections made after March 31, 1995, and before January 27, 1997, is the first day of the shareholder's election year. The shareholder's election year is the taxable year of the shareholder for which it made the section 1295 election.

(ii) *Exception.* A shareholder who made the deemed sale election after May 1, 1992, and before January 27, 1997 may elect to change its qualification date to the first day of the first QEF year, provided the periods of limitations on assessment for the taxable year that includes that date and for the shareholder's election year have not expired. A shareholder changes the qualification date by filing amended returns, with revised Forms 8621, for the shareholder's election year and the shareholder's taxable year that includes the first day of the first QEF year, and making all appropriate adjustments and payments.

(f) *Adjustments to basis*—(1) *In general.* A shareholder that makes the deemed sale election increases its adjusted basis of the PFIC stock owned directly by the amount of gain recognized on the deemed sale. If the shareholder makes the deemed sale election with respect to a PFIC of which it is an indirect shareholder, the shareholder's adjusted basis of the stock or other property owned directly by the shareholder, through which ownership of the PFIC is attributed to the shareholder, is increased by the amount of gain recognized by the shareholder. In addition, solely for purposes of determining the subsequent treatment under the Code and regulations of a shareholder of the stock of the PFIC, the adjusted basis of the direct owner of the stock of the PFIC is increased by the amount of gain recognized on the deemed sale. A shareholder shall not adjust the basis of any stock with respect to which the shareholder realized a loss on the deemed sale.

(2) *Adjustment of basis for section 1293 inclusion with respect to deemed sale election made after March 31, 1995, and before January 27, 1997.* For purposes of determining the amount of gain recognized with respect to a deemed sale election made after March 31, 1995, and before January 27, 1997, by a shareholder that treats the first day of the shareholder's election year as the qualification date, the adjusted basis of the stock deemed sold includes the shareholder's section 1293(a) inclusion attributable to the period beginning with the first day of the PFIC's first QEF year and ending on the day before the qualification date.

(g) *Treatment of holding period.* For purposes of applying sections 1291 through 1297 to the shareholder after the deemed sale, the shareholder's holding period of the stock of the PFIC begins on the qualification date, without regard to whether the shareholder recognized gain on the deemed sale. For other purposes of the Code and regulations, this holding period rule does not apply.

(h) *Election inapplicable to shareholder of former PFIC.* A shareholder may not make the section 1295 and deemed sale elections if the foreign corporation is a former PFIC (as defined in § 1.1291–9(j)(2)(iv)) with respect to the shareholder. For the rules regarding the election by a shareholder of a former PFIC, see 1.1297–3T.

(i) *Effective date.* The rules of this section are applicable as of April 1, 1995.

§ 1.1291–10T [Removed]

Par. 7. Section 1.1291–10T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 9. In § 602.101, paragraph (c) is amended by removing the entries for 1.1291–9T and 1.1291–10T from the table and adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

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CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.1291–9	1545–1507
1.1291–10	1545–1507
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.
Approved: December 12, 1996.
Donald C. Lubick,
Acting Assistant Secretary of the Treasury.
[FR Doc. 96–32246 Filed 12–26–96; 8:45 am]
BILLING CODE 4830–01–U

Fiscal Service

31 CFR Part 209

RIN 1510–AA30

Payment to Financial Institutions for Credit to Accounts of Employees and Beneficiaries

AGENCY: Financial Management Service, Fiscal Service, Treasury.
ACTION: Final rule.

SUMMARY: The Financial Management Service is removing this Part from Title 31 of the Code of Federal Regulations. This Part governs the remittance to financial institutions of checks representing wage, salary, annuity and allotment payments to be credited to the accounts of Federal employees and beneficiaries. Such disbursements are no longer made by check. These payments now are made by electronic funds transfer through the Automated Clearing House and, are governed by 31 CFR Part 210. Therefore, Part 209 is no longer necessary.

EFFECTIVE DATE: January 27, 1997.

FOR FURTHER INFORMATION CONTACT: Christine Ricci, Financial Program Specialist, at (202) 874–7458 or Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, (202) 874–6657. A copy of the Final Rule is being made available for downloading from the Financial Management Service home page at the following address: http://www.ustreas.gov./treasury/bureaus/finman/.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1995, the Financial Management Service (Service) published a Notice of Proposed Rulemaking (NPRM) proposing to remove Part 209 from Title 31 of the Code of Federal Regulations. See 60 FR 416. Part 209 governs the remittance to financial institutions of checks representing wage, salary, annuity and allotment payments for credit to the accounts of Federal employees and beneficiaries. The Service issued such checks when sending payments to financial institutions that did not have the capability to receive payments by electronic funds transfer. In the NPRM, the Service noted that other regulations which took effect on July 1, 1994, required financial institutions to receive such payments by electronic funds transfer. See 58 FR 21634. The Service no longer issues checks pursuant to Part 209 and, thus, the regulation is obsolete.

The January 4 publication contained a 30 day comment period. No comments were received in response to the NPRM.

On September 30, 1994, the Service published an NPRM in which the Service proposed to move the portions of Part 209 dealing with savings and salary allotments to 31 CFR Part 210. See 59 FR 50112. The Service expects to issue a new NPRM with respect to Part 210 in the near future. At that time, the Service will review the desirability of including provisions relating to savings and salary allotments in Part 210.

Rulemaking Analysis

The Service has determined that this regulation is not a significant regulation as defined in E.O. 12866 and a regulatory assessment is not required. It is hereby certified that removal of this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The removal of 31 CFR Part 209 will have little or no effect on the economy or consumers, because the part is obsolete and no longer in use.

List of Subjects in 31 CFR Part 209

Automated Clearing House, Allotments, Banks, Banking, Discretionary allotments, Electronic funds transfer, Financial institution, Government employees, Net pay, Salary, Wages.

Accordingly, and under the authority of 31 U.S.C. 321, 3321, and 3335, Part 209 of Title 31 is removed as follows:

PART 209—[REMOVED]

Part 209 is removed.

Dated: December 19, 1996.
Russell D. Morris,
Commissioner.
[FR Doc. 96–32781 Filed 12–26–96; 8:45 am]
BILLING CODE 4810–35–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Charleston 96–034]

RIN 2115–AA97

Safety/Security Zone Regulations; Charleston Harbor and Cooper River, SC

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a moving safety/security zone around vessels transporting nuclear materials in Charleston Harbor and the Cooper River. Each zone will extend 200 yards ahead and astern, and 100 yards to each side of vessels carrying the nuclear materials, during transit from the Charleston Harbor entrance to the Charleston Naval Weapons Station on the Cooper River. The zone will remain in effect during cargo operations while the vessel is moored at the Naval Weapons Station. This safety/security zone is needed to protect the transport vessels from potential protests and demonstrations by organizations that may attempt to disrupt shipments, while transiting Charleston Harbor and the Cooper River.

EFFECTIVE DATE: January 27, 1997.

FOR FURTHER INFORMATION: Lieutenant Jeffrey T. Carter, Project Manager, Coast Guard Marine Safety Office Charleston at (803) 724–7680.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 11, 1996, the Coast Guard published a notice of proposed rulemaking entitled SAFETY/SECURITY ZONE REGULATIONS; Charleston Harbor and Cooper River, SC in the Federal Register (61 FR 47839). The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The Coast Guard is establishing a moving safety/security zone around vessels transporting certain nuclear materials in Charleston Harbor and the Cooper River. As part of a major national security objective to prevent the spread of nuclear weapons worldwide, the U.S. Department of Energy will be receiving shipments of foreign research reactor spent nuclear fuel rods through the Charleston Naval Weapons Station. These shipments will take place over a 13 year period.

Protests and demonstrations during shipments through U.S. ports of nuclear materials, such as spent fuel rods, would place the safe navigation of the transport vessels at risk. This moving safety/security zone is needed to protect the transport vessels from the risk associated with protests and demonstrations while transiting Charleston Harbor and the Cooper River.

The safety/security zone will extend 200 yards ahead and astern and 100 yards to each side of the vessel carrying the nuclear materials during its transit from Charleston Harbor Entrance Buoy ''C'' (LLNR 1885) to the Charleston Naval Weapons Station on the Cooper River. The zone will remain in effect during cargo operations while the vessel is moored at the Naval Weapons Station. Entry into this zone is prohibited during vessel transit (which includes any emergency anchorage or mooring) and cargo transfer operations, unless authorized by Captain of the Port Charleston.

The actual dates this safety/security zone will be in effect are not known at this time. The Captain of the Port will announce the activation of this zone through a Broadcast Notice to Mariners whenever Captain of the Port Charleston receives a firm arrival time. Maritime traffic will not be significantly impacted because of the expected small number of vessels needing this safety/security zone, and the limited duration of the zone during transit and cargo operations.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979), because of the small number of vessels needing the safety/security zone and the minimal impact on navigation and commerce. No changes have been made to the proposed regulatory text.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. This rule is not significant and the number of small entities is not substantial because of the small number of vessels needing the safety/security zone and the minimal impact on navigation and commerce. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Section 2.B.2 of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994), that this rule is categorically excluded from further environmental documentation. In accordance with this instruction section 2.B.2.e.34.(g), a Categorical Exclusion Determination and Environmental Analysis Checklist was prepared. Both documents are available in the docket for inspection and copying.

List of Subjects in 33 CFR Part 165

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

Final Regulations

For reasons set forth in the preamble, the Coast Guard amends subpart D of part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

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

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

2. A new § 165.708 is added to read as follows:

§ 165.708 Safety/Security Zone; Charleston Harbor and Cooper River, Charleston, SC.

(a) *Regulated area.* The following boundaries are established as a safety and security zone during specified conditions:

(1) All waters 200 yards ahead and astern and 100 yards to each side of a vessel transporting nuclear materials while the vessel transits from Charleston Harbor Entrance Buoy ''C'' (LLNR 1885, position 32–39.6N, 079–40.9W) to the Charleston Naval Weapons Station (position 32–55.4N, 079–56.0W) on the Cooper River. All coordinates referenced use datum: NAD 1983.

(2) All waters within 100 yards of the vessel described in paragraph (a)(1) of this section while the vessel is conducting cargo operations at the Charleston Naval Weapons Station.

(b) Captain of the Port Charleston will announce the activation of the safety/security zones described in paragraph (a) of this section by Broadcast Notice to Mariners. The general regulations governing safety and security zones contained in §§ 165.23 and 165.33 apply.

Dated: November 27, 1996.

M. J. Pontiff,

Commander, U.S. Coast Guard, Captain of the Port, Charleston, South Carolina.

[FR Doc. 96–32837 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Savannah 96–073]

RIN 2115–AA97

Safety Zone Regulations; Savannah, GA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in a 1,000 yards radius of the Savannah Light Tower. The safety zone is needed to protect vessel traffic from the hazards created by the allision of a vessel with the Savannah Light Tower and the Tower's subsequent destruction. These regulations are necessary for the safety of life on navigable waters. Entry into this zone is prohibited, unless specifically authorized by the Captain of the Port.

DATES: This rule is effective at 8 a.m. EST (Eastern Standard Time) on December 5, 1996. When this temporary regulation is terminated, the agency will publish a document in the Federal Register.

FOR FURTHER INFORMATION CONTACT: LCDR Linda Fagan, Project Officer, Coast Guard Marine Safety Office Savannah, at (912) 652–4371.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in

less than 30 days after Federal Register date would be contrary to the public interest since immediate action is needed to prevent further harm to the public due to the navigational hazards associated with destruction of the Savannah Light Tower.

Background and Purpose

The Coast Guard is establishing a temporary safety zone in a 1,000 yards radius of the Savannah Light Tower. This safety zone is needed to protect vessel traffic from the hazards created by the allision of the M/V Neptune Jade with the Savannah Light Tower and the Tower's subsequent destruction. The M/V Neptune Jade at the time of the allision lost at 20 ft. container overboard. The contents of the container were 70 55-gallon drums of paint. Salvage operations are being performed in the area of the Savannah Light Tower. In addition to protecting vessel traffic from debris associated with the Savannah Light Tower's destruction, these regulations are necessary to protect salvage personnel engaged in recovery operations.

This safety zone is established on the navigable waters within a 1,000 yard radius of the Savannah Light Tower, at position 31–57.ON and 080–41.OW. All coordinates referenced use Datum: NAD 1983. Nonobligatory guidelines are included in the regulatory language for that portion of the regulated area which falls outside of the navigable waters of the United States. Entry into this safety zone is prohibited, unless specifically authorized by the Captain of the Port.

Regulatory Evaluation

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard Certifies this rule will not have a significant effect on small entities because this safety zone will be established in a limited area and will only be in effect for a limited time.

Collection of Information

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implication to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has been determined pursuant to section 2.B.2. of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994). Specifically, section 2.B.2.e.(34)(g) does not require a Categorical Exclusion Determination and the preparation of an Environmental Analysis Checklist.

List of Subjects in 33 CFR Part 165

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

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends subpart C of part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

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

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

2. A new § 165.T96–073 is added to read as follows:

§ 165.T96–073 Safety Zone: Savannah, GA.

(a) *Regulated Area.* A safety zone is established on the navigable waters within a 1,000 yard radius of the Savannah Light Tower, at position 31–57.ON, 080–41.OW. All coordinates referenced use Datum: NAD 1983.

(b) *Regulations.* These regulations are effective for those navigable waters which fall within the navigable waters of the United States.

(1) Anchoring, mooring, or transiting within this zone is prohibited, unless authorized by the Captain of the Port, Savannah, Georgia.

(2) Entry into this zone is prohibited. unless specifically authorized by the Captain of the Port, Savannah, Georgia.

(3) The Captain of the Port will notify the public of changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Effective date.* This regulation is effective at 8 a.m. EST on December 5, 1996. When this temporary rule is terminated the agency will publish a document in the Federal Register.

Dated: December 5, 1996.

C. E. Bone,

Commander, U. S. Coast Guard, Captain of the Port Savannah, Georgia.

[FR Doc. 96–32844 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5669–7]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Ambler Asbestos Superfund site in Ambler, Pennsylvania from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Pennsylvania have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Pennsylvania have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: December 27, 1996.

ADDRESSES: Comprehensive information on this site is available for viewing at the Site information repositories at the following locations:

U.S. EPA, Region 3, Hazardous Waste Technical Information Center, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566-5363.

Wissahickon Valley Public Library, Ambler Branch, 209 Race Street, Ambler, PA 19002, (610) 646-1072.

FOR FURTHER INFORMATION CONTACT: James J. Feeney, Site Project Manager (3HW21), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA, 19107, (215) 566-3190.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Ambler Asbestos Site, Ambler, Pennsylvania.

A Notice of Intent to Delete for this site was published September 5, 1996 (61 FR 46755). The closing date for comments on the Notice of Intent to Delete was October 7, 1996. EPA received no comments.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL.

Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

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

Dated: December 13, 1996.

W. Michael McCabe,

Regional Administrator, U.S. EPA Region 3.

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

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, 191 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site ''Ambler Asbestos Piles'' in Ambler, Pennsylvania.

[FR Doc. 96–32660 Filed 12–26–96; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–4, 301–7, 301–8, 301–11, and 302–2

[FTR Amendment 54]

RIN 3090–AF98

Federal Travel Regulation; Computation of Per Diem Allowance for a Partial Day of Travel; Use of Locality-Based Per Diem Rate for Househunting Trips

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to modify per diem allowance computation for a partial day of travel, to eliminate the requirement for a traveler to record departure and arrival times on the travel voucher, and to allow per diem reimbursement for a househunting trip to be based on the locality per diem rate. This amendment will simplify travel reimbursement, thereby reducing agency travel costs.

DATES: *Effective dates:* The provisions of this final rule which amend part 301–4 of chapter 301 are effective June 7, 1996. The provisions of this final rule which amend parts 301–7, 301–8, and 301–11 of chapter 301, and part 302–2 of chapter 302 are effective December 27, 1996.

Applicability dates: The provisions of this final rule which amend part 301–4 of chapter 301 apply for travel performed on or after June 7, 1996. The provisions of this final rule which amend parts 301–7, 301–8, and 301–11 of chapter 301, and part 302–2 of chapter 302 apply for travel (including travel incident to a change of official station) performed on or after December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: This amendment was developed by the Joint Financial Management Improvement Program (JFMIP) Travel Reinvention Task Force to streamline the processing of travel and relocation reimbursement claims. The General Services Administration (GSA), after review of the JFMIP recommendations, has determined that the recommendations are appropriate and is implementing the changes with certain modifications through this amendment. The amendment modifies per diem allowance computation for a partial day of travel, and eliminates the requirement for a traveler to record departure and arrival times on the travel voucher. This amendment also authorizes the payment of a locality-based per diem rate when an employee is performing travel to seek residence quarters. Finally, this amendment makes a technical correction to the provisions governing reimbursement when an employee uses a privately owned vehicle to perform official travel.

Current Per Diem Allowance Computation

The FTR provides for the payment of a per diem allowance based on the lodgings-plus method, which includes payment for the actual expenses of lodging up to a maximum amount and payment of a flat amount for meals and incidental expenses (M&IE). The FTR currently requires that the M&IE amount be reduced for meals provided by the Government at no cost or at nominal cost to the employee.

In addition, the FTR requires that the M&IE allowance for a partial day of travel (e.g., the first or last day of travel) be computed based on one-fourth of the applicable M&IE rate for each quarter-day the employee is in a travel status on that day. The quarters are fixed (i.e., 12:01 a.m.–6:00 a.m., 6:01 a.m.–12:00 noon, 12:01 p.m.–6:00 p.m., and 6:01 p.m.–12:00 midnight) based on local time.

Under current rules, an employee may not be paid a per diem allowance for travel of 10 hours or less (a special variation of this rule applies for an employee working a compressed work schedule). Finally, an employee must record the time of departure from, and arrival at, the official station or any other place at which official travel begins or ends to accurately compute the per diem allowance payable.

Modification of Per Diem Allowance Computation.

This amendment abolishes the quarter-day method of computing the M&IE allowance for a partial day of travel and replaces it with payment of a flat three-fourths of the applicable M&IE rate on a partial travel day. The JFMIP Travel Reinvention Task Force

found that most travelers begin their first day of official travel in the second quarter of the day and end the travel in the third quarter of the day. Under the new rule, agencies must continue to reduce, or deduct from, the applicable maximum per diem rate or the three-fourths of the M&IE rate, as appropriate, for Government provided meals.

This amendment also prohibits the payment of a per diem allowance for travel of 12 hours or less, and establishes three-fourths of the applicable M&IE rate as the appropriate per diem allowance payment for travel of more than 12 hours but not exceeding 24 hours when no lodging is required. For travel of more than 12 hours but not exceeding 24 hours when lodging is required, per diem shall be computed in the same manner as for travel of more than 24 hours.

Elimination of the Requirement That Employees Record Time of Departure and Arrival

This amendment eliminates the need for an employee to record departure and arrival times on the travel voucher. The FTR will continue to require that an employee record departure and arrival dates for such travel, however.

Locality-Based Per Diem Rate for Househunting Trips

The FTR allows an agency to authorize payment for travel to seek permanent residence quarters, i.e., a househunting trip. The agency may pay transportation expenses and subsistence expenses for the employee and spouse to perform a househunting trip for a period not to exceed 10 days. The FTR provides that the applicable per diem rate for a househunting trip inside the continental United States (CONUS) shall be the standard CONUS rate regardless of locality.

The JFMIP recommended giving agencies discretionary authority to reimburse per diem for a househunting trip within CONUS based on the locality per diem rate. This change is necessary since an employee who transfers to a high cost locality needs to obtain lodging in that locality when performing a househunting trip.

Further, the employee may not be able to reduce subsistence costs by lodging at a lower cost extended stay facility. The employee incurs expenses in the same manner as if he/she were on temporary duty travel, and it therefore is equitable to provide subsistence reimbursement based on the locality rate. This amendment maintains agencies' ability to reimburse househunting trip subsistence expenses based on the standard CONUS rate when the agency determines that it is advantageous to the Government.

Technical Correction to the Mileage Reimbursement Rate Provisions

FTR Amendment 48, (61 FR 25802, May 23, 1996) increased mileage reimbursement rates for the use of a privately owned vehicle. FTR Amendment 48 revised FTR § 301–4.2(a) to increase the mileage reimbursement rate for use of a privately owned automobile to 31 cents per mile, but did not make a corresponding change to FTR § 301–4.2(c) (1) or (2). This amendment makes the corresponding changes.

GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the Federal Register for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Parts 301–4, 301–7, 301–8, and 301–11

Government employees, Travel, Travel allowances, Travel and transportation expenses.

List of Subjects in 41 CFR Part 302–2

Government employees, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, 41 CFR parts 301–4, 301–7, 301–8, 301–11, and 302–2 are amended to read as follows:

PART 301–4—REIMBURSEMENT FOR USE OF PRIVATELY OWNED CONVEYANCES

1. The authority citation for part 301–4 is revised to read as follows:

Authority: 5 U.S.C. 5701–5709.

§ 301–4.2 [Amended]

2. Section 301–4.2 is amended by removing the phrase ''30 cents per mile'' where it appears in paragraphs (c) (1) and (2), and adding in its place the phrase ''31 cents per mile''.

PART 301–7—PER DIEM ALLOWANCES

3. The authority citation for part 301–7 is revised to read as follows:

Authority: 5 U.S.C. 5701–5709.

4. Section 301–7.2 is amended by revising paragraphs (a) (2) and (3) to read as follows:

§ 301–7.2 Employee and agency responsibilities.

(a) * * *

(2) *Duty to record pertinent times and/or dates.* The date of departure from and arrival at the official station or any other place at which travel begins or ends must be shown on the travel voucher. This same information also must be shown for points at which temporary duty is performed or for a stopover or official rest stop location when such arrival or departure affects the per diem allowance or other travel expenses. Other points visited also should be shown.

(3) *Use of standard time.* When recording time, an employee shall use standard time in effect at the place involved. (See 15 U.S.C. 262.)

* * * * *

§ 301–7.4 [Amended]

5. Section 301–7.4 is amended by removing the phrase ''Federal Supply Service, Attn: Transportation Management Division (FBX), Washington, DC 20406'' in paragraph (a), and by adding in its place the phrase, ''Office of Governmentwide Policy, Attn: Travel and Transportation Management Policy Division (MTT), Washington, DC 20405''.

6. Section 301–7.5 is amended by revising paragraph (b), by removing paragraph (c), and redesignating paragraphs (d) and (e) as paragraphs (c) and (d) and revising them to read as follows:

§ 301–7.5 General rules affecting entitlement to per diem.

* * * * *

(b) *No allowance for travel of 12 hours or less.* A per diem allowance shall not be allowed for official travel of 12 hours or less. (This requirement also applies for travel incident to a change of official station.)

(c) *Beginning and ending of entitlement.* For computing per diem allowances, official travel begins when an employee leaves his/her home, office, or other authorized point of departure and ends when the traveler returns to his/her home, office, or other authorized point at the conclusion of the trip.

(d) *International date line.* In cases where the traveler crosses the international date line (180th meridian), the actual elapsed time in days shall be used to compute the per diem rather than calendar days.

7. Section 301–7.6 is amended by revising paragraph (b)(2) to read as follows:

§ 301–7.6 Lodgings-plus per diem system.

* * * * *

(b) * * *

* * * * *

(2) *Meals and incidental expenses (M&IE) allowance.* The maximum per

diem rates include a fixed allowance for meals and for incidental expenses (M&IE rate). The M&IE rate, or fraction thereof, is payable to the traveler without itemization of expenses or receipts. For a partial day of travel, the M&IE rate shall be prorated as provided in § 301–7.8 (a) or (c)(3), as appropriate.

8. Section 301–7.7 is revised to read as follows:

§ 301–7.7 Computation rules for travel of more than 12 hours, but not exceeding 24 hours.

When the travel for which per diem has been authorized is more than 12 hours, but does not exceed 24 hours, the per diem allowance for the trip shall be calculated as follows:

(a) *Lodging not required.* If lodging is not required, the per diem allowance shall be three-fourths of the applicable M&IE allowance for the temporary duty assignment location. If more than one temporary duty point is involved, the per diem allowance shall be calculated using the highest of the M&IE rates prescribed for the location where official business is performed.

(b) *Lodging required.* If lodging is required, the per diem allowable shall be the actual cost of lodging incurred by the traveler, limited to the applicable maximum lodging allowance prescribed for the location of the lodging, plus three-fourths of the applicable M&IE rate prescribed for the lodging location.

9. Section 301–7.8 is revised to read as follows:

§ 301–7.8 Computation rules for travel of more than 24 hours.

The applicable maximum per diem rate for each calendar day of travel shall be determined by the travel status and location of the employee at 12:00 midnight and whether lodging is required at such location. When lodging is required, the applicable maximum per diem rate shall be the maximum rate prescribed for the temporary duty location, or a stopover point where lodging is obtained while en route to, from, or between temporary duty locations (see §§ 301–7.9 and 301–7.6(a)(3) for regulations on lodging location and maximum per diem rates applicable to change of official station travel, respectively). Only one maximum rate will be applicable to a calendar day or fraction thereof. Per diem for travel of more than 24 hours shall be calculated as provided in paragraphs (a) through (e) of this section.

(a) *Day travel begins*—(1) *Lodging required.* When lodging is required on the day travel begins (day of departure from the home, office, or other authorized point), the per diem allowable shall be the actual cost of lodging incurred by the traveler, limited to the applicable maximum lodging allowance prescribed for the location of the lodging, plus three-fourths of the applicable M&IE rate prescribed for the lodging location.

(2) *Lodging not required.* When lodging is not required on the day travel begins, (day of departure from the home, office, or other authorized point), the per diem allowable shall be three-fourths of the destination M&IE rate.

(b) *Full calendar days of travel*—(1) *Lodging required.* For each full calendar day that the employee is in a travel status and lodging is required (whether en route or at a temporary duty location), the per diem allowable shall be the actual cost of lodging incurred by the traveler, limited to the applicable maximum lodging allowance prescribed for the location of the lodging, plus the applicable M&IE rate.

(2) *Lodging not required.* For each full calendar day that the traveler is in a travel status and lodging is not required (such as when the traveler is en route overnight to the next temporary duty location), the per diem allowance shall be the destination M&IE rate.

(c) *Returning from travel*—(1) *Lodging required.* For each full calendar day of travel when lodging is required at an en route location while the employee is returning to the official station, home, or other authorized point, the per diem allowable shall be the actual cost of lodging incurred by the traveler, limited to the applicable maximum lodging allowance prescribed for the location of the lodging, plus the applicable M&IE rate.

(2) *Lodging not required.* For any full calendar day of travel when lodging is not required while the traveler is en route overnight returning to the official station, home, or other authorized point, the per diem allowable shall be the M&IE rate applicable to the preceding calendar day.

(3) *Day travel ends*—(i) *No lodging required.* For the day travel ends (day traveler returns to the official station, home, or other authorized point) the per diem allowable shall be three-fourths of the M&IE rate applicable to the preceding calendar day.

(ii) *Lodging required on the day travel ends.* When an employee must perform official business at a temporary duty site en route to the official station, home, or other authorized point on the day travel ends and the agency authorizes the employee to obtain lodging, the per diem allowable shall be the actual cost of lodging incurred by the traveler, limited to the applicable maximum lodging allowance prescribed for the en route temporary duty site, plus three-fourths of the M&IE rate applicable to the en route temporary duty site.

(d) *Lodging obtained after midnight.* Although per diem generally is based on the employee's location at midnight, there will be instances in which he/she is en route and does not arrive at the lodging location (either temporary duty location or en route stopover point) until after midnight. In such cases, the lodging shall be claimed for the preceding calendar day and the applicable maximum per diem for the preceding day will be determined as if the employee had been at the lodging location at 12:00 midnight of that day.

(e) *Commercial vessel.* For vessel travel, except for the day of arrival on board (day of embarkation) and the day of departure from the vessel (day of debarkation), the allowable per diem rate will be $6 per day. When the $6 rate is not sufficient to meet the traveler's per diem expenses, a per diem rate equal to the anticipated expenses, not to exceed $9 per day, may be authorized or approved; except that the rate for travel by the Alaska Ferry System shall not exceed the standard M&IE rate for CONUS. Per diem will be computed under the lodgings-plus system on the days of embarkation and debarkation.

10. Section 301–7.12 is amended by revising the fifth sentence of the introductory text to read as follows:

§ 301–7.12 Reductions in maximum per diem rates when appropriate.

* * * When reduced rate situations involve partial days, per diem for such days may be three-fourths of the reduced rate, a special reduced rate prescribed for partial days, or an amount determined under the lodgings-plus system, as considered appropriate by the agency. * * *

* * * * *

PART 301–8—REIMBURSEMENT OF ACTUAL SUBSISTENCE EXPENSES

11. The authority citation for part 301–8 is revised to read as follows:

Authority: 5 U.S.C. 5701–5709.

12. Section 301–8.3 is amended by revising paragraph (b)(2) to read as follows:

§ 301–8.3 Maximum daily rates and reimbursement limitations.

* * * * *

(b) * * *

(2) *Specific meals and incidental expenses limitation.* The agency may authorize or approve the payment of meals and incidental expenses on a flat rate basis without the need for receipts

and/or itemization when such expenses are within the applicable M&IE rate. On full days of travel, the payment shall not exceed the applicable M&IE rate. On partial days of travel, the payment shall not exceed three-fourths of the applicable M&IE rate. The amount of the maximum daily rate in excess of the actual M&IE payment may be used for lodging.

PART 301–11—CLAIMS FOR REIMBURSEMENT

13. The authority citation for part 301–11 is revised to read as follows:

Authority: 5 U.S.C. 5701–5709.

14. Section 301–11.5 is amended by revising paragraph (a) (2) and (3) to read as follows:

§ 301–11.5 Preparation of voucher.

(a) * * *

(2) *Leave of absence.* When leave of absence of any kind is taken while an employee is in a travel status, the type of leave and number of hours of leave for each day shall be recorded on the travel voucher.

(3) *Indirect-route travel.* The travel voucher should set forth the details of the expenses actually incurred, the date of departure from the post of duty, and the date of arrival at the place of duty. Where leave has been taken while in travel status, the date and time that leave began and terminated should be shown.

* * * * *

§ 301–11.6 [Amended]

15. Section 301–11.6 is amended by removing the reference ''§ 301–7.8(g)'' in paragraph (b)(16), and adding in its place the reference ''§ 301–7.8(e)''.

PART 302–2—ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION

16. The authority citation for part 302–2 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

17. Section 302–2.1 is revised to read as follows:

§ 302–2.1 For the employee.

(a) *Applicability.* This part applies to travel of

(1) Transferred employees,

(2) New appointees, and

(3) Employees assigned to posts of duty outside the continental United States in connection with either overseas tour renewal agreement travel or return travel to places of residence for the purpose of separation.

(b) *Payment for employee's travel expenses.* Except as specifically provided in this chapter, an agency shall pay per diem, transportation costs, and other travel expenses of the employee in accordance with the provisions of 5 U.S.C. 5701–5709 and chapter 301 of this title. The prohibition in § 301–7.5(b) of this title on paying per diem for travel of 12 hours or less applies to change of official station travel.

(c) *Maximum per diem rates for relocation travel*—(1) *Travel when en route between employee's old and new official stations.* The maximum per diem rate for en route travel within CONUS between the employee's old and new official stations shall be the standard CONUS rate prescribed under § 301–7.3 of this title.

(2) *Travel to seek residence quarters.* The maximum per diem rate for travel to seek residence quarters shall be the lesser of the maximum per diem rate prescribed under § 301–7.3 of this title for the locality where the employee seeks residence quarters or for the locality where the employee obtains lodging accommodations. An agency may prescribe the standard CONUS rate as the maximum per diem rate if it determines that establishment of such lower rate is advantageous to the Government.

18. Section 302–2.2 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 302–2.2 For members of an employee's immediate family.

* * * * *

(b) *Per diem allowance when en route between employee's old and new official stations.* When an employee is transferred, an allowance shall be paid for per diem expenses incurred by the employee's immediate family while traveling between the old and new official stations regardless of where the old and new stations are located. If the actual travel involves departure and/or destination points other than the old or new official station, the per diem allowance shall not exceed the amount to which members of the immediate family would have been entitled if they had traveled by a usually traveled route between the old and new official stations. The prohibition in § 301–7.5(b) of this title on paying per diem for travel of 12 hours or less applies to change of official station travel. The maximum allowable per diem rates are as follows:

* * * * *

Dated: September 26, 1996.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 96–32712 Filed 12–26–96; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 28

[CGD 96–046]

RIN 2115–AF35

Commercial Fishing Industry Vessel Regulations

AGENCY: Coast Guard, DOT.

ACTION: Correction to interim rule; extension of comment period; delay of effective date.

SUMMARY: This document contains a correction to the interim rule [CGD 96–046], which was published Tuesday, November 5, 1996, (61 FR 57268). Also, the Coast Guard is extending the comment period and delaying the interim rule effective date on the requirements for safety equipment and vessel operating procedures on commercial fishing industry vessels. The comment period is extended to 105 days to allow 60 additional days for public comment.

DATES: The effective date of the interim rule published on November 5, 1996 (61 FR 57268) is delayed until March 20, 1997. The effective date of this document is December 27, 1996. Comments must be received on or before February 20, 1997.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–046), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Mark D. Bobal, Project Manager, G–MSO–2, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593, telephone (202) 267–0836.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On November 5, 1996, the Coast Guard published an interim rule in the Federal Register (61 FR 57268). This rulemaking was initiated to implement certain provisions of the Commercial Fishing Industry Vessel Safety Act of 1988, Pub. L. 100–424. This rule established requirements for U.S. documented or state numbered uninspected fishing, fish processing, and fish tender vessels. The comment period was limited to 45 days by the interim rule. The Coast Guard has received many requests to extend the comment period to allow for additional time to review the provisions of this rule. The purpose of this document is to extend the comment period an additional 60 days and delay the effective date of the interim rule and to make the following correction:

Need for Correction

As published, the interim rule contains an omission which may prove to be misleading and needs correction.

Correction of Publication

Accordingly, the publication on November 5, 1996, of the interim rule [CGD 96–046] which was the subject of FR Doc. 96–28406, is corrected as follows:

1. On page 57274, in table 28.120(a) entitled ''Survival Craft For Documented Vessels,'' in the eighth entry for area, ''Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or rivers, cold waters'', for vessels 10.97 meters (36 feet) or more in length, in the third column, the words ''See note 2'' should be added after the words ''Inflatable buoyant apparatus.''

Dated: December 20, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 96–32843 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted December 13, 1996, and released December 20, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 244A and adding Channel 244C3 at Pine Hill.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 297A and adding Channel 296B1 at Madera, and by removing Channel 252A and adding Channel 252B1 at Oxnard.

4. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 264C3 and adding Channel 264A at Milledgeville.

5. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 237C3 and adding Channel 237C1 at Sun Valley.

6. Section 73.202(b), the Table of FM Allotments under Garapan is amended by removing Channel 266C and adding Channel 266A at Saipan.

7. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 235C2 and adding Channel 235A at Albert Lea.

8. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 244A and adding Channel 243C2 at Deer Lodge.

9. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 269A and adding Channel 270A at Jamestown.

10. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 225A and adding Channel 226A at Bells and by removing Channel 290A and adding Channel 290C2 at Stanton.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–32558 Filed 12–26–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 282]

Organization and Delegation of Powers and Duties; Delegations to Federal Highway Administrator, Research and Special Programs Administrator, and Director of the Bureau of Transportation Statistics

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This document delegates to the Administrator of the Federal Highway Administration (FHWA), the Administrator of the Research and Special Programs Administration (RSPA), and the Director of the Bureau of Transportation Statistics (BTS) certain authority vested in the Secretary of Transportation by the ICC Termination Act of 1995 (ICCTA), Pub. L. 104–88, 109 Stat. 803. The purpose of this rulemaking is to amend Part 1 of title 49, Code of Federal Regulations, to reflect these delegations.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: (1) Thomas P. Holian, Office of Chief Counsel, Legislation and Regulations Division, FHWA, Room 4223, (202) 366–0761; (2) John Grimm, Office of Motor Carrier Information Analysis,

FHWA, Room 3104, (202) 366–4039; or Michael Falk, Office of Chief Counsel, Motor Carrier Law Division, FHWA, Room 4217, (202) 366–0834; (3) Edward H. Bonekemper, III, Assistant Chief Counsel, Hazardous Materials Safety, Research and Technology Law Division, RSPA, Room 8405, (202) 366–4401; (4) David Mednick, BTS, Room 3430, (202) 366–8871. The building address for all of the above is 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Secretary has determined that certain authority vested in the Secretary by the ICCTA should be formally delegated to the Federal Highway Administrator, the Research and Special Programs Administrator, and the Director of the Bureau of Transportation Statistics. This rulemaking amends section 1.48 of 49 CFR Part 1, Delegations to the Federal Highway Administrator, section 1.53 of 49 CFR Part 1, Delegations to the Administrator of the Research and Special Programs Administration, and section 1.71 of 49 CFR Part 1, Delegations to the Director of the Bureau of Transportation Statistics, to reflect these delegations.

Because these amendments relate to departmental management, organization, procedure, and practice, prior notice and opportunity for comment are unnecessary. For the same reason, good cause exists for making this final rule effective immediately upon publication in the Federal Register.

Section 1.48 Delegations to the Federal Highway Administrator

This final rule amends 49 CFR 1.48 to delegate to the Federal Highway Administrator the authority to administer portions of section 103 of the ICCTA. Section 103 amended or enacted provisions of title 49, United States Code, which direct the Secretary to carry out certain motor carrier, broker, and freight forwarder functions.

This final rule also amends 49 CFR 1.48 to delegate to the Federal Highway Administrator the authority to administer sections 104, 403(a), and 408 of the ICCTA. Section 104 requires regulations be established relating to State grants, vehicle length limitations, insurance, and self-insurance. Section 403(a) relates to the promulgation of regulations relating to railroad-highway grade crossings. Section 408 requires the Secretary to issue a rulemaking in relation to a variety of fatigue-related issues pertaining to commercial motor vehicle safety.

A correction in paragraph designation is provided to reflect an amendment to a final rule published on January 6, 1993 (58 FR 502–503), that added paragraph (jj) to § 1.48. The final rule published today amends the January 6, 1993, rule because an earlier rule added (jj) at 57 FR 62483–62484 on December 31, 1992.

Section 1.53 Delegations to the Research and Special Programs Administrator

This final rule amends 49 CFR 1.53 to delegate to the Research and Special Programs Administrator the authority to administer section 406 of the ICCTA, which requires the Secretary to (1) issue a final rule extending the transition period for the continued use of fiber drum packagings that do not meet performance standards adopted in 1990; (2) contract with the National Academy of Sciences for a study of packaging standards applicable to the use of fiber drums for the transportation of liquid hazardous materials; and (3) develop final standards for fiber drum packagings for liquid hazardous materials.

Section 1.71 Delegations to the Director of the Bureau of Transportation Statistics

This final rule amends 49 CFR 1.71 to delegate to the Director of the Bureau of Transportation Statistics the authority to administer section 14122(a) and (c) and section 14123 of title 49, U.S.C., relating to the collection and dissemination of information on motor carriers, which was revised under section 103 of the ICCTA.

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 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).

2. Section 1.48 is amended by redesignating the second (jj) paragraph as paragraph (d) and adding new paragraphs (h) and (i) to read as follow:

§ 1.48 Delegations to the Federal Highway Administrator.

* * * * *

(h) Carry out the functions and exercise the authority vested in the Secretary by 49 U.S.C., Subtitle IV, Part B,:

(1) Chapter 131;

(2) Chapter 133;

(3) Chapter 135;

(4) Chapter 137, sections 13702(a), 13702(c)(1), 13702(c)(2), 13702(c)(3), 13704, 13707, and 13708;

(5) Chapter 139;

(6) Chapter 141, Subchapter I and sections 14121 and 14122 of Subchapter II;

(7) Chapter 145, sections 14501, 14502, and 14504;

(8) Chapter 147, sections 14701 through 14708; and

(9) Chapter 149, sections 14901 through 14913.

(i) Carry out the functions and exercise the authority vested in the Secretary by sections 104, 403(a), and 408 of the ICC Termination Act of 1995, Pub. L. 104–88, relating to miscellaneous motor carrier provisions, railroad-highway grade crossing regulation and fatigue-related issues pertaining to commercial motor vehicle safety.

* * * * *

3. Section 1.53 is amended by adding a new paragraph (b)(5) to read as follows:

§ 1.53 Delegations to the Administrator of the Research and Special Programs Administration.

* * * * *

(b) * * *

(5) Section 406 of the ICC Termination Act of 1995 (Public Law 104–88) relating to the issuance of regulations concerning the use of certain fiber drum packagings for the transportation of liquid hazardous materials, including contracting for a study by the National Academy of Sciences.

* * * * *

4. Section 1.71 is amended by adding a new paragraph (b) to read as follows:

§ 1.71 Delegations to the Director of the Bureau of Transportation Statistics.

* * * * *

(b) *Motor carrier information.* 49 U.S.C. 14123, relating to the collection and dissemination of information on motor carriers.

* * * * *

Issued at Washington, D.C. this 17 day of December 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96–32703 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 951116270–5308–02; I.D. 102896B]

Fisheries of the Northeastern United States; Summer Flounder Fishery

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

ACTION: Commercial quota harvest; Closure of the exclusive economic zone (EEZ).

SUMMARY: NMFS issues this notification to announce that the summer flounder commercial quota available to the State of Maryland has been harvested and to announce the closure of the summer flounder fishery in the EEZ. Accordingly, vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Maryland and no commercial vessel may fish for or possess summer flounder in the EEZ for the remainder of calendar year 1996. Regulations governing the summer flounder fishery require publication of this notification to advise Maryland that the State's quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state. Also, regulations governing this fishery require that once the commercial fisheries for summer flounder are closed in all states, such as is now the case, the Regional Administrator close the EEZ to fishing for summer flounder for the remainder of the calendar year.

EFFECTIVE DATE: December 27, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Regina Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648, Subparts A and G. The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in

§ 648.100. Amendment 7 to the Fishery Management Plan for the Summer Flounder Fishery (November 24, 1995, 60 FR 57955) revised the fishing mortality rate reduction schedule for summer flounder, and the revised schedule was the basis for establishing the 1996 quota. The total commercial quota for summer flounder for the 1996 calendar year was adopted to achieve the appropriate fishing mortality rate of 0.41 for 1996, and is set equal to 11,111,298 lb (5,040,000 kg) (January 4, 1996, 61 FR 291). The percent allocated to vessels landing summer flounder in Maryland is 2.03910 percent or 226,570 lb (102,770 kg).

Section 648.101(b) requires the Regional Administrator, Northeast Region, NMFS, (Regional Administrator) to monitor state commercial quotas and to determine when a state commercial quota is harvested. The Regional Administrator is further required to publish a notice in the Federal Register advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined that the 1996 summer flounder quota allocation for vessels landing in Maryland has been harvested.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours December 27, 1997, through December 31, 1997, further landings of summer flounder in Maryland by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1996 calendar year, unless additional quota becomes available through a transfer and is announced in the Federal Register. Federally permitted dealers are also advised that they may not purchase summer flounder from Federally permitted vessels that land in Maryland for the remainder of the calendar year, or until additional quota becomes available, effective on December 27, 1996, through December 31, 1996.

Furthermore, the closure of the State of Maryland to landings means that the quota allocated to all of the states for 1996 has been attained and all of those states have been closed by virtue of either state of Federal action. As required by § 648.101(a), this notification closes the summer flounder fishery in the EEZ to harvesting or otherwise possessing summer flounder by commercial vessels for the remainder of the 1996 calendar year. During the closure, harvesting or otherwise possessing summer flounder in the EEZ is prohibited as authorized under § 600.725(a) and (k).

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 20, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–32890 Filed 12–20–96; 4:26 pm]

BILLING CODE 3510–22–F

50 CFR Part 648

[Docket No. 960216032–6352–08; I.D. 112196D]

RIN 0648–AH70

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Small Mesh Area 2

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to modify the regulations implementing the Northeast Multispecies Fishery Management Plan (FMP). This rule modifies the size of Small Mesh Area 2, which is an exempted small mesh fishing area located in the Gulf of Maine/Georges Bank (GOM/GB) Regulated Mesh Area, by removing the northernmost portion from the list of exempted fisheries. The intent of this action is to reduce the bycatch of regulated multispecies in Small Mesh Area 2 so that it is consistent with the conservation objectives of the fishery.

EFFECTIVE DATE: January 1, 1997.

ADDRESSES: Copies of Amendment 7 to the FMP, its regulatory impact review (RIR), the regulatory flexibility analysis contained within the RIR, and its final supplemental environmental impact statement, are available upon request from Christopher Kellogg, Acting Executive Director, New England Fishery Management Council (Council), 5 Broadway, Saugus, MA 01906–1097. Copies of the environmental assessment (EA) supporting this action may be obtained from Dr. Andrew A. Rosenberg, Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Management Specialist, 508–281–9288.

SUPPLEMENTARY INFORMATION:

Regulations implementing Amendment 7 to the FMP became effective on July 1, 1996 (61 FR 27710, May 31, 1996). These regulations implemented a comprehensive set of measures to control fishing mortality and rebuild the primary stocks of regulated multispecies. Among the specific measures is a bycatch control measure that prohibits prosecution of any fishery for which NMFS has not determined the bycatch level of regulated multispecies.

The bycatch control restriction is applied on a fishery-specific basis in each of two regulated mesh areas: The GOM/GB Regulated Mesh Area and the Southern New England (SNE) Regulated Mesh Area. A vessel may not fish in these areas unless it is fishing under a multispecies or scallop days-at-sea allocation, fishing with exempted gear, fishing under the handgear or party/charter permit restrictions, or fishing in an exempted fishery.

The procedure for adding or removing exempted fisheries is described in § 648.80 of the regulations governing the FMP. These regulations state that additional fisheries may be exempted if, after consultation with the New England Fishery Management Council, the Regional Administrator, Northeast Region, NMFS, (Regional Administrator) finds that there are sufficient data or information to determine that the percentage of the bycatch of regulated multispecies is, or can be reduced to, less than 5 percent, by weight, of the total catch, and that such exemption will not jeopardize fishing mortality objectives. This section also authorizes the Regional Administrator to remove or modify existing exempted fisheries by imposing specific gear, area, seasonal, or other limitations appropriate to reduce bycatch of regulated multispecies.

On May 15, 1995, the Regional Administrator established a seasonal small mesh fishing area within part of the GOM/GB Regulated Mesh Area (60 FR 26841, May 19, 1995). This small mesh fishing area consists of two subareas, Small Mesh Areas 1 and 2, and was established on the basis that fishing in these areas was not likely to exceed the 5 percent bycatch allowance of regulated multispecies.

Subsequently, the Maine Fisheries Cooperative Association requested that the Regional Administrator reexamine the establishment of Small Mesh Area 2, since it felt that small mesh vessels were causing unacceptable damage to the resource. The Regional Administrator presented the industry request to the Council and, despite earlier data showing that fishers using small mesh in Small Mesh Area 2 during January through June exhibited less than a 5 percent bycatch of regulated multispecies, several members of the Council insisted that the fishery exceeded the maximum 5 percent bycatch of regulated multispecies. The Council concurred with the industry request that the Regional Administrator reexamine the area and stated it would support further restrictions if the Regional Administrator found that the bycatch was equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption might jeopardize meeting fishing mortality objectives.

After analyzing the available data and considering the gear used, the area where the fishery occurred, and other relevant factors, the Regional Administrator determined that the top third (northernmost portion) of Small Mesh Area 2 does not meet the exemption qualification requirements specified in § 648.80(a)(7). This area is geophysically distinct from the lower two-thirds of Small Mesh Area 2 in that it is in shallower water. The elimination of the northern portion of the area is consistent with the available data, which show that fishing activity in the northern portion of Square Mesh Area 2 has exceeded the allowable bycatch of regulated multispecies. Eligible vessels may continue to participate in the fishery in the lower portion of Small Mesh Area 2 from January through June.

Classification

The Regional Administrator determined that this final rule is necessary for the conservation and management of the fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive prior notice and opportunity for comment under 5 U.S.C. 553(b)(B). Provisions under the FMP give the Regional Administrator authority to add, delete, or modify exempted fisheries based on the percentage of regulated species caught. Public meetings held by the Council to discuss this modification to Small Mesh Area 2, provided prior notice and opportunity for public comment to be made and considered, making additional notice and opportunity for public comment unnecessary. Further, the AA finds good cause to waive the 30-day delay in effectiveness of this regulation under 5 U.S.C. 553(d)(3), because fishing in the area when it opens January 1 with small mesh would jeopardize the conservation objectives of the fishery. Specifically, the FMP's goals to reduce regulated multispecies bycatch would be jeopardized. NMFS will employ notification methods to fishery participants and the affected public beyond notification by this Federal Register notice (e.g., by letter, fax) so that they will not unknowingly fish in violation of the area modification.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 23, 1996.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is 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 § 648.80, paragraph (a)(8)(i) is revised to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(8) *Small Mesh Area 1/Small Mesh Area 2.* (i) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size from July 15 through November 15 when fishing in Small Mesh Area 1 and from January 1 through June 30 when fishing in Small Mesh Area 2, except as specified in paragraph (a)(8)(ii) of this section. A vessel may not fish for, possess on board, or land any species of fish other than: Butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following allowable bycatch species, with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. These areas are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Director upon request):

SMALL MESH AREA 1

Point	N. Lat.	W. Long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°°32′
SM1	43°03′	70°27′

SMALL MESH AREA 2

Point	N. Lat.	W. Long.
SM13	43°03.7′	70°00′
SM14	43°10.1′	69°43.3′
SM15	42°49.5′	69°40′
SM16	42°41.5′	69°40′
SM17	42°34.9′	70°00′
SM13	43°03.7′	70°00′

* * * * *

[FR Doc. 96–33022 Filed 12–23–96; 4:49 pm]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 61, No. 250
Friday, December 27, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 20

Export Reporting for Meat and Meat Products

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Extension of comment period for advance notice of proposed rulemaking.

SUMMARY: On November 14, 1996, the U.S. Department of Agriculture (USDA) published an advance notice of proposed rulemaking (Federal Register: November 14, 1996, Volume 61, Number 221, page 58343–58345) soliciting comments and views on a proposal to require reporting of export sales of meat (including poultry meat) and meat products. The proposal responded to a recommendation by the USDA Advisory Committee on Agricultural Concentration. This notice required that comments be received on or before January 13, 1997, to be assured of consideration. Under the proposal, firms involved in exporting meat products could be required to report detailed information on these sales to the Department on a weekly basis.

DATES: *Revised comment period.* The comment period is extended for 30 days and comments should be received on or before February 12, 1997, to be assured of consideration.

ADDRESSES: Comments should be sent to: Export Sales Reporting Branch, Trade and Economic Analysis Division, Room 5959—Stop 1025, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250–1025. All written comments received will be available for public inspection at the above address during business hours from 8:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas B. McDonald, Jr., Chief, Export Sales Reporting Branch, Trade and Economic Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture, (202) 720–3273, FAX (202) 690–3275.

Signed at Washington, D.C. December 18, 1996.

August Schumacher, Jr.,

Administrator, Foreign Agricultural Service.

[FR Doc. 96–32909 Filed 12–26–96; 8:45 am]

BILLING CODE 3410–10–M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 96–007P]

RIN 0583–AC17

Use of Two Kinds of Poultry Without Label Change

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: In response to a petition, the Food Safety and Inspection Service (FSIS) is proposing to amend the poultry products inspection regulations by adding a provision that would permit manufacturers of poultry products to interchange the amounts and kinds of poultry present in a product without requiring new labels for each formulation. This provision would apply in situations where two kinds of poultry make up at least 70 percent of the poultry and poultry ingredients used in the product formulation, and neither of the two kinds of poultry used constitutes less than 30 percent of the poultry and poultry ingredients used. In these situations, one label with the word ''and'' instead of a comma between the declaration of the kinds of poultry in the ingredients statement would indicate to consumers that the order of predominance of the two kinds of poultry may be interchanged. This action would provide consistent provisions for both meat and poultry products.

DATES: Comments must be received on or before: February 25, 1997.

ADDRESSES: Send an original and two copies of comments to: FSIS Docket Clerk, Docket #96–007P, Room 3806–S, 1400 Independence Avenue, SW, Washington, DC 20250–3700. Reference materials cited in this document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 1:00 p.m. and 2:00 p.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Facilities, Equipment, Labeling and Compound Review Division, Office of Policy, Program Development, and Evaluation; (202) 418–8900.

SUPPLEMENTARY INFORMATION:

Background

FSIS has been petitioned to amend the poultry products inspection regulations to add a provision that would permit poultry processors to interchange the kinds of poultry used to prepare a poultry product without requiring that the product label be changed to reflect the order of predominance of the kinds of poultry.

The Federal meat inspection regulations currently provide that when two meat ingredients comprise at least 70 percent of the meat and meat byproduct ingredients of a product formulation and when neither of the two meat ingredients constitutes less than 30 percent of the total weight of the meat and meat byproducts used, the meat ingredients may be interchanged in the product formula without a change being made in the ingredients statement, if the word ''and'' is used in lieu of a comma between the two meat ingredients in the ingredients statement (9 CFR 317.2(f)(1)(v)). (Meat byproduct ingredients are any parts of a meat carcass that are capable of use as human food other than meat.) For example, if a sausage is made with both beef and pork the proportions of beef can vary from 30 to 70 percent and the proportions of pork can vary from 30 to 70 percent, without necessitating a change in the product's ingredients statement. This provision was originally promulgated in response to an industry request to allow meat processors to utilize different amounts of meat ingredients without having to develop and maintain an inventory of labels with different ingredients statements. This provision permits processors to utilize whichever species of meat is the least expensive at the time the product is being produced. This provision, when promulgated for meat products, was not extended to poultry products because, at that time, the poultry industry was producing further processed poultry

products (such as poultry rolls and sausages) only on a very limited scale. Conditions in the poultry industry have changed since that time. Therefore, the petitioner requests that the labeling flexibility afforded to meat processors be available to poultry processors.

FSIS has determined that there is merit to the petitioner's request, and is proposing to amend the poultry products inspection regulations to add a provision to permit manufacturers of poultry products to interchange the amounts and kinds of poultry present in a product formulation without requiring new labels for each formulation. This provision would apply to those products in which at least 70 percent of the poultry and poultry ingredients portion comprises two kinds of poultry, and neither of the two kinds of poultry used in the product constitutes less than 30 percent of the poultry and poultry ingredients. (Poultry ingredients include such products as giblets, skin and/or fat in excess of natural proportions, and mechanically separated (kind)).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) all State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Executive Order 12866 and the Regulatory Flexibility Act

This proposal has been determined to be not significant under Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The Administrator has made an initial determination that this proposal will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposal would provide flexibility in the amount and kinds of poultry that may be used in a product formulation without having to change product labels.

Paperwork Requirements

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this proposed rule. This proposed rule would permit establishments to interchange the amounts and kinds of poultry present in a product without having to change the product label. However, establishments wishing to take advantage of this provision would need to develop and print labels which conform to the proposed rule.

Estimate of Burden: Meat and poultry establishments must develop product labels in accordance with the regulations. To receive approval of the labels, establishments must complete FSIS Form 7234–1. FSIS program employees review FSIS Form 7234–1 to ensure that information on the label complies with the regulations. FSIS estimates that it will take 60 minutes to design and develop a modified product label in accordance with the proposed regulations, and 15 minutes to prepare FSIS Form 7234–1 and submit it, along with the label, to FSIS or a label expediter who will deliver the form and label to FSIS.

Respondents: Poultry establishments.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 125 hours.

Copies of this information collection assessment can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, South Agriculture Building, Room 3812, Washington, DC 20250–3700.

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 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Send comments to both Lee Puricelli, Paperwork Specialist, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Comments are requested by February 25, 1997. To be most effective, comments should be sent to OMB within 30 days of the publication date of this proposed rule.

List of Subjects

9 CFR Part 381

Poultry products inspection, Labeling.

For the reasons discussed in the preamble, FSIS is proposing to amend part 381 of the poultry products inspection regulations (9 CFR part 381) as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

2. Section 381.118 would be amended by adding a new paragraph (f) to read as follows:

§ 381.118 Ingredients statement.

* * * * *

(f) Establishments may interchange the identity of two kinds of poultry (e.g., chicken and turkey) used in a product formulation without changing the product's ingredients statement under the following conditions: the two kinds of poultry used must comprise at least 70 percent by weight of the poultry and poultry ingredients (e.g., giblets, skin and/or fat in excess of natural proportions, or mechanically separated (kind)) used, and neither of the two kinds of poultry used can be less than 30 percent by weight of the total poultry and poultry ingredients used. The word ''and'' in lieu of a comma must be shown between the declaration of the two kinds of poultry in the ingredients statement.

Done at Washington, DC, on: December 17, 1996.

Thomas J. Billy,

Administrator.

[FR Doc. 96–32853 Filed 12–26–96; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0951]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed revisions to Regulation C (Home Mortgage Disclosure). The revisions would implement the amendments to the Home Mortgage Disclosure Act included in the Economic Growth and Regulatory Paperwork Reduction Act of 1996. Those amendments increase the exemption threshold for depository institutions and modify certain

disclosure requirements. The Board also proposes to extend the information collection authority under the Paperwork Reduction Act for another three years, and to make technical amendments to the transmittal sheet accompanying the loan/application register.

DATES: Comments must be received on or before February 25, 1997.

ADDRESSES: Comments should refer to Docket No. R–0951, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments 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) 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 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or (202) 452–2412; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

On September 30, the President signed into law the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (the 1996 Act) (Pub. L. 104–208, 110 Stat. 3009) . The 1996 Act, in part, amends the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). HMDA requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must file reports with their federal supervisory agencies and make disclosures available to the public. The Board's Regulation C (12 CFR Part 203) implements HMDA.

II. Proposed Revisions

A. Increasing the Exemption Based on Asset Size

Currently, depository institutions with assets of $10 million or less are exempt from HMDA. The 1996 Act increases this exemption for depository institutions by adjusting the $10 million figure by the change since 1975 in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW)—rounded to the nearest million. The Board proposes to revise § 203.3(a)(1)(ii) of Regulation C to implement this amendment to section 309 of HMDA (12 U.S.C. 2808).

The Bureau of Labor Statistics calculates the CPIW monthly and publishes the data with a lag of a few weeks. The seasonally adjusted figures are available with a longer lag. Accordingly, the Board proposes to use the ''not seasonally-adjusted'' figure. The 1996 Act calls for an initial adjustment based on the percentage by which the CPIW for 1996 exceeds the CPIW for 1975. To ensure that the public is informed of the new threshold promptly, the Board intends to publish a notice with the adjusted threshold as soon as the December 1996 data become available in early January. Based on the increase in the CPIW from December 1975 to October 1996, the adjusted figure would be $27.9 million, rounded to an exemption threshold of $28 million. Thus, institutions with assets of $28 million or less would be exempt from data collection in 1997.

Institutions covered during 1996 but exempt subsequently because of the new threshold (for example, institutions with assets of $17 million) are required to collect data for all of 1996, and to submit those data by March 1, 1997. Such institutions will not be subject to the data collection requirements for 1997.

The 1996 Act provides that the exemption is to be adjusted annually to reflect future changes in the CPIW. The Board could make the adjustment using December data or, if it wanted to announce the new threshold by year-end, using November data. To make the year-to-year adjustments consistent with the initial adjustment, the Board proposes to base the adjustments on December data and publish the results in the Federal Register as soon as those data become available in January. If the adjustment uses December data the threshold might be higher, but some institutions that are actually exempt might have to collect the data in the early weeks of the year because of the uncertainty as to the threshold. For example, one year the threshold could be $29 million based on November data and $30 million based on December data. An institution with assets of $28.5 million as of that December 31 might want the Board to use the November data and publish the threshold in December so it could cease data collection beginning January 1. An institution with assets of $29.5 million might want the Board to use the December data so that it would qualify for exemption, even though the institution would have collected data for the first few weeks of January before the new threshold was published. The Board requests comment on whether earlier notice based on November data is preferable to a potentially higher exemption threshold using December data.

Conforming amendments relative to the asset exemption would be made in several sections of Appendix A—Form and Instructions for Completion of HMDA Loan/Application Register, and in § 203.3 of Supplement I—Staff Commentary.

Section 309 of HMDA (12 U.S.C. 2808), as amended in 1991, requires the Board, in consultation with the Secretary of the Department of Housing and Urban Development, to establish an exemption for nondepository institutions comparable to the exemption for depository institutions. The 1996 Act amends section 309 by adding a parenthetical stating that the comparable exemption shall be ''determined without regard to the adjustment made by subsection (b) [the CPIW adjustments].'' Currently, a nondepository institution with offices in an MSA is exempt from HMDA if it had assets of $10 million or less as of the preceding December 31 and originated fewer than 100 home-purchase loans in the preceding calendar year. In 1996, depository institutions with assets of $28 million or less, on average, reported about 50 HMDA loan/application register entries apiece. Accordingly, the Board, in consultation with the Secretary, has determined that no change to the existing coverage of nondepository institutions is appropriate at this time.

B. Elimination of the Branch Disclosure Requirement

Currently, HMDA provides that within ten business days of receiving the disclosure statement from the Federal Financial Institutions Examination Council (FFIEC), an institution must make a copy of the statement available to the public for inspection and copying in at least one branch office in each additional MSA where the institution has offices. The institution must also make the disclosure statement available at its home office. Regulation C added the requirement that an institution must post a general notice concerning the availability of HMDA data at the institution's home office and at each physical branch in an MSA.

The 1996 Act amends section 304 of HMDA (12 U.S.C. 2803) to specify that

an institution need not make the information available at branch offices if the institution posts a notice and makes the information available upon a written request sent to the home office. The proposal amends § 203.5(b) concerning the public disclosure of an institution's mortgage loan disclosure statement accordingly.

For an institution choosing to make the HMDA data available upon written request, the 1996 Act requires a notice stating that the information is available from the home office upon written request. Currently, § 203.5(e) requires an institution to post—at the home office and at each branch office—a general notice about the availability of its HMDA data. Upon request, the institution must promptly provide the location where the data is available, and at its option may include the location in the notice. The Board believes the current provisions provide adequate notice and that requiring more detailed notices would not produce sufficient additional benefit to the public to justify the burden of preparing the new notices.

A literal reading of the 1996 Act could suggest that a request for HMDA data must be sent to the home office. The Board believes that specifying the home office as the location where requests are sent would not improve the public availability of this information. Accordingly, the revised § 203.5(e) would allow an institution to specify whatever address it wishes. The institution could either provide the address promptly upon request, or include the address in its notice.

Technical amendments to paragraphs (b) and (c) of § 203.5 clarify that an institution may continue to provide the data on an MSA-by-MSA basis. For example, if a person requests the disclosure statement for a particular branch location, the institution may provide just the statement for the MSA in which that branch is located.

Conforming amendments would be made in several sections in Appendix A—Form and Instructions for Completion of HMDA Loan/Application Register.

C. Disclosure Formats

Currently, Appendix A to Regulation C provides that an institution may make the public disclosures available in paper or automated form (a computer diskette, for example). The 1996 Act amends section 304 of HMDA (12 U.S.C. 2803) to provide that an institution may not make the information available in automated form (in place of paper) unless the person requesting the information agrees to receiving the data in that format. Appendix A, Section III.F. would be revised accordingly.

D. Revisions to the HMDA Loan/Application Register

The Board proposes to make three minor revisions to the HMDA loan/application register. To comply with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR 1320 Appendix A.1), the following text would be added: ''An agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for the HMDA–LAR is 7100–0247.'' In addition, to facilitate prompt communication with a respondent, a blank for the respondent's facsimile number would be added to the transmittal sheet. To reduce burden, the Board proposes to modify the transmittal sheet so that a respondent will no longer have to enter the name and address of its supervisory agency.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0951. The Board requests that, when possible, comments be prepared using a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5″ or 5.25″ size, in any IBM-compatible DOS-based format. Comments on computer diskettes must be accompanied by a paper version.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the proposed amendments to Regulation C. Overall, the amendments are expected to reduce the burden on small entities. The proposed regulatory revisions implement the 1996 Act which, in part, increases the exemption threshold for depository institutions. The 1996 Act also creates an alternative means for making branch disclosures available. A final regulatory flexibility analysis will be prepared after consideration of comments received during the comment period.

V. Paperwork Reduction Act

A. Paperwork Burden

The proposed revisions to the information collection requirements are found in 12 CFR 203.3, 203.5 and Appendix A to Part 203 and implement the data collection and reporting requirements established by the Home Mortgage Disclosure Act. The respondents are mortgage lenders in metropolitan statistical areas. Under the act, each respondent must make its loan/application register available to the public for three years; and must provide for five years the disclosure statement that the FFIEC prepares from the data submitted by the respondent. Local public officials use the data to help identify target areas for residential redevelopment and rehabilitations. Members of the public use the data to help evaluate the extent to which mortgage lenders are serving local community and housing needs.

The amendments that the Board has proposed for public comment would decrease the number of respondents and ease compliance with the public disclosure requirements of the regulation. Small businesses are directly affected by the proposed amendments: many would no longer be required to collect, report, or disclose the information.

Regulation C applies to all types of financial institutions and other mortgage-lending institutions that meet the coverage tests. Under the Paperwork Reduction Act, however, the Board accounts for the paperwork burden associated with Regulation C only for state member banks, their subsidiaries, subsidiaries of bank holding companies, and other entities regulated by the Federal Reserve. Any estimates of paperwork burden for other respondents are provided by the federal agency or agencies that supervise them.

The Board estimates that the amendments' impact on the burden per response is negligible. The estimated burden per response varies from 10 to 10,000 hours, depending on individual circumstances, with estimated averages of 202 hours for state member banks and 160 hours for mortgage banking subsidiaries.

It is estimated that of the 565 state member banks that are currently covered because they exceed the $10 million asset threshold, 39 will be exempt as a result of the higher threshold. The 93 mortgage banking subsidiaries reporting HMDA data to the Federal Reserve are and would remain covered. The total amount of annual burden is estimated to decrease from 129,168 hours to 121,368 (a change of approximately 6 percent) as a consequence of the higher exemption threshold. The Board estimates that there would be no capital or start up cost associated with these amendments,

and that there is no annual cost burden beyond the estimated burden hours.

B. OMB Control Number

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number applicable to the HMDA–LAR data collection is 7100–0247.

C. Confidentiality

The Board has previously determined that the HMDA loan/application register is required by law (12 U.S.C. 2801–2810; 12 CFR Part 203) and completion of the register, submission to the appropriate federal supervisory agency, and disclosure to the public on request are mandatory. The data, as modified according to Appendix A of the regulation (paragraph III.E.), are made publicly available and are not considered confidential. Information that might identify individual borrowers or applicants is given confidential treatment under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)).

D. Extension of Authority

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed Regulation C under the authority delegated to the Board by the Office of Management and Budget. The Board proposes to extend the authority to collect the HMDA loan/application register for three years through March 31, 2000.

E. Comments

In keeping with OMB regulations, comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information may be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0247), Washington, D.C. 20503, with copies to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

List of Subjects in 12 CFR Part 203

Banks, banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Section 203.3 would be amended by revising paragraph (a)(1)(ii) to read as follows:

§ 203.3 Exempt institutions.

(a) *Exemption based on location, asset size, or number of home purchase loans.* (1) * * *

(ii) The institution's total assets were [$10 million or less] fl at or below the asset threshold established by the Board. For 1997 data collection, the asset threshold is $28 million as of December 31, 1996. For subsequent years, the Board will adjust the threshold based on the year-to-year change in the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, as of the month of December, with rounding to the nearest million. The Board will publish the adjusted asset figure in January fi .

* * * * *

3. Section 203.5 would be amended as follows:

a. Under paragraph (b), the first sentence would be designated as paragraph (b)(1), sentences two and three of the newly designated paragraph (b)(1) would be removed, and a new paragraph (b)(2) would be added;

b. Under paragraph (c), the last sentence would be revised; and

c. Under paragraph (e), the last two sentences would be revised.

The revisions and additions would read as follows:

§ 203.5 Disclosure and reporting.

* * * * *

(b) *Public disclosure of statement.* fl (1) fi A financial institution shall make its mortgage loan disclosure statement (to be prepared by the Federal Financial Institutions Examination Council) available to the public at its home office no later than three business days after receiving it from the Examination Council. [A financial institution shall also make its disclosure statement available to the public within ten business days in at least one branch office in each additional MSA where the institution has offices. The disclosure statement at a branch office need only contain data relating to properties in the MSA where the branch office is located.]

fl (2) In addition, a financial institution shall either:

(i) Make its disclosure statement available to the public within ten business days of receiving it from the Examination Council in at least one branch office in each additional MSA where it has offices (the disclosure statement need only contain data relating to properties in the MSA where the branch office is located); or

(ii) Mail or deliver a copy of its disclosure statement to any person requesting it, within 15 calendar days of receiving a written request (the disclosure statement need only contain data relating to properties in the MSA for which the request is made). fi

(c) *Public disclosure of loan application register.* * * * [The modified register made available at a branch office need only contain data relating to properties in the MSA where the branch office is located.] fl The modified register need only contain data relating to the MSA for which the request is made. fi

* * * * *

(e) *Notice of availability.* * * * Upon request, it shall promptly provide the location of the institution's offices where the statement is available fl for inspection and the address where a written request may be sent for a copy of the data fi . At its option, an institution may include [the locations] fl this information fi in its notice.

4. Appendix A to Part 203 would be amended as follows:

a. Paragraph I.A. would be amended by redesignating the introductory text, paragraph 1., and 2. as paragraph 1., paragraph 1.a., and paragraph 1.b., respectively;

b. Newly designated paragraph 1.a. would be revised;

c. A new paragraph 2. would be added; and

d. The undesignated paragraph EXAMPLE, would be designated as

paragraph 3. and would be revised. The addition and revisions would read as follows:

Appendix A to Part 203—Form and Instructions For Completion of HMDA Loan/Application Register

* * * * *

I. Who Must File a Report

A. Depository Institutions.

fl 1. fi * * *

[1.] fl a. fi Had assets of more than [$10 million] fl the asset threshold for coverage as published by the Board each year in January fi , and

[2.] fl b. fi * * *

fl 2. For 1997 data collection, the asset threshold is $28 million in total assets as of December 31, 1996. fi

fl 3. *Example.* fi If on December 31 you had a home or branch office in an MSA and your assets exceeded [$10 million] fl the asset threshold fi , you must complete a register that lists the home-purchase and home-improvement loans that you originate or purchase (and also lists applications that did not result in an origination) beginning January 1.

* * * * *

5. Paragraph III. of Appendix A to Part 203 would be amended as follows:

a. Under paragraph D. the fourth sentence would be removed and a new sentence and new paragraphs 1. and 2. would be added at the end;

b. Under paragraph F. the first paragraph following the heading would be designated as paragraph 1. and revised, and the second paragraph would be designated as paragraph 2.; and

c. Under paragraph G. the first paragraph following the heading would be designated as paragraph 1. and a new heading would be added to the newly designated paragraph 1., and paragraph 2. would be added after the Home Mortgage Disclosure Act Notice.

The revisions and additions would read as follows:

* * * * *

III. Submission of HMDA–LAR and Public Release of Data

* * * * *

D. *Availability of disclosure statement.* * * * [You also must make the disclosure statement available, within ten business days after receiving it from the FFIEC, in at least one branch office in each additional MSA where you have physical offices.] For these purposes a business day is any calendar day other than a Saturday, Sunday, or legal public holiday. fl You also must either:

1. Make your disclosure statement available to the public, within ten business days of receiving it from the FFIEC, in at least one branch office in each additional MSA where you have offices (the disclosure statement need only contain data relating to properties in the MSA where the branch office is located); or

2. Mail or deliver a copy of your disclosure statement to any person requesting it, within 15 calendar days of receiving a written request (the disclosure statement need only contain data relating to the MSA for which the request is made). fi

* * * * *

F. *Location and format of disclosed data.* fl 1. fi A financial institution must make a complete copy of its disclosure statement and modified register available to the public at its home office. Institutions may make these data available in [hard copy or] fl paper form or, if the person requesting the data agrees, fi in automated form (such as by floppy disk or computer tape). [If you have physical branch offices in other MSAs, you must make available, in at least one branch office in each of those MSAs, either a complete copy of the disclosure statement or the portion of it that relates to properties in that MSA. Similarly, a modified register at a branch office need only reflect data concerning properties within the MSA where the branch is located.] fl A modified register need only reflect data relating to the MSA for which the request is made. fi

fl 2. fi * * *

G. *Posters.*

fl 1. *Suggested language.* fi * * *

fl 2. *Optional information.* At your option, you may include the location where the disclosed data are available for inspection and the address to be used for making a written request. fi

* * * * *

6. Supplement I to Part 203, under Section 203.3—Exempt Institutions, under 3(a) *Exemption based on location, asset size, or number of home-purchase loans,* the second sentence of Paragraph 1. *General* would be revised to read as follows:

Supplement I to Part 203—Staff Commentary

* * * * *

Section 203.3—Exempt Institutions

3(a) *Exemption based on location, asset size, or number of home-purchase loans.*

1. *General.* * * * For example, a bank whose assets [drop to $10 million or less] fl are at or below the threshold fi on December 31 of a given year reports data for that full calendar year, in which it was covered, but does not report data for the succeeding calendar year. * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 16, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–32305 Filed 12–26–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AEA–14]

Proposed Establishment of Class E Airspace; Canandaigua, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E Airspace at Canandaigua, NY. The development of a new Standard Instrument Approach Procedure (SIAP) at Canandaigua Airport based on the Global Positioning System (GPS) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 3, 1997.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 96–AEA–14, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AEA–14''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Canandaigua, NY. A GPS RWY 13 SIAP has been developed for Canandaigua Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

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

* * * * *

AEA NY E5 Canandaigua, NY [New]

Canandaigua Airport, NY
(Lat. 42° 54′ 26″ N, long. 77° 19′ 18″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Canandaigua Airport, excluding that portion that coincides with the Rochester, NY Class E airspace area and the Palmyra, NY Class E airspace area.

* * * * *

Issued in Jamaica, New York, on December 11, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–33002 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Ch. I

Notice of Intent to Request Public Comments on Rules

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments.

SUMMARY: As part of its systematic review of all current Commission regulations and guides, the Federal Trade Commission (''Commission'') gives notice that it intends to request public comments on the rules listed below during 1997. The Commission will request comments on, among other things, the economic impact of, and the continuing need for, the rules; possible conflict between the rules and state, local, or other federal laws or regulations; and the effect on the rules of any technological, economic, or other industry changes. In certain instances the reviews also will address other specific matters or issues, such as reviews of the impact on small businesses mandated by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* No Commission determination on the need for or the substance of a rule should be inferred from the intent to publish requests for comments.

FOR FURTHER INFORMATION CONTACT: Further details may be obtained from the Commission's contact person(s) listed for each particular item.

SUPPLEMENTARY INFORMATION: The Commission intends to initiate a review of and solicit public comments on the following rules during 1997:

(1) *Hobby Protection Act Rules*, 16 CFR Part 304. The review of the Hobby Protection Act Rules will include a review of the impact of the rules on small businesses under the Regulatory Flexibility Act.

Agency Contact: Robert E. Easton, Sr., Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S–4302, Sixth Street and Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3029.

(2) *900 Number Rule*, 16 CFR Part 308.

Agency Contact: Marianne Schwanke, Federal Trade Commission, Bureau of Consumer Protection, Division of Marketing Practices, Room H–238, Sixth

Street and Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3165.

(3) *Dry Cell Batteries Rule*, 16 CFR Part 403.

Agency Contact: Neil J. Blickman, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S–4302, Sixth Street and Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3038.

(4) *Negative Option Plans Rule*, 16 CFR Part 425.

Agency Contact: Edwin Rodriguez, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S–4302, Sixth Street and Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3147.

(5) *Power Output Claims for Amplifiers Rule*, 16 CFR Part 432.

Agency Contact: Robert E. Easton, Sr., Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S–4302, Sixth Street and Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3029.

(6) *Ophthalmic Practice Rules*, 16 CFR Part 456.

Agency Contact: James Reilly Dolan, Federal Trade Commission, Bureau of Consumer Protection, Division of Service Industry Practices, Room H–200, Sixth Street and Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3292.

(7) *Informal Dispute Settlement Procedures under Magnuson-Moss Warranty Act*, 16 CFR Part 703.

Agency Contact: Carole I. Danielson, Federal Trade Commission, Bureau of Consumer Protection, Division of Marketing Practices, Room H–238, Sixth Street and Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3115.

As part of its systematic program to review all current Commission regulations and guides, the Commission also has tentatively scheduled reviews of additional rules and guides for 1998 through 2006. A copy of this tentative schedule is appended. The Commission may modify or reorder the schedule in the future where appropriate to incorporate new legislative rules, or to respond to external factors (such as changes in the law) or other considerations.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

APPENDIX—REGULATORY REVIEW MODIFIED REVOLVING TEN-YEAR SCHEDULE

16 CFR Part	Topic	Year to review	Office to review
304	Hobby Protection Act Rules	1997	ENF.
308	900 Number Rule	1997	MP/AP/CP.
403	Dry Cell Batteries Rule	1997	ENF.
425	Negative Option Rule	1997	ENF.
432	Amplifier Rule	1997	ENF.
456	Ophthalmic Practice Rules	1997	SIP.
703	Informal Dispute Settlement Procedures	1997	MP.
20	Used Auto Parts Industry Guides	1998	CLRO.
243	Decorative Wall Paneling Guides	1998	DERO.
801	Hart-Scott-Rodino Coverage Rules (mergers)	1998	BC.
802	Hart-Scott-Rodino Exemption Rules (mergers)	1998	BC.
803	Hart-Scott-Rodino Transmittal Rules (mergers)	1998	BC.
235	Adhesive Compositions Guides	1999	SFRO.
240	Guides for Ad Allowances and Merchandising Payments	1999	BC.
256	Guides for the Law Book Industry	1999	ENF.
259	Fuel Economy Guides	1999	CLRO.
307	Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986	1999	AP.
453	Funeral Industry Practices Rule	1999	MP.
600	Statements of General Policy or Interpretations	1999	CP.
901	Procedures for State Exemptions from Fair Debt Collection Practices Act	1999	CP.
233	Guides Against Deceptive Pricing	2000	CHRO.
238	Guides Against Bait Advertising	2000	AP.
241	Guides for the Dog and Cat Food Industry	2000	AP.
250	Guides for the Household Furniture Industry	2000	ARO.
251	Guide Concerning Use of the Word ''Free''	2000	CHRO/BC.
310	Telemarketing Sales Rule	2000	MP.
228	Tire Advertising and Labeling Guides	2001	CLRO.
255	Guides Concerning Use of Endorsements and Testimonials in Advertising	2001	AP.
424	Retail Food Store Advertising and Marketing Practices	2001	ENF.
433	Holder-In-Due-Course Rule	2001	CP.
306	Automotive Fuel Ratings Rule	2003	ENF.
435	Mail or Telephone Order Merchandise Rule	2003	ENF.
18	Guides for the Nursery Industry	2004	ENF.
305	Appliance Labeling Rule	2004	ENF.
410	Television Picture Size Rule	2004	AP.
500	Regulations under Section 4 of the Fair Packaging and Labeling Act (FPLA)	2004	ENF/LARO.
501	Exemptions from Part 500 of FPLA	2004	ENF/LARO.
502	Regulations under Section 5(c) of FPLA	2004	ENF/LARO.
503	Statements of General Policy or Interpretations under FPLA	2004	ENF/LARO.
14	Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements.	2005	ENF.
309	Labeling Requirements for Alternative Fuels and Alternatively Fueled Vehicles	2005	ENF.
311	Recycled Oil Rule	2005	ENF.
429	Cooling Off Rule	2005	ENF.
444	Credit Practices Rule	2005	CP.
455	Used Car Rule	2005	ENF.

APPENDIX—REGULATORY REVIEW MODIFIED REVOLVING TEN-YEAR SCHEDULE—Continued

16 CFR Part	Topic	Year to review	Office to review
24	Leather Products Guides	2006	DARO.

[FR Doc. 96–33017 Filed 12–26–96; 8:45 am]

BILLING CODE 6750–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 5

Revised Procedures for Commission Review and Approval of Applications for Contract Market Designation and of Exchange Rules Relating to Contracts Terms and Conditions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: On November 22, 1996, the Commodity Futures Trading Commission (Commission) published in the Federal Register a proposal to amend its procedures relating to its review and approval of applications for contract market designation and proposed exchange rules relating to contract terms and conditions (61 FR 59386). The comment period ends on December 23, 1996. These fast-track review procedures are intended further to streamline Commission review of applications for contract market designation and proposed exchange rule amendments relating to contract terms and conditions. The Commission has determined, in this instance, to extend the comment period.

DATES: Comments must be received on or before January 16, 1997.

ADDRESSES: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to ''Fast-track Designation and Rule Approval Procedures.''

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581, (202) 418–5260, or electronically, [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION: The New York Mercantile Exchange (NYMEX) has filed a petition requesting an extension of time to submit comments on the Commission's proposed rulemaking concerning approval of applications for contract market designation and of exchange rules relating to contract terms and conditions. The Exchange requests an extension until January 16, 1997—the date that comments are to be received on the proposed rulemaking concerning the related topic of contract market review procedures for other rules (61 FR 66241, December 17, 1996). The NYMEX stated that it has spoken to representatives from the Chicago Mercantile Exchange and the Chicago Board of Trade concerning this request for an extension and that those exchanges agreed to join this request.

The Exchange stated that, since the proposed rulemakings concern similar and related issues, the issues should be considered and evaluated together and can best be addressed in one comment letter. Accordingly, the NYMEX concluded that a short delay will result in a more efficient rulemaking process.

For the reasons noted above, the Commission has determined to extend the public comment period for the subject rulemaking. The Commission believes that an extension of the comment period until January 16, 1997, would permit the NYMEX and any other interested parties fully to evaluate the proposed rulemaking and to submit their comments thereon to the Commission. The Commission cautions that the deadline for comments on the subject proposed rulemaking is independent of the deadline for comments on the proposed rulemaking concerning contract market review procedures for other rules. Any request for and Commission action on an extension of the comment period for the latter proposed rulemaking will not affect the deadline for comments on the subject proposed rulemaking.

Issued in Washington, DC on December 20, 1996.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–33072 Filed 12–26–96; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209817–96]

RIN 1545–AU19

Treatment of Obligation-Shifting Transactions

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 treatment of certain multiple-party financing transactions in which one party realizes income from leases or similar agreements and another party claims deductions related to that income. In order to prevent tax avoidance, the proposed regulations recharacterize these transactions in a manner that clearly reflects income. The proposed regulations affect only persons that engage in these transactions. The regulations generally do not apply to routine transactions lacking characteristics of tax avoidance. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written comments, requests to appear, and outlines of topics to be discussed at the public hearing scheduled for April 29, 1997, at 10 a.m. must be received by April 8, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209817–96), 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–209817–96), 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 of 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 IRS Auditorium, Internal Revenue Building,

7th Floor, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jonathan Zelnik at (202) 622–3940; concerning submissions and the hearing, Christina Vasquez at (202) 622–7190 (not toll-free numbers).

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 April 8, 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 § 1.7701(l)–2(j). This information is required by the IRS to verify pass-through entity compliance with § 1.7701(l)–2. This information will be used to determine whether the amount of tax has been computed correctly. The collection of information is mandatory. The likely recordkeepers are businesses and other organizations. Estimated total annual recordkeeping burden: 500 hours. Estimated average annual burden per recordkeeper: 5 hours. Estimated number of recordkeepers: 100.

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 tax information are confidential, as required by 26 U.S.C. 6103.

Background

The IRS and Treasury Department have become aware of multiple-party financing transactions (''stripping transactions'') intended to allow one party to realize income from a lease or similar agreement and to allow another party to report deductions related to that income (for example, cost recovery or rental expenses). Notice 95–53, 1995–2 C.B. 334, describes several examples of these transactions, including transferred basis transactions, transfers of partnership interests, and variations involving licenses, service contracts, and prepayment, front-loading, and retention of rights to receive future payments.

Notice 95–53 states the position of the IRS that the claimed tax treatment of these transactions improperly separates income from related deductions and that the transactions do not produce the tax consequences desired by the parties. The notice also states that regulations will be issued under section 7701(l) of the Internal Revenue Code recharacterizing stripping transactions any significant element of which is entered into or undertaken on or after October 13, 1995. The notice requested comments regarding those regulations.

The IRS received only one set of comments in response to Notice 95–53. Those comments recommended that the regulations under section 7701(l) address a broader class of transactions than was described in the notice. Specifically, they recommended that the regulations defer the recognition of income in circumstances where there is an advance receipt or assignment of future income and there is the potential for the transactions to become stripping transactions. They also recommended that the regulations recharacterize these transactions without regard to whether there is a tax avoidance purpose. The comments reflected a desire for the regulations to produce an economic accrual of income and to enable taxpayers to determine the proper tax accounting for their transactions without regard to subsequent events.

The proposed regulations generally follow the notice and do not expand the class of transactions subject to recharacterization. The regulations do not require taxpayers to make any assumptions as to subsequent events. They are intended to produce tax results that conform to the economic substance of the transactions that they address. Furthermore, the regulations generally apply to transactions whether or not the parties have a tax avoidance purpose.

Explanation of Provisions

1. General Approach

Section 7701(l) authorizes the Secretary to ''prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by [the Internal Revenue Code].'' The proposed regulations recharacterize transactions in which the transferee (''the assuming party'') assumes obligations or acquires property subject to obligations under an existing lease or similar agreement and the transferor (''the property provider'') or any other party has already received or retains the right to receive amounts that are allocable to periods after the transfer. The recharacterization reflects the general principle that a taxpayer who is treated for federal income tax purposes as the owner of rental property must recognize income that accrues during its period of ownership. , *e.g., Steinway & Sons* v. *Commissioner,* 46 T.C. 375 (1966), *acq.,* 1967–2 C.B. 3; *Alstores Realty Corp.* v. *Commissioner,* 46 T.C. 363 (1966), *acq.,* 1967–2 C.B. 1.

For the period in which an assuming party in such a transaction is a party to the lease or similar agreement, the recharacterization requires the assuming party to report income on a level-rent basis calculated using the rules of the constant rental accrual method described in § 1.467–3(d) as proposed on June 3, 1996 (IA–292–84, 61 FR 27834, 27844). Thus, the assuming party is required to recognize rental income for the period in which it owns the property or leasehold interest. In addition, the transaction is recharacterized to include additional consideration in the form of a note provided by the assuming party to the property provider for the transfer of the property, resulting in interest income and expense for which the parties must account as appropriate. The property provider also must adjust its income for any differences between amounts it recognized and amounts it would have recognized if it had reported income on a level-rent basis for the periods that it owned the property or leasehold

interest. Finally, to account for any differences in timing or amount between payments the property provider actually receives after the transaction and payments treated as being made to the property provider under the note from the assuming party, the property provider is treated as an obligor or obligee under a second loan, for which the property provider must account accordingly.

2. Obligation-shifting Tsransactions

The proposed regulations are not intended to recharacterize transactions with little potential for tax avoidance. Taken together, the definition of ''obligation-shifting transaction'' and the enumerated exceptions limit the scope of the regulations to transactions that are not routine and that involve shifting of substantial amounts of income away from the taxpayer that recognizes deductions related to the income.

The proposed regulations apply to obligation-shifting transactions, which are defined as any transaction in which an assuming party assumes a property provider's obligations to a property user (or acquires property subject to a property provider's obligations to a property user) under a lease or similar agreement if the property provider or any other party has already received, or retains the right to receive, amounts that are allocable to periods after the transaction. The regulations define obligations under a lease or similar agreement as including a continuing obligation to make property available to the lessee or the ultimate user of the property. These obligations typically give rise to deductions, such as for cost recovery or, in the case of a master-lease/sublease arrangement, for payments under a master lease. The advance receipt of amounts that are allocable to periods after the obligation-shifting transaction often results in accelerated taxable income for the recipient. Thus, the definition describes transactions in which there is the potential for one party to recognize income but a different party to recognize deductions associated with that income.

In some transactions identified in Notice 95–53, one party sells, assigns, or otherwise transfers to a third party the right to receive future payments under a lease and includes as current income the amount received as consideration for the transfer. The underlying property (subject to the lease) is later transferred in a transaction intended to qualify as a transferred basis transaction. These transactions are within the scope of the regulations because the property transferee assumes obligations or acquires the property subject to the obligation to make the property available to the lessee and the property transferor already received amounts that are allocable to periods after the transaction by reason of the assignment of rights to receive future payments. In other transactions, the property transferor does not assign the right to future rental amounts but instead receives prepayment from the lessee or retains the right to receive future amounts over time. Both variations likewise are within the scope of the regulations.

The proposed regulations adopt an aggregate view of partnerships, treating each partner as having a proportionate share of the rights and obligations of the partnership. Thus, for example, if a partnership assigns its right to receive future amounts under a lease and allocates to its current partners the amount recognized, a later transfer of a partnership interest is an obligation-shifting transaction because the transferee partner assumes an allocable share of the partnership's obligation to make the property available to the lessee and because the transferor partner is treated as having already received amounts that are allocable to periods after the transaction. See *Example 3* of the proposed regulations. In appropriate cases, the IRS may assert other authorities to prevent the use of a partnership to effect an improper separation of income from related deductions. *See, e.g.,* § 1.701–2(d) (*Example 7*).

The proposed regulations also generally treat an obligation-shifting transaction as occurring if a subsidiary that is a member of a consolidated group becomes a nonmember at a time when the subsidiary has received payments under a lease or similar agreement that are allocable to periods after the transaction.

3. Lease or Similar Agreement

Under the proposed regulations, an obligation-shifting transaction involves a lease or similar agreement. The regulations define this term broadly to include any contract for the use or enjoyment of tangible or intangible property, including leaseholds, licenses, other non-fee interests in property, and other contracts (including service contracts) involving the use or enjoyment of property if the value of that use or enjoyment is more than *de minimis.* The proposed regulations, therefore, do not apply to service contracts that do not involve the use or enjoyment of property. The definition of obligation-shifting transaction, however, does not restrict the IRS's ability to challenge these transactions under other authorities. For instance, even if a transaction is not within the scope of the proposed regulation, the IRS may challenge it under one or more of the authorities identified in Notice 95–53.

The IRS requests comments on whether additional guidance is needed on the definition of lease or similar agreement.

4. Exceptions

The proposed regulations are not intended to recharacterize otherwise routine transactions, such as the incorporation of an entire line of business that does not involve significant shifting of income and deductions. See Rev. Rul. 80–198, 1980–2 C.B. 113, subject to the limitations described therein. Accordingly, the regulations provide a number of objective exceptions that generally will protect routine transactions from recharacterization. The regulations do not apply to transactions in which the amounts that are allocable to future periods but are not transferred are less than or equal to $100,000. The regulations do not apply to transactions in which total payments (including the aggregate expected future value of all contingent consideration) under the lease or similar agreement are not reasonably expected to exceed $250,000. The regulations do not apply to transactions in which the fair market value of the property that is subject to the lease or similar agreement and is transferred in the obligation-shifting transaction, plus the value of the amounts that are already received or retained by the property provider but are allocable to periods after the obligation-shifting transaction, is less than ten percent of the total assets (other than Class I and Class II assets as described in § 1.1060–1T(d) and debt issued by the property provider) transferred by the property provider in the transaction. The regulations do not apply to transactions in which the lease or similar agreement is a disqualified leaseback or long-term agreement within the meaning of § 1.467–3(b). The regulations do not apply to transactions described in section 381(a), unless the transaction is deemed to be an obligation-shifting transaction under proposed § 1.7701(l)–2(k). Finally, the regulations provide that a transaction is exempt from recharacterization if the parties to the transaction establish to the satisfaction of the Commissioner that the transaction does not present a significant potential for tax avoidance.

Because the purpose of recharacterization under section 7701(l) is to prevent tax avoidance, these objective exceptions are unavailable for

transactions entered into with a principal purpose of substantially reducing the present value of the aggregate tax liability of the property provider, the assuming party, and any other party whose taxable income is determined by reference to the taxable income of the property provider or the assuming party.

5. Recharacterization

The proposed regulations recharacterize an obligation- shifting transaction in order to ensure that the property provider and the assuming party both report the income from the underlying property allocable to their respective periods of ownership.

For purposes of determining the amounts that are allocable to periods under the lease or similar agreement, the proposed regulations apply a rent-leveling process based on the constant rental accrual method described in § 1.467–3(d) to all amounts that are treated as payable under the lease or similar agreement. At the time of the obligation-shifting transaction, the level rental amount is determined for the entire term of the lease or similar agreement using 110 percent of the applicable Federal rate based on that term. The amounts that are treated as payable under the lease or similar agreement at the time of the obligation-shifting transaction are the amounts that have already been paid to the property provider and the future amounts that, immediately before the obligation-shifting transaction, are payable to the property provider. Thus, if the property provider assigns the right to receive payments to a third party in exchange for consideration, the consideration is treated as an amount received under the lease or similar agreement. Because the property provider no longer has the right to receive the payments assigned to the third party, those payments (whether past or future) are not treated as amounts that are payable to the property provider for purposes of calculating the level rental amount.

The proposed regulations recharacterize an obligation- shifting transaction by treating the assuming party and the property provider as follows:

The assuming party is treated as acquiring the right to receive all amounts that are allocable to periods after the obligation-shifting transaction. The assuming party includes these amounts in income for the periods that it owns the property.

To reflect the amounts that the assuming party is treated as receiving under the recharacterization but that it does not actually receive, the assuming party also is treated as providing additional consideration to the property provider in the form of a note (a ''section 7701(l) note''). The original principal balance of the section 7701(l) note equals the excess of the present value of the amounts that are allocable to periods after the obligation-shifting transaction over the present value of the amounts that are payable to the assuming party.

The property provider must adjust its income to the extent that it accounted for income under the lease or similar agreement before the obligation-shifting transaction in a manner inconsistent with the level-rent method described above. The adjustment, which can increase or decrease the property provider's income, equals the principal balance of the section 467 loan that would have existed if the property provider had been using the constant rental accrual method to account for amounts under the lease or similar agreement that are allocable to periods before the obligation-shifting transaction, reduced by any existing section 467 loan if the lease or similar agreement is a section 467 rental agreement. The constant rental amount is calculated using the amounts that are treated as payable under the lease or similar agreement.

Finally, to account for any differences in timing or amount between payments the property provider actually receives after the obligation-shifting transaction and payments treated as being made to the property provider under the section 7701(l) note, the property provider is treated as a party to a loan (a ''section 7701(l) rent-leveling loan''). The section 7701(l) rent-leveling loan is created at the time of the obligation-shifting transaction. Its balance at that time equals the section 467 loan that would have existed if the property provider had been using the constant rental accrual method to account for amounts under the lease or similar agreement that are allocable to periods before the obligation-shifting transaction. Thus, in the periods after the obligation-shifting transaction, the property provider must account for any interest expense or income resulting from the section 7701(l) rent-leveling loan, in addition to any interest income or expense resulting from the section 7701(l) note.

Although section 467 may not apply to an obligation-shifting transaction, the effect of the proposed regulations is to recharacterize the transaction to produce the constant rental amount and associated loans that the parties would have been treated as having if the lease or similar agreement had been a section 467 rental agreement (modified to reflect the amounts already received or payable to the property provider immediately before the obligation-shifting transaction) and had been subject to the constant rental accrual method. Thus, the assuming party is treated as if it had purchased the property in part with a note, had obtained the right to receive rental amounts on the constant rental accrual method during its ownership of the property, and had used those amounts to service the note. For the property provider, the proposed regulations provide a recharacterization that is similar (but not identical) to the treatment required when a lessor disposes of property subject to a section 467 rental agreement that was accounted for under the constant rental accrual method.

The proposed regulations provide the exclusive recharacterization of an obligation-shifting transaction for a property provider and an assuming party. Thus, if an obligation-shifting transaction is recharacterized under this section and the lease or similar agreement is a section 467 rental agreement, the rules of this section supersede the rules of §§ 1.467–1 through 1.467–8 as proposed on June 3, 1996 (IA–292–84, 61 FR 27834) for the property provider (the transferor) and the assuming party (the transferee). The assuming party's income after the obligation-shifting transaction is determined under this section and not under § 1.467–7(e)(1). Similarly, the rules provided in § 1.467–7(e)(2) for determining the amount of the section 467 loan for the period after the transfer, the amount realized by the property provider, and the assuming party's basis in the property do not apply to obligation-shifting transactions recharacterized by this section.

The recharacterization does not affect the property user or rent factor (if any), because, even though they are parties to the multiple-party financing transaction, no adjustment to their treatment of the transaction is necessary to prevent the avoidance of tax. *Cf.* § 1.881–3(a)(3)(ii)(A) (limiting purposes for which conduit financing arrangements are recharacterized). Thus, if the lease or similar agreement is a section 467 rental agreement, the property user must continue to take section 467 rent and section 467 interest into account without regard to the obligation-shifting transaction and the recharacterization under this section. *See* § 1.467–7(e)(1).

6. Issues Not Addressed

The proposed regulations do not address transactions in which a taxpayer assigns rights to future income

but does not transfer the underlying property to another taxpayer, except as provided in the special rules regarding pass-through entities and consolidated groups.

7. Proposed Effective Date

Notice 95–53 states that the regulations under section 7701(l) will be effective ''with respect to stripping transactions any significant element of which is entered into or undertaken on or after October 13, 1995.'' The regulations are proposed to adopt the effective date stated in the notice.

Special Analyses

It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the understanding of the IRS that the total number of entities engaging in transactions affected by these regulations is not substantial and, of those entities, most are not small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Therefore, a Regulatory Flexibility Analysis is not required. It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

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 April 29, 1997, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 7th Floor, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

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

Persons that wish to present oral comments at the hearing must submit written comments and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by April 8, 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 Jonathan R. Zelnik, Office of the Assistant Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.7701(l)–2 also issued under 26 U.S.C. 7701(l). * * *

Par. 2. Section 1.7701(l)–1 is amended as follows:

1. Paragraphs (b)(6) and (b)(7) are revised.

2. Paragraph (b)(8) is added.

The revisions and addition reads as follows:

§ 1.7701(l)–1 Conduit financing arrangements.

* * * * *

(b) * * *

* * * * *

(6) Section 1.6038A–3(b)(5);

(7) Section 1.6038A–3(c)(2)(vii); and

(8) Section 1.7701(l)–2.

Par. 3. Section 1.7701(l)–2 is added under the center heading ''General Actuarial Valuations'' to read as follows:

§ 1.7701(l)–2 Treatment of obligation-shifting transactions.

(a) *Purpose.* The purpose of this section is to prevent avoidance of tax by parties participating in multiple-party financing transactions that involve an assumption of obligations under a lease or similar agreement. This section should be interpreted in a manner consistent with this purpose.

(b) *In general.* Obligation-shifting transactions as defined in paragraph (h)(1) of this section are recharacterized in the manner described in paragraph (d) of this section unless an exception in paragraph (c) of this section applies.

(c) *Exceptions*—(1) *In general.* Paragraph (d) of this section does not apply if any of the following is satisfied:

(i) The aggregate amounts that have already been received by or are payable to the property provider but are allocable to periods (including partial periods) after the obligation-shifting transaction (as determined under paragraph (g) of this section) are less than or equal to $100,000.

(ii) The sum of the aggregate payments (including contingent payments) under the lease or similar agreement and the aggregate value of other consideration (including contingent consideration) to be received under the lease or similar agreement is not reasonably expected to exceed $250,000. The rules of § 1.467–1(c)(4)(ii)[1] apply in determining the amount described in this paragraph (c)(1)(ii).

(iii) The fair market value of the leased property is less than ten percent of the aggregate fair market value of all of the property (excluding Class I assets as described in § 1.1060–1T(d)(1), Class II assets as described in § 1.1060–1T(d)(2)(i), and debt issued by the property provider) that the property provider transfers to the assuming party as part of the same transaction or series of related transactions. For this purpose, the fair market value of the leased property is the sum of—

(A) The fair market value of the property subject to the lease or similar agreement and transferred in the obligation-shifting transaction, plus

(B) The value of the amounts that have already been received under the lease or similar agreement or are retained by the property provider or any other party but are allocable to periods (including partial periods) after the obligation-shifting transaction.

(iv) The agreement(s) between the property provider and the property user is a disqualified leaseback or long-term agreement within the meaning of § 1.467–3(b).[2]

(v) The transaction is described in section 381(a), unless the transaction is deemed to be an obligation-shifting transaction under paragraph (k) of this section.

(vi) The Commissioner determines that the transaction does not

[1] This section appears in proposed regulations published on June 3, 1996 (IA–292–84, 61 FR 27834, 27839).

[2] This section appears in proposed regulations published on June 3, 1996 (IA–292–84, 61 FR 27834, 17844).

substantially reduce the present value of the tax liability of the assuming party or otherwise result in the avoidance of tax.

(2) *Limitation on exceptions.* The exceptions listed in paragraph (c)(1) of this section do not apply to obligation-shifting transactions entered into with a principal purpose of substantially reducing the present value of the aggregate tax liability of the assuming party, the property provider, and any person whose taxable income is determined (in whole or in part) by reference to the taxable income of the property provider or the assuming party.

(d) *Recharacterization of obligation-shifting transaction*—(1) *In general.* In order to clearly reflect the income of the assuming party and the property provider, an obligation-shifting transaction is recharacterized as follows:

(i) *Assuming party treated as receiving all allocable rents.* The assuming party is treated as acquiring the right to receive (and as receiving when due) all amounts under the lease or similar agreement that are allocable (as determined under paragraph (g) of this section) to periods (including partial periods) after the obligation-shifting transaction. Thus, the assuming party must include these amounts in income in the periods to which they are allocable.

(ii) *Assuming party treated as issuing section 7701(l) note.* The assuming party is treated as issuing to the property provider, as additional consideration in the obligation-shifting transaction, a section 7701(l) note, with terms as described in paragraph (e) of this section. Accordingly, the assuming party and the property provider must account for interest expense and income from the section 7701(l) note in the periods (including partial periods) following the obligation-shifting transaction.

(2) *Section 7701(l) rent-leveling loan and adjustment to property provider's income*—(i) *Section 7701(l) rent-leveling loan.* To account for any differences in timing or amount between payments actually received by the property provider after the obligation-shifting transaction and payments (as described in paragraph (e)(3) of this section) treated as being made under the section 7701(l) note, the property provider is treated as a party to a section 7701(l) rent-leveling loan, with terms as described in paragraph (f) of this section. Accordingly, the property provider must account for interest expense or income (as appropriate) in the periods (including partial periods) following the obligation-shifting transaction.

(ii) *Adjustment to property provider's income.* To account for any differences between amounts previously included by the property provider and amounts that are allocable to periods before the obligation-shifting transaction, on the date on which the obligation-shifting transaction is consummated, the property provider must treat as an item of expense or income (as appropriate)—

(A) The principal balance of the section 7701(l) rent-leveling loan, minus

(B) The principal balance (plus interest not already included in the principal balance) of the property provider's section 467 loan (if any) as determined under the principles of § 1.467–4(a)(4)[3] and existing as of that date.

(3) *Exclusive recharacterization.* If the lease or similar agreement is a section 467 rental agreement, the property provider and the assuming party must account for the recharacterized transaction under the provisions of this section and not under the provisions of §§ 1.467–1 through 1.467–8.[4]

(e) *Section 7701(l) note*—(1) *Principal.* On the date on which the obligation-shifting transaction is consummated, the principal balance of the section 7701(l) note equals the excess of—

(i) The present value of the amounts that are allocable to periods (including partial periods) after the obligation-shifting transaction, over

(ii) The present value of the amounts that are payable to the assuming party.

(2) *Present value, yield, and compounding period.* For purposes of paragraph (e)(1) of this section, present value is determined under the rules of § 1.467–2(d)[5]. The yield of the section 7701(l) note equals 110 percent of the applicable Federal rate on the date on which the obligation-shifting transaction is consummated, based on the remaining term of the lease or similar agreement. The compounding period for determining both the original principal balance and the yield must equal the period used in determining the amounts that are allocable (as determined under paragraph (g) of this section) to periods under the lease or similar agreement.

(3) *Repayment schedule*—(i) *Amount.* The payment for each period under the section 7701(l) note is—

(A) The amount that is taken into account by the assuming party under paragraph (d)(1)(i) of this section, minus

(B) The amount received by the assuming party for that period.

(ii) *Timing.* The timing of section 7701(l) note payments, as determined under paragraph (e)(3)(i) of this section, is the same as the timing of the payments taken into account by the assuming party under paragraph (d)(1)(i) of this section.

(4) *Debt for all purposes.* A section 7701(l) note is debt for all purposes of the Internal Revenue Code. The principal balance of the section 7701(l) note after the obligation-shifting transaction may be positive or negative. If the principal balance is positive, the note represents an amount owed by the assuming party to the property provider, and if the principal balance is negative, the note represents an amount owed by the property provider to the assuming party.

(f) *Section 7701(l) rent-leveling loan*—(1) *Principal.* On the date on which the obligation-shifting transaction is consummated, the principal balance of the section 7701(l) rent-leveling loan equals the principal balance (plus any interest not already included in the principal balance) of the section 467 loan as determined under § 1.467–4(b) that would have existed as of that date if—

(i) The amounts payable under the lease or similar agreement were the amounts described in paragraphs (g)(1) and (g)(2) of this section, and

(ii) The property provider had reported all items of income and expense with respect to the lease or similar agreement by applying the constant rental accrual method described in § 1.467–3(d) and by determining the section 467 rent for each period in accordance with § 1.467–1(d)(2)(i).

(2) *Yield and compounding period.* The yield of the section 7701(l) rent-leveling loan equals 110 percent of the applicable Federal rate on the date on which the obligation-shifting transaction is consummated, based on the original term of the lease or similar agreement. The compounding period for determining the yield must equal the period used in determining the amounts that are allocable (as determined under paragraph (g) of this section) to periods under the lease or similar agreement.

(3) *Repayment schedule*—(i) *Amount.* The property provider's payment (or receipt) for each period under the section 7701(l) rent-leveling loan is—

(A) The amount (as described in paragraph (e)(3)(i) of this section)

[3] This section appears in proposed regulation published on June 3, 1996 (IA–292–84, 61 FR 27834, 27845).

[4] These sections appear in proposed regulations published on June 3, 1996 (IA–292–84, 61 FR 27834).

[5] This section appears in proposed regulations published on June 3, 1996 (IA–292–84, 61 FR 27834, 27842).

treated as paid in satisfaction of the section 7701(l) note, minus

(B) The amount received by the property provider under the lease or similar agreement for that period.

(ii) *Timing.* The timing of section 7701(l) rent-leveling loan payments, as determined under paragraph (f)(3)(i) of this section, is governed by paragraph (g) of this section (and thus, is the same as the timing of the payments taken into account by the assuming party under paragraph (d)(1)(i) of this section).

(4) *Debt for all purposes.* A section 7701(l) rent-leveling loan is debt for all purposes of the Internal Revenue Code. The principal balance of the section 7701(l) rent-leveling loan may be positive or negative. If the principal balance is positive, the amount represents a loan on which the property provider is the obligee, and if the principal balance is negative, the amount represents a loan on which the property provider is the obligor.

(g) *Determining amounts that are allocable to periods under the lease or similar agreement.* The amounts that are allocable to periods under a lease or similar agreement are determined (immediately before the obligation-shifting transaction is consummated) by applying the constant rental accrual method described in § 1.467–3(d) from the inception of the lease or similar agreement based on—

(1) The amounts that have already been received under the lease or similar agreement, and

(2) The amounts that are payable under the lease or similar agreement.

(h) *Definitions.* The following definitions apply solely for purposes of this section.

(1) An *obligation-shifting transaction* is any transaction in which an assuming party assumes a property provider's obligations to a property user (or acquires property subject to a property provider's obligations to a property user) under a lease or similar agreement if the property provider or any other party has already received, or retains the right to receive, amounts that are allocable to periods after the transaction.

(2) A *property user* is any person with the right to use property under a lease or similar agreement.

(3) A *property provider* is any person (other than an assuming party in its capacity as such) that is obligated to make property available to a property user on account of a lease or similar agreement.

(4) An *assuming party* is any person that assumes obligations or acquires property subject to obligations under an existing lease or similar agreement with a property user.

(5) A *lease or similar agreement* is any contract for the use or enjoyment of tangible or intangible property, including leaseholds, licenses, other non-fee interests in property, and other contracts (including service contracts) involving the use or enjoyment of property if the fair market value of that use or enjoyment is more than de minimis.

(6) *Obligations under a lease or similar agreement* include the continuing obligation to make property subject to a lease or similar agreement available to a property user. To the extent that an assuming party assumes obligations of a property provider or acquires property subject to obligations of a property provider, the obligations shall not thereafter be treated as obligations of the property provider.

(7) *Amounts that have already been received under the lease or similar agreement* include consideration received (as of the date on which the obligation-shifting transaction is consummated) for assigning the rights to receive payments under the lease or similar agreement.

(8) *Amounts that are payable under the lease or similar agreement* do not include payments the rights to which have been assigned in an arm's-length transaction to an unrelated third person in exchange for consideration.

(9) A *section 7701(l) note* is indebtedness arising from the recharacterization described in paragraph (d)(1)(ii) of this section. The terms of a section 7701(l) note are described in paragraph (e) of this section.

(10) A *section 7701(l) rent-leveling loan* is indebtedness arising from the recharacterization described in paragraph (d)(2)(i) of this section. The terms of a section 7701(l) rent-leveling loan are described in paragraph (f) of this section.

(i) *Reserved.*

(j) *Pass-through entity look-through rule.* For purposes of determining whether any person is a property user, a property provider, or an assuming party, the person is treated as having the rights and obligations of any pass-through entity in which the person is a partner, shareholder, beneficiary, or other participant, but only to the extent of the person's allocable share of pass-through entity items relating to the property. The pass-through entity must reflect the required recharacterization on its books.

(k) *Consolidated group rule.* For purposes of this section, if a subsidiary is a member of a consolidated group and the subsidiary or a successor becomes a nonmember (other than in a transaction described in § 1.1502–13(j)(5)), the nonmember (whether or not a separate legal entity) will be treated as a separate corporation that acquires the assets and assumes the obligations of the subsidiary. For example, assume that P sells all the stock of S, previously a wholly-owned subsidiary of P and a member of the P consolidated group, and that, at the time of the sale, S already has received amounts under a lease that are allocable to periods after the sale. Under this paragraph (k), an obligation-shifting transaction occurs when S becomes a nonmember. S, as a nonmember, is treated as having assumed the obligations under the lease. Therefore, S must adjust its income as provided in paragraph (d)(2)(ii) of this section immediately before it becomes a nonmember of the consolidated group. After the sale, S is treated as both a property provider and an assuming party in the obligation-shifting transaction.

(l) *Reserved.*

(m) *Examples.* The following examples illustrate the rules of this section. Each example assumes that all taxpayers use the calendar year as the taxable year, all payment periods are the calendar year, and none of the rental agreements are disqualified leasebacks or long-term agreements under § 1.467–3(b). Except as otherwise provided, none of the exceptions in paragraph (c)(1) of this section apply. The examples read as follows:

Example 1. *Retained rents; section 351 transfer*—(i) *Facts.* (A) On January 1, 2001, A leases property to B for a five-year period. The lease provides for rent of $10,000,000 per year, payable annually on December 31.

(B) On January 1, 2002, A transfers the leased property to D in exchange for D preferred stock. A retains the right to receive the remaining four years of rent from B. As part of the same transaction, C transfers $100,000,000 to D in exchange for D common stock. After the transaction, A and C own 100 percent of the stock of D. Assume the transaction meets all of the requirements of section 351. C and D are members of the same consolidated group as defined in § 1.1502–1(h). One hundred ten percent of the applicable Federal rate based on annual compounding is 7 percent.

(ii) *Obligation-shifting transaction.* B is a property user because B has the right to use the property under the lease with A. A is a property provider because A is obligated to make the property available to B on account of the lease. D is an assuming party because in the January 1, 2002, transaction D acquires the property subject to A's obligations under the lease to make the property available to B for the remaining four years of the lease. The transaction is an obligation-shifting transaction because D is an assuming party

and A retains the right to receive rent from B allocable to periods after the transaction.

(iii) *Recharacterization.* As of January 1, 2002, the transaction is recharacterized as follows:

(A) Under the constant rental accrual method described in § 1.467–3(d), the amount accruing for each calendar year period under the lease is $10,000,000. D is treated as acquiring the right to receive the amounts allocable to the four periods after the obligation-shifting transaction. Thus, in 2002, 2003, 2004, and 2005, D must recognize $10,000,000 rental income.

(B) The principal balance of the section 7701(l) note equals $33,872,112.56, with a yield equal to 7 percent based on annual compounding. As part of the obligation-shifting transaction, D is treated as having given A the section 7701(l) note as additional consideration. The amount of the section 7701(l) note is treated as ''other property'' transferred from D to A in the section 351 exchange. D is treated as making section 7701(l) note payments to A. A has interest income on the section 7701(l) note. D has interest expense on the section 7701(l) note. A and D account for the section 7701(l) note as follows:

SECTION 7701(1) NOTE

Taxable year ending	Beginning balance	Payment	Interest	Principal
12/31/02	$33,872,112.56	$10,000,000.00	$2,371,047.88	$7,628,952.12
12/31/03	26,243,160.44	10,000,000.00	1,837,021.23	8,162,978.77
12/31/04	18,080,181.67	10,000,000.00	1,265,612.72	8,734,387.28
12/31/05	9,345,794.39	10,000,000.00	654,205.61	9,345,794.39

(C) Because the amount A recognized in the year before the obligation-shifting transaction equals the amount A would have recognized under the constant rental accrual method, A's adjustment to income on the consummation of the obligation-shifting transaction is $0.

(D) At the time of the obligation-shifting transaction, the principal balance of the section 7701(l) rent-leveling loan equals $0. Furthermore, because the amounts A actually receives each year after the obligation-shifting transaction, $10,000,000, equal the amounts D is treated as paying A under the section 7701(l) note, $10,000,000, the balance of the section 7701(l) rent-leveling loan equals $0 for all periods after the obligation-shifting transaction. Thus, A has no interest income or expense arising from the section 7701(l) rent-leveling loan.

Example 2. *Rents already received; section 351 transfer*—(i) Facts. (A) On January 1, 2001, X leases property to Y for a seven-year period. The XY lease provides for rent of $900,000 per year, payable annually on December 31. Also on January 1, 2001, Y leases the property to Z for a five-year period. The YZ lease provides for rent payable on December 31 of each year as follows: $800,000 in 2001, $900,000 in 2002, $1,000,000 in 2003, $1,100,000 in 2004, and $1,200,000 in 2005.

(B) On December 31, 2001, Y sells to F the right to receive all rents from Z for 2002 through 2005. F pays Y $3,146,345.27. Y includes the $3,146,345.27 as ordinary income.

(C) On January 1, 2002, Y contributes to S cash of $2,500,000, Y's rights and obligations under the lease with X, and Y's rights and obligations under the lease with Z in exchange for S preferred stock. As part of the same transaction, P transfers cash of $7,500,000 to S in exchange for S common stock. After the transaction, Y and P own 100 percent of the stock of S. Assume the transaction meets all of the requirements of section 351. S and P are members of the same consolidated group as defined in § 1.1502–1(h). One hundred ten percent of the applicable Federal rate based on annual compounding is 10 percent.

(ii) *Obligation-shifting transaction.* Z is a property user because Z has the right to use the property under the YZ lease. Y is a property provider because Y is obligated to make the property available to Z. S is an assuming party because in the January 1, 2002, transaction, S assumes Y's obligations under the YZ lease to make the property available for the remaining four years of the lease. The transaction is an obligation-shifting transaction because S is an assuming party and Y has already received amounts allocable to periods after the transaction (Y sold to F the right to receive rent payments under the YZ lease for 2002 through 2005).

(iii) *Recharacterization.* As of January 1, 2002, the transaction is recharacterized as follows:

(A) Under the constant rental accrual method described in § 1.467–3(d), the amount accruing for each calendar year period under the YZ lease is $946,396.31, based on the $800,000 Y received from Z on December 31, 2001, and the $3,146,345.27 Y received from F on December 31, 2001. S is treated as acquiring the right to receive the amounts allocable to the four periods after the obligation-shifting transaction. Thus, S must recognize $946,396.31 of rental income for each of the four periods following the obligation-shifting transaction.

(B) The principal balance of the section 7701(l) note equals $2,999,948.96, with a yield equal to 10 percent based on annual compounding. As part of the obligation-shifting transaction, S is treated as having given Y the section 7701(l) note as additional consideration. The amount of the section 7701(l) note is treated as ''other property'' transferred from S to Y in the section 351 exchange. S is treated as making section 7701(l) note payments to Y. Y has interest income on the section 7701(l) note. S has interest expense on the section 7701(l) note. S and Y account for the section 7701(l) note as follows:

SECTION 7701(l) NOTE

Taxable year ending	Beginning balance	Payment	Interest	Principal
12/31/02	$2,999,948.96	$946,396.31	$299,994.90	$646,401.41
12/31/03	2,353,547.55	946,396.31	235,354.75	711,041.56
12/31/04	1,642,505.99	946,396.31	164,250.60	782,145.71
12/31/05	860,360.28	946,396.31	86,036.03	860,360.28

(C) At the time of the obligation-shifting transaction, the principal balance of the section 467 loan that would have existed if Y had reported all items of income and expense by applying the constant rental accrual method equals negative $2,999,948.96. Thus, in computing its income on the consummation of the obligation-shifting transaction, Y must take into account an expense equal to $2,999,948.96.

(D) At the time of the obligation-shifting transaction, the principal balance of the section 7701(l) rent-leveling loan equals negative $2,999,948.96. Y must account for the section 7701(l) rent-leveling loan as follows:

SECTION 7701(l) RENT-LEVELING LOAN

Taxable year ending	Beginning balance	Payment	Interest	Principal
12/31/02	($2,999,948.96)	($946,396.31)	($299,994.90)	($646,401.41)
12/31/03	(2,353,547.55)	(946,396.31)	(235,354.75)	(711,041.56)
12/31/04	(1,642,505.99)	(946,396.31)	(164,250.60)	(782,145.71)
12/31/05	(860,360.28)	(946,396.31)	(86,036.03)	(860,360.28)

Example 3. *Rents already received; sale of a partnership interest*—(i) *Facts.* (A) On January 1, 2001, A, B, and C form partnership PRS by contributing $3,600,000, $396,000, and $4,000, respectively, for proportionate interests (90.0 percent, 9.9 percent, and 0.1 percent, respectively) in the capital and profits of PRS. On the same day, PRS purchases property for $4,000,000 and leases the property to X for a five-year period. The lease provides for rent payable on December 31 of each year as follows: $800,000 in 2001, $900,000 in 2002, $1,000,000 in 2003, $1,100,000 in 2004, and $1,200,000 in 2005.

(B) On December 31, 2001, PRS sells to F the right to receive all rents from X for 2002 through 2005. F pays PRS $3,146,345.27. PRS treats the $3,146,345.27 as ordinary income allocated $2,831,710.74 to A, $311,488.18 to B, and $3,146.35 to C. One hundred ten percent of the applicable Federal rate based on annual compounding is 10 percent.

(C) Immediately following the sale of the rents, A sells its entire partnership interest to D based on the fair market value of 90 percent of PRS's assets. PRS does not have an election in effect under section 754.

(ii) *Obligation-shifting transaction.* X is a property user because X has the right to use the property under the lease with PRS. A is a property provider as to its share of the partnership's obligations under the lease to make the property available to X. D is an assuming party because D acquires A's partnership interest subject to A's share of the partnership's obligations under the lease with X to make the property available for the remaining four years of the agreement. The transaction is an obligation-shifting transaction because D is an assuming party and A has already received income allocable to periods after the transaction (A received allocations of income from the sale of the right to receive rents under the lease in 2002 through 2005). Thus, D is treated as assuming 90 percent of the partnership's obligations under the lease.

(iii) *Recharacterization.* As of January 1, 2002, the transaction is recharacterized as follows:

(A) Under the constant rental accrual method described in § 1.467–3(d), the amount accruing for each calendar year period under the lease is $946,396.31, based on the $800,000 PRS received from X and the $3,146,345.27 PRS received from F. A's share of the amount payable in each calendar year period under the lease is $851,756.68 (90 percent of $946,396.31). D is treated as acquiring the right to A's 90 percent share of the amounts allocable to the four periods after the obligation-shifting transaction. Thus, D must recognize $851,756.68 of rental income for each of the four periods following the obligation-shifting transaction.

(B) The principal balance of the section 7701(l) note equals $2,699,954.06, with a yield equal to 10 percent based on annual compounding. As part of the obligation-shifting transaction, D is treated as having given A the section 7701(l) note as additional consideration. D is treated as making section 7701(l) note payments to A. A has interest income on the section 7701(l) note. D has interest expense on the section 7701(l) note. A and D account for the section 7701(l) note as follows:

SECTION 7701(l) NOTE

Taxable year ending	Beginning balance	Payment	Interest	Principal
12/31/02	$2,699,954.06	$851,756.68	$269,995.41	$581,761.27
12/31/03	2,118,192.79	851,756.68	211,819.28	639,937.40
12/31/04	1,478,255.39	851,756.68	147,825.54	703,931.14
12/31/05	774,324.25	851,756.68	77,432.42	774,324.26

(C) At the time of the obligation-shifting transaction, the principal balance of the section 467 loan that would have existed if PRS had reported all items of income and expense by applying the constant rental accrual method equals negative $2,999,948.96. Thus, in computing its income on the consummation of the obligation-shifting transaction, A must take into account an expense equal to $2,699,954.06 (90 percent of $2,999,948.96).

(D) At the time of the obligation shifting transaction, the principal balance of the section 7701(l) rent-leveling loan equals negative $2,699,954.06. A must account for the section 7701(l) rent-leveling loan as follows:

SECTION 7701(l) RENT-LEVELING LOAN

Taxable year ending	Beginning balance	Payment	Interest	Principal
12/31/02	($2,699,954.06)	($851,756.68)	($269,995.41)	($581,761.27)
12/31/03	(2,118,192.79)	(851,756.68)	(211,819.28)	(639,937.40)
12/31/04	(1,478,255.39)	(851,756.68)	(147,825.54)	(703,931.14)
12/31/05	(774,324.25)	(851,756.68)	(77,432.42)	(774,324.26)

Example 4. *Exception where aggregate amounts retained or already received are less than or equal to $100,000; section 351 transfer*—(i) *Facts.* (A) On January 1, 2001, A leases property to B for a five-year period. The lease provides for rent of $1,000,000 for 2001, and $875,000 for the each of the remaining four years of the lease. Rent is payable annually on December 31.

(B) On January 1, 2002, A transfers the leased property along with the right to receive rent payments for 2002 through 2005 to D in exchange for D preferred stock. As part of the same transaction, C transfers $1,000,000 to D in exchange for D common stock. After the transaction, A and C own 100 percent of the stock of D. Assume that the transaction meets all of the requirements of

section 351. C and D are members of the same consolidated group as described in § 1.1502–1(h). Assume that A, C, and D did not enter into the transaction with a principal purpose of substantially reducing the present value of their aggregate tax liabilities. One hundred ten percent of the applicable Federal rate based on annual compounding is 7 percent.

(ii) *Obligation-shifting transaction.* A is a property provider because it is obligated to make property available to B on account of a lease or similar agreement. B is a property user because it has the right to use property under its lease with A. D is an assuming party because, in the January 1, 2002, transaction, it acquires the property subject to A's obligation to make the property available to B for the remaining term of the lease. The transaction between A and D is an obligation-shifting transaction because D is an assuming party and A retains the right to receive amounts from B allocable to periods after the transaction.

(iii) *Availability of exception.* Even though the transaction between A and D is an obligation-shifting transaction, it is not recharacterized under this section. As of the date of the transaction, A has already received $1,000,000. Under the constant rental accrual method described in § 1.467–3(d), the constant rental amount accruing for each calendar year during the lease is $903,491.90. The aggregate amount that has already been received by A but that is allocable to periods after the obligation-shifting transaction is $1,000,000 minus $903,491.90, or $96,508.10. Because this amount is less than $100,000, the transaction is excepted from recharacterization under paragraph (c)(1)(i) of this section.

Example 5. *Exception where fair market value of leased property is less than 10 percent of value of all property transferred; incorporation of existing business*—(i) *Facts.* (A) On January 1, 2001, A leases property to B for a five-year period. The lease provides for rent of $1,000,000 per year, payable annually on December 31.

(B) On January 1, 2003, the fair market value of the leased property is $4,000,000. On that date, A transfers the property, together with $3,000,000 of Class I and Class II assets and other property with a fair market value of $39,000,000, in exchange for all of the common stock of C. A retains the right to receive the remaining three rent payments from B. The fair market value of the rent payments retained by A is $2,486,851.99 (based on a discount rate of 10 percent). The fair market value of the property subject to the lease and transferred to B, reflecting A's retention of the right to the remaining three rent payments, is $1,513,148.01. Assume that the transaction meets all of the requirements of section 351. Assume that A and C did not enter into the transaction with a principal purpose of substantially reducing the present value of their aggregate tax liabilities.

(ii) *Obligation-shifting transaction.* A is a property provider because it is obligated to make property available to B on account of a lease or similar agreement. B is a property user because it has the right to use property under its lease with A. C is an assuming party because, in the January 1, 2003, transaction, it acquires the property subject to A's obligation to make the property available to B for the remaining three years of the lease. The transaction between A and C is an obligation-shifting transaction because C is an assuming party and A retains the right to receive amounts from B allocable to periods after the transaction.

(iii) *Availability of exception.* Even though the transaction between A and C is an obligation-shifting transaction, it is not recharacterized under this section. The fair market value of the leased property equals $4,000,000. The fair market value of the property subject to the lease and transferred to B is $1,513,148.01, and the fair market value of the rents retained is $2,486,851.99. The aggregate fair market value of all of the property transferred, excluding Class I assets, Class II assets, and debt issued by the property provider, as part of the same transaction is $43,000,000 ($4,000,000 leased property plus $39,000,000 other property, excluding Class I assets, Class II assets, and debt issued by the property provider). Because the value of the leased property, $4,000,000, is less than 10 percent of $43,000,000, the transaction is excepted from recharacterization under paragraph (c)(1)(iii) of this section.

(n) *Effective date.* This section applies to obligation-shifting transactions any significant element of which was entered into or undertaken on or after October 13, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–32670 Filed 12–26–96; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 203

RIN 0790–AG14

Technical Assistance for Public Participation (TAPP) in Defense Environmental Restoration Activities

AGENCY: Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)), DOD.

ACTION: Proposed rule.

SUMMARY: Pursuant to the National Defense Authorization Act of 1996, the Department of Defense proposes these regulations on providing technical assistance to local community members of Restoration Advisory Boards (RABs) and Technical Review Committee (TRCs). RABs and TRCs are established to review and comment on Department of Defense actions at military installations undertaking environmental restoration's activities.

DATES: Written comments must be received on or before February 25, 1997.

ADDRESSES: Send written comments and requests for documents to the Office of the Deputy Under Secretary for Environmental Security/Cleanup, 3400 Defense Pentagon, Washington, DC 20301–3400. Comments may also be submitted electronically by sending electronic mail (e-mail) to: ferrebpl@acq.osd.mil.

FOR FURTHER INFORMATION CONTACT: Patricia Ferrebee or Marcia Read, telephone (703) 697–5372 or (703) 697–7475.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Introduction

A. Authority

This proposed rule is issued under the authority of § 2705 of Title 10, United States Code. Subsections (c) and (d) of Section 2705 encourage the Department of Defense to establish either a Technical Review Committee (TRC) or Restoration Advisory Board (RAB) to review and comment on DoD actions at military installations undertaking environmental restoration activities. In 1994, Congress authorized the Department of Defense to develop a program to facilitate public participation by providing technical assistance to local community members of TRCs and RABs (section 326 of the National Defense Authorization Act for Fiscal Year 1995, P.L. 103–337). In 1996, Congress revised this authority (section 324 of the National Defense authorization Act for Fiscal Year 1996,

P.L. 104–112). It is pursuant to this revised authority, which is codified as new subsection (e) of § 2705, that the Department of Defense issues this proposed rule.

In general, § 2705(e) permits the Department of Defense to obtain, from private sector sources, technical assistance to help TRCs and RABs better understand the scientific and engineering issues underlying an installation's environmental restoration activities. TRCs and RABs may request this assistance only if:

(1) The TRC or RAB demonstrates that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation do not have the technical expertise necessary for achieving the objective for which the technical assistance is to be obtained; or

(2) The technical assistance—

(a) Is likely to contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation; and

(b) Is likely to contribute to community acceptance of environmental restoration activities at the installation.

Funding for this technical assistance program will come from the Defense Environmental Restoration Account for operating installations and formerly used defense sites, and from the Defense Base Closure Account for installations approved for closure.

B. Background of the Rulemaking

Over the past several years, the Department of Defense has participated as a member of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC). This committee, comprised of a wide range of stakeholders, was chartered to develop consensus policy recommendations for improving environmental restoration at Federal facilities. In February 1993, the FFERDC issued the ''Interim Report of the FFERDC: Recommendations for Improving the Federal Facilities Environmental Restoration Decision-Making and Priority-Setting Processes.'' This report recommended that Federal agencies become more proactive in providing information about restoration activities to stakeholders and that citizen advisory boards be established to provide advice to government agencies that conduct restoration at Federal facilities. This report also suggested the initiation of administrative and technical assistance funding.

The Department of Defense has issued policy for establishing RABs at all installations. On September 9, 1993, the Department of Defense issued policy for establishing RABs at installations designated for closure or realignment under the BRAC Acts of 1988 and 1990 where property will be available for transfer to the community. On April 14, 1994, the Department of Defense issued RAB policy for non-closing installations as part of Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program. The policy called for the establishment of RABs at DoD installations where there is sufficient, sustained community interest. Criteria for determining sufficient interest are: (1) A government request that a RAB be formed; (2) fifty local residents sign a petition requesting that a RAB be formed; (3) an installation determines that a RAB is needed; or (4) the closure of an installation involves the transfer of property to the community. On September 27, 1994, the Department of Defense and the Environmental Protection Agency (EPA) issued joint RAB guidelines on how to develop and implement a RAB. Finally, on August 6, 1996, the Department of Defense proposed regulations governing the characteristics, composition, and establishment of RABs pursuant to NDAA–95 (61 FR 40764–40772). These regulations propose the policy for creation and implementation of RABs at defense installations.

The purpose of a RAB is to bring together people who reflect the diverse interests within the local community, enabling an early and continual flow of information between the affected community, the Department of Defense, and environmental oversight agencies. Recognizing the importance of citizen participation in the environmental restoration process, Congress authorized the provision of technical assistance and assistance to aid public participation in § 326 of NDAA–95. In response to this authority, the Department of Defense published a Notice of Request for Comments (May 24, 1995, 60 FR 27460–27463) on alternative methods for funding technical assistance. In 1996, Congress revised this authority in § 324 of NDAA–96. This proposed rule proposes regulations for providing technical assistance to RABs and Technical Review Committees (TRCs), and details the specific requirements for obtaining this assistance consistent with this new authority. Regulations regarding the characteristics, composition, and establishment of RABs were previously announced on August 6, 1996 (61 FR 40764–40772).

Because this rule relates to public grants, benefits, or contracts, it is exempt from the requirements of § 553 of the Administrative Procedure Act (5 U.S.C. 553), including notice and opportunity for comment. Nonetheless, the Department of Defense is interested in receiving public comments. The Department of Defense previously sought public comment on the issues addressed in this proposed rule in its May 1995 Notice of Request for Comments, and is seeking comments on this proposed rule as well in order to develop the final rule.

II. Summary of RAB Regulation

RAB policy is contained in the April 14, 1994, Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program and the September 9, 1993, memorandum on Fast Track Cleanup at Closing Installations. Joint Department of Defense and EPA RAB Implementation Guidelines were published in September 1994. Proposed regulations on RAB development and procedures were published on August 6, 1996, (61 FR 40764–40772).

A RAB will be established at installations where there is sufficient, sustained community interest. Criteria for determining sufficient interest are:

(1) A local government requests that a RAB be formed; or

(2) Fifty local residents sign a petition requesting that a RAB be formed; or

(3) An installation determines that a RAB is needed; or

(4) The closure of an installation involves the transfer of property to the community.

The purpose of a RAB is to act as a forum for discussion and exchange of information between agencies and the community and to provide an opportunity for stakeholders to review progress and participate in a dialogue with the decisionmakers.

The RAB will be comprised of representatives from the Department of Defense Components, the EPA and/or States, and members of the local community. The Department of Defense will ensure that the membership reflects the diverse interests within the community.

Statutory language defining the duties of the Secretary of Defense regarding consultations with RABs or TRCs can be found at 10 U.S.C. § 2705(f). Details regarding the establishment, operation, funding, and reporting requirements for RABs are contained in the proposed rule published in the Federal Register on August 6, 1996, (61 FR 40764–40772).

III. Responses to Major Public Comments on RAB Funding Options Raised in the Notice of Request for Comments

A. Summary of Options

Consistent with § 326 of the National Defense Authorization Act for Fiscal Year 1995 (NDAA–95), the Department of Defense considered three options for technical assistance funding to citizens affected by the environmental restoration of DoD facilities. These options were published by the Department of Defense on May 24, 1995, (60 FR 27460–27463) in a Notice of Request for Comments. The three options under consideration are described briefly as follows:

Option A proposes using the existing EPA Technical Assistance Grant (TAG) and Technical Outreach Services to Communities (TOSC) programs as vehicles to provide technical assistance to community members of TRCs and RABs. Under this option, the Department of Defense would sign a Memorandum of Understanding (MOU) authorizing the EPA to provide assistance to community members of TRCs and RABs using EPA's existing regulations. The TAG process provides funding directly to community members at National Priority List (NPL) installations. The TOSC program would provide technical advisors and related services from designated Hazardous Substance Research Centers to community members at non-NPL installations.

Option B would involve the competitive procurement of one or more independent technical assistance providers to provide technical and public participation assistance to community members of TRCs and RABs at DoD installations.

Option C proposes the issuance of purchase orders to technical and public participation assistance providers up to the allowable limit per purchase order. Under this option, community members of the TRC or RAB would provide a description of the service they are requesting and the names of one or more proposed technical assistance providers to a DoD contracting office. A minimum set of organizational qualifications for receiving assistance would be specified by the Department of Defense under this option.

In the National Defense Authorization Act for Fiscal Year 1996 (NDAA–96), Congress established a limit on the total amount of DERA and BRAC funds that could be made available for use as support to RABs. These funding sources also fund technical assistance for public participation. Under all of the technical assistance options examined today, the local installations will continue to be responsible for providing that portion of the available funds required for administrative support. Furthermore, under all options assistance would be limited to community members of TRCs or RABs at DoD installations. This has the added benefit of providing a return to the government in the form of enhanced public participation in the restoration process. Furthermore, NDAA–96 directed the Department of Defense to consider funding for technical assistance only under the following specified conditions:

(1) The Technical Review Committee or Restoration Advisory Board must demonstrate that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation, and available DoD personnel, do not have the technical expertise necessary for achieving the objective for which the technical assistance is to be obtained; or

(2) The technical assistance—

(a) Is likely to contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation; and

(b) Is likely to contribute to community acceptance of environmental restoration activities at the installation.

This proposed rule responds to the public's comments on the options published in the request for comments and the requirements of § 2705 of Title 10 of the U.S. Code, as amended.

A total of 43 written comments were received in response to the request for comment. Approximately two-thirds of the comments received were from members of RABs, the groups most directly affected by the proposed rules, although a number of comments were also received from various government sources and potential providers of the services described in the notice. The written comments are available to the public in the docket for the notice. The major issues addressed by the comments and the Department of Defense responses to them are provided in this preamble.

B. Comments in Support of Option C—Issue Purchase Orders to Assistance Providers

A clear majority of the commenters expressed a preference for Option C, citing the increased flexibility and responsiveness to community needs provided by this option and the increased ability of the RABs and TRCs to contribute to the selection of the technical assistance provider. Several commenters noted the importance of this latter provision in Option C, with some going on to state that the separation of the Department of Defense from the selection process was important in eliminating potential conflicts of interest and fostering increased trust in the contributions of the technical assistance providers. Furthermore, this option was viewed as an efficient use of funds, as unnecessary layers of management were eliminated.

In response to the clear support of commenters for Option C, the Department of Defense is today publishing the proposed rule describing the procedures for implementing this option for funding technical support for public participation. This option also provides benefits to the government, primarily in providing a direct return to the restoration process in the form of informed and involved public participation. The RABs and TRCs are in the best position to determine their particular requirements for assistance. Their description of the services required and the criteria for selecting a provider will allow the Department of Defense to obtain the necessary resources to enhance their participation. Option C, as proposed today, provides the most direct means for meeting those needs and for meeting the requirements of the Federal Acquisition Regulations. Furthermore, by means of the eligibility requirements outlined in § 203.11 and § 203.12 of this proposed rule, the Department of Defense has more assurance that its limited will be used to provide technical support to the RABs or TRCs.

The Department of Defense supports the legislative initiative to enhance public participation at DoD environmental restoration sites. Based upon the comments received, the Department of Defense believes that Option C will provide the greatest opportunity to provide TRCs and RABs with technical assistance in a manner that will promote the highest level of confidence among public participants in that assistance.

Ten commenters remarked on the increased workload the RABs might incur from the implementation of Option C, since this option would involve an application for assistance, a process with which the RABs might not be familiar. However, many felt the administrative burden under this option was significantly less than that entailed by Option A.

The Department of Defense is aware of the administrative burdens that might fall to RABs or TRCs and for this reason has sought to minimize them with the publication of this rule. Each option proposed would impose some

responsibility for administration and accounting. This proposed rule, however, seeks to limit the burden on RABs and TRCs by using the Department of Defense as the contracting office to administer funds to providers selected on the basis of specifications provided by RABs and TRCs, subject to the limitations of the Federal Acquisition Regulations as noted in the proposed rule. This process is expected to minimize administrative impacts on RABs and TRCs while still providing sufficient reporting and management requirements to effectively run the program.

Although Option C was favored by most respondents, some commenters preferred either Option A or Option B or some combination of options which included A or B. The Department of Defense carefully considered these options, but ultimately rejected them in favor of Option C for many of the same reasons as were provided by commenters.

C. Comments in Support of Option A—Using EPA's TAG and TOSC Program

Option A was favored by six commenters, who cited its status as an ongoing and functioning program that has already provided technical assistance to a number of groups at Federal facilities. Two of these commenters represented TOSC providers, or individual Hazardous Substance Research Centers; two others had positive experiences with this process at their installations. There were, however, other commenters who argued against the selection of this option. Principal among the reasons provided by these commenters was the lack of local control over the selection of a provider. Several commenters also noted the ''cumbersome and time-consuming'' administrative requirements associated with the application and reporting requirements of TAG grants and TOSC support. These were felt to be beyond the scope of administrative resources available to most typical RABs or TRCs. One commenter questioned whether the selection process used by TOSC providers would adequately serve the needs of RABs or TRCs, citing their experience with a potential TOSC provider. Other limitations noted were the unequal treatment afforded NPL sites versus non-NPL sites, the normal limitation of one TAG grant per site, which might lead to competition between RABs or TRCs and other community groups, and the uncertain ability of the EPA to provide sufficient resources to manage the additional grants for DoD facilities. Indeed, Region IX EPA opposes the use of Option A because of the significant increase in workload it will generate for EPA staff. This commenter also believes that RABs and TRCs may be ineligible for TAG grants, which are intended for non-profit community groups, and is concerned that DoD's definition of technical assistance is broader than that used by the EPA and may lead to ineligible charges or inadequate support for RABs and TRCs.

In selecting Option C instead of Option A as a means for providing assistance to RABs and TRCs, the Department of Defense has balanced the expressed desires of those bodies to identify proposed technical assistance providers and the Department of Defense's own financial management responsibilities. Furthermore, the option of using TAG grants or TOSC support will continue to be available to communities surrounding DoD installations, although the prior existence of TAG or TOSC support at an installation may affect DoD funding priorities. Those arguments supplied by commenters in favor of Option A, because of its ready adaptation to Department of Defense use, are met by this proposed rule by implementing a process that will be immediately available to RABs and TRCs to obtain technical support. The Department of Defense also maintains that many of the comments opposing the selection of Option A have merit, and concurs that the administrative burden on RABs or TRCs associated with the procurement of a TAG grant or TOSC support could be an impediment to obtaining meaningful assistance.

D. Comments in Support of Option B—Procurement of Independent Provider

Only one commenter expressed interest solely in the selection of Option B, noting the neutral and credible assistance such a provider could supply. This commenter also expressed interest in providing the services outlined under this option. The Department of Defense's rejection of this option was again primarily based upon the majority of the commenters' wishes to maintain control of the assistance provider at the local level. Other comments that the Department of Defense believes have merit include the comment that the use of regional or national providers may exclude from participation firms providing localized or specialized expertise, and the fact that the procurement of regional or national providers under this option would take considerable time to implement.

E. Comments in Support of Option C Combined with Option A or B

Ten commenters favored the selection of Option C in conjunction with either Option A or Option B. The principal reason cited for this preference was the possibility of deflecting administrative burdens from the RABs and TRCs onto other entities. The Department of Defense believes it has met this objective by the use of DoD contracting offices in the issuance and administration of purchase orders, as detailed in this rule. The RABs and TRCs will have the ability to define the TAPP project, specify assistance provider qualifications and criteria for consideration by the Department of Defense, and provide consultation to the Department of Defense in the selection process.

F. Qualifications for Independent Technical Assistance Providers

The Department of Defense also solicited comments on the qualifications necessary for the independent technical assistance providers described in Option B, and the desirability of regional versus national assistance providers. However, because the Department of Defense supports Option C, these issues are no longer pertinent to this proposed rule.

G. Methods and Criteria for Allotment

Regardless of the option chosen, funding must, out of necessity, be subject to an annual limit per RAB or TRC. The Department of Defense solicited comments and suggestions as to the size of such a cap or the criteria that should be used to establish a cap.

Eleven commenters suggested options for allocating the limited resources available for technical assistance. Proposed amounts ranged from $25,000 to $325,000, with one commenter noting that the larger number is still less than that incurred by lawsuits brought by affected community members, and another commenter stating that $25,000 was insufficient to hire qualified technical assistance for larger projects. Other commenters proposed allotments based on a percentage of the BRAC or DERA restoration budget. Suggested amounts were based on one to five percent of the restoration budget. One commenter suggested a determination based upon the total number of RABs expected to make requests versus the available resources.

The Department of Defense must carefully balance available funds with the needs of RABs and TRCs to procure needed technical assistance. In response to the limits suggested by commenters,

and in view of the resources available, the Department of Defense has determined that total technical assistance funding will be limited to $100,000 per RAB or TRC, with no more than the lesser of 1 percent of the installation's projected restoration cost-to-complete or $25,000 available during any fiscal year. This amount is consistent with the amounts available for similar purposes under the EPA's TAG/TOSC programs and should be sufficient to obtain meaningful technical assistance for a variety of needs. Limiting funding on the basis of an installation's annual restoration budget is one means available to the Department of Defense for allocating resources among competing facilities. The Deputy Under Secretary of Defense (Environmental Security) may waive the $100,000 total and $25,000 annual limitations, as appropriate, to reflect the complexity of response action, the nature and extent of contamination at the installation, the level of activity at the installation, projected total needs as identified by the TAPP recipient, the size and diversity of the affected population, and the ability of the TAPP recipient to identify and raise funds from other sources.

In addition to the issue of providing technical assistance to RABs or TRCs, the Department of Defense requested comment on methods of determining priorities among TAPP projects. Two commenters suggested the closure status of the base should affect priority, since these bases tend to be on a fast track cleanup schedule. Other factors that were offered as a basis for prioritization included the severity of the problem or risk associated with a base, the stage of the restoration program at the base, and the proposed use of the money. Commenters did question where the decisionmaking authority would lie for setting priorities among competing funding requests.

In response, the Department of Defense has determined that TAPP projects will be funded upon completion of an eligible TAPP request, in the order received, as available resources permit. In the event that TAPP requests exceed available resources, the Department of Defense Component will consider factors such as closure status, the installations restoration program status, and alternate sources of assistance in determining funding priorities.

H. Additional Services to be Provided Under Option C

The Department of Defense developed a list of public participation services it believes could be provided under Option C in addition to hiring technical advisors, facilitators, mediators and educators. These services include: translation and interpretation; training; transportation to meetings; and payment of approved travel. The notice solicited comments regarding additional services that should be considered to meet the goal of providing technical assistance to RABs and TRCs and to encourage meaningful public participation.

Although only a limited number of commenters chose to respond to the request for additional services that should be offered, a variety of options were suggested. These included technical support, such as the procurement of independent technical consultants, training, and legal advice, as well as administrative and financial support, such as translation services, reimbursement for postage, phone calls, and travel, community outreach programs, newsletters, stipends for RAB members, and child care.

Because of limitations within the legislation and because resources for RAB and TRC support are limited, the Department of Defense has chosen to focus resources on technical support. The Department of Defense has an interest in promoting partnering with the community members of TRCs and RABs and believes that providing technical assistance will enable them to provide more meaningful input to the restoration process. Technical support, including short-term training, attendance at workshops, and procurement of technical consultants, would be eligible for funding under the program outlined in this rule. Specific eligibility criteria can be found in § 203.11 of this proposed rule. Administrative costs incurred by the RABs and TRCs will continue to be borne by the installation, as is currently the case.

Certain types of legal assistance will not be eligible for funding because they could promote an adversarial relationship between community members and the installation. Specifically, litigation or underwriting legal actions, such as paying for attorney fees or paying for a technical assistance provider to assist an attorney in preparing legal action or preparing for and serving as an expert witness at any legal proceeding regarding or affecting the site, will be ineligible for funding. Other types of assistance, such as translation and interpretation, transportation to meetings, and community outreach programs, represent needs of the community at large, and are not limited by RAB membership. As such, they are beyond the scope of the TAPP funding mechanism.

I. Other Comments and Suggestions

Although not specifically requested by the notice for comments, a few commenters suggested additional options for increasing or improving public participation. These included extending assistance to community groups other than RABs or TRCs; providing additional assistance for minority voices on RABs; obtaining peer review from other Federal agencies with relevant technical expertise; providing documents in electronic format to RABs, TRCs, and public repositories; releasing draft documents for review; and using local universities for technical support.

In keeping with the legislation, the Department of Defense is limiting the program announced in this proposed rule to providing technical assistance to community members of TRCs and RABs. The EPA's TAG and TOSC programs are still available for other community groups. The use of assistance provided through the DoD program will be decided by individual RABs and TRCs, given the eligibility criteria specified in § 203.11 of this proposed rule.

Regarding the other suggestions, these are beyond the scope of the current rulemaking and therefore will not be addressed. The Department of Defense, however, notes its continuing efforts to enhance public participation at its facilities and encourages those commenters to pursue innovative ideas for public participation through the RAB process.

IV. Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12866 (October 4, 1993, 58 FR 51735), the Department of Defense must determine whether this regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) an the requirements of the Executive Order. under Section 3(f), the order defines a ''significant regulation action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering

the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, the OMB has determined this rule is a ''significant regulatory action'' because it may raise novel legal or policy issues. As such, this action was submitted to the OMB for review, and any comments or changes made in response to the OMB suggestions or recommendations have been documented in the public record.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that agencies evaluate the effects of proposed rules for three types of small entities:

(1) Small businesses (as defined in the Small Business Administration regulations);

(2) Small organizations (independently owned, non-dominant in their field, non-profit); and

(3) Small government jurisdictions (serving communities of less than 50,000 people).

The Department of Defense has considered the interests of small businesses and small organizations by means of the use of purchase orders to obtain technical assistance. As stated in the Federal Acquisition Regulations, those purchase orders under $100,000 are reserved for small businesses, unless it can be demonstrated that small businesses are unable to provide the necessary service or product. Only a limited number of small non-profit organizations are expected to be affected by this program as it is likely that only those non-profit organizations located near Department of Defense installations with ongoing environmental restoration programs will, in most cases, provide the requested technical assistance. The Department of Defense was careful not to impose additional reporting requirements on the public and to stay within the reporting requirements quota for procurements.

Moreover, the Department of Defense has undertaken several activities to help small organizations. The Department of Defense has sought to increase the dollar amount of small purchase orders to simplify the procurement process. The Department of Defense has deliberately written the regulations to encourage small entities to apply.

Given the limited funding available to this program from Congress, and the rationing operation of § 203.4, this rule is not expected to have a significant economic impact on a substantial number of small entities. The Under Secretary for Acquisition and Technology (USD(A&T)), therefore, certifies that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the reporting and recordkeeping provisions of this proposed rule have been submitted to the OMB for review under § 3507(d) of the Act.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Deputy Under Secretary of Defense for Environmental Security (Environmental Cleanup) announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (1) 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; (2) the accuracy of the agency's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

The collection of information is necessary to identify products or services requested by community members of restoration advisory boards or technical review committees to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements.

Affected Public: Not-for-Profit Institutions.

Annual Burden Hours: 1,060.

Number of Respondents: 265.

Responses Per Respondent: 1.

Average Burden Per Response: 4 hours.

Frequency: On occasion.

Respondents are community members of restoration advisory boards or technical review committees requesting technical assistance to interpret scientific and engineering issues regarding the nature of environmental hazards at an installation. This assistance will assist communities in participating in the cleanup process. The information, directed by 10 U.S.C. 2705, will be used to determine the eligibility of the proposed project, begin the procurement process to obtain the requested products or services, and determine the satisfaction of community members of restoration advisory boards and technical review committees receiving the products and services.

Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 715 17th Street, N.W., Washington, DC 20503, marked ''Attention Desk Officer for Department of Defense.'' Copies should be sent to the Office of the Deputy Under Secretary for Environmental Security/ Cleanup, 3400 Defense Pentagon, Washington, DC 20301–3400. Comments may also be submitted electronically by sending electronic mail (e-mail) to: ferrebpl@acq.osd.mil.

When the Department of Defense promulgates the Final Rule, the Department will respond to comments by OMB or the public regarding the information collection provisions and recordkeeping requirements of the rule.

List of Subjects in 32 CFR Part 203

Administrative practice and procedure, Technical assistance, Public participation, Environmental protection—restoration, Federal buildings and facilities, Organization and functions (Government agencies).

It is proposed to amend Title 32 of the Code of Federal Regulations, Chapter I, Subchapter M, by adding part 203 to read as follows:

PART 203–TECHNICAL ASSISTANCE FOR PUBLIC PARTICIPATION (TAPP) IN DEFENSE ENVIRONMENTAL RESTORATION ACTIVITIES

Sec.

Authority: 10 U.S.C. 2705.

§ 203.1 Authority.

Part 203 is issued under the authority of section 2705 of Title 10, United States Code. In 1994, Congress authorized the Department of Defense to develop a program to facilitate public participation by providing technical assistance to local community members of TRCs and RABs (section 326 of the National Defense Authorization Act for Fiscal Year 1995, P.L. 103–337). In 1996, Congress revised this authority (section 324 of the National Defense Authorization Act for Fiscal Year 1996, P.L. 104–112). It is pursuant to this revised authority, which is codified as new subsection (e) of section 2705, that the Department of Defense issues this part.

§ 203.2 Purpose and availability of referenced material.

(a) This part establishes the Technical Assistance for Public Participation (TAPP) program for the Department of Defense. It sets forth policies and procedures for providing technical assistance to community members of TRCs and RABs established at DoD facilities. This part sets forth the procedures for the Department of Defense to accept and evaluate TAPP applications, to procure the assistance desired by community members of RABs and TRCs, and to manage the TAPP program. These provisions are applicable to all applicants/recipients of technical assistance as specified under the selected option discussed in § 203.4.

(b) Any reference to documents made in this part necessary to apply for TAPP (e.g., the Office of Management and Budget (OMB) Circulars or DoD forms) are available through the DoD installation, the military department headquarters, of from the Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)), 3400 Defense Pentagon, Washington, DC 20301–3400.

§ 203.3 Definitions.

As used in this part, the following terms shall have the meaning set forth:

Affected. Means subject to an actual or potential health or environmental threat arising from a release or a threatened release at an installation where the Secretary of Defense is planning or implementing environmental restoration activities including a response action under the Comprehensive Environmental Response Compensation and Liability Act as amended (CERCLA), corrective action under the Resource Conservation and Recovery Act (RCRA), or other such actions under applicable Federal or State environmental restoration laws. This would include actions at active, closing, realigning, and formerly used defense installations. Examples of affected parties include individuals living in areas adjacent to installations whose health is or may be endangered by the release of hazardous substances at the facility.

Applicant. Means any group of individuals that files an application for TAPP, limited by this proposal rule to community members of the RAB or TRC.

Application. Means a completed formal written request for TAPP that is submitted to the installation commander or to the identified decision authority designated for the installation. A completed application will include a TAPP project description.

Assistance provider. Is an individual, group of individuals, or company contracted by the Department of Defense to provide technical assistance under the Technical Assistance for Public Participation program announced in this rule.

Assistance provider's project manager. Means the person legally authorized to obligate the organization receiving a TAPP purchase order to the terms and conditions of the Department of Defense's regulations and the contract, and designated by the recipient to serve as the principal contact with the Department of Defense.

Community member. Is a member of the RAB or TRC who is also a member of the affected community. For the purpose of this rule, community members to do not include local, State, or Federal government officials acting in any regulatory capacity, nor does it include DoD members.

Community point of contact. Is the community member of the RAB or TRC designated in the TAPP application as the focal point for communications with the Department of Defense regarding the TAPP procurement process. The community point of contact is responsible for completing the reporting requirements specified in § 203.15 of this part.

Contract. Means a written agreement between the installation or other instrumentality of the Department of Defense and another party for services or supplies necessary to complete the TAPP project. Contracts include written agreements and subagreements for professional services or supplies necessary to complete the TAPP projects, agreements with consultants, and purchase orders.

Contract officer. Means the Federal official designated to manage the contract used to fulfill the TAPP request by the RAB or TRC.

Contractor. Means any party (e.g., Technical advisor) to whom the installation or other instrumentality of the Department of Defense awards a contract. In the context of this rule, it is synonymous with assistance provider.

Cost estimate. Is an estimate of the total funding required for the assistance provider to complete the TAPP project.

DoD Component. Includes, but is limited to, the services (Army, Navy, Air Force, Marines, and Reserves) and those defense agencies with an environmental restoration program.

DoD Installation. Means a faculty that is owned or operated or otherwise possessed by a department, agency, or instrumentality of the United States Department of Defense. In the context of this rule, formerly used defense sites (FUDS) are included within the definition of a DoD Installation.

EPA. Means the United States Environmental Protection Agency.

Formerly Used Defense Site (FUDS). Is a site that has been owned by, leased to, possessed by, or otherwise under the jurisdiction of the Department of Defense. The FUDS program does not apply to those sites outside the U.S. jurisdiction.

Firm fixed price contract. Is a contract wherein funding is fixed, prior to the initiation of a contract, for an agreed upon service or product.

Purchase order. Is an offer by the Government to buy supplies or services from a commercial source, upon specified terms and conditions, the total cost of which cannot exceed the small purchase limit of $100,000. Purchase orders are governed by Federal Acquisition Regulations, 48 CFR part 13, and the Simplified Acquisition Threshold Procedures.

Restoration Advisory Board (RAB). Is a group of individuals comprised of representatives of the Department of Defense, community members, and EPA and/or State officials formed to act as a forum for discussion and exchange of information between agencies and the community, and to provide an opportunity for stakeholders to review progress and participate in dialogue with the decision makers. RAB policy was outlined in the joint guidelines published by EPA and the Department of Defense on September 27, 1994, and is described in 32 CFR part 202.[1] [2]

Statement of Work. Is that portion of a contract which describes the actual

[1] 32 CFR part 202 is the proposed rule on RAB development. It was published on August 6, 1996 (61 FR 40764–40772).

[2] Copies of the Federal Register publication for 32 CFR part 202 are available from the Department of Defense, Office of the Deputy Under Secretary of Defense (Environmental Security).

work to be done by means of specifications or minimum requirements, quantities, performance dates, time and place of performance, and quality requirements. It is key to any procurement because it is the basis for the contractor's response and development of proposed costs.

TAPP approval. Signifies that the Department of Defense has approved the eligibility of the proposed TAPP project and will undertake an acquisition to obtain the services specified in the TAPP application submitted by the RAB or TRC. The government will conduct the acquisition in accordance with all of the applicable rules and requirements of the Federal Acquisition Regulations and the Simplified Acquisition Procedures. Approval does not constitute an agreement to direct an award to a specific source if such an action would be contrary to Federal Acquisition Regulations.

TAPP project description. Is a discussion of the assistance requested that includes the elements listed in § 203.10 of this part. The project description should contain sufficient detail to enable the Department of Defense to determine the nature and eligibility of the project, identify potential providers and estimate costs, and prepare a statement of work to begin the procurement process.

Technical assistance. Encompasses those activities specified in § 203.11 that will contribute to the public's ability to participate in the decision-making process by improving the public's understanding of overall conditions and activities. Technical assistance may include interpreting information such as: the nature of the hazard, including potential health impacts posed by onsite conditions; remedial investigation and feasibility studies; records of decision; remedial designs; selection and construction of remedial actions; operation and maintenance; significant removal actions; and training on technical issues of particular concern to the community members of the RAB or TRC. Technical assistance does not include those activities prohibited under § 203.12, such as litigation or underwriting legal actions; political activity; generation of new primary data such as well drilling and testing, including split sampling; reopening final Department of Defense decisions or conducting disputes with the Department of Defense; or epidemiological or health studies, such as blood or urine testing.

Technical Review Committee (TRC). Is a group formed to meet the requirements of 10 U.S.C. 2705(c), Department of Defense Environmental Restoration Program. Primarily functioning to review installation restoration documents, these committees are being expanded and modified at installations where interest or need necessitates the creation of a RAB.

§ 203.4 Selected option.

(a) The Department of Defense will issue purchase orders to technical assistance, facilitation, training, and other public participation assistance providers subject to the purchase limit per order as resources continue to be available. If multiple purchase orders are needed to assist community members of a particular RAB or TRC, the combined sum of these purchase orders cannot exceed $100,000 or, during any one year, the lesser of $25,000 or 1 percent of the installation's projected restoration cost to complete. Note that these limitations refer to the maximum allowable technical assistance funding per RAB/TRC. Resources available within a given year may vary. These limitations apply unless a waiver is granted by the Deputy Under Secretary of Defense (Environmental Security) (DUSD(ES)). The Deputy Under Secretary of Defense (Environmental Security) may waive the $100,000 total and $25,000 annual limitations, as appropriate, to reflect the complexity of response action, the nature and extent of contamination at the installation, the level of activity at the installation, projected total needs as identified by the TAPP recipient, the size and diversity of the affected population, and the ability of the TAPP recipient to identify and raise funds from other sources.

(b) Community members of the RAB/TRC will provide a description of the services it is requesting (TAPP Project Description) and, if desired, the names of one or more proposed technical assistance providers to the DoD RAB Co-Chair, who will ensure the application will be submitted to the installation commander or other designated authority and to the appropriate DoD contracting office. Technical assistance providers proposed by the community members of a RAB or TRC at each DoD facility that meet the minimum set of organizational qualifications guidelines provided by the Department of Defense in § 203.13 of this part will be added to the governments list of bidders for the proposed procurement.

§ 203.5 TAPP process.

This section provides an overview of the TAPP process. Specific details referred to in this section can be found in subsequent sections of this rule.

(a) *TAPP funding.* The DoD budget for support to RABs and TRCs will be established annually. Each DoD Component will be authorized to allocate funds on the basis of the number of RABs or TRCs in operation or in planning stages at the beginning of the fiscal year. Each DoD Component will then make these funds available to their individual installations or facilities on an equitable basis, considering a number of factors related to the restoration program at the installation and its impact upon the community. These factors include, but are not limited to:

(1) Closure status.
(2) Budget.
(3) Installation restoration program status.
(4) Presence (or absence) of alternate funding.
(5) Relative risk.
(6) Type of task to be funded.
(7) Community concern.
(8) Available funding.

(b) *Identification of proposed TAPP project.* Eligible applicants of RABs and TRCs, established in § 203.7 and § 203.8 of this part, should determine whether a TAPP project is required to assist the community members of the RAB or TRC to interpret information regarding the nature and extent of contamination or the proposed remedial actions. Eligibility requirements for TAPP projects are described in § 203.11 and § 203.12 of this part. In keeping with the requirements of 10 U.S.C. 2705(e), the RAB or TRC must be able to demonstrate that the technical expertise necessary for the proposed TAPP project is not available through the Federal, State, or local agencies responsible for overseeing environmental restoration at the installation, or that the selection of an alternate provider will contribute to environmental restoration activities and the community acceptance of such activities. In addition, the Department of Defense encourages the RAB or TRC to seek other available avenues of assistance prior to submitting a request for TAPP in order to preserve limited TAPP resources. These sources include tasks appropriate for the installation contractor, the procurement of volunteer services from local universities or other experts, or assistance from state and local health and environmental organizations.

(c) *TAPP project request.* Upon the determination that other sources of assistance are unavailable or unlikely to contribute to the community acceptance of environmental restoration activities at the installation, the RAB or TRC should notify the installation of its intent to pursue TAPP, and should prepare a

formal request specifying the type of assistance required and, if desired, one or more sources for this assistance. Details concerning this request are stated in § 203.10 of this part. The RAB or TRC must certify to the Department of Defense that the TAPP request represents a request by a majority of the community members of the RAB or TRC. The RAB or TRC should ensure that the request meets the eligibility requirements specified in § 203.11 and § 203.12 of this part. Furthermore, the RAB or TRC should outline specific criteria for the Department of Defense to consider in the selection of a provider (such as knowledge of local environmental conditions or specific technical issues, a prior work history within the study area which has relevant specific circumstances or unique challenges, or other relevant expertise or capabilities), keeping in mind that providers must meet the minimum technical qualifications outlined in § 203.13 of this part. The formal request should be submitted to the installation commander or designated decision authority, either directly, or through the DoD member of the RAB. The installation commander, or other designated decision authority, will review the proposed project to determine whether the proposed project conforms to the eligibility requirements.

(d) *Purchase orders.* Upon receipt of a completed TAPP request, the installation will begin the procurement process necessary to obtain the desired services by means of a purchase order or will forward the request to the contracting authority designated by the DoD component to act for that installation. The government is required to follow the rules and regulations for purchase orders as outlined in the Federal Acquisition Regulations. As a result, the government cannot direct awards to a specified supplier unless the procurement is under $2,500, and then only if the cost is comparable to other suppliers. For procurements over $2,500 but under $100,000, the acquisition is reserved for small businesses, unless there is a reasonable expectation that small businesses could not provide the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performance, and schedules. Furthermore, the award must be on a competitive basis. In addition to proposing potential providers, the application for technical assistance should indicate specific criteria or qualifications that are deemed necessary by the RAB/TRC for the completion of the project to their satisfaction. This information will be used to assist the Department of Defense in preparing a bidders list. The Department of Defense will solicit bids from those providers meeting the criteria and will select a provider offering the best value to the government. Should the procurement process identify more than one qualified respondent or fail to identify any qualified respondents, the RAB/TRC will be consulted prior to the award of a purchase order. If the Department of Defense determines that the TAPP request represents an eligible project for which no funds are available, it will ask the RAB or TRC to specify whether the project should be reconsidered upon the availability of additional funds.

(e) *Reporting requirements.* The applicant must make copies of delivered reports available to the Department of Defense and comply with the reporting requirements established in § 203.15 of this part.

§ 203.6 Cost principles.

(a) Non-profit contractors must comply with the cost principles in OMB Circular A–122.[3]

(b) Profit-making contractors and subcontractors must comply with the cost principles in the Federal Acquisition Regulation (48 CFR part 31).

§ 203.7 Eligible applicants.

Eligible applicants, except as provided in § 203.8 of this part, are community members of RABs or TRCs established in accordance with 32 CFR part 202 (61 FR 40764–40772). Furthermore, the RABs or TRCs must be comprised of at least three community members to ensure community interests are broadly represented. The applicant must certify that the request represents the wishes of a simple majority of the community members of the RAB or TRC. Certification includes, but is not limited to, the results of a roll call vote of community members of the RAB or TRC documented in the meeting minutes. Other requirements of the application are detailed in § 203.10 of this part.

§ 203.8 Ineligible applicants.

(a) The following groups and organizations are ineligible to receive technical assistance for public participation under this program:

(1) Corporations that are not incorporated for the specific purpose of representing affected individuals at a defense installation.

(2) Academic institutions.

(3) Political subdivisions (e.g., townships and municipalities).

(b) Paragraph (a) of this section does not preclude qualified technical assistance providers that fall under these categories from receiving a purchase order from the government to supply TAPP project services or products.

§ 203.9 Evaluation criteria.

The Department of Defense will begin the TAPP procurement process only after it has determined that all eligibility and responsibility requirements listed in § 203.6, § 203.7, and § 203.8 of this part are met, and after review of the specific provider qualifications as submitted in the narrative section of the application. In addition, the proposed TAPP project must meet the eligibility criteria as specified in § 203.11 and § 203.12 of this part. Projects that fail to meet those requirements relating to the relevance of the proposed project to the restoration activities at the installation will be denied.

§ 203.10 Submission of application.

The applicant must submit a TAPP application to begin the TAPP procurement process. The application form is included as Appendix A of this part and can be obtained from the DoD installation, the military department headquarters, or directly from the Department of Defense.[4] The applications will not be considered complete until the following data elements have been entered into the form:

(a) Installation.

(b) Source of TAPP request (name of RAB or TRC).

(c) Certification of majority request.

(d) RAB/TRC contact point for TAPP project.

(e) Project title.

(f) Project type (e.g., data interpretation, training, etc.).

(g) Project purpose and description (descriptions, time and locations of products or services desired).

(h) Statement of eligibility of project.

(i) Proposed provider, if known.

(j) Specific qualifications or criteria for provider.

§ 203.11 Eligible activities.

(a) TAPP procurements should be pursued by the RAB or TRC only to the extent that Federal, State, or local agencies responsible for overseeing environmental restoration at the facility do not have the necessary technical expertise for the proposed project, or the

[3] Copies may be obtained from EOP Publications, 725 17th NW, WEOB, DC 20503.

[4] Copies may be obtained from the Department of Defense, Office of the Deputy Under Secretary of Defense (Environmental Security).

proposed technical assistance will contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation and is likely to contribute to community acceptance of those activities.

(b) TAPP procurements may be used to fund activities that will contribute to the community's ability to participate in the decision-making process by improving the community's understanding of overall conditions and activities. Specifically, TAPP procurements may be used to obtain technical assistance in interpreting information with regard to: the nature of the hazard, including potential health impacts posed by onsite conditions; remedial investigation and feasibility study; record of decision; remedial design; selection and construction of remedial action; operation and maintenance; or a significant removal action at an installation where the Secretary of Defense is planning or implementing environmental restoration activities. Also included within additional activities for purposes of enhancing public participation are those activities such as training on technical issues of particular concern to the community members of the RAB or TRC.

§ 203.12 Ineligible activities.

The following activities are ineligible for assistance under this program:

(a) Litigation or underwriting legal actions such as paying for attorney fees or paying for a technical assistance provider to assist an attorney in preparing legal action or preparing for and serving as an expert witness at any legal proceeding regarding or affecting the site.

(b) Political activity and lobbying in accordance with OMB Circular A–122.

(c) Other activities inconsistent with the cost principles stated in OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.''

(d) Generation of new primary data such as well drilling and testing, including split sampling.

(e) Reopening final DoD decisions such as the Records of Decision (see limitations on judicial review of remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) § 113(h)) or conducting disputes with the Department of Defense.

(f) Epidemiological or health studies, such as blood or urine testing.

§ 203.13 Technical assistance for public participation provider qualifications.

(a) A technical assistance provider must possess the following credentials:

(1) Demonstrated knowledge of hazardous or toxic waste issues and/or laws.

(2) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering, law).

(3) Ability to translate technical information into terms understandable to lay persons.

(b) A technical assistance provider should possess the following credentials:

(1) Experience working on hazardous or toxic waste problems.

(2) Experience in making technical presentations.

(3) Demonstrated writing skills.

(4) Previous experience working with affected individuals or community groups or other groups of individuals.

(c) The technical assistance provider's qualifications will vary according to the type of assistance to be provided. Community members of the RAB/TRC may suggest additional provider qualifications as part of the application for technical assistance. These additional qualifications may be used by the Department of Defense to target the most appropriate providers during the procurement process. Examples of such criteria could include prior work in the area, knowledge of local environmental conditions or laws, specific technical capabilities, or other relevant expertise.

§ 203.14 Procurement.

Procurements will be conducted as purchase orders in accordance with the Federal Acquisition Regulations 48 CFR part 13. Under these procedures, procurements not exceeding $100,000 are reserved exclusively for small businesses, and will be conducted as competitive procurements. Procurements below a value of $2,500 are considered ''micro-purchases.'' These procurements do not require the solicitation of bids and may be conducted at the discretion of the contracting officer.

§ 203.15 RAB/TRC reporting requirements.

The RAB or TRC shall ensure that all final written documents developed by a technical advisor for the RAB or TRC using resources provided under this rule are disseminated by providing copies of such documents to the DoD installation for the local information repository(ies). Furthermore, the community point of contact of the RAB or TRC must submit a report, to be provided to the installation and to DUSD(ES), to enable the Department of Defense to meet DoD reporting requirements to Congress. This report should include a description of the TAPP project, a summary of services and products obtained, and a statement regarding the overall satisfaction of the community members of the RAB or TRC with the quality of service and/or products received.

§ 203.16 Method of payment.

The simplified acquisition procedures set forth in Federal Acquisition Regulations 48 CFR part 13, require purchase orders to be conducted on a firm-fixed-price basis, unless otherwise authorized by agency procedures. The Department of Defense anticipates all TAPP awards to be firm-fixed-price procurements.

§ 203.17 Record retention and audits.

The recipient contractor(s) shall keep and preserve detailed records in connection with the contract reflecting acquisitions, work progress, reports, expenditures and commitments, and indicate the relationship to established costs and schedules.

§ 203.18 Technical assistance provider reporting requirements.

Each technical assistance provider shall submit progress reports, financial status reports, and a final report to the Department of Defense for the TAPP project as specified by the specific purchase order agreement. The final report shall document TAPP project activities over the entire period of support and shall describe the achievements with respect to stated TAPP project purposes and objectives.

§ 203.19 Conflict of interest and disclosure requirements.

The Department of Defense shall require each prospective contractor on any contract to provide, with its bid or proposal:

(a) Information on its financial and business relationship with the installation or any/all potentially responsible parties (PRPs) at the site, and with their parent companies, subsidiaries, affiliates, subcontractors, contractors, and current clients or attorneys and agents. This disclosure requirement encompasses past and anticipated financial and business relationships, including services related to any proposed or pending litigation, with such parties.

(b) Certification that, to be best of its knowledge and belief, it has disclosed such information or no such information exists.

(c) A statement that it shall disclose immediately any such information discovered after submission of its bid or

after award. The contracting officer shall evaluate such information and shall exclude any prospective contractor if the contracting officer determines the prospective contractor's conflict of interest is significant and cannot be avoided or otherwise resolved. After award, the contract will be terminated, if the contracting officer determines the conflict of interest is significant and cannot be avoided or resolved.

(d) Contractors and subcontractors may not be Technical Advisors to recipient groups at the same installation for which they are doing work for the Federal or State government or any other entity.

BILLING CODE 5000–04–M

APPENDIX A TO PART 203

TECHNICAL ASSISTANCE FOR PUBLIC PARTICIPATION (TAPP) APPLICATION

Form Approved
OMB No. 0704-0392
Expires Dec 31, 1999

PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO INSTALLATION LISTED IN SECTION I, BLOCK 1.

SECTION I - TAPP REQUEST SOURCE IDENTIFICATION DATA

1. INSTALLATION

2. SOURCE OF TAPP REQUEST *(Name of Restoration Advisory Board (RAB) or Technical Review Committee (TRC)*

3. CERTIFICATION OF MAJORITY REQUEST

4. DATE OF REQUEST *(YYYYMMDD)*

5. RAB POINT OF CONTACT

a. NAME *(Last, First, Middle Initial)*

b. ADDRESS *(Street, Apt. or Suite Number, City, State, ZIP Code)*

c. TELEPHONE NUMBER *(Include Area Code)*

SECTION II - TAPP PROJECT DESCRIPTION

6. PROJECT TITLE

7. PROJECT TYPE *(Data Interpretation, Training, etc.)*

8. PROJECT PURPOSE AND DESCRIPTION *(State anticipated goals of project and relate to increased understanding/participation in restoration process at the installation. Include descriptions, locations, and timetables of products or services requested.)*

9. STATEMENT OF ELIGIBILITY *(Refer to eligibility criteria in S203.11 and S203.12 of TAPP rule. Note other sources that were considered for this support and state reasons why these sources are inadequate.)*

10. ADDITIONAL QUALIFICATIONS OR CRITERIA TO BE CONSIDERED *(Additional qualifications (beyond those specified in S203.13) a provider should demonstrate to perform the project to the satisfaction of the RAB/TRC. Attach separate statement, if necessary.)*

SECTION III - INSTALLATION COMMANDER/DESIGNATED DECISION AUTHORITY APPROVAL

	APPROVED	**11. SIGNATURE**	**12. TITLE**	**13. DATE** *(YYYYMMDD)*
	NOT APPROVED			

DD FORM 2749, DEC 1996 (EG)

Designed using Perform Pro, WHS/DIOR, Dec 96

SECTION IV - PROPOSED PROVIDER DATA			
14. PROPOSED PROVIDER			
a. NAME		**b. ADDRESS** *(Street, Apt. or Suite Number, City, State, ZIP Code)*	
c. TELEPHONE NUMBER *(Include Area Code)*			
15. PROVIDER QUALIFICATIONS *(Attach separate statement, if necessary. A statement of qualifications from the proposed technical assistance provider will be acceptable.)*			
16. ALTERNATE PROPOSED PROVIDER *(If known. Attach additional pages as required.)*			
a. NAME		**b. ADDRESS** *(Street, Apt. or Suite Number, City, State, ZIP Code)*	
c. TELEPHONE NUMBER *(Include Area Code)*			
17. ALTERNATE PROVIDER QUALIFICATIONS *(Attach separate statement, if necessary. A statement of qualifications from the proposed technical assistance provider will be acceptable.)*			
SECTION V - CONTRACTING OFFICE APPROVAL			
	APPROVED	**18. SIGNATURE**	**19. TITLE**	**20. DATE** *(YYYYMMDD)*
	NOT APPROVED			

DD FORM 2749 (BACK), DEC 1996

Dated: December 12, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–32130 Filed 12–26–96; 8:45 am]

BILLING CODE 5000–04–C

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD01–96–119]

Special Anchorage Area: Special Anchorage Sheepshead Bay, Brooklyn, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposed to amend the Sheepshead Bay special anchorage regulations by reducing the size of the northern area to accommodate the construction of a floating restaurant.

DATES: Comments must be received on or before February 25, 1997.

ADDRESSES: Comments should be mailed to Lieutenant John W. Green, Waterways Oversight Branch, Coast Guard Activities New York, Bldg. 108 Governors Island, New York 10004–5096.

FOR FURTHER INFORMATION CONTACT: Lieutenant John W. Green, Waterways Oversight Branch, Coast guard Activities New York (212) 668–7906.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD01–96–119) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Background and Purpose

The Hastings Design Group is developing plans to construct a floating restaurant in Sheepshead Bay. As planned, the floating restaurant extends into the northern area of the Sheepshead Bay special anchorage defined in 33 CFR 110.60(x)(2). Special anchorages are areas of water in which vessels of not more than 65 feet in length may anchor without exhibiting anchor lights. The proposed rule would change the boundaries of the special anchorage by moving the eastern boundary line so that no portion of the restaurant is within the special anchorage. The new eastern boundary line would be relocated to a line parallel to and 80 feet west of the prolonged west line of Coyle Street. This configuration would allow for the floating restaurant to project a maximum of 80 feet west of the prolonged west line of Coyle Street, and will allow for an area 45 feet wide for vessel traffic to transit to and from the anchorage west of the floating restaurant. Moving the eastern boundary line would eliminate four moorings from the special anchorage under the existing mooring field plan. However, the owner of the floating restaurant has agreed to make four berths available at the restaurant pier to the New York City, Department of Parks and Recreation to offset the loss of moorings from the special anchorage. These four berths will be administered by the Department of Parks and Recreation as part of the entire special anchorage.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Although the proposed boundary change would decrease the size of the northern area of the Sheepshead Bay special anchorage, the effect of this regulation would not be significant for the following reasons: the owner of the floating restaurant will provide four permanent moorings to be administered by the New York City, Department of Parks and Recreation as part of the special anchorage, and a 45 foot fairway will be established so vessel traffic can safely access the special anchorage west of the floating restaurant.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization, qualifies as a small entity and that this rule will have significant economic impact on your business or organization, please submit a comment explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

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

Federalism

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

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e.(34)(f) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994) this rule reduces the size of a special anchorage and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR 110

Anchorage grounds.

Proposed Regulation

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—[AMENDED]

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

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

2. Section 110.60, is amended by revising paragraph (c)(2) to read as follows:

§ 110.60 Port of New York and vicinity.

* * * * *

(x) * * *

(2) *Northern Area.* South of the established U.S. pier head line on the north side of the bay; west of a line parallel to and 80 feet west of the prolonged west line of Coyle Street; north of a line ranging from a point 125 feet south of said pier head line in said line parallel to and 80 feet west of the prolonged west line of Coyle Street to the intersection of the south line of Shore Boulevard and the west line of Kensington Street; north of a line parallel to and 325 feet north of the bulkhead wall along the north side of Shore Boulevard; northeast of a line ranging from the point of intersection of the last-mentioned line with the prolonged east line of East 28th Street, toward a point on the prolonged east line of East 27th Street and 245 feet south of the established U.S. pier head line on the north side of the bay; and east of the prolonged east side of East 27th Street.

* * * * *

Dated: December 6, 1996.

J.L. Linnon,

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

[FR Doc. 96–32839 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD08–95–026]

RIN 2115–AE47

Drawbridge Operation Regulation; Bonfouca Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of supplemental proposed rulemaking; Notice of temporary deviation.

SUMMARY: The Coast Guard is revising its proposal concerning the operation of the swing span drawbridge across Bonfouca Bayou, mile 7.0, at Slidell, St. Tammany Parish, Louisiana. This supplemental proposal is the result of comments on the notice of proposed rulemaking. The revised proposal would provide that the draw need not open for passage of vessels during peak vehicular traffic periods. This change will allow for the timely passage of school busses and relieve vehicular traffic congestion that has increased dramatically during recent years and still provide for the reasonable needs of navigation.

In order to test the revised schedule and closing times in this supplemental proposal, the District Commander authorized a temporary deviation in drawbridge operation regulations for the Bonfouca Bayou drawbridge effective through December 21, 1996. The Coast Guard requests comments on the test schedule.

DATES: Comment must be received on or before January 10, 1997.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or may be delivered to Room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson, Bridge Administration Branch, at the address and telephone number given above.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking and to comment on the temporary deviation by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this supplemental proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

The Commander, Eighth Coast Guard District, will evaluate all comments received and determine a course of final action on this proposal. The supplemental proposal may again be changed in the light of comments received.

The temporary deviation is effective for 90 days from September 23, 1996 through December 21, 1996.

Discussion of Proposed Rules

The Bonfouca Bayou, swingspan bridge at mile 7.0, at Slidell, St. Tammany Parish, Louisiana, has 3.5 feet vertical clearance above high tide in the closed to navigation position and 6.7 feet above low tide at the pivot pier, and 8.2 feet clearance above high tide and 11.4 feet above low tide at the rest pier. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels, and other recreational craft. Annualized data provided by the Louisiana Department of Transportation and Development (LDOTD) show that from September 1994 through September 1995, a total of 207 vessels passed the bridge between 6 a.m. and 9 a.m. throughout the year and a total of 406 vessels passed the bridge between 3 p.m. and 6 p.m. throughout the year. The data also shows that on average 1532 vehicles cross the bridge between 6 a.m. and 9 a.m. each day and 2261 vehicles cross the bridge between 3 p.m. and 6 p.m. each day.

Reduced to a monthly rate, the above data reflects the fact that on average, 17 vessels pass and 45,960 vehicles cross the bridge each month during the morning period and 34 vessels pass and 67,830 vehicles cross the bridge during the afternoon period.

The Louisiana Department of Transportation and Development with the support to Congressman Robert L. Livingston and many other parish and city officials, previously requested that the bridge remain closed from 6 a.m. to

9 a.m. and from 3 p.m. to 6 p.m. in order to expedite passage of vehicular traffic, that crosses the bridge during the peak traffic periods. A notice of proposed rulemaking was published in 61 Federal Register 19223 dated Wednesday, May 1, 1996 which announced the original proposed rulemaking and solicited comments of support or opposition. Mariners and business owners, located upstream of the bridge commented on the proposal, stating that their businesses would suffer if vessels were not permitted to transit above the bridge for periods of three continuous hours. Additionally, local commercial marine interests, requested that the draw open on demand from 9 p.m. to 5 a.m. if at least 4 hours advance notice is given, in lieu of 12 hours notice. A meeting was held in Slidell, Louisiana on June 19, 1996 attended by the Greater Slidell Chamber of Commerce, City of Slidell officials, maritime industry members, and concerned citizens to discuss this proposal. The proposed rule is being revised to reflect these comments, concerns and suggested changes.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

Since the proposed rule also considers the needs of local commercial fishing vessels, the economic impact of this proposal is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2.g(5) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.433 is revised to read as follows:

§ 117.433 Bonfouca Bayou.

The draw of the S433 bridge, mile 7.0, at Slidell, shall operate as follows:

(a) The draw need not open for passage of vessels from 7 a.m. to 8 a.m. and from 1:45 p.m. to 2:45 p.m., Monday through Friday except Federal holidays.

(b) The draw need open only on the hour and half-hour from 6 a.m. to 7 a.m. and from 3 p.m. to 6 p.m., Monday through Friday except Federal holidays.

(c) The draw shall open on signal from 9 p.m. to 5 a.m., if at least 4 hours notice is given to the LDOTD Security Service at (504) 375–0100.

(d) At all other times the draw shall open on signal.

Dated: November 26, 1996.

T.W. Josiah,

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

[FR Doc. 96–32846 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–010–1010; FRL–5671–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to Missouri's State Implementation Plan (SIP) concerning Missouri rules 10 CSR 10–2.260 and 10 CSR 10–5.220, ''Control of Petroleum Liquid Storage, Loading, and Transfer.'' The purpose of these revisions is to modify the required testing periods for delivery vessels in the Kansas City metropolitan area and in the St. Louis nonattainment area. These revisions are designed to reduce volatile organic compound emissions from the loading and unloading of gasoline delivery vessels. The reduction in emissions is part of the state's plan under the Clean Air Act to reduce ozone levels in the St. Louis nonattainment area. This action will also ensure progress toward improved air quality in Kansas City.

DATES: Comments must be received on or before January 27, 1997.

ADDRESSES: Comments may be mailed to Stan Walker, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Stan Walker at (913) 551–7494.

SUPPLEMENTARY INFORMATION: On February 1, 1996, the state of Missouri submitted revisions to Missouri rules 10 CSR 10–2.260 and 10 CSR 10–5.220, ''Control of Petroleum Liquid, Storage, Loading, and Transfer.'' These revisions were adopted after proper notice and public hearing. The hearing was held on July 27, 1995. Revisions to 10 CSR 10–2.260 are being submitted to help Kansas City maintain the ozone standard. Revisions to 10 CSR 10–2.250 are being submitted as part of the state's plan to attain the ozone standard in St. Louis.

The amendment to Missouri rule 10 CSR 10–2.260 (specific to the Kansas City metropolitan area) changes the periods for testing tank trucks that have rubber hoods from April 1 through July 1 to January 1 through May 30 of each year. The purpose of requiring tank trucks with rubber hoods to be tested during the aforementioned schedule is to give the state an opportunity to identify problems or possible leaks in the gasoline transfer process before the ozone season. The testing period for aluminum hoods will take place in the period of January 1 through December 31 of each year. Requiring tank trucks with aluminum hoods to be tested during the previously mentioned schedule provides the state the opportunity to test trucks before the ozone season, but also provides the flexibility to continue testing throughout the year. In addition, the revisions add two forms for reporting. One form is a leak test application which is to be completed by the owner or operator of the facility and provided to the director. The second form is a request for exemption form which is to be completed by facility personnel to request an exemption.

The amendment to Missouri rule 10 CSR 10–5.220 (specific to the St. Louis nonattainment area) requires bulk plants to use two new forms. One form requires bulk plants to report the throughput when they apply for an exemption. This form provides documentation for eligible facilities to seek an exemption. The second revision requires sources to submit an application form to obtain a sticker that certifies passage of required tests by gasoline tank trucks.

I. Proposed Action

The EPA is proposing to approve amendments to rules 10 CSR 10–2.260 and 10 CSR 10–5.220 as a revision to the Missouri SIP.

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

II. 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 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., the 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, the 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 (CAA) do not create any new requirement, 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 CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed 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 preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 26, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 96–32971 Filed 12–26–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 96–20]

Port Restrictions and Requirements in the United States/Japan Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rule; extension of comment period.

SUMMARY: This extends the comment deadline in regard to the Commission's proposed imposition of fees on liner vessels operated by Japanese carriers calling at United States ports in an effort to adjust or meet apparent unfavorable conditions caused by Japanese port restrictions and requirements.

DATES: Comments due on or before January 20, 1997.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Commission's Notice of proposed rulemaking in this proceeding, published November 13, 1996 (61 FR 58160), proposed countervailing burdens on Japanese ocean carriers designed to adjust or meet apparent unfavorable conditions caused by Japanese port restrictions and requirements. Sixty days were allowed for filing comments. The current deadline is January 13, 1997.

Counsel for the Japanese Lines now has filed a request for a 45-day enlargement of the comment period to February 27, 1997. Counsel cite as justification for their request intergovernmental meetings regarding this matter scheduled for January 6–7, 1997, a week before comments are due, and the intervening holiday schedule. Counsel for Sea-Land Service, Inc. and American President Lines, Ltd. have responded in general opposition to the request, but state that they have no objection to a one-week extension of the filing deadline.

The Commission has determined that an extension limited to one week should be granted. This would move the filing deadline to January 20, 1997, which would provide roughly two weeks after completion of the intergovernmental meetings for parties to finalize and submit comments. This should be sufficient in the circumstances.

By the Commission

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 96–32902 Filed 12–26–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[Gen Docket No. 83–484; RM 3739; DA No. 96–2159]

Personal Attack and Political Editorial Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of invitation to file updated comments.

SUMMARY: This Public Notice invites interested parties to file updated comments in General Docket No. 83–484 concerning the Commission's proposal to repeal or modify the personal attack and political editorial rules. Comments were filed in that proceeding in 1983, but no Report and Order has been issued. The Commission has received petitions from the Radio-Television News Directors Association (''RTNDA'') and other parties urging the Commission to repeal the personal attack and political editorial rules. In addition, on September 17, 1996, RTNDA filed in the United States Court of Appeals for the D.C. Circuit a Petition for a Writ of Mandamus, asking the Court to direct the Commission to act on a 1987 RTNDA petition seeking repeal of the rules. In view of the length of time that has passed since conclusion of the pleading cycle in General Docket No. 83–484, and in light of the Commission's subsequent decision to end enforcement of the fairness doctrine as described in the 1987 RTNDA petition, we believe it is appropriate to update the record in this proceeding by affording interested parties an opportunity to file additional comments in General Docket No. 83–484 concerning the Commission's proposal to repeal the rules.

DATES: Comments are due February 10, 1997, and reply comments are due March 12, 1997.

ADDRESSES: Federal Communications Commission, 2000 M Street, Room 543, Washington, DC, 20554.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Mass Media Bureau, (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice, released December 19, 1996, inviting updated comments regarding the personal attack and political editorial rules. The complete text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of Public Notice

The Commission has received petitions from the Radio-Television News Directors Association (''RTNDA'') and other parties urging the Commission to repeal the personal attack and political editorial rules, 47 CFR §§ 73.1920, 73.1930. In addition, on September 17, 1996, RTNDA filed in the United States Court of Appeals for the D.C. Circuit a Petition for a Writ of Mandamus, asking the Court to direct the Commission to act on a 1987 RTNDA petition seeking repeal of the rules. By this Public Notice, interested parties are invited to file updated comments in the Commission's pending rulemaking proceeding concerning the above-referenced rules.

By way of background, in 1983 the Commission proposed to repeal or modify the personal attack and political editorial rules. *See Notice of Proposed Rulemaking,* Gen. Docket 83–484, RM–3739, 48 FR 28295 (June 21, 1983). The Commission also sought comment on possible repeal of the rules insofar as they apply to cable systems. Comments were filed in the proceeding in 1983, but no Report and Order has been issued. On August 25, 1987, RTNDA and others filed a ''Joint Petition for Expedited Rulemaking Action and for Clarification of Memorandum Opinion and Order Ending Enforcement of the Fairness Doctrine'' (''Joint Petition''), urging the Commission to: (1) Issue a Report and Order in General Docket 83–484 repealing the personal attack and political editorial rules; and/or (2) clarify that in light of the decision to end enforcement of the fairness doctrine, in *In re Complaint of Syracuse Peace Council Against Television Station WTVH, Syracuse, New York,* 2 FCC Rcd. 5043 (1987), *recon. denied,* 3 FCC 2d 2035 (1988), *aff'd sub nom. Syracuse Peace Council* v. *FCC,* 867 F.2d 654 (D.C. Cir. 1989), *cert. denied,* 493 U.S. 1019 (1990) (''*Syracuse Peace Council*''), the personal attack and political editorial rules will no longer be applied to broadcast licensees. On January 22, 1990, RTNDA and four other parties filed another petition, renewing the request that the Commission repeal the personal attack and political editorial rules.

In view of the length of time that has passed since conclusion of the pleading cycle in General Docket No. 83–484, and in light of the Commission's subsequent decision to end enforcement of the fairness doctrine as described in the 1987 RTNDA petition, we believe it is appropriate to update the record in this proceeding by affording interested parties an opportunity to file additional comments in General Docket No. 83–484 concerning the Commission's proposal to repeal the rules. Comments must be filed on or before February 10, 1997, and reply comments must be filed by March 12, 1997. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. All comments should reference General Docket No. 83–484 and should be addressed to: Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. The full text of

the submissions are available for viewing and copying in the Public Reference Room, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. Copies may also be purchased from the Commission's copy contractor, International Transcription Service ((202) 857–3800).

List of Subjects

47 CFR Part 73

Political candidates, Radio broadcasting, Television broadcasting.

47 CFR Part 76

Cable television, Political candidates.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 96–32933 Filed 12–23–96; 12:09 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[Docket No. 961211348–6348–01; I.D. 121196A]

RIN 0648–AH77

Atlantic Shark Fisheries; Limited Access Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement the limited access system contained in proposed Amendment 1 to the Fishery Management Plan for Atlantic sharks (FMP). If approved, Amendment 1 would establish a two-tiered permit system for the Atlantic shark commercial fishery, set forth eligibility criteria for these permits based on historical participation, and limit the transferability of such permits. NMFS has determined that the Atlantic shark fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to the harvest level prescribed by the recovery plan. NMFS is holding public hearings and requesting written comments from the public on this proposed rule. The objective of this amendment is to take a first and significant step to prevent further overcapitalization.

DATES: Written comments on this proposed rule must be received on or before February 18, 1997.

ADDRESSES: Comments on this proposed rule should be sent to William Hogarth, Acting Chief, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Copies of Amendment 1, which includes an Environmental Assessment (EA) and Regulatory Impact Review (RIR), are available from Margo Schulze, Fishery Biologist, at the same address. See **SUPPLEMENTARY INFORMATION** for hearing locations. Comments regarding the collection-of-information requirement required in this rule should be sent to Margo Schulze and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Margo Schulze or John Kelly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Background

The fishery for Atlantic sharks is managed under the FMP prepared by NMFS under authority of section 304(g) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended, and implemented on April 26, 1993, through regulations found at 50 CFR part 678. The FMP established three species management groups, commercial quotas and recreational bag limits, fishing seasons, mandatory vessel reporting, and required commercial vessel permits (with an earned income requirement). The Atlantic shark fishery has operated under open access.

On February 22, 1994, a notice of control date for entry into the Atlantic shark fishery was published in the Federal Register (59 FR 8457). This notice announced that anyone entering the fishery after that date (the ''control date'') may not be assured of future access to the fishery if some form of limited access were implemented later.

Currently, there are more vessels permitted in the fishery than are necessary or desirable to harvest the available total allowable catch (TAC). During 1993–96, the number of commercial vessels permitted in the fishery has fluctuated between approximately 1,500 and 2,748 vessels, while the TAC has been harvested by about 100 to 150 vessels (approximately 3 to 5 percent of the permitted fleet).

Need for Limited Access

The creation of a limited access system would be an initial step toward achieving a more reasonable balance between the harvesting capacity of the permitted fleet and the TAC. Implementation of proposed limited access would, at a minimum, prevent further increases in the number of permits in the fisheries that target sharks and would dramatically reduce the number of speculative permit holders (those without significant, documented landings of Atlantic sharks).

While a limited access system alone would not resolve all of the problems associated with open access fisheries (e.g., derby fishing conditions, ''the race for fish,'' market gluts), it would help prevent them from becoming more severe. Additionally, considerable public comment subsequent to the scoping meetings convened by NMFS indicates increased support for limited access from the directed shark fishing industry.

A limited access system would stabilize fleet size and provide an opportunity for NMFS to collect data, conduct studies, and work cooperatively with fishery participants and other constituents to develop a more flexible, permanent, effort control program in the future.

Permit Categories

NMFS proposes to implement a two-tiered commercial fishing permit system in which permits would be classified as ''directed'' or ''incidental.'' The reason for issuing two types of permits is to define and regulate the directed shark fishery separately from commercial fisheries that target other species but take sharks as bycatch. Only persons holding directed fishery permits would be eligible to participate in directed fisheries under the management measures already established, while those holding incidental permits would be restricted to the bycatch fishery with more restrictive management measures. NMFS proposes to restrict access to both the directed and incidental shark fisheries.

Eligibility Criteria

Only person or entities that held a shark permit at any time from July 1, 1994, through December 31, 1995, who have documented landings equal to or above the specified directed or incidental threshold levels of historical participation in the shark fishery, who meet the current earned income requirement, and who own a shark-permitted vessel at the time of

publication of the final rule would receive a directed or incidental commercial permit, respectively.

It is considered that catch histories belong to current permit holders rather than to vessels; i.e., if a shark permit holder sells one vessel and buys another, he/she retains the history of the vessel sold and does not acquire the history of the vessel purchased. Thus, it is considered that persons or entities purchasing existing shark vessels have not also purchased that vessel's catch history (since the fishery is currently open access, it would be imprudent for someone to pay money for a catch history from which he/she may never benefit). However, the establishment of a control date by NMFS has changed this assumption as several vessels were purchased after the control date with stipulations that the catch history of the purchased vessel was purchased as well. Accordingly, NMFS will accept legal documentation of transfers of catch histories in the determination of eligibility.

These eligibility criteria are proposed because the majority of existing shark permit holders have not participated in the fishery (have not had significant reported landings of sharks). If all current shark permit holders were to be allowed future participation in the commercial shark fishery, there would be potential to reach or even to exceed greatly the TAC in a short time. Given the overfished status of large coastals and the fully fished status of pelagics and small coastals, exceeding the TAC could have substantial long-term negative impacts on these resources.

For the directed fishery, NMFS proposes a minimum landings threshold of 250 sharks from January 1, 1991, through February 21, 1994, and 125 sharks from February 22, 1994 (the control date), through June 30, 1995 (which is equivalent to having landed sufficient shark each year on average to earn $5,000 per year in gross revenue). NMFS estimates that 134 vessels would be eligible for directed shark permits under this landings criteria.

For the incidental fishery, NMFS proposes a minimum landings threshold of three sharks from January 1, 1991, through February 21, 1994, and two sharks from February 22, 1994 (the control date), through June 30, 1995. NMFS estimates that 279 vessels would be eligible for incidental shark permits under this landings criteria.

If a vessel were sold after the control date and its landings history were included specifically in the written sales agreement, such landings would accrue to the purchaser (and no longer to the seller) for purposes of qualifying for a directed or incidental permit under the proposed limited access system.

Permit Process

NMFS would identify and notify all permit holders of their eligibility status for the directed or incidental shark fishery, after analysis based on the established eligibility criteria.

Upon receipt of this initial notification, eligible permit holders may submit an application for a directed or incidental fishery permit. If a permit holder is informed that he or she does not qualify for a permit, but he or she believes that there is credible evidence to the contrary, the permit holder may apply for a permit and provide the appropriate documentation. NMFS would then evaluate all applications and any accompanying documentation, and notify the applicant of its decision either to accept or deny the permit application.

If the permit application is denied, the applicant may appeal within 90 days of receipt of the notice of denial. Provisional directed or incidental fishery permits, as appropriate, would be issued, pending the outcome of an appeal, until the final decision has been rendered. All appeal decision letters would be mailed via certified mail. If the appeal is denied, provisional permits would become invalid 5 days after the receipt of the notice of denial. If the appeal is approved, provisional permits would become invalid upon receipt of the appropriate permit.

Only owners or operators of permitted vessels that were permitted at any time from July 1, 1994, through December 31, 1995, would be considered for appeal. All appeals would need to be made in writing. To appeal, the applicant would complete an appeal cover sheet with the name, affiliation (if any), address, and telephone number of the applicant. Additional pages and documentation could be attached, as necessary.

The sole ground for appeal would be that NMFS used incorrect or incomplete data in the eligibility analysis. No hardship cases would be heard. Valid documentation of landings covering the eligibility period would be required for consideration of an appeal. Documentation that would be considered in support of an appeal from fishers who believe they qualify for a directed or incidental fishery permit would be restricted to official NMFS logbook records that have been submitted to NMFS prior to August 30, 1995 (60 days after the cutoff date for eligible landings); official, verifiable sales slips or receipts from registered dealers; and state landings records. Dealer sales slips or receipts would have to show definitively the species and the vessel's name or other traceable indication of the harvesting vessel. Dealer records would have to contain a sworn affidavit by the dealer confirming the accuracy and authenticity of the records.

While photocopies would be acceptable for initial submission, NMFS might request originals at a later date, which would be returned to the applicant via certified mail. Any submitted materials of questionable authenticity would be referred for investigation to NMFS' Office of Enforcement.

NMFS would designate appeals officers, who would be NOAA employees. The appeals officers would individually review cases but would confer regularly to ensure consistency.

The appeals officers would review appeals for no more than 30 days before making a recommendation to the Director of the Office of Sustainable Fisheries (Director). The Director would render the final decision for the Department of Commerce. All denial letters would be sent by certified mail with return receipt so that NMFS would know when letters were received by permit holders.

Restrictions on Transfer of Permits

NMFS recognizes that vessels may sink or deteriorate beyond repair, and vessel owners may have valid reasons for wishing to exit the fishery. NMFS proposes to create a system in which directed commercial permits would be transferable with the sale of the permitted vessel, or to a vessel of similar harvesting capacity, or a replacement vessel owned or purchased by the original permittee but not under any other circumstances. Such transfers would be subject to upgrading restrictions (defined in next section). Incidental permits would not be transferable. NMFS recognizes that the same factors present in the directed fishery (e.g., vessel sinking or deterioration, disability, retirement) would also be present in the incidental fishery and that non-transferability of incidental permits would eventually result in the elimination of the incidental fishery through attrition. However, NMFS believes that allowing transferability of incidental permits could result in substantial increases in fishing effort levels. Prohibiting transferability of incidental permits would slow the growth of fishing effort in the limited access fishery.

In years after 1997, the eligibility criteria to which initial limited access permit holders are subject would not apply. In other words, transferees/

buyers of limited access vessel permits would not be required to meet the initial limited access eligibility criteria, (i.e., having held a shark permit at any time from July 1, 1994, through December 31, 1995; having met the landings thresholds and the earned income requirement; and owning a vessel at the time of publication of the final rule).

Restrictions on Vessel Upgrading

NMFS proposes to require that any vessel to which a permit is transferred be defined as the ''new'' vessel and be required to have the same or less gross registered tonnage and registered length as the originally permitted vessel. This restriction would apply to ''replacement vessels,'' or those vessels acquired by the original permittee to replace originally permitted vessels, and to ''new vessels,'' or those vessels not originally permitted but to which a permit has been transferred after the original permittee has sold the permit. This restriction would also apply to the refurbishment of existing permitted vessels.

Ownership Limits

NMFS proposes to restrict the number of permitted vessels that any one person or entity could own or control to no more than 5 percent of the permitted vessels in the directed fishery. This would prevent significant consolidation and maintain the historically predominant individual owner/operator character of the shark fishery.

Incidental Harvest Limits

Without limits on the harvest of bycatch, the potential would exist for the incidental fishery to target and harvest significant numbers of sharks. This would defeat the purpose of the two-tiered commercial permit system. For these reasons, NMFS proposes to establish a harvest limit for the incidental fishery at a maximum of four sharks (all species combined) per vessel per day. Vessel logbooks would be examined to determine the dates of trip origin and termination (number of days) to ascertain the authorized harvest limit for each trip, with the number of days of the trip multiplied by 4 as the maximum number of sharks of all species authorized per trip.

NMFS believes that establishing a limit of four shark per vessel per day for the commercial incidental fishery would ensure that fishing mortality on the overfished large coastal stock does not increase, while still providing the opportunity for incidental fishers to land some bycatch. The rationale for combining all species groups is that a single catch limit would minimize fishing mortality on the overfished large coastal sharks, prevent increases in fishing mortality on the fully fished pelagic and small coastal sharks, reduce the incentive to target sharks while fishing for other species, and greatly facilitate enforcement. A limit of four sharks per vessel per day limit for the incidental limit would be restrictive for the pelagic longline fisheries, which often catch substantial numbers of pelagic sharks as bycatch. However, at this time, most pelagic sharks are released except for makos and threshers, which are harvested for their valuable fins, and porbeagles, for which there is a small directed fishery. Current estimates of effective fishing mortality on pelagic sharks indicate that significant increases in fishing mortality would likely result in overfishing. The proposed incidental limit, in conjunction with the limited number of permits that would be issued for the incidental category under the proposed limited access system (approximately 279 permits), would allow some sharks caught as bycatch to be landed, while an increase in the current level of fishing mortality would be prevented.

Fees

The Regional Director may charge a fee to recover the administrative expenses of permit issuance and appeals. The amount of the fee would be determined, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Director, for determining administrative costs of each special product or service. The fee would not exceed such costs and would be specified with each application form. The appropriate fee would be required to accompany each application. Failure to pay the fee would preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded would invalidate any permit.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The Assistant Administrator has preliminarily determined that the proposed regulations are necessary for management of the Atlantic shark fishery. NMFS prepared a draft EA for this proposed rule with a preliminary finding of no significant impact on the human environment. NMFS reinitiated consultation on the Atlantic shark fishery under section 7 of the Endangered Species Act on September 25, 1996. This consultation will consider new information concerning the status of the northern right whale. NMFS has determined that proceeding with this rule, pending completion of that consultation, will not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. This rule would reduce the number of permits in the Atlantic shark commercial fishery and freeze the harvesting capacity of the fleet at current levels, thereby preventing further overcapitalization and derby fishing conditions and would likely reduce interaction rates.

The Assistant General Counsel for Legislation and Regulations 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 establish a two-tiered limited access permit system for the Atlantic shark fishery, set forth eligibility criteria for these permits based on historical participation, and limit the transferability of such permits. The Atlantic shark fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to the harvest level prescribed by the recovery plan.

The purpose of this proposed rule is to rationalize current harvesting capacity with total allowable catch and substantially reduce latent effort without significantly altering the status quo in the Atlantic shark fishery. Practically all current participants of the shark fishery readily fall within the definition of small business. The proposed rule will affect all current permit holders in the Atlantic shark fishery. However, few if any shark fishers that are substantially dependent on the fishery would be excluded under the proposed limited access rule.

Speculative permit holders, by definition, have not participated in the commercial shark fishery at all or have not been substantially dependent on the fishery. The incidental bycatch limits continue to provide for speculative commercial fishers to land some sharks; accordingly, annual gross revenues should not decrease substantially.

Therefore, redefining commercial shark permits as directed and incidental will not significantly alter the status quo of the Atlantic shark fishery in terms of fishers' annual gross revenues. Since the proposed rule will not significantly impact presently active shark fishers, the ''significant economic impact'' criterion will not be met. Therefore, the substantive changes proposed are minimal, primarily affecting the applicability of permitting requirements.

Any of the proposed limited entry measures have implications on the gross revenues of small entities. In essence, those that will be excluded from any form of limited entry system will experience

reduction in their gross revenues at least in the short run. If qualification for any form of limited entry is similar to the one adopted for the species endorsement and bycatch while limited is allowed, those excluded would probably not experience more than a 5 percent reduction in their gross revenues.

The substantive changes proposed primarily affecting the applicability of permitting requirements. The need for these changes is explained in the preamble to the proposed rule.

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 (PRA) unless that collection of information displays a currently valid OMB Control Number.

This proposed rule does not change any currently approved vessel permitting or reporting requirements under OMB Control Numbers 0648–0205, which is estimated and approved at 20 minutes per permit application, and 0648–0016, which is estimated and approved at 15 minutes per logbook report. However, the appeals procedure does constitute a new collection-of-information requirement, which has been submitted to OMB for approval. An appeal of a permit denial is estimated to take 1.5 hours, including the time to gather records, make copies, and mail documents to NMFS. Comments regarding: (1) the accuracy of this burden estimate (including hours and cost); (2) whether the proposed collection of information is necessary for the proper performance of NMFS' functions, including whether the sought information has practical utility; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information; and (5) any other aspects of information collection should be sent to OMB and NMFS (see **ADDRESSES**).

This action has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 678

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 20, 1996.

Nancy Foster,

Deputy Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 678 is proposed to be amended as follows:

PART 678—ATLANTIC SHARKS

1. The authority citation for part 678 continues to read as follows:

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

2. In § 678.2, a definition for ''Director'' is added, in alphabetical order, to read as follows:

§ 678.2 Definitions.

* * * * *

Director means the Director, Office of Sustainable Fisheries F/SF, NMFS, or a designee.

* * * * *

3. In § 678.4, paragraphs (a) through (c) and (e) through (k) are revised to read as follows:

§ 678.4 Permits and fees.

(a) *Vessel permits.* Any owner or operator of a vessel of the United States that fishes for, possesses, or lands Atlantic sharks from the management unit, except vessels that fish for Atlantic sharks exclusively in state waters, and recreational fishing vessels, must obtain and carry on board a valid Federal shark permit issued under this paragraph.

(1) *Limited access eligibility in 1997.* NMFS will issue two types of Atlantic shark vessel permits: Directed and incidental. To be eligible to obtain a shark permit for 1997, a vessel owner or operator must have held a valid Federal commercial shark permit at any time from July 1, 1994, through December 31, 1995, must meet the earned income qualification specified in paragraph (b)(1)(vi) of this section, and must own or operate a vessel with a valid shark permit on the date of publication of the final rule.

(i)(A) Directed permits will be issued only to eligible permit holders that have documented landings of at least 250 sharks from January 1, 1991, through February 21, 1994, and 125 sharks from February 22, 1994, through June 30, 1995.

(B) Incidental permits will be issued only to eligible permit holders that have documented landings of three sharks from January 1, 1991, through February 21, 1994, and two sharks from February 22, 1994, thorough June 30, 1995.

(ii) If the vessel owner does not meet the limited access criteria specified in paragraph (a)(1) of this section and the earned income qualification specified in paragraph (b)(1)(vi) of this section and the operator does meet those qualifications, the operator may apply for a shark permit.

(iii) A shark permit for 1997 will not be issued unless an application for such permit is received by NMFS on or before December 31, 1997.

(2) *Eligibility in 1998 and thereafter.* To be eligible for a shark permit in years after 1997, a vessel owner or operator must have been issued a shark permit for the preceding year or the vessel must be replacing a vessel that has been retired from the Atlantic commercial shark fishery and had been issued a shark permit for the preceding year, and the vessel and owner must meet the criteria set forth in paragraphs (a)(4) through (a)(6) of this section. If more than one vessel owner claims eligibility to apply for a shark permit based on one vessel's fishing and permit history after 1997, the Regional Administrator shall determine who qualifies for the limited access Atlantic shark vessel permit according to paragraph (a)(3) of this section.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to be retained by the original permit holder whenever the vessel is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is transferring/selling the vessel's fishing and permit history.

(4) *Permit transfer.* Directed permits are transferable to a new vessel and/or owner or to a replacement vessel owned or purchased by the original permittee but not under any other circumstances. Such transfers are subject to the requirements specified in paragraph (a)(5) of this section. Incidental permits are not transferable or assignable; incidental permits are valid only for the vessel and owner or operator of original issuance.

(5) *Vessel replacement/upgrading.* Transfer of directed shark permits is authorized only for new or replacement vessels of the same or lesser gross registered tonnage and registered length as the originally permitted vessel.

(6) *Ownership limits.* One person or entity may own or control no more than 5 percent of the vessels in the directed shark fishery.

(7) *Notification of eligibility for 1997.* (i) NMFS will attempt to notify all current commercial shark permit holders of their eligibility for a directed or incidental shark permit, based on the eligibility criteria set forth in paragraph (a)(1) of this section. Upon receipt of this determination, eligible permit holders may submit an application for the appropriate permit.

(ii) If a vessel owner or operator has been notified that the vessel is not eligible for a directed shark permit or is only eligible for an incidental shark permit, and the vessel owner or operator can provide credible evidence that the

vessel does qualify under the pertinent criteria, the vessel owner or operator may apply for the appropriate permit by submitting the documentation required under paragraph (9)(ii) of this section. If, based on the documentation supplied with the application, NMFS determines that the vessel meets the eligibility criteria, the appropriate permit will be issued.

(8) *Application denial.* If, based on the documentation supplied with the application, NMFS determines that the vessel does not meet the eligibility criteria specified in paragraphs (a)(1) and (a)(2) of this section or the conditions specified in paragraph (e) of this section, the permit will be denied. Letters of denial will be sent via certified mail.

(9) *Appeals.* (i) Any applicant denied a limited access permit for Atlantic shark vessels may appeal the denial to NMFS within 90 days of the notice of denial. The sole ground for appeal is that NMFS erred in its determination of eligibility on the basis of incorrect or incomplete data. Valid documentation of landings covering the eligibility period as specified in paragraph (a)(9)(ii) of this section must be provided by the applicant for NMFS to consider an appeal. Photocopies will be acceptable for initial submission. NMFS may request originals at a later date, which will be returned to the applicant via certified mail. Any such appeal must be in writing. Documentation that is of questionable authenticity will be referred for investigation to NMFS' Office of Enforcement.

(ii) *Valid documentation.* The only documentation that will be considered in support of an application or appeal are official NMFS logbook records that were submitted to NMFS prior to August 30, 1995, state landings records, and official, verifiable sales slips or receipts from registered dealers. Dealer sales slips and receipts must definitively show the species landed and vessel's name or other traceable information for the harvesting vessel and must contain a sworn affidavit by the dealer confirming the accuracy and authenticity of the records.

(iii) *Status during appeal.* The Regional Director shall issue a provisional permit for the category of appeal for, which shall be valid for the pendency of the appeal to a vessel and owner for which an appeal has been initiated. The provisional permit must be carried on board the vessel while participating in the Atlantic shark fishery and is not transferable.

(iv) *Appeals officers.* NMFS will appoint appeals officers, who will review the written materials and submit findings and a recommendation to the Regional Director within 30 days of receipt of a complete appeal.

(v) *Final decision on appeals.* Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(vi) *Notification of final decision on appeals.* The Regional Director shall notify the appellant of the final decision on the appeal by letter sent via certified mail. If the appeal is denied, the provisional permit will become invalid 5 days after receipt of the notice of denial. If the appeal is granted, the provisional permit will become invalid upon receipt of the appropriate permit.

(10) *Adjustments to eligibility.* In years after 1997, NMFS may adjust the eligibility criteria for issuance of a shark permit. In making the adjustment, NMFS shall take into consideration the fishing mortality goals and the objectives of the FMP. Any such adjustment may be made following a reappraisal and analysis under the framework provisions specified in § 678.27.

(11) *Condition.* A vessel owner who applies for a shark permit under this section must agree, as a condition of the permit, that the vessel's shark fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, landward of the EEZ, or outside the EEZ, and without regard to where such shark or gear are possessed, taken, or landed. However, when a vessel fishes in the waters of a state that has more restrictive regulations on shark fishing, those more restrictive regulations may be applied by that state to fishing, catch, and gear in its waters.

(b) *Application for a shark permit.* (1) In the year 1997, an initial application for a shark permit must be submitted and signed by the owner (in the case of a corporation, the qualifying officer or shareholder; in the case of a partnership, the qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. An applicant must provide the following:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name, official number, registered gross tonnage, and registered length.

(iii) Name, mailing address including ZIP code, telephone number, and social security number, and date of birth of the owner (if the owner is a corporation/partnership, in lieu of the social security number, the employer identification number, if one has been assigned by the Internal Revenue Service (IRS), and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) If the owner does not meet the earned income qualification specified in paragraph (b)(1)(vi) of this section and the operator does meet that qualification, the name, mailing address including ZIP code, telephone number, social security number, and date of birth of the operator.

(v) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as specified on the application form.

(vi) A sworn statement by the applicant (if the applicant is a corporation or partnership, by an officer, shareholder, general partner, or if the applicant is an operator, by the operator) certifying that, during 1 of the 3 calendar years preceding the application:

(A) More than 50 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, or from charter or headboat operations;

(B) His or her gross sales of fish were more than $20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish of the corporation or partnership were more than $20,000.

(vii) Documentation supporting the statement of income, if required under paragraph (b)(1)(x) of this section.

(viii) A sworn statement that the applicant agrees to the conditions specified in paragraph (a)(11) of this section.

(ix) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(x) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(1)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (h) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential.

(2) In years after 1997, a shark permit holder may apply for a shark permit renewal, provided that the initial information under which the permit holder qualified for a shark permit has not changed as specified in paragraph (k) of this section. Shark permits must be renewed annually and renewal applications must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. Only a holder of a valid shark permit is eligible for a renewal of that permit.

(3) In years after 1997, an application for permit transfer of a directed shark permit to a new vessel and/or owner will be authorized, subject to transfer and upgrading restrictions specified in paragraphs (a)(4) and (a)(5) of this section, respectively. Incidental shark permits are not transferable. All other requirements and restrictions specified in this part apply to transferred limited access permits and permit holders.

(c) *Dealer permits.* A dealer who receives sharks from the management unit must have a valid dealer permit issued under this part. An application for an annual dealer permit must be submitted and signed by the dealer or an officer of a corporation acting as a dealer. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(1) A permit applicant must provide the following:

(i) A copy of each state wholesaler's license held by the dealer.

(ii) Business name; mailing address, including zip code, of the principal office of the business; employer identification number, if one has been assigned by the Internal Revenue Service; and date the business was formed.

(iii) The address of each physical facility at a fixed location where the business receives fish.

(iv) Applicant's name; official capacity in the business; address, including zip code; telephone number; social security number; and date of birth.

(v) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(2) *Transfer.* A dealer permit issued under paragraph (c)(1) of this section may be transferred upon sale of the dealer's business. However, such transferred permit shall expire 30 days after sale of the dealer's business. A person purchasing a permitted dealership who desires to conduct activities for which a new permit is required after that 30-day period must apply promptly for a permit in accordance with paragraph (c) of this section.

* * * * *

(e) *Issuance*—(1) Limited access shark permits. Except as provided in subpart D of 15 CFR part 904 and under paragraphs (a)(8) and (a)(9) of this section, the Regional Director shall issue a Federal shark permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a complete application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 678.5;

(ii) The application was not received by NMFS by the deadlines set forth in paragraph (a)(1)(v) of this section;

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraphs (a)(1) and (a)(2) of this section; or

(iv) The applicant has failed to meet any other application requirements stated in this part.

(2) *Dealer permits.* The Regional Director will issue a dealer permit at any time to an applicant if the application is complete. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 678.5(a) or § 678.5(b).

(3) *Incomplete applications.* Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 90 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it, and the conditions accepted upon its issuance remain in effect for that period, unless the vessel is retired from the shark fishery or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Display.* A vessel permit issued pursuant to paragraphs (a)(9)(iii) or (b) of this section must be carried on board the vessel, and such vessel must be identified as required by § 678.6. A dealer permit issued pursuant to paragraph (c) of this section must be available on the dealer's premises. The operator of a vessel or a dealer must present the permit for inspection upon the request of an authorized officer.

(h) *Sanctions and denials.* A permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(i) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(j) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement permit.

(k) *Change in application information.* The owner or operator of a vessel with a shark permit or a dealer with a permit must notify the Regional Director within 30 days after any change in the application information required by paragraphs (a), (b), or (c) of this section. The permit is void if any change in the information is not reported within 30 days.

* * * * *

4. In § 678.7, paragraphs (b), (k) through (m), (p), (q), (x), and (y) are revised to read as follows:

§ 678.7 Prohibitions.

* * * * *

(b) Fail to display a permit, as specified in § 678.4(g).

* * * * *

(k) Remove the fins from a shark and discard the remainder, as specified in § 678.22(b)(1).

(l) Possess shark fins, carcasses, or parts, aboard or offload shark fins from a fishing vessel, except as specified in § 678.22, or possess shark carcasses or parts aboard, or offload shark fins, carcasses, or parts, from a vessel, except as specified in § 678.22(d).

(m) Fail to release a shark in the manner specified in § 678.22(c).

* * * * *

(p) Land or possess on any trip, shark in excess of the vessel trip limit, as specified in § 678.22(d).

(q) Transfer a shark at sea, as specified in §§ 678.22(d)(3) and 678.23(e).

* * * * *

(x) Exceed the vessel trip limits, as specified in § 678.22(d).

(y) Purchase, trade, or barter, or attempt to purchase, trade, or barter, a shark from the management unit without an annual dealer permit, as specified in § 678.4(c).

* * * * *

5. Section 678.22 is revised to read as follows:

§ 678.22 Harvest Limitations.

(a) *Limited access permit restrictions.* (1) Only holders of valid directed shark

permits issued pursuant to § 678.4 may target and harvest sharks under the specifications outlined in §§ 678.20, 678.21, and 678.24 through 678.28.

(2) Only holders of valid incidental shark permits issued pursuant to § 678.4 may retain a maximum of four sharks (all species combined) per vessel per day.

(b) *Finning.* (1) The practice of ''finning,'' that is, removing only the fins and returning the remainder of the shark to the sea, is prohibited in the EEZ or aboard a vessel that has been issued a permit pursuant to § 678.4.

(2) Shark fins that are possessed onboard or offloaded from a fishing vessel must be in proper proportion to the weight of carcasses. That is, the weight of fins may not exceed 5 percent of the weight of the carcasses. All fins must be weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing and such weights of the fins landed must be recorded on the weighout slips submitted by the vessel owner or operator under § 678.5(a).

(3) Shark fins may not be possessed onboard a fishing vessel after the vessel's first point of landing.

(c) *Release.* A shark that is harvested in the EEZ or harvested by a vessel that has been issued a permit pursuant to § 678.4 that is not retained—

(1) Must be released in a manner that will ensure maximum probability of survival.

(2) If caught by hook and line, must be released by cutting the line near the hook without removing the fish from the water.

(d) *Vessel trip limits*—(1) *Directed permits.* The owner or operator of a vessel that has been issued a directed shark permit pursuant to § 678.4 may not possess on any trip, or land from any trip, large coastal species in excess of 4,000 lb (1,814 kg), dressed weight.

(2) *Incidental permits.* The owner or operator of a vessel that has been issued an incidental shark permit pursuant to § 678.4 may not possess on any trip, or land from any trip, in excess of four sharks per day of all shark species combined. Vessel logbooks will be the sole criterion used to determine dates of trip origin and termination for each trip.

(3) *Transfer at sea.* A shark from any of the three management units may not be transferred at sea from a vessel issued an Atlantic shark permit issued under § 678.4 to any other vessel.

6. In § 678.26, paragraph (c) is revised to read as follows:

§ 678.26 Restrictions on sale upon landing.

* * * * *

(c) Fins from a shark harvested in the EEZ, or by the owner or operator of a vessel that has been issued a permit under § 678.4, that are disproportionate to the weight of carcasses landed (see § 678.22(b)(2)) may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

* * * * *

[FR Doc. 96–32891 Filed 12–20–96; 4:50 pm]

BILLING CODE 3510–22–W

Notices

Federal Register
Vol. 61, No. 250
Friday, December 27, 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.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency For International Development; Board for International Food and Agricultural Development One Hundred and Twenty-Second Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and twenty-second meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 9:00 a.m. to 5:00 p.m. on January 14, and from 9:00 a.m. to 3:00 p.m. on January 15, 1997, both days, at the Pan-American Health Organization, located at 525 23rd Street N.W., Washington DC, 20523, in Conference Room B.

The agenda will concentrate on issues related to the leadership role of the Agency for International Development in international agriculture.

The meeting is open to the public. Any interested person may attend the meeting, may file written statements with the Committee before or after the meeting, or present any oral statements in accordance with procedures established by the Committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting should contact Mr. George Like at the Agency for International Development, Office of Agriculture and Food Security, SA–2, Room 401–B, Washington, DC, 20523–0214, telephone (202) 663–2553, fax (202) 663–2552 or internet [glike@usaid.gov] with your full name.

Anyone wishing to obtain additional information about BIFAD should contact Mr. Tracy Atwood the Designated Federal Officer for BIFAD. Write him in care of the Agency for International Development, Office of Agriculture and Food Security, SA–2, Room 401K, Washington DC, 20523–0214, telephone him at (202) 663–2536 or fax (202) 663–2552.

Dated: December 17, 1996.

Tracy Atwood,

AID Designated Federal Officer, (Chief, Food Policy Division, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs).

[FR Doc. 96–33009 Filed 12–27–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Market Access Program, Fiscal Year 1997

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice announces an extension of the application period for participation in the Market Access program (MAP) for Fiscal Year 1997 until 5 pm eastern standard time, January 13, 1997.

FOR FURTHER INFORMATION CONTACT:

Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW Washington, DC 20250, (202) 720–4327.

SUPPLEMENTARY INFORMATION: The MAP is implemented by the Commodity Credit Corporation (CCC) in accordance with the regulations set forth in 7 CFR 1485, published February 1, 1995. On October 4, 1996, CCC published a notice in the Federal Register (61 FR 51880) informing prospective applicants for participation in the MAP that all applications had to be received by CCC by 5 p.m. Eastern Standard Time, December 16, 1996.

CCC has determined that the program's goals and purposes can be best served by enabling program managers to consider a broader range of commodities and applicants. Therefore, CCC is extending the period to apply for participation in the MAP until 5 p.m. Eastern Standard Time, January 13, 1997. Applicants must follow the instructions for addressing applications set forth in the October 4, 1996, Notice.

Signed at Washington, D.C. on December 18, 1996.

August Schumacher,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 96–32908 Filed 12–26–96; 8:45 am]

BILLING CODE 3410–10–M

Rural Housing Service

Notice of Availability of Housing Funds; Multi-Family Housing, Single Family Housing

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the availability of housing funds for fiscal year 1997 (FY 1997). This action is taken to comply with 42 U.S.C 1490p which requires that RHS publish in the Federal Register notice of the availability of any housing assistance.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese-Foxworth, Senior Loan Specialist, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Room 5337 (STOP 0781), or Gloria Denson, Senior Loan Specialist, Single Family Housing Processing Division, Room 5334 (STOP 0783), U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250, telephones (202) 720–1604 and (202) 720–1474, respectively. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Programs Affected

These programs or activities are listed in the Catalog of Federal Domestic Assistance under Nos.

10.405 Farm Labor Housing (LH) Grants
10.410 Very Low to Moderate Income Housing Loans
10.415 Rural Rental Housing Loans
10.427 Rural Rental Housing Assistance Payments
10.433 Housing Preservation Grants

Executive Order 12372

The following programs are subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials:

10.405 Farm Labor Housing (LH) Grants
10.415 Rural Rental Housing Loans
10.427 Rural Rental Housing Assistance Payments
10.433 Housing Preservation Grants

Discussion of Notice

7 CFR, part 1940, subpart L contains the formulas and methodology applicable to loan and grant funds.

Rural Housing Service Rural Housing Assistance Program

I. General

A. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, 1997 Appropriations Act, Public Law 104–180 (August 6, 1996), established the Rural Housing Assistance Program (RHAP). RHAP combines eleven programs into one funding account. The Administrator has allocated RHAP budget authorities into program funds in proportion to what was proposed in the President's budget. Each dollar of budget authority may support a different program level dependent upon whether it is a loan or grant program and the nature of the program. In addition to RHAP, the Appropriations Act provided two additional sources of funding which may be available to supplement funding for some of our programs during this fiscal year. These sources include a portion of the Fund for Rural America and excess unobligated funds from the ''Women, Infant, and Children'' (WIC) program.

B. *RHAP Programs.* The programs included in the RHAP are:

1. Direct Community Facility loans,
2. Guaranteed Community Facility loans,
3. Community Facility grants,
4. Rural Housing Preservation Grants,
5. Section 504 Single Family Housing grants,
6. Compensation for Construction Defects,
7. Supervisory and Technical Assistance Grants,
8. Section 515 Direct Multi-Family Housing loans for new construction,
9. Section 538 Guaranteed Multi-Family Housing loans for new construction,
10. Section 521 Rental Assistance for new construction for the Section 515 program,
11. Section 516 Farm Labor Housing grants.

C. RHAP provides flexibility for transfers in budget authority between programs included within RHAP. For FY 1997, up to 20 percent of initial allocations of budget authority may be transferred between the Community Facilities CF) Direct loan, CF Guaranteed loan, and Housing Preservation Grant (HPG) programs.

D. *Empowerment Zone/Enterprise Community (EZ/EC) Earmark.* The appropriations act provided not to exceed $1.2 million in budget authority in RHAP for EZ/EC Communities.

E. *Pooling.* Pooling for programs funded under the RHAP is tentatively scheduled for August 15, 1997. Unexpended RHAP funding will be pooled and may be redistributed between the eleven program areas.

F. *RHAP programs funded for carryover.* The following programs will be funded exclusively from carryover funds from previous years. No funding was required from RHAP funds. These programs are included in the non-RHAP section of this Notice:

1. Section 509 Compensation for Construction Defects.
2. Supervisory and Technical Assistance Grants.

II. Exception Authority

The Administrator, or the Administrator's designee, may, in individual cases, make an exception to any of the requirements of this Notice which are not inconsistent with the authorizing statute if the Administrator finds that application of the requirement would adversely affect the interest of the Government. The Administrator, or designee, may change pooling dates, establish or change minimum or maximum fund usage from set asides and reserves, or restrict participation in set asides and reserves.

Rural Housing Service Rural Housing Assistance Program (RHAP) Multi-Family Housing (MFH)

I. General

A. This provides MFH allocations for the Rural Housing Assistance Program (RHAP) to individual States for FY 1997. Allocation computations have been performed in accordance with 7 CFR 1940.575 and 1940.578. For FY 1997, there is flexibility to transfer up to 20 percent of initial allocations of budget authority between the Community Facilities (CF) Direct loan, CF Guaranteed loan, and Housing Preservation Grant (HPG) programs under certain conditions.

B. Section 515 Rural Rental Housing for new construction, Section 516 Farm Labor Housing (LH) Grants, Section 525 or 509 Housing Application Packaging Grants, and the Housing Preservation Grant (HPG) Program are included under RHAP. For FY 1997, Rural Rental Housing is in two separate funds—one for new construction under the RHAP program and one for repair or rehabilitation and equity loans which is not limited to new construction not included under RHAP. Therefore, the repair or rehabilitation portion of the RRH not limited to new construction, as well as LH loans and LH rental assistance, are covered in the non-RHAP portion of this Notice.

C. MFH loan and grant levels for the available RHAP programs, for FY 1997, are as follows:

Section 515 Rural Rental Housing (RRH) for New Construction	$96,561,280
Section 521 Rental Assistance for RRH New Construction	30,190,000
Section 516 Farm Labor Housing (LH) Grants	6,421,000
Section 533 Housing Preservation Grants (HPG)	7,063,000

II. Section 515 RRH and Section 521 RA Funds (Allocated to the States)

Section 515 new construction loan funds and new construction rental assistance programs cannot be obligated until revised regulations have been promulgated for legislated reforms.

A. Section 515 RRH Loan Funds (for New Construction)

1. *Amount Available for Allocation.* Refer to the end of the RHAP, MFH portion of this Notice:

Total available	$96,561,280
Less set-aside for nonprofits	6,936,938
Less set-aside for underserved counties and colonias	4,828,064
Less general reserve	9,656,128
Less designed reserve	2,500,000
Base allocation	16,232,880
Basic formula amount	56,407,270

2. *Base Allocation.* This provides a distribution of funds to certain States to assure that all States receive at least $1,000,000 to ensure sufficient funding levels for new construction.

3. *Administrative Allocation.* Not used.

4. *Reserves and Set-Asides.*

a. *State Office Reserve.* State Directors are encouraged NOT to hold reserves or sub-allocate funds due to the decrease in funding levels.

b. *National Office Reserves.* These reserves are broken down as follows:

General reserve	$9,656,128
Designated reserve:	
State RA	2,500,000
Total National Office Reserve	12,156,128

(i) *General Reserve.* $9,656,128 in general reserve funds have been set aside. Since access to general reserve

funds cannot be assured or guaranteed, States should not consider potential access to these funds when authorizing Form AD–622, ''Notice of Preapplication Review Action,'' up to the authorized percentage of their allocation. Some examples of allowable uses are as follows:

(A) *Hardships and Emergencies.* The request must include sufficient documentation to support the hardship or emergency including reasons why it is in the Government's best interest to favorably consider the request.

(B) *Patch outs.* A patch out, not to exceed 30 percent of the total loan obligation, when the State needs the additional funds to obligate 100 percent of its allocation.

(C) *RH Cooperatives.* States with approval proposals for cooperative housing may request funds and RA from this reserve.

(ii) *Designated Reserves for State RA.* $2.5 million of the RRH funds has been set aside for matching for projects in which an active State sponsored RA program is available. The State RA program must be comparable to the RHS RA program.

c. *National Office Set-asides.* The following designated and legislatively required set-asides are part of the National Office Set-aside:

Nonprofit set-aside	$6,936,938
Underserved counties and colonias	4,828,064

(i) *Nonprofit Set-Aside.* $6,936,938 has been set-aside for nonprofit applicants. In order to maximize the number of loans from this set-aside, each State may develop one proposal which may not exceed the State's average size (number of units) new construction loan. The amount requested under this reserve per State or jurisdiction cannot exceed $750,000. The applicant must be a nonprofit entity which meets the following conditions:

(1) Is a private nonprofit organization, consumer cooperative or Indian Tribe;

(2) Whose principal purposes include the planning, development and management of low-income housing;

(3) Is exempt from federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code;

(4) Is not wholly or partially owned or controlled by a for-profit entity; and

(5) If a partnership has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary for Section 515 assistance to sponsor a project which is receiving Low-Income Housing Tax Credits (LIHTC) pursuant to section 42 of the Internal Revenue Code of 1986.

(ii) *Underserved Counties and Colonias Set-Aside.* $4,828,064 has been set-aside for loan requests which are located in one of the 100 underscored counties (list available in any Rural Development Office) and colonias, as determined by the provisions of the Cranston-Gonzalez Affordable Housing Act of 1990.

5. *National Office Pooling.* Pooling for programs funded under the RHAP is tentatively scheduled for August 15, 1997. RHAP funding will be pooled and may be redistributed between the eleven program areas.

6. *Participation Loans.* Participation loans are those where other funding sources are participating with RHS in the development of a rural rental housing complex. All provisions of 7 CFR part 1944, subpart E apply to participation loans. Participation loans do not receive any special priority. The ability to approve such loans is tied to the promulgation of revisions to 7 CFR part 1944, subpart E.

7. *Issuing Form AS–622.* The Agency will not issue Form AD–622 authorizing submission of applications for new construction, including the use of reserve funds until regulatory changes to the selection system and initiation of subsidy layering reforms are promulgated. Applications approved, but not funded, will most likely need to be re-submitted for consideration for funding under the new selection system when implemented.

B. Section 515 New Construction Rental Assistance (RA).

1. *Valuation of New Construction RA.* $30,190,000 will be available for RRH new construction RA. This amount equates to an estimated 2,415 units for the new construction RRH loan program.

2. *Estimated New Construction RA Units Available for Allocation.* New construction RA allocations are based proportionately upon each State's new construction loan fund allocation. The allocation formula contained in 7 CFR 1940.576 was not utilized. See the end of this Notice for the new construction RA State allocations.

Estimated total new construction units available	2,415
Less set-aside	559
Less base allocation	0
Less administrative allocation	0
Total state requested new construction RA units	1,856

3. *Base Allocation.* No base allocation is provided.

4. *Administrative Allocation.* No administrative allocation is provided.

5. *RA Set-asides.*

a. *National Office Set-aside.* 309 units will be held in the National Office to accompany RRH set-asides for nonprofits, underserved counties and colonias.

b. *Participation Loans and RA.* 250 units of new construction RA have been set-aside to provide tenant subsidy on units that are developed through participation loans.

6. *National Office Pooling.* Pooling for programs funded under the RHAP is tentatively scheduled for August 15, 1997. RHAP funding will be pooled and may be redistributed between the eleven program areas.

7. *Availability of the Allocation.* The Agency will not issue Form AD–622 authorizing submission of applications for new construction until the aforementioned regulatory reforms are promulgated.

8. *Approval and Obligation of RA.* Loans will only be obligated when sufficient RA to ensure market feasibility can be obligated at the same time. RA for loans obligated in a prior FY will not be authorized.

III. Farm Labor Housing Grant Funds (Not Allocated to States) (LH Loan Funds Are Not Part of RHAP.)

A. *Section 516 LH Grants.* The grants are funded in accordance with 7 CFR 1940.579(b). Unobligated prior year balances and cancellations will be added to the amount shown.

FY 1997 Appropriation	$6,421,000
Available for LH Grants	4,815,750
Available for Technical Assistance Contracts	642,100
National Office Reserve (15 percent)	963,150

B. *National Office Reserve.* A $963,150 LH grant National Office reserve will be available until pooling, tentatively scheduled for close-of-business August 15, 1997, or until expended. The reserve will be used for the following purposes:

1. *Repair and Rehabilitation of LH Projects in the Portfolio.* Loans and grants are available for the repair and rehabilitation of existing projects that have health and safety violations.

2. *Migrant and Migrant and Homeless Projects.* Funds are available for proposals that include at least 50 percent of the units to serve migrant farmworkers or the dual populations of migrant farmworkers and the homeless.

3. *Leveraged LH projects.* While some leverage funds should be used in all LH projects to the degree possible and feasible, reserve funds are available for projects that are highly-leveraged, i.e., projects that have commitments of non-

LH loan and grant funds in excess of 25 percent of total development cost.

C. *National Office Pooling.* Pooling for programs funded under RHAP is tentatively scheduled for August 15, 1997. RHAP funding will be pooled and may be redistributed between the eleven program areas.

D. *Section 516 Technical Assistance (TA) Contracts.* Funds set aside for TA contracts are legislatively limited to 10 percent of funds made available for LH grants. TA is provided for the development of labor housing exclusively for farmworkers and may also be used in those unique agricultural markets where there is also a need for emergency, short-term housing for the local homeless population. The current contracts with the TA providers provide funds through March 31, 1997.

The contracts may be extended for the TA providers to assist current sponsors through the preapplication and application process as well as those sponsors with repair or rehabilitation needs.

E. *RA for LH.* This RA is held in a National Office reserve for use with LH loan and grant applications. RA is only available with a LH loan of at least 5 percent of total development cost. Projects without LH loans cannot receive RA.

F. *National Office Pooling.* Pooling for programs funded under the RHAP is tentatively scheduled for August 15, 1997. RHAP funding will be pooled and may be redistributed between the eleven program areas.

IV. Section 533 Housing Preservation Grants (HPG)

A. *Amount Available for Allocation.*

Total available	$7,063,000
Less reserve	353,150
Less base allocation	1,810,012
Basic formula amount	4,899,838

B. *Base Allocation.* The base allocation is used to provide each State a minimum of $100,000.

C. *Administrative Allocations.* There is no administrative allocation due to the limited amount of funds available for FY 1997.

D. *Reserve.* The National Office reserve is 5 percent of the total funds available. The reserve is for emergencies.

E. *Availability of the Allocation.* A distribution of funds is made to all States. The Agency does not have the authority to waive the statutory rule requiring not more than 50 percent of the State's allocation go to one eligible applicant.

F. *HPG is a competitive grant program.* Opening and closing dates for submission of preapplications will be announced in the Federal Register at a later date. Obligations of HPG requests may not exceed the amounts reflected in this Notice. There will be no funds for patch outs or additional requests.

Rural Housing Service Rural Housing Assistance Program (RHAP) Single Family Housing (SFH)

I. General

A. *Amount available for allocation.* This provides SFH allocations for RHAP programs to individual States for FY 1997. Only the Section 504 Grant program is included in RHAP for SFH.

Amount available for allocations.

Section 504 Grants

Total Available	$15,989,000
Less 5% Set aside for 100 underserved counties or colonias	799,450
Less General Reserve	757,000
Less Targeted Reserve	756,000
Basic Formula-Administrative Allocation	13,676,550

B. *Basic formula criteria, data source, and weight.* See 7 CFR 1940.567(b). Data derived from the 1990 Census was provided to each State by the National Office on August 12, 1993, (available in any State Office). This data must be used if funds are suballocated to below the State level.

C. *Administrative allocation.* Due to the absence of Census Data, the Western Pacific Areas will receive an administrative allocation of $560,000. The minimum amount to a State is $50,000.

D. *Reserve.*

1. *State Office reserve.* State Directors must:

a. Maintain an adequate reserve to fund hardship applications.

b. Develop their own definition of a hardship case. Hardships will be determined by the Agency on a case-by-case basis.

2. *National office reserves.*

a. *General reserve.* The general reserve contains $757,000. Access to the general reserve is only for hardship cases.

(i) For Section 504 Grants, an extreme hardship case is one requiring a significant priority in funding, ahead of other requests, due to severe health or safety hazards, or physical needs of the applicant or community.

(ii) Section 504 grant requests must be reviewed and sufficient documentation must be provided to support the hardship.

b. *Targeted reserve.* Of the 1997 Section 504 grant funds, $756,000 has been set aside for the targeted counties selected by the State Director in accordance with strategic plan goals.

c. *Underserved counties or colonias.* The reserve for the 100 underserved counties and colonias contains $799,450.

E. *Pooling of funds.* Pooling for programs funded under the RHAP is tentatively scheduled for August 15, 1997. RHAP funding will be pooled and may be redistributed between the eleven programs areas.

Rural Housing Service Non-RHAP

I. General

A. *Public Notification.* State Directors are encouraged to notify nonprofit and public housing agencies of the availability of RHS loan and grant funds.

B. *Section 525 or 509 Housing Application Packaging Grants (HAPG).* Carry-over funds from previous years remain available for the HAPG program. HAPG funds will not be allocated by State, based on the historical use of the program.

II. Exception Authority

The Administrator, or the Administrator's designee, may, in individual cases, make an exception to any of the requirements of this Notice which are not inconsistent with the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government.

Rural Housing Service Non-Rural Housing Assistance Programs (Non-RHAP) Multi-Family Housing (MFH)

I. General

A. This provides MFH allocations for programs not in the Rural Housing Assistance Program (RHAP) to individual States for FY 1997. Allocation computations have been performed in accordance with 7 CFR 1940.575 and 1940.578.

B. Section 514 Labor Housing (LH) Loans, Section 515 Loans for repairs and rehibilitation and Equity Loans, Rental Assistance (RA) for labor housing, and MFH Loan Program Credit Sales are covered in this section. Rental Assistance units for servicing and renewal will be distributed separately. All other MFH programs are listed in the RHAP section of this Notice. MFH loan levels for the above mentioned programs, for FY 1997, are as follows:

Section 514 Farm Labor Housing (LH) Loans	$14,512,811
Section 515 Rural Rental Housing (RRH) Loans not limited to new construction	56,571,038
Section 515 Rural Rental Housing (RRH) Loans:	
(New construction is not authorized at this time.)	(See RHAP Section)
Section 516 LH Grants	(See RHAP Section)
Section 521 Rental Assistance (RA):	
RRH New Construction	(See RHAP Section)
LH	4,500,000
Section 525 or 509 Housing Application Packaging Grants*	Carryover
Section 533 Housing Preservation Grants (HPG)	(See RHAP Section)
MFH Loan Programs Credit Sales	3,687,179

* See the RHAP, MFH portion of this notice for further information.

II. State Allocations

State allocations have been developed with the methodology and formulas stated in 7 CFR part 1940, subpart L, except where noted elsewhere.

A. *Repair or Rehabilitation.* States with repair and rehabilitation loans have a separate Section 515 allocation for repair and rehabilitation loans. These funds may not be used for new construction. Tenant health and safety continues to be a priority. Allocated repair and rehabilitation funds must be FIRST targeted to RRH Loan facilities that have physical conditions that effect the health and safety of tenants and then made available to facilities that have deferred maintenance. See the end of this Notice for the State rehabilitation and repair allocations.

B. *Section 515 RRH Funds not Limited to New Construction.*

1. *Amount Available for Allocation.*

Section 515 RRH Loan Funds	$56,571,038
General reserve	5,657,104
Designated reserve for equity loans	2,500,000
Basic formula amount	48,413,934

2. *Base Allocation.* Not used.

3. *Administrative Allocation.* To ensure sufficient funding levels for repair or rehabilitation loans, funds are distributed to States based on need. States are receiving at least $1,000,000 or their stated need for funds if less than $1,000,000.

4. *Reserves.*

a. *State Office Reserve.* Since funds were allocated based on need, there is no basis for a State Office reserve.

b. *National Office Reserve.* This reserve is 10 percent of the total funds available.

(i) *General Reserve.* $5,657,104 in general reserve funds have been set aside. Since access to general reserve funds cannot be assured or guaranteed, States should not consider potential access to these funds when authorizing Form AD–622, ''Notice of Preapplication Review Action.'' Some examples of allowable uses are as follows:

(A) *Hardships and Emergencies.* The request must include sufficient documentation to support the hardship or emergency including reasons why it is in the Government's best interest to favorably consider the request.

(B) *Patch outs.* A patch out, not to exceed 30 percent of the total loan obligation, when the State needs the additional funds to obligate 100 percent of its allocation.

(ii) *Designated reserve for equity loans.* $2.5 million has been designated for the equity loan prepayment alternative incentive feature described in 7 CFR Part 1965, subpart E.

5. *National Office Pooling.* Unused RRH funds will be placed in the National Office reserve and will be made available administratively. Year-end pooling of all Section 515 RRH funds is tentatively scheduled for close of business (COB), August 15, 1997.

III. Funds not Allocated to States

A. *Credit Sales Authority.* For FY 1997, $3,687,179, will be set aside for credit sales to program and nonprogram buyers. Credit sale funding will not be allocated by State. When this loan authority is expended, States will resume the use of the appropriate loan funds to finance sales to program eligible buyers.

B. *Section 514 Farm LH Loans.*

1. These loans are funded in accordance with 7 CFR 1940.579(a).

FY 1997 appropriation	$14,412,811
Available for off-farm loans	10,112,811
Available for on-farm loans	1,500,000
National Office reserve	2,800,000

2. On-farm loans are limited to $1.5 million for this FY.

C. *National Office LH Loan Reserve.* A $2.8 million LH loan National Office reserve will be available until approximately August 15, 1997, or until expended. The reserve will be used for the following purposes:

1. *Repair and Rehabilitation of LH Projects in the Portfolio.* Loans are available for the repair and rehabilitation of existing projects that have health and safety violations.

2. *Migrant and Migrant and Homeless Projects.* Funds are avilable for obligation of proposals that include at least fifty percent of the units to serve migrant farmworkers or the dual populations of migrant farmworkers and the homeless.

3. *Leveraged LH Projects.* While some leveraging funds should be used in all LH projects to the degree possible and feasible, reserve funds are available for projects that are highly-leveraged, i.e., projects that have commitments of non-LH loan and grant funds in excess of percent of total development cost. The operating budget should still reflect a feasible full five-year period of RA usage. Leveraged loan funds should result in economically feasible rents and assurance that the term of RA for the facility will average 5 years. In general, the cost of leveraged loans should not exceed the cost of 100 percent LH loan financing.

D. *Section 516 Technical Assistance (TA) Contracts.* For Information on TA contracts for FY 1997, see the RHAP, MFH portion of this notice.

E. *RA for LH.* The National Office reserve contains 360 units at an average of $12,500 for use with LH loan and grant applications. RA is only available with an LH loan of at least 5 percent of total development cost. Projects without a LH loan cannot receive RA.

Rural Housing Service Non-RHAP Single Family Housing (SFH)

I. General

A. This provides SFH allocations for programs not in the Rural Housing Assistance Program (RHAP) available to individual States for Fiscal Year (FY) 1997. Allocation computations have been made in accordance with 7 CFR 1940.563 through 1940.568.

B. The SFH loan amounts (*) and grant amounts shown below are based on the total loan levels deliverable. The SFH levels authorized for FY 1997 are as follows:

Section 502 Guaranteed Rural Housing (RH) Loans:	
Non-subsidized Guarantees	$2,700,000,000
[Refinancing Guarantees***	150,000,000]
Section 502 Direct RH Loans:	
Very Low-Income Subsidized Loans*	234,132,581
Low-Income Subsidized Loans*	351,198,871
Non-subsidized Loans	0
Credit Sales (Program and Non Program)*	24,674,166
Section 504 Housing Repair Loans*	30,251,160
See 504 Grants	(See RHAP)
Section 509 Compensation for Construction Defects**	1,909,926
Section 523 Self-Help Site Loans*	592,234
Section 525 Self-Help Technical Assistance Grants**	26,010,520
Section 524 RH Site Loans	600,000
Section 306C WWD Grants	2,075,921
Sections 525 or 509 Housing Application:	
Packaging Grants (HAPG)**	1,731,394
Natural Disaster Funds.	
(Estimated carry-over amounts from previous year):	
Section 502 Natural Disaster Loans	34,969,354
Section 504 Natural Disaster Loans	3,913,949
Section 504 Natural Disaster Grants	765,690

* SFH loan levels deliverable with subsidy.
** Unobligated or canceled funds from prior FY have been added to the amount shown. See the non-RHAP portion of this notice.
*** $150 million for loans to refinance Section 502 Direct loans with guaranteed funds. These funds will be held until July 1, 1997, pending passage of a statutory provision to permit using guaranteed funds for refinancing 502 direct loans. If the statutory provision is not passed by July 1, 1997, these funds will be used for non-subsidized guarantees.

C. SFH loan and grant types not allocated to States or available as follows:

1. *Section 502 direct non-subsidized funds (loan making and servicing).* There were no FY 1997 funds designated for loans for non-subsidized servicing or loan-making applicants. Subsidized funds will continue to be used for qualified very low- and low-income applicants when the payment subsidy formula shows there is no need for the subsidy. This assistance will be taken from the State's subsidized regular funding.

2. *Credit sale authority.* For FY 1997, $24,674,166 will be set aside for Real Estate Owned (REO) credit sales to SFH program and nonprogram buyers. Credit sale funding will not be allocated by State. When this loan authority is exhausted, States will resume the use of the loan funds to finance REO sales to program eligible buyers.

3. *Section 509 Compensation for Construction Defects.* The approval official must determine that the construction is defective, in accordance with 7 CFR 1924.265.

4. *Section 523 Mutual and Self-Help Site Loans.* The State Director must request funding authority prior to obligating loan funds for the project.

5. *Section 523 Mutual and Self-Help Technical Assistance Grants.* The State Director must request funding approval authority for all grantees. A technical review and analysis of all grantee applications must be completed by the Technical and Management Assistance (T&MA) contractor. This analysis is a prerequisite for approval for all grantees.

6. *Section 524 RH Site Loans.* The State Director must request funding authority prior to obligating loan funds for the project.

7. *Deferred Mortgage Payment Demonstration.* There is no funding provided for deferred mortgage authority or loans for deferred mortgage assumptions.

II. State Allocations

A. *Section 502 non-subsidized guaranteed RH loans.*

1. *Amount available for allocation:*

Total Available	$2,700,000,000
Less National Office Reserve	405,000,000
Less funds for refinancing Section 502 loans (Pending Legislative Authority)	150,000,000
Less Base Allocation	0
Basic Formula—Administrative: Allocation	2,145,000,000

2. *Basic formula criteria, data source, and weight.* See 7 CFR 1940.563(b). Data derived from the 1990 Census was provided to each State by the National Office on August 12, 1993.

3. *Administrative allocation.* Due to the absence of Census Data, the Western Pacific Areas will receive an administrative allocation of $1 million.

4. *Pooling of funds.* There will be no mid-year pooling. Year-end pooling is tentatively scheduled for close of business on August 15, 1997. Pooled funds will be placed in the National Office reserve and will be made available administratively.

5. *Availability of the allocation.* Funds will be distributed by quarters as follows: 50 percent through the first quarter, 80 percent through the second quarter, 90 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

6. *Suballocation by the State Director.* The State Director may suballocate to the District level. All guaranteed funds will be administered through the reservation of funds system.

7. *Targeted.* Each State Director must target at least 30 percent of their Section 502 guaranteed rural housing funds toward counties with median incomes at or below the State's non-metropolitan median income.

B. *Section 502 Direct RH loans.*

1. *Amount available for allocation.*

Total Available	$585,331,452
Less required set aside for underserved counties or colonies	29,266,573
Less General Reserve	18,000,000
Less Designated Reserves	85,000,000
Self-Help	80,000,000
Targeted	5,000,000
Basic Formula Administrative Allocation	453,064,879

2. *Basic formula criteria, data source, and weight.* See 7 CFR 1940.565(b). Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993.

3. *Administrative allocation.* Due to the absence of Census Data, the Western Pacific Areas will receive an administrative allocation of $1,100,000.

4. *Reserves.*

a. *State office reserve.* State Directors must maintain an adequate reserve to fund the following applications:

(i) Hardship and homelessness applications. Hardships and homelessness will be determined by the State Directors on a case-by-case basis.

(ii) The State's portion of funds for Mutual Self-Help loans. This amount will represent the State's 25 percent contribution.

(iii) Subsequent loans for essential improvements or repairs and in connection with transfers with assumptions of the Rural Development indebtedness.

(iv) Financing for the purchase of REO property when credit sale authority has been exhausted.

(v) State Directors must set aside not less than 20 percent of their initial low-income allocation for participation in leveraging Section 502 direct loan funds. A reserve for very low-income participation loans is not required, but may be established if significant activity is anticipated by the State Director.

b. *National office reserves.*

Note: Currently, RHS has small reserves set aside for the general reserve which includes hardships, homelessness, and National Homeownership Partnership pilot cases; and the designated reserves which include self-help loans, and the targeted counties. RHS will consider increasing the general and designated reserves and continuing with the Innovative Demonstration Initiatives if there is any increase in the program levels in the Section 502 Direct Program.

(i) *General reserve.* The National Office reserve has a general reserve of $18 million. Of the $18 million, hardship and homelessness reserves each have $1 million set aside. For a National Homeownership Partnership pilot, $8 million is set aside.

(ii) *Hardhip and homeless reserve.* When State funding is not sufficient to serve all program eligible applicants, State Directors may submit hardship and homeless cases for reserve funds. Priority will be given to applicants facing deficient housing hardships including applicants who have been living in deficient housing for more than 6 months, current homeowners in danger of losing a property through foreclosure, and other circumstances determined by RHS on a case-by-case basis to constitute a hardship.

(iii) *National Homeownership Partnership pilot.* Of the section 502 direct funds, $8 million has been set aside for this pilot. This is a pilot in designated States forming a partnership between Rural Housing Service, Federal Home Loan Bank, local lenders, and community based non-profit organizations although RHS funds will all be used for Section 502 authorized purposes.

c. *Designated reserves.*

Note: The designated reserves have a set aside of $85 million for the following:

(i) *Targeted reserve.* Of the FY 1997 section 502 Direct loan funds, $5 million has been set aside for targeted counties. The targeted reserve will be held in the Administrator's reserve for areas and projects identified in the FY 1997 annual performance goals. Special consideration will be given to non-metro counties with persistent poverty, tribal government, Empowerment Zones, Enterprise Communities, Champion Communities, Pacific Northwest areas, Appalachia and the Mississippi Delta Region.

(ii) *Matching funds for states with approved mutual self-help housing grants.* The amount of $80 million of FY 1997 Section 502 Direct Loan funds has been set aside for matching funds on the basis of the National Office contributing 75 percent from the National Office reserve and States contributing 25 percent of their allocated Section 502 RH funds to assist participating Self-Help families.

d. *Underserved counties and colonias.* $29,266,573 was set aside for the 100 underserved counties and colonias per the Cranston-Gonzalez National Affordable Housing Act, as amended. These funds are to be used in the 100 most underserved counties and colonias (available in any Agency office).

e. *State office pooling.* If pooling is conducted within a State, it must not take place within the first 30 calendar days of the first, second, or third quarter. (There are no restrictions on pooling in the fourth quarter.) The pooled funds may be redistributed by the State Director provided the State Director has determined that the pooled funds could not be used in the field offices receiving the funds allocated in accordance with 7 CFR part 1940, subpart L.

f. *National Office Pooling.* There will be no mid-year pooling. Year-end pooling is tentatively scheduled for close of business August 15, 1997. Year-end pooled funds will be placed in the National Office reserve and will be made available administratively.

g. *Availability of the Allocation.* The Housing Act of 1949, as amended, provides that not less than 40 percent of the funds be made available for very low-income Section 502 loan applicants. Funds will be distributed by quarters as follows: 50 percent through the first quarter, 80 percent through the second quarter, 90 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

h. *Suballocation by the State Director.* The State Director may suballocate using the methodology and formulas required by 7 CFR part 1940, subpart L.

C. *Section 504 housing repair loans.* Section 504 grant funding may be found in the RHAP section of this notice.

1. *Amount available for allocation.*

Total Available	$30,251,160
Less 5% for Underserved Counties or Colonias	1,512,558
Less General Reserve	1,436,930
Less Designated Targeted Reserve	1,436,930
Basic Formula—Administrative Allocation	25,864,742

2. *Basic formula criteria, data source, and weight.* See 7 CFR 1940.566(b). Data derived from the 1990 Census was provided to each State by the National Office on August 12, 1993, (available in any State Office). This data must be used if funds are suballocated.

3. *Administrative allocation.* Due to the absence of Census Data, the Western Pacific Areas will receive an administrative allocation of $2,400,000. The minimum State allocation is $50,000.

4. *Reserves and Set-asides.*

a. *State office reserve.* State Directors must:

(i) Maintain an adequate reserve for Section 504 hardship loan applications.

(ii) Develop an objective definition of a hardship case for a Section 504 loan. Hardships will than be determined by the State Director on a case-by-case basis.

b. *National office reserve.* Of the 1997 Section 504 loan funds, $1,436,930 has been set aside for the General Reserve and $1,436,930 has been set aside as a reserve for targeted counties.

c. *Underserved counties and colonias.* $1,512,558 was set aside for the 100 underserved counties and colonias.

5. *Pooling of funds.* There will be no mid-year pooling. Year-end pooling is tentatively scheduled for close of business on August 15, 1997. Pooled funds will be placed in the National Office reserve and will be made available administratively.

6. *Availability of the allocation for section 504 loans.* Funds will be distributed cumulatively by quarters as follows: 50 percent through the first quarter, 80 percent through the second quarter, 90 percent through the third quarter and 100 through the fourth quarter.

7. *Section 306C water and waste grants to individuals in colonias.* The

objective of the section 306C WWD individual grant program is to facilitate the use of community water or waste disposal systems for the residents of the colonias along the U.S.-Mexico border.

8. *Natural disaster assistance.* For the purpose of administering these funds, natural disasters will only include those identified by a Presidential declaration. State Offices will be informed at the issuance of the Presidential declaration on how to handle and process natural disasters loans or grants through the Finance Office.

Dated: December 18, 1996.

Jan E. Shadburn,

Acting Administrator, Rural Housing Service.

RURAL HOUSING SERVICE—SECTION 515—RURAL RENTAL HOUSING PROGRAM

[FY 1997 New Construction State Allocations Under RHAP]

State	Formula factor	State formula allocation	Base allocation	Total new construc. allocation	New construc. RA units
AL	0.02956	$1,667,963	$0	$1,667,963	43
AK	0.00587	331,111	668,889	1,000,000	26
AZ	0.01780	1,004,049	0	1,004,049	26
AR	0.02310	1,303,008	0	1,303,008	33
CA	0.04653	2,624,630	0	2,624,630	67
CO	0.00840	473,821	526,179	1,000,000	26
DE	0.00190	107,174	892,826	1,000,000	26
MD	0.00880	496,384	503,616	1,000,000	26
FL	0.02890	1,630,170	0	1,630,170	42
GA	0.03867	2,181,269	0	2,181,269	56
HI	0.00790	445,617	554,383	1,000,000	26
WPA	0.00647	364,955	635,045	1,000,000	26
ID	0.00743	419,106	580,394	1,000,000	26
IL	0.02250	1,269,164	0	1,269,164	32
IN	0.02157	1,216,705	0	1,216,705	31
IA	0.01340	755,857	244,143	1,000,000	26
KS	0.01130	637,402	362,598	1,000,000	26
KY	0.03483	1,964,665	0	1,964,655	50
LA	0.03170	1,788,111	0	1,788,111	46
ME	0.00913	514,998	485,002	1,000,000	26
MA	0.00793	447,310	552,690	1,000,000	26
CT	0.00453	255,525	744,475	1,000,000	26
RI	0.00100	56,407	943,593	1,000,000	26
MI	0.02977	1,679,245	0	1,679,245	43
MN	0.01673	943,694	56,306	1,000,000	26
MS	0.03180	1,793,751	0	1,793,751	46
MO	0.02460	1,387,619	0	1,387,619	35
MT	0.00620	349,725	650,275	1,000,000	26
NE	0.00713	402,184	597,816	1,000,000	26
NV	0.00263	148,351	851,649	1,000,000	26
NJ	0.00657	370,596	629,404	1,000,000	26
NM	0.01437	810,583	189,427	1,000,000	26
NY	0.02753	1,552,892	0	1,552,892	40
NC	0.04497	2,536,635	0	2,536,635	65
ND	0.00413	232,962	767,038	1,000,000	26
OH	0.03450	1,946,051	0	1,946,051	50
OK	0.01917	1,081,327	0	1,081,327	28
OR	0.01423	802,675	197,325	1,000,000	26
PA	0.03687	2,079,736	0	2,079,736	53
PR	0.04923	2,776,930	0	2,776,930	71
SC	0.02690	1,517,356	0	1,517,356	39
SD	0.00597	336,751	663,249	1,000,000	26
TN	0.02973	1,676,988	0	1,676,988	43
TX	0.07645	4,312,336	0	4,312,336	110
UT	0.00430	242,551	757,449	1,000,000	26
VT	0.00403	227,321	772,679	1,000,000	26
NH	0.00503	283,729	716,271	1,000,000	26
VI	0.00273	153,992	846,008	1,000,000	26
VA	0.02660	1,500,433	0	1,500,433	38
WA	0.01743	983,179	16,821	1,000,000	26
WV	0.01937	1,092,609	0	1,092,609	28
WI	0.01873	1,056,508	0	1,056,508	27
WY	0.00307	173,170	826,830	1,000,000	26
Distr	1.00000	56,407,270	16,232,880	72,640,150	1,856
N/O Res	.....	.....	.....	23,921,130	559
TTL Avail	.....	.....	.....	96,561,280	2,415

RURAL HOUSING SERVICE—SECTION 533 Housing Preservation Grant Program Under RHAP Multi-Family Housing

State	Formula factor	FY 1997 State formula allocation	Admin allocation	Total allocation
AL	0.02957	$144,888	$0	$144,888
AK	0.00587	28,762	71,238	100,000
AZ	0.01780	87,217	12,783	100,000
AR	0.02310	113,186	0	113,186
CA	0.04653	227,989	0	227,989
CO	0.00840	41,159	58,841	100,000
DE	0.00190	9,310	90,690	100,000
MD	0.00880	43,119	56,881	100,000
FL	0.02890	141,605	0	141,605
GA	0.03867	189,477	0	189,477
HI	0.00790	38,709	61,291	100,000
WPA	0.00647	31,702	68,298	100,000
ID	0.00743	36,406	63,594	100,000
IL	0.02250	110,246	0	110,246
IN	0.02157	105,689	0	105,689
IA	0.01340	65,658	34,342	100,000
KS	0.01130	55,368	44,632	100,000
KY	0.03483	170,661	0	170,661
LA	0.03170	155,325	0	155,325
ME	0.00913	44,736	55,264	100,000
MA	0.00793	38,856	61,144	100,000
CT	0.00453	22,196	77,804	100,000
RI	0.00100	4,900	95,100	100,000
MI	0.02977	145,868	0	145,868
MN	0.01673	81,974	18,026	100,000
MS	0.03180	155,815	0	155,815
MO	0.02460	120,536	0	120,536
MT	0.00620	30,379	69,621	100,000
NE	0.00713	34,936	65,064	100,000
NV	0.00263	12,887	87,113	100,000
NJ	0.00657	32,192	67,808	100,000
NM	0.01437	70,411	29,589	100,000
NY	0.02753	134,892	0	134,892
NC	0.04497	220,346	0	220,346
ND	0.00413	20,236	79,764	100,000
OH	0.03450	169,044	0	169,044
OK	0.01917	93,930	6,070	100,000
OR	0.01423	69,725	30,275	100,000
PA	0.03687	180,657	0	180,657
PR	0.04923	241,219	0	241,219
SC	0.02690	131,806	0	131,806
SD	0.00597	29,252	70,748	100,000
TN	0.02973	145,672	0	145,672
TX	0.07645	374,593	0	374,593
UT	0.00430	21,069	78,931	100,000
VT	0.00403	19,746	80,254	100,000
NH	0.00503	24,646	75,354	100,000
VI	0.00273	13,377	86,623	100,000
VA	0.02660	130,336	0	130,336
WA	0.01743	85,404	14,596	100,000
WV	0.01937	94,910	5,090	100,000
WI	0.01873	91,774	8,226	100,000
WY	0.00307	15,042	84,958	100,000
Distr.	1.00000	4,899,838	1,810,012	6,709,850
N/O Res.	.....	.....	.....	353,150
TTL Avail.	.....	.....	.....	7,063,000

RURAL HOUSING SERVICE—FISCAL YEAR 1997 ALLOTMENT—SECTION 504 RURAL HOUSING GRANTS

State	State basic formula factor	State basic formula allocation	Admin. allocation	Total FY 1997 allocation
Alabama	0.0281124	366,062	0	366,062
Alaska	0.0056894	74,084	0	74,084
Arizona	0.0170683	222,253	0	222,253
Arkansas	0.0224230	291,978	0	291,978
California	0.0481928	627,537	0	627,537
Colorado	0.0083668	108,947	0	108.947

RURAL HOUSING SERVICE—FISCAL YEAR 1997 ALLOTMENT—SECTION 504 RURAL HOUSING GRANTS—Continued

State	State basic formula factor	State basic formula allocation	Admin. allocation	Total FY 1997 allocation
Delaware	0.0023427	30,505	19,495	50,000
Maryland	0.0100402	130,737	0	130,737
Florida	0.0341365	444,504	0	444,504
Georgia	0.0368139	479,368	0	479,368
Hawaii	0.0076975	100,232	0	100,232
W. Pacific Areas	N/A	.....	560,000	560,000
Idaho	0.0073628	95,874	0	95,874
Illinois	0.0264391	344,273	0	344,273
Indiana	0.0244311	318,127	0	318,127
Iowa	0.0163989	213,536	0	213,536
Kansas	0.0133869	174.316	0	174,316
Kentucky	0.0297858	387,852	0	387,852
Louisiana	0.0261044	339,915	0	339.915
Maine	0.0103748	135,094	0	135,094
Massachusetts	0.0097055	126,379	0	126,379
Connecticut	0.0053548	69,727	0	69,727
Rhode Island	0.0013387	17,432	32,568	50,000
Michigan	0.0317938	413,999	0	413,999
Minnesota	0.0197456	257,115	0	257,115
Mississippi	0.0271084	352,989	0	352,989
Missouri	0.0257697	335,557	0	335,557
Montana	0.0060241	78,442	0	78,442
Nebraska	0.00087015	113,305	0	113,305
Nevada	0.0026774	34,863	15,137	50,000
New Jersey	0.0083668	108,947	0	108.947
New Mexico	0.0123829	161,242	0	161,242
New York	0.0324632	422,716	0	422,716
North Carolina	0.0471888	614,463	0	614,463
North Dakota	0.0046854	61,010	0	61,010
Ohio	0.0361446	470,652	0	470,652
Oklahoma	0.0184070	239,684	0	239,684
Oregon	0.0157296	204,821	0	204,821
Pennsylvania	0.0438420	570,883	0	570,883
Puerto Rico	0.0264391	344,273	0	344,273
South Carolina	0.0261044	339,915	0	339,915
South Dakota	0.0063588	83,800	0	82,800
Tennessee	0.0294511	383,494	0	383,494
Texas	0.0716198	932,588	0	932,588
Utah	0.0036814	47,937	2,063	50,000
Vermont	0.0046854	61,010	0	61,010
New Hampshire	0.0060241	78,442	0	78,442
Virgin Islands	0.0023427	30,505	19,495	50,000
Virginia	0.0284471	370,420	0	370,420
Washington	0.0184070	239,684	0	239,684
West Virginia	0.0180723	235,326	0	235,326
Wisconsin	0.0224230	291,978	0	291,978
Wyoming	0.0033467	43,579	6,421	50,000
Distr	1.0000000	13,021,371	655,179	13,676,550
Total Res.	.....	.....	.....	1,513,000
5% Set Aside for Underserved Cty/Col	.....	.....	.....	799,450
Total Avail	.....	.....	.....	15,989,000

RURAL HOUSING SERVICE—SECTION 515—RURAL RENTAL HOUSING PROGRAM

[Rehabilitation/Repair State Allocations]

State	RHS loan amt. req. from 9/9 survey	Admin. alloc. to meet request	Alloc. by percent of demand to funds avail.	Admin. alloc. to meet minimum	FY 1997 total rehab alloc.	Percent meet rehab. needs
AL	$2,700,000	.....	$1,074,209	$0	$1,074,209	39.79
AK	200,000	$200,000	.....	0	200,000	100.00
AZ	1,100,000	.....	437,641	562,359	1,000,000	90.91
AR	2,585,000	.....	1,028,456	0	1,028,456	39.79
CA	2,038,010	.....	810,833	189,167	1,000,000	49.07
CO	225,000	225,000	.....	0	225,000	100.00
DE	0	.....	.....	0	0	.....

RURAL HOUSING SERVICE—SECTION 515—RURAL RENTAL HOUSING PROGRAM—Continued

[Rehabilitation/Repair State Allocations]

State	RHS loan amt. req. from 9/9 survey	Admin. alloc. to meet request	Alloc. by percent of demand to funds avail.	Admin. alloc. to meet minimum	FY 1997 total rehab alloc.	Percent meet rehab. needs
MD	1,450,000	.....	576,890	423,110	1,000,000	68.97
FL	4,000,000	.....	1,591,421	0	1,591,421	39.79
GA	1,425,000	.....	566,944	433,056	1,000,000	70.18
HI	0	.....	.....	0	0	.....
WPA	0	.....	.....	0	0	.....
ID	300,000	300,000	.....	0	300,000	100.00
IL	927,000	927,000	0	0	927,000	100.00
IN	7,000,000	.....	2,784,987	0	2,784,987	39.79
IA	495,000	495,000	0	0	495,000	100.00
KS	584,829	584,829	0	0	584,829	100.00
KY	850,210	850,210	0	0	850.210	100.00
LA	7,057,500	.....	2,807,864	0	2,807,864	39.79
ME	3,238,830	.....	1,288,586	0	1,288,586	39.79
MA	100,000	100,000	.....	0	100,000	100.00
CT	300,000	300,000	.....	0	300,000	100.00
RI	300,000	300,000	.....	0	300,000	100.00
MI	626,099	626,099	0	0	626,099	100.00
MN	1,473,000	.....	586,041	413,959	1,000,000	67.89
MS	908,613	908,613	0	0	908,613	100.00
MO	200,000	200,000	.....	0	200,000	.....
MT	1,000,000	1,000,000	0	0	1,000,000	100.00
NE	450,000	450,000	.....	0	450,000	.....
NV	900,000	900,000	0	0	900,000	100.00
NJ	205,000	205,000	.....	0	205,000	100.00
NM	0	.....	.....	0	0	.....
NY	0	.....	.....	0	0	.....
NC	3,885,568	.....	1,545,894	0	1,545,894	39.79
ND	0	.....	.....	0	0	.....
OH	3,858,658	1,535,188	1,535,188	0	1,535,188	39.79
OK	6,260,330	.....	2,490,706	0	2,490,706	39.79
OR	5,386,500	.....	2,143,048	0	2,143,048	39.79
PA	1,200,000	.....	477,426	522,574	1,000,000	83.33
PR	428,000	428,000	0	0	428,000	100.00
SC	4,000,000	.....	1,591,421	0	1,591,421	39.79
SD	350,000	350,000	0	0	350,000	100.00
TN	2,875,000	.....	1,143,834	0	1,143,834	39.79
TX	13,300,000	.....	5,291,476	0	5,291,476	39.79
UT	500,000	500,000	0	0	500,000	100.00
VT	295,000	295.000	.....	0	295,000	100.00
NH	1,005,700	.....	400,123	599,877	1,000,000	99.43
VI	970,000	970,000	0	0	970,000	100.00
VA	2,850,000	.....	1,133,888	0	1,133,888	39.79
WA	310,000	310,000	0	0	310,000	100.00
WV	2,650,000	.....	1,054,317	0	1,054,317	39.79
WI	350,000	350,000	0	0	350,000	100.00
WY	2,850,000	.....	1,133,888	0	1,133,888	39.79
Distr	95,963,847	11,774,751	33,495,081	3,144,102	48,413,934	.....
N/O Res.	.....	.....	.....	.....	8,157,104	.....
TTL. Avail	.....	.....	.....	.....	56,571,038	.....

RURAL HOUSING SERVICE—FISCAL YEAR 1997 ALLOCATION IN THOUSANDS—SECTION 502 GUARANTEED LOANS (NONSUBSIDIZED)

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1997 allocation
Alabama	0.0253847	$54,425	$54,425
Alaska	0.0061561	13,199	13,199
Arizona	0.0155290	33,294	33,294
Arkansas	0.0213661	45,809	45,809
California	0.0524861	112,530	112,530
Colorado	0.0100701	21,590	21,590
Delaware	0.0024043	5,155	5,155
Maryland	0.0104750	22,458	22,458

RURAL HOUSING SERVICE—FISCAL YEAR 1997 ALLOCATION IN THOUSANDS—SECTION 502 GUARANTEED LOANS (NONSUBSIDIZED)—Continued

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1997 allocation
Florida	0.0308357	66,112	66,112
Georgia	0.0385293	82,607	82,607
Hawaii	0.0083323	17,864	17,864
W. Pacific Areas*	N/A	1,000	1,000
Idaho	0.0077774	16,675	16,675
Illinois	0.0256395	54,971	54,971
Indiana	0.0236023	50,603	50,603
Iowa	0.0151422	32,465	32,465
Kansas	0.0123032	26,378	26,378
Kentucky	0.0286790	61,488	61,488
Louisiana	0.0256223	54,934	54,934
Maine	0.0113916	24,424	24,424
Massachusetts	0.0117468	25,185	25,185
Connecticut	0.0065708	14,088	14,088
Rhode Island	0.0017216	3,691	3,691
Michigan	0.0337181	72,292	72,292
Minnesota	0.0184738	39,608	39,608
Mississippi	0.0259670	55,673	55,673
Missouri	0.0253687	54,390	54,390
Montana	0.0067138	14,394	14,394
Nebraska	0.0083216	17,842	17,842
Nevada	0.0029735	6,375	6,375
New Jersey	0.0091825	19,687	19,687
New Mexico	0.0117200	25,128	25,128
New York	0.0369739	79,272	79,272
North Carolina	0.0471742	101,141	101,141
North Dakota	0.0040847	8,758	8,758
Ohio	0.0378081	81,061	81,061
Oklahoma	0.0175713	37,673	37,673
Oregon	0.0166212	35,636	35,636
Pennsylvania	0.0438367	93,986	93,986
Puerto Rico	0.0250931	53,800	53,800
South Carolina	0.0249510	53,495	53,495
South Dakota	0.0065435	14,029	14,029
Tennessee	0.0276859	59,359	59,359
Texas	0.0665018	142,578	142,578
Utah	0.0039861	8,546	8,546
Vermont	0.0057475	12,323	12,323
New Hampshire	0.0075234	16,130	16,130
Virgin Islands	0.0027236	5,839	5,839
Virginia	0.0278404	59,690	59,690
Washington	0.0200905	43,074	43,074
West Virginia	0.0172518	36,988	36,988
Wisconsin	0.0222867	47,783	47,783
Wyoming	0.0035006	7,505	7,505
State Totals	1.0000000	2,145,000	2,145,000
General Reserve	.....	.....	405,000
Set Aside for 502 Refinancing	.....	.....	150,000
Total	.....	.....	2,700,000

RURAL HOUSING SERVICE—FISCAL YEAR 1997 ALLOCATION IN THOUSANDS—SECTION 502 DIRECT RURAL HOUSING LOANS

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1997 allocation
Alabama	0.0267275	$12,080	$12,080
Alaska	0.0055160	2,493	2,493
Arizona	0.0145422	6,573	6,573
Arkansas	0.0208104	9,406	9,406
California	0.0454819	20,556	20,556
Colorado	0.0091766	4,148	4,148
Delaware	0.0024571	1,111	1,111
Maryland	0.0115334	5,213	5,213
Florida	0.0312406	14,120	14,120

RURAL HOUSING SERVICE—FISCAL YEAR 1997 ALLOCATION IN THOUSANDS—SECTION 502 DIRECT RURAL HOUSING LOANS—Continued

States	State basic formula factor	State basic formula/administrative allocation	Total FY 1997 allocation
Georgia	0.0374586	16,930	16,930
Hawaii	0.0067195	3,037	3,037
W. Pacific Areas*	N/A	1,100	1,100
Idaho	0.0076722	3,468	3,468
Illinois	0.0266774	12,057	12,057
Indiana	0.0270785	12,239	12,239
Iowa	0.0163474	7,388	7,388
Kansas	0.0127369	5,757	5,757
Kentucky	0.0288838	13,054	13,054
Louisiana	0.0246715	11,151	11,151
Maine	0.0108314	4,895	4,895
Massachusetts	0.0109818	4,963	4,963
Connecticut	0.0066693	3,014	3,014
Rhode Island	0.0015545	703	703
Michigan	0.0353525	15,978	15,978
Minnesota	0.0199077	8,998	8,998
Mississippi	0.0250226	11,309	11,309
Missouri	0.0252733	11,423	11,423
Montana	0.0063685	2,878	2,878
Nebraska	0.0086752	3,921	3,921
Nevada	0.0028583	1,292	1,292
New Jersey	0.0097784	4,419	4,419
New Mexico	0.0110320	4,986	4,986
New York	0.0359041	16,227	16,227
North Carolina	0.0484405	21,893	21,893
North Dakota	0.0045131	2,040	2,040
Ohio	0.0390131	17,633	17,633
Oklahoma	0.0174005	7,864	7,864
Oregon	0.0154949	7,003	7,003
Pennsylvania	0.0467857	21,145	21,145
Puerto Rico	0.0239695	10,833	10,833
South Carolina	0.0258249	11,672	11,672
South Dakota	0.0062682	2,833	2,833
Tennessee	0.0291846	13,190	13,190
Texas	0.0660415	29,847	29,847
Utah	0.0040618	1,836	1,836
Vermont	0.0052653	2,380	2,380
New Hampshire	0.0072711	3,286	3,286
Virgin Islands	0.0020058	907	907
Virginia	0.0289841	13,100	13,100
Washington	0.0187042	8,454	8,454
West Virginia	0.0175008	7,910	7,910
Wisconsin	0.0237188	10,720	10,720
Wyoming	0.0036105	1,632	1,632
State Totals	1.0000000	453,065	453,065
General Reserve	.....	.....	18,000
Designated Reserves	.....	.....	85,000
100 Underserved Counties/Colonias	.....	.....	29,266
Total	.....	.....	585,331

RURAL HOUSING SERVICE.—FISCAL YEAR 1997 ALLOCATION IN THOUSANDS—SECTION 502 DIRECT RURAL HOUSING LOANS

States	Total FY 1997 allocation	Very low-income allocation 40 percent	Low-income allocation 60 percent
Alabama	$12,080	$4,832	$7,248
Alaska	2,493	998	1,495
Arizona	6,573	2,630	3,943
Arkansas	9,406	3,763	5,643
California	20,556	8,223	12,333
Colorado	4,148	1,660	2,488
Delaware	1,111	445	666
Maryland	5,213	2,086	3,127

RURAL HOUSING SERVICE.—FISCAL YEAR 1997 ALLOCATION IN THOUSANDS—SECTION 502 DIRECT RURAL HOUSING LOANS—Continued

States	Total FY 1997 allocation	Very low-income allocation 40 percent	Low-income allocation 60 percent
Florida	14,120	5,648	8,472
Georgia	16,930	6,772	10,158
Hawaii	3,037	1,215	1,822
W. Pacific Areas	1,100	440	660
Idaho	3,468	1,388	2,080
Illinois	12,057	4,823	7,234
Indiana	12,239	4,896	7,343
Iowa	7,388	2,956	4,432
Kansas	5,757	2,303	3,454
Kentucky	13,054	5,222	7,832
Louisiana	11,151	4,461	6,690
Maine	4,895	1,958	2,937
Massachusetts	4,963	1,986	2,977
Connecticut	3,014	1,206	1,808
Rhode Island	703	282	421
Michigan	15,978	6,392	9,586
Minnesota	8,998	3,600	5,398
Mississippi	11,309	4,524	6,785
Missouri	11,423	4,570	6,853
Montana	2,878	1,152	1,726
Nebraska	3,921	1,569	2,352
Nevada	1,292	517	775
New Jersey	4,419	1,768	2,651
New Mexico	4,986	1,995	2,991
New York	16,227	6,491	9,736
North Carolina	21,893	8,758	13,135
North Dakota	2,040	816	1,224
Ohio	17,633	7,054	10,579
Oklahoma	7,864	3,146	4,718
Oregon	7,003	2,802	4,201
Pennsylvania	21,145	8,458	12,687
Puerto Rico	10,833	4,334	6,499
South Carolina	11,672	4,669	7,003
South Dakota	2,833	1,134	1,699
Tennessee	13,190	5,276	7,914
Texas	29,847	11,916	17,931
Utah	1,836	735	1,101
Vermont	2,380	952	1,428
New Hampshire	3,286	1,315	1,971
Virgin Islands	907	363	544
Virginia	13,100	5,240	7,860
Washington	8,454	3,382	5,072
West Virginia	7,910	3,164	4,746
Wisconsin	10,720	4,288	6,432
Wyoming	1,632	653	979
State Totals	453,065	181,226	271,839
General Reserve	18,000	7,200	10,800
Designated Reserves	85,000	34,000	51,000

RURAL HOUSING SERVICE—FISCAL YEAR 1997 ALLOTMENT—SECTION 504 RURAL HOUSING LOANS

State	State basic formula factor	State basic formula allocation	Admin allocation	Total FY 1997 allocation
Alabama	0.0291457	683,041	0	683,041
Alaska	0.0080402	188,425	0	188,425
Arizona	0.0201005	471,063	0	471,063
Arkansas	0.0226131	529,947	0	529,947
California	0.0532663	1,248,317	0	1,248,317
Colorado	0.0085427	200,202	0	200,202
Delaware	0.0020101	47,107	2,893	50,000
Maryland	0.0095477	223,754	0	223,754
Florida	0.0296482	694,817	0	694,817
Georgia	0.0396985	930,350	0	930,350
Hawaii	0.0100503	235,533	0	235,533

RURAL HOUSING SERVICE—FISCAL YEAR 1997 ALLOTMENT—SECTION 504 RURAL HOUSING LOANS—Continued

State	State basic formula factor	State basic formula allocation	Admin allocation	Total FY 1997 allocation
W. Pacific Areas	N/A	.....	2,400,000	2,400,000
Idaho	0.0075377	176,649	0	176,649
Illinois	0.0226131	529,947	0	529,947
Indiana	0.0221106	518,171	0	518,171
Iowa	0.0130653	306,191	0	306,191
Kansas	0.0115578	270,862	0	270,862
Kentucky	0.0321608	753,701	0	753,701
Louisiana	0.0296482	694,817	0	694,817
Maine	0.0100503	235,533	0	235,533
Massachusetts	0.0080402	188,425	0	188,425
Connecticut	0.0040201	94,213	0	94,213
Rhode Island	0.0010050	23,553	26,447	50,000
Michigan	0.0291457	683,041	0	683,041
Minnesota	0.0175879	412,179	0	412,179
Mississippi	0.0301508	706,596	0	706,596
Missouri	0.0241206	565,276	0	565,276
Montana	0.0060302	141,320	0	141,320
Nebraska	0.0070352	164,873	0	164,873
Nevada	0.0030151	70,660	0	70,660
New Jersey	0.0070352	164,873	0	164,873
New Mexico	0.0150754	353,298	0	353,298
New York	0.0286432	671,265	0	671,265
North Carolina	0.0477387	1,118,775	0	1,118,775
North Dakota	0.0040201	94,213	0	94,213
Ohio	0.0331658	777,254	0	777,254
Oklahoma	0.0175879	412,179	0	412,179
Oregon	0.0150754	353,298	0	353,298
Pennsylvania	0.0371859	871,466	0	871,466
Puerto Rico	0.0341709	800,809	0	800,809
South Carolina	0.0281407	659,488	0	659,488
South Dakota	0.0060302	141,320	0	141,320
Tennessee	0.0296482	694,817	0	694,817
Texas	0.0783920	1,837,148	0	1,837,148
Utah	0.0040201	94,213	0	94,213
Vermont	0.0045226	105,989	0	105,989
New Hampshire	0.0055276	129,542	0	129,542
Virgin Islands	0.0030151	70,660	0	70,660
Virginia	0.0296482	694,817	0	694,817
Washington	0.0185930	435,734	0	435,734
West Virginia	0.0180905	423,958	0	423,958
Wisconsin	0.0195980	459,287	0	459,287
Wyoming	0.0035176	82,436	0	82,436
Distr.	1.000000	23,435,402	2,429,340	25,864,742
Total Res.	.....	.....	.....	2,873,860
5% Set Aside for Underserved Cty/Col	.....	.....	.....	1,512,558
Total Avail.	.....	.....	.....	30,251,160

FY 1996 MEDIAN FAMILY INCOMES FOR NONMETROPOLITAN PORTIONS OF STATES

State	Median income
Alabama	28,800
Alaska	48,500
Arizona	29,800
Arkansas	27,300
California	34,300
Connecticut	50,000
Delaware	37,800
Dist. of Columbia	0
Florida	31,600
Georgia	32,500
Hawaii	47,100
Idaho	35,900
Illinois	36,000
Indiana	37,200
Iowa	37,000
Kansas	34,300

FY 1996 MEDIAN FAMILY INCOMES FOR NONMETROPOLITAN PORTIONS OF STATES—Continued

State	Median income
Kentucky	26,400
Louisiana	25,200
Maine	34,100
Maryland	42,000
Massachusetts	42,000
Michigan	33,800
Minnesota	36,200
Mississippi	26,000
Missouri	30,100
Montana	34,700
Nebraska	35,100
Nevada	47,200
New Hampshire	40,700
New Jersey	0
New Mexico	29,200
New York	35,600
North Carolina	33,500
North Dakota	32,300
Ohio	37,000
Oklahoma	26,600
Oregon	33,100
Pennsylvania	32,800
Rhode Island	45,400
South Carolina	33,300
South Dakota	32,800
Tennessee	30,200
Texas	28,900
Utah	36,600
Vermont	36,300
Virginia	33,600
Washington	33,600
West Virginia	26,600
Wisconsin	37,700
Wyoming	40,500
United States	31,400

[FR Doc. 96–32914 Filed 12–26–96; 8:45 am]
BILLING CODE 3410–XV–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Thursday, January 30, 1997, at the Ramada Plaza Hotel, 1001 County Line Road, Jackson, Mississippi 39211. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 19, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit

[FR Doc. 96–33019 Filed 12–26–96; 8:45 am]
BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 7:00 p.m. on each of the following days: Thursday, January 30, 1997, at the Hampton City Council Chambers, 22 Lincoln Street, Hampton, Virginia 23669, and Friday, January 31, 1997, at the Newport News City Council Chambers, 2400 Washington Avenue, Newport News, Virginia 23607. The purpose of each meeting is to gather information from panels of speakers and individuals on policies and practices of law enforcement agencies and sentencing disparities as they affect African Americans on the Hampton/Newport News peninsula.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Jessie M. Rattley, 804–727–5647, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 18, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–33018 Filed 12–26–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: Bureau of the Census.

Title: 1997 Census of Governments.

Agency Number: F–1, F–5, F–5A, F–11, F–12, F–13,F–21, F–22, F–25, F–28, F–29, F–32, F–42, D–1, E–2, E–3, E–6, E–7, E–9, EGO–3, EGO–4, EGO–6, EGO–7.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 170,017 hours.

Number of Respondents: 134,119.

Avg Hours Per Response: 1.27 hours.

Needs and Uses: This census provides government organization, employment and finance data for state and local governments. The data are used to calculate the Gross Domestic Product (GDP), to monitor the government sector of the economy, and to formulate, develop, and review public policy. The organization phase provides statistics on the number of local governments by type and by selected characteristics. The employment phase collects data on employment and payrolls of state and local governments. In the finance phase, the information relates to several aspects of state and local government public finance; revenues, including related property tax bases; expenditures by function and character; indebtedness and debt transactions; and case and security holdings. The 1997 Census of Governments excludes two portions of information collected in the 1992 quinquennial census; There will not be a taxable property value phase and the organization phase will exclude data relating to elected officials. In addition, there are two significant methodological changes; The reference date for the Employment phase will be March 12, 1997 instead of October 12, 1997 and all organization phase mail data will be obtained on joint employment/organization forms (EGO forms).

Affected Public: State, local or tribal government.

Frequency: Every five years.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 161.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, Room 1020l, New Executive Office Building, Washington, DC 20503.

Dated: December 19, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–32888 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–07–P

Bureau of the Census

1997 Economic Censuses Classification Report; Proposed Agency Information Collection Activity; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 25, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information of copies of the information collection instrument(s) and instructions should be directed to William Bostic, Bureau of the Census, Room 2641, Building 3, Washington, D.C. 20233–6100 and 301–457–2672 or E-mail at William.G.Bostic.Jr@Info.Census.Gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector of timely, relevant and quality data about the people and the economy of the United States. Economic data are the Census Bureau's primary program commitment during non-decennial census years. The economic census, conducted under authority of Title 13 U.S.C., is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public.

The 1997 Economic Census will cover virtually every sector of the U.S. economy. The Census Bureau will implement the new North American Industry Classification System (NAICS) in the 1997 Economic Census. The implementation of the NAICS as a replacement for the 1987 Standard Industrial Classification (SIC) system will require contacting businesses to collect classification information to update the 1997 Economic Census mailing lists.

Accurate and reliable industry and geographic codes are critical to the Bureau of Census statistical programs. New businesses are assigned industry classification by the Social Security Administration (SSA). However, many of these businesses in manufacturing and mining cannot be assigned detailed industry codes because insufficient information is provided on Internal Revenue Service (IRS) Form SS–4. In addition, many of these businesses when matched against the Bureau of Labor Statistics (BLS) classification system cannot be assigned a detailed classification code.

In order to provide detailed manufacturing and mining industry data reflecting NAICS for the 1997 Economic Censuses and the Standard Statistical Establishment List (SSEL), these partially coded businesses must be assigned detailed classification codes.

This data collection, Form NC–9926, is designed to obtain detailed classification information for the partially coded single-unit manufacturing and mining industries including changes from the SIC to NAICS and provide current information on physical locations for establishments below the mail cutoff.

The failure to collect this classification information will have an adverse effect on the quality and usefulness of economic statistics and

severely hamper the Census Bureau's ability to implement NAICS in the 1997 Economic Censuses.

II. Method of Collection

The Census Bureau will select establishments to receive this survey from the Census Bureau's SSEL. The Census Bureau will mail the NC–9926 to single-unit manufacturing and mining establishments to obtain needed four-digit industry codes and subindustry detail for small establishments in selected four-digit industries in the apparel area, Major Groups 22 and 23. In addition, this form will be mailed to small manufacturing and mining establishments which could not be assigned a classification code when matched against the Bureau of Labor Statistics classification system. The NC–9926 will contain a list of 6-digit codes and descriptions. Respondents are to select the activity which best describes their business by checking the box next to the activity listed or describe their principal business activity if no box can be checked.

III. Data

OMB Number: Not Available.
Form Number: NC–9926.
Type of Review: Regular Review.
Affected Public: Small businesses or other small for profit organizations.
Estimated Number of Respondents: 105,000.
Estimated Total Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 8,750.
Estimated Total Annual Cost: The cost to government for this survey is included in the total cost of the 1997 Economic Census, estimated to be $218 million.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13 USC, Sections 131 and 224.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 19, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–32889 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–07–P

Bureau of Export Administration

Action Affecting Export Privileges; Doornbos, GMBH

In the matter of: Doornbos, GMBH, Emscherstrasse 4, 42697 Solingen, Germany, Respondent.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified Doornbos, GmbH (Doornbos) of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1996)) (the Act),[1] and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1996), as amended (61 FR 12714 (March 25, 1996)) (the Regulations),[2] based on allegations that Doornbos violated the provisions of Sections 787.2, 787.3(b), 787.4(a) and 787.5(a) as follows:

1. between on or about May 1, 1991 and on or about June 15, 1995, Doornbos conspired with Helmut Korelski and others to evade U.S. export control laws that restricted exports to Libya by acquiring various equipment from several companies in the United States, representing that the equipment was for use in Germany, then selling the U.S.-origin equipment to the Dong Ah Consortium for use in the Great Man Made River Project in Libya, transporting it to Libya through the Netherlands and/or Germany, without applying for and obtaining the export authorizations that the conspirators knew or had reason to know were required by Section 772.1 of the Regulations, in violation of Section 787.3(b) of the Regulations;

2. in furtherance of the conspiracy described above, between on or about May 1, 1991 and on or about June 15, 1995, Doornbos caused, aided or abetted the export of U.S.-origin equipment from the United States, through the Netherlands and/or Germany, to Libya for use in the Great Man Made River Project, without applying for and obtaining the export authorizations that Doornbos knew or had reason to know were required by Section 772.1 of the Regulations, in violation of Sections 787.2 and 787.4(a) of the Regulations; and

3. in furtherance of the conspiracy described above, between on or about May 1, 1991 and on or about June 15, 1995, Doornbos caused to be filed with the U.S. Customs Service Shipper's Export Declarations containing false and misleading misrepresentations of material fact, in violation of Section 787.5(a) of the Regulations;

BXA and Doornbos having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It is therefore Ordered:

First, that, for a period of four years from the date of this Order, Doornbos and all of its successors or assigns, and all of its officers, representatives, agents, and employees when acting for or on behalf of Doornbos, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license,[3] License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notice on August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), and extended again on August 14, 1996 (61 *Fed. Reg.* 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1996)).

[2] The March 25, 1996 Federal Register publication redesignated, but did not republish, the existing Regulations as 15 C.F.R. Parts 768A–799A. In addition, the March 25 Federal Register publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730–774, effective April 24, 1996.

[3] For purposes of this Order, ''license'' includes any general license established in 15 C.F.R. Parts 768A–799A.

subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in § 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that the proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public. A copy of this Order shall be published in the Federal Register.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 18th day of December, 1996.

Frank W. Deliberti,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 96–32906 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DT–M

Action Affecting Export Privileges; Helmut Korelski

In the Matter of: Helmut Korelski, Manager, Doornbos, GmbH, Emscherstrasse 4, 42697 Solingen, Germany, Respondent.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified Helmut Korelski (Korelski) of its intention to initiate an administrative proceeding against him pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1996)) (the Act),[1] and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1996), as amended (61 FR 12714 (March 25, 1996)) (the Regulations),[2] based on allegations that Korelski violated the provisions of Sections 787.2, 787.3(b), 787.4(a) and 787.5(a) as follows:

1. Between on or about May 1, 1991 and on or about June 15, 1995, Korelski conspired with Doornbos, GmbH and others to evade U.S. export control laws that restricted exports to Libya by acquiring various equipment from several companies in the United States, representing that the equipment was for use in Germany, then selling the U.S.-origin equipment to the Dong Ah Consortium for use in the Great Man Made River project in Libya, transporting it to Libya through the Netherlands and/or Germany, without applying for and obtaining the export authorizations that the conspirators knew or had reason to know were required by Section 772.1 of the Regulations, in violation of Section 787.3(b) of the Regulations;

2. In furtherance of the conspiracy described above, between on or about May 1, 1991 and on or about June 15, 1995, Korelski caused, aided or abetted the export of U.S.-origin equipment from the United States, through the Netherlands and/or Germany, to Libya for use in the Great Man Made River Project, without applying for and obtaining the export authorizations that Korelski knew or had reason to know were required by Section 772.1 of the Regulations, in violation of Sections 787.2 and 787.4(a) of the Regulations; and

3. In furtherance of the conspiracy described above, between on or about May 1, 1991 and on or about June 15, 1995, Korelski caused to be filed with the U.S. Customs Service Shipper's Export Declarations containing false and misleading misrepresentations of material fact, in violation of Section 787.5(a) of the Regulations;

BXA and Korelski having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It is therefore ordered:

First, that, for a period of four years from the date of this Order, Korelski may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license,[3] License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notice of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), and extended again on August 14, 1996 (61 *Fed. Reg.* 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1996)).

[2] The March 25, 1996 Federal Register publication redesignated, but did not republish, the existing Regulations as 15 C.F.R. Parts 768A–799A. In addition, the March 25 Federal Register publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730–774, effective April 24, 1996.

[3] For purposes of this Order, ''license'' includes any general license established in 15 C.F.R. Parts 768A–799A.

other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the time will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, or whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in § 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that the proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public. A copy of this Order shall be published in the Federal Register.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 18th day of December, 1996.

Frank W. Deliberti,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 96–32905 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 8–95]

Foreign-Trade Zone 24—Pittston, Pennsylvania; Withdrawal of Application for Subzone Status J. Schoeneman, Inc., Plant (Wearing Apparel) State Line, Pennsylvania

Notice is hereby given of the withdrawal of the application submitted by the Eastern Distribution Center, Inc., grantee of FTZ 24, requesting special-purpose subzone status for the apparel manufacturing plant of J. Schoeneman, Inc. (subsidiary of the Plaid Clothing Group, Inc.), located in State Line, Pennsylvania. The application was filed on March 10, 1995 (60 FR 14420, 3/17/95).

The withdrawal was requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: December 16, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–32875 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 5–93]

Foreign-Trade Zone 86—Tacoma, WA; Withdrawal of Application for Subzone Status for the Toray Carbon Fiber Composites Plant

Notice is hereby given of the withdrawal of the application submitted by the Port of Tacoma, Washington, grantee of FTZ 86, requesting special-purpose subzone status for the carbon fiber composite materials manufacturing plant of Toray Composites (America), Inc. The application was filed on February 16, 1993 (58 FR 11208, 2/24/93).

The withdrawal was requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: December 17, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–32874 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–559–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On December 5, 1996, the Department of Commerce (the Department) issued the final results of administrative review of the antidumping duty orders on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom, which published on December 17, 1996 in the Federal Register.

The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 64 manufacturers/exporters. The review period is May 1, 1993, through April 30, 1994. We are correcting a margin-rate error with respect to ball bearings from Singapore manufactured/exported by NMB/Pelmec.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1996, the Department of Commerce (the Department) issued the final results of the fifth administrative review of the antidumping duty orders on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom, which published on

December 17, 1996 in the Federal Register. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 64 manufacturers/exporters. The review period is May 1, 1993, through April 30, 1994.

After issuance of our final results, we realized that we did not publish the correct margin we calculated for the final results with respect to ball bearings exported by NMB/Pelmec.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Amended Final Results of Review

We have determined the following weighted-average margin to exist for the period May 1, 1993, through April 30, 1994:

Country	Company	Class or kind	Rate (percent)
Singapore	NMB/Pelmec	Ball Bearings	12.47

This deposit requirement is effective upon publication of this notice of amended final results of administrative review for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act of 1930 (as amended). This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 18, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–32872 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–831]

Fresh Garlic From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the petitioner, the Fresh Garlic Producers Association and its individual members, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). The period of review (POR) is July 11, 1994, through October 31, 1995. The petitioner's request covered 159 producers/exporters of subject merchandise. Only one company, Top Pearl Ltd. (Top Pearl), a Hong Kong company, along with its U.S. importer of record, Merex Corporation, requested a review of its sales and has responded to our questionnaire. Because we have determined that (1) the review of Top Pearl should be terminated, and (2) the other PRC producers/exporters failed to submit responses to our questionnaires, we have preliminarily determined to use facts otherwise available for cash deposit and assessment purposes for all PRC producers/exporters of the subject merchandise.

Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Andrea Chu or Kris Campbell, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On September 26, 1994, the Department published in the Federal Register (59 FR 49058) the final affirmative antidumping duty determination on fresh garlic from the PRC and published an antidumping duty order on November 16, 1994 (59 FR 59209). On November 15, 1995, the Department published in the Federal Register (60 FR 55541) a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on fresh garlic from the PRC. On November 30, 1995, petitioner requested an administrative review of 159 producers/exporters of this merchandise to the United States. On the same date, Top Pearl, along with its U.S. importer of record, Merex Corporation, requested a review of its sales. We initiated the review on December 15, 1995 (60 FR 64413).

Scope of the Review

The products subject to this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in

water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing and level of decay.

The scope of this order does not include: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Use of Facts Otherwise Available

On January 25, 1996, we sent a questionnaire to the Embassy of the People's Republic of China, requesting that any designated party answer the questions to the extent possible for all companies that manufactured or exported the subject merchandise during the period of review (POR), whether or not they were owned by the PRC-government or subject to PRC government control of export pricing. We also stated that all companies named in the notice of initiation were presumed to be under PRC-government control and we requested that the government designate a person or organization as our contact for this review. The embassy named the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) as our contact. We did not receive any response from MOFTEC regarding the questionnaire nor did we receive a response from any PRC companies. Therefore, we must rely on facts otherwise available in accordance with section 776(a) of the Act for these preliminary results of review.

Because necessary information is not available on the record with regard to sales by these firms, as a result of their withholding the requested information, we are preliminarily determining to apply antidumping duties based on facts otherwise available pursuant to section 776(a) of the Act. In addition, the Department finds that, in not responding to the questionnaire, the firms named in the notice of initiation failed to cooperate by not acting to the best of their ability to comply with requests for information from the Department.

Where the Department must base the entire dumping margin for a respondent in an administrative review on facts available because that respondent failed to cooperate, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use, as adverse facts available, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because information from prior segments of the proceeding constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render the secondary information not relevant. Where circumstances indicate that the selected data is not appropriate as adverse facts available, the Department will disregard that data and determine an appropriate alternative (*see, e.g., Bicycles from the PRC; Final Determination of Sales at Less than Fair Value*, 61 FR 19026, 19027 (April 30, 1996) (where the Department disregarded certain information from the petition as adverse facts available because the data was not reflective of the industry and, therefore, did not have probation value)). In this case, we relied upon information from the petition as secondary information. Based on our review of several major items (*i.e.*, general and administrative expense, packing cost and profit, as well as the factor value for seed cost and labor cost) contained in the petition which individually comprise a significant portion of the normal value (NV) calculations, there is no indication that the selected margin is not appropriate as facts available.

In this case, in accordance with the facts-available formula stated above, we have preliminarily assigned these companies the rate determined for companies involved in the less-than-fair-value investigation (376.67 percent). Moreover, we have determined that the non-responsive companies do not merit separate rates. *See, e.g, Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 57390 (November 6, 1996). Therefore, the facts available for these companies forms the basis for the PRC rate, which is 376.67 percent for this review.

Partial Termination of Review

We also preliminarily determine to terminate our review of Top Pearl, the sole responding party in this proceeding. This determination is based on the principle that it is not appropriate to review U.S. sales made by a third-country company (in this case, Top Pearl) whose supplier (here, the PRC exporter Wallong) had knowledge that the merchandise was destined for the United States. Instead, the appropriate respondent in this instance is Wallong. We are assigning the PRC rate to transactions made during the period between Wallong and Top Pearl, for the reasons stated in our November 22, 1996 memorandum: *Partial Termination of 1994–95 Administrative Review of Fresh Garlic from the PRC* (November 22, 1996). Specifically, we did not receive a request for review of Wallong; accordingly, Wallong is not entitled to a review of its POR sales as a separate entity (as opposed to its participation as part of the PRC entity). In order for Wallong to participate in this review as an independent company and not as part of the PRC entity, a request for review of this company must have been made during the anniversary month (*see* 19 CFR 353.22) and the company must have established that it is entitled to a separate rate.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 376.67 percent exists for all producers/exporters of the subject merchandise for the period July 11, 1994 through October 31, 1995.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will issue a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

The Department will determine, and the Customs Service will assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: For all PRC exporters and for all non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the PRC-wide rate established in the final results of this review.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 18, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–32877 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–614–801]

Fresh Kiwifruit From New Zealand; Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On September 3, 1996, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on fresh kiwifruit from New Zealand. The review covers one exporter, the New Zealand Kiwifruit Marketing Board (NZKMB), and the period from June 1, 1994, through May 31, 1995. Based on the correction of ministerial errors, we are amending the final results.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Paul M. Stolz or Thomas F. Futtner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4474 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION

Background

On September 3, 1996, the Department published the final results (61 FR 46438) of its administrative review of the antidumping duty order on fresh kiwifruit from New Zealand (57 FR 23203 (June 2, 1992)). The review covered one exporter, the New Zealand Kiwifruit Marketing Board (NZKMB). The Department has now amended the final results of this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute are references to the provisions on January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Scope of the Review

The product covered by the order under review is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit, are not covered under the scope of the order. The subject merchandise is currently classifiable under subheading 0810.90.20.60 of the Harmonized Tariff Schedule (HTS). Although the HTS number is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Analysis of Comments Received

After publication of our final results, we received timely allegations of ministerial errors from the respondent, NZKMB, and the petitioner, the California Kiwifruit Commission.

Comments

The petitioner alleged that the Department's calculation of cost of production (used for comparison with net home market sales prices) did not include an amount for pallet expense.

The respondent alleged three ministerial errors pertaining to the Department's preliminary calculations: (1) packing costs were double-counted in calculating constructed value; (2) home market transportation insurance was incorrectly treated as an indirect selling expense rather than as a movement cost; and (3) U.S. indirect selling expenses incurred in New Zealand were erroneously deducted from constructed export price.

DOC Position

With respect to the ministerial error allegations noted above, the Department agrees that it made these errors and has corrected these errors for the final results. (See memorandum to the file dated October 30, 1996, for a detailed description of all adjustments made.)

Amended Final Results of Review

As a result of our correction of the ministerial errors, we have determined the following margin exists for the period June 1, 1994, through May 31, 1995:

Manufacturer exporter	Margin (percent)
New Zealand Kiwifruit Marketing Board	3.5

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between U.S. price and NV may vary from the percentage stated above. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise

entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed firm will be 3.57 percent; and (2) the cash deposit rate for merchandise exported by all other manufacturers and exporters will be the ''all others'' rate of 98.60 percent established in the less-than-fair-value investigation; in accordance with the Department practice. See Floral Trade Council v. United States, 822 F.Supp. 766 (1993), and Federal Mogul Corporation, 822 F.Supp. 782 (1993).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 10, 1996.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–32879 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–847]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Persulfates From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta, Barbara Wojcik-Betancourt, or Howard Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–6320, (202) 482–0629, or (202) 482–5193, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Preliminary Determination

We determine preliminarily that persulfates from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (61 FR 40817, August 6, 1996), the following events have occurred:

On August 1, 1996, the Department sent a survey to the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) requesting the identification of producers and exporters, information on production and sales of persulfates exported to the United States, and identification of the appropriate Chinese Chamber of Commerce. We did not receive a response to this request from MOFTEC.

On August 26, 1996, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (see ITC Investigation No. 731–TA–749). The ITC found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the PRC of persulfates.

The Department issued an antidumping questionnaire [1] to MOFTEC on August 27, 1996, with instructions to forward the document to all PRC producers/exporters of persulfates and to inform these companies that they must respond by the due dates. We also sent courtesy copies of the antidumping duty questionnaire to the Chinese Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters Association and to 18 companies whose names and complete addresses had been identified in the petition. Moreover, on September 5, 1996, we served the questionnaire, via MOFTEC, on two additional companies not listed in the petition (i.e., Guangdong Petroleum Chemical Import & Export Trade Corporation (''Guangdong Petroleum'') and Shanghai Ai Jian Import & Export Corporation (''AJ'')) which we learned were potential manufacturers and/or exporters of the subject merchandise. In addition, on the same date, we sent copies of the questionnaire directly to both of these companies.

On September 17, 1996, the Department requested that interested parties provide published information (PI) for valuing the factors of production and for surrogate country selection. We received comments from interested parties in October 1996.

In September and October 1996, four PRC companies and one U.S. company submitted responses to section A and/or sections C and D of the questionnaire. The identities of these companies are: (1) Sinochem Jiangsu Wuxi Import & Export Co. (''Wuxi''), a Chinese exporter of subject merchandise; (2) Shanghai Ai Jian Import & Export Co., (''AJ''), a Chinese exporter of subject merchandise; (3) Ai Jian Reagent Works (''AJ Works''), Wuxi's and AJ's supplier factory; (4) ICC Chemical Corporation (''ICC''), a U.S. importer and reseller of subject merchandise which is a privately-owned U.S. company; and (5) Guangzhou City Zhujian Electrochemical Factory (''Zhujian''), ICC's Chinese supplier factory.

Also in October 1996, we issued supplemental questionnaires to the companies noted above. We received responses to these questionnaires during October and November 1996.

In its questionnaire responses, Zhujian identified Guangdong Petroleum as its official exporter in China. Yet, ICC, the U.S. importer of Zhujian produced persulfates,

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[1] The questionnaire is divided into four sections. Section A requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C request home market sales listings and U.S. sales listings, respectively (section B does not normally apply in antidumping proceedings involving the PRC). Section D requests information on the factors of production of the subject merchandise.

responded to Section C of the Department's antidumping questionnaire. In light of these facts, we concluded that clarification was required as to whether Guangdong Petroleum or ICC was the appropriate respondent for U.S. sales reporting purposes. Therefore, on November 4, 1996, we requested that Zhujian provide information on its U.S. sales via Guangdong Petroleum. Insofar as Guangdong Petroleum had failed to respond to our original questionnaire sent to it on September 5, 1996, we did not issue our request for additional information to Guangdong Petroleum. Nevertheless, Guangdong Petroleum, rather than Zhujian, responded to this request on November 25, 1996, by submitting a response to Section C of our questionnaire.[2]

Except for the companies identified above, none of the other companies which were served with a questionnaire responded.

Postponement of Final Determination and Extension of Provisional Measures

In November and December 1996, all participating exporters requested that, pursuant to section 735(a)(2)(A) of the Act, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the publication of the affirmative preliminary determination in the Federal Register. In accordance with 19 CFR 353.20(b), because (1) our preliminary determination is affirmative, (2) these respondents account for all of the exports of the companies that responded to the questionnaire, and (3) we are not aware of the existence of any compelling reasons for denying the request, we are granting respondents' requests and are postponing the final determination until no later than 135 days after the publication of this notice in the Federal Register. Suspension of liquidation will be extended accordingly.

Scope of the Investigation

The products covered by this investigation are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formulae for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Sodium persulfate is classified under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of this investigation (POI) comprises each exporter's two most recent fiscal quarters prior to the filing of the petition (*i.e.*, January through June 1996).

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy country (NME) in all past antidumping investigations (*see, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*) and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22545 (May 8, 1995) (*Furfuryl Alcohol*)). Neither respondents nor petitioner has challenged such treatment. Therefore, in accordance with section 771(18)(C) of the Act, we will continue to treat the PRC as an NME in this investigation.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producers' factors of production, valued, to the extent possible, in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the NV section below.

Surrogate Country

The Department has determined that India, Pakistan, Sri Lanka, Egypt and Indonesia are countries comparable to the PRC in terms of overall economic development (see Memorandum from David Mueller to Louis Apple, dated September 12, 1996).

According to the available information on the record, we have determined that India is a significant producer of comparable merchandise. Accordingly, we have calculated NV using Indian prices to value the PRC producers' factors of production, when available and where appropriate. We have obtained and relied upon PI wherever possible.

Separate Rates

Each of the participating respondent exporters, except for Guangdong Petroleum which did not respond to the Department's section A questionnaire, has requested a separate, company-specific rate. The claimed ownership structure of the respondents is as follows: (1) Wuxi is owned by all the people; (2) AJ is a publicly-held company.

As stated in *Silicon Carbide* and *Furfuryl Alcohol*, ownership of a company by all the people does not require the application of a single rate. Accordingly, each of the respondents which reports that it is owned by all the people or publicly held is eligible for consideration for a separate rate.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*) and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

Except for Guangdong Petroleum which has failed to respond to the Department's section A questionnaire, each respondent exporter has placed on the administrative record a number of documents to demonstrate absence of *de jure* control. These documents include laws, regulations and provisions enacted by the central government of the PRC, describing the deregulation of Chinese enterprises as well as the deregulation of the Chinese export trade, but for a list of products that may be subject to central government export constraints, which the respondents claim does not involve the subject merchandise. Specifically, the respondents provided English translations of the law of the PRC on industrial enterprises ''owned by the people,'' enacted on April 13, 1988, and the regulations regarding the deregulation of state owned industrial enterprises, enacted on August 23, 1992. The articles of the 1988 law and 1992 regulations authorize these companies to make their own operational and managerial decisions.

In prior cases, the Department has analyzed the laws which the respondents have submitted in this record and found that they establish an absence of *de jure* control. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China*, 60 FR 54472 (October 24, 1995);

[2] Guangdong Petroleum never responded to the Department's Section A questionnaire which was issued to it on September 5, 1996.

see also Furfuryl Alcohol. We have no new information in these proceedings which would cause us to reconsider this determination.

However, as in previous cases, there is some evidence that the PRC central government enactments have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Silicon Carbide* and *Furfuryl Alcohol*.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices (''EP'') are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Except for Guangdong Petroleum which has failed to respond to the Department's section A questionnaire, each respondent exporter has asserted the following: (1) it establishes its own EPs; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is a *de facto* absence of governmental control of the export functions of these companies.

Consequently, we determine preliminarily that each of the participating exporters, meets the criteria for application of separate rates. Guangdong Petroleum, however, did not provide any information on the issue of *de jure* or *de facto* control of its operations. Therefore, we preliminarily determine that this exporter has not met the criteria enumerated above for the application of a separate rate. Consequently, we are applying a China-wide rate to this PRC exporter for purposes of the preliminary determination. Because Guangdong Petroleum submitted a response to Section C of the Department's questionnaire in connection with our request for additional information from Zhujian, and we are uncertain that Guangdong Petroleum received the full questionnaire issued to it on September 5, 1996, we intend to send Guangdong Petroleum a supplemental letter requesting, among other things, that it provide the information requested in the Department's Section A questionnaire in order to be considered for a separate rate in the final determination.

China-Wide Rate

U.S. import statistics indicate that the total quantity and value of U.S. imports of persulfates from the PRC is greater than the total quantity and value of persulfates reported by all PRC companies that submitted responses. Given this discrepancy, we conclude that not all exporters of PRC persulfates responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the China-Wide rate—to all exporters in the PRC (other than AJ and Wuxi), based on our presumption that those respondents who failed to respond constitute a single enterprise, and are under common control by the PRC government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996) (*Bicycles*).

This China-Wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority . . . shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

When multiple companies are treated as a single enterprise, the enterprise must submit a complete, consolidated response. If it fails to do so, the Department may base the margin calculation for the enterprise on the facts available. As discussed above, all PRC exporters that do not qualify for a separate rate are treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. Accordingly, consistent with section 776(b)(1) of the Act, we have applied, as total facts available, the higher of the average margin from the petition, as recalculated by the Department based on the corroboration efforts discussed below, or the highest rate calculated for a respondent in this proceeding. In the present case, based on our comparison of the calculated margins for the other respondents in this proceeding to the recalculated average margin in the petition, we have concluded that the petition is the most appropriate record information on which to form the basis for dumping calculations in this investigation. Accordingly, the Department has based the China-wide rate on information in the petition. In this case, the recalculated average petition rate is 76.65 percent.

Section 776(c) of the Act provides that where the Department relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA clarifies that the petition is ''secondary information.'' *See* SAA at 870. The SAA also clarifies that ''corroborate'' means to determine that the information used has probative value. *Id*. However, where corroboration is not practicable, the Department may use uncorroborated information.

In accordance with section 776(c) of the Act, we corroborated the margins in the petition to the extent practicable. The petitioner based EPs on price quotes obtained from U.S. importers, reduced by estimated importer mark-ups and movement charges. We compared the starting prices used by petitioner less the importer mark-ups against prices derived from U.S. import statistics and found that the two sets of

prices are consistent. We also compared the movement charges used in the petition with the surrogate values used by the Department in its margin calculations and found them to be consistent.

Regarding normal value, petitioner used publicly available published information from India to value the factors of production. Petitioner based factory overhead (FOH), selling, general and administrative (SG&A) and profit estimates on data from an annual report of National Peroxide Limited, an Indian producer of hydrogen peroxide. We compared this financial data against that obtained for other Indian chemical producers, and found that we could not corroborate this data. (*See* also, ''Factors Valuation'' section of this notice.) Therefore, we recalculated the FOH, SG&A and profit portions of the petitioner's normal value calculations using data obtained from the financial statement for Sanderson Industries Ltd. (''Sanderson''), which we found to be more consistent with that of the other Indian chemical producers examined.

With respect to all other elements of the normal value calculation in the petition (*i.e.,* materials, labor, energy and packing), the Department corroborated the values used in the petition by comparing them with values obtained from PI collected in this and previous NME investigations.

Accordingly, we have corroborated, to the extent practicable, the data contained in the petition. Our recalculation of the FOH, SG&A and profit portions of the petitioner's margin calculations resulted in revised average margin rate of 76.65 percent. See Memorandum from the Team to Louis Apple regarding Factors Valuation for the Preliminary Determination dated December 18, 1996 (*Factors Memorandum*); and the Memorandum from the Team to Louis Apple regarding Corroboration of Data Contained in the Petition, dated December 18, 1996.

Export Price Issues

Although we have not calculated a separate rate for Guangdong Petroleum for purposes of this preliminary determination, we will be affording Guangdong Petroleum a second opportunity to respond to Section A of the Department's questionnaire, as discussed in the ''Separate Rates'' section of this notice. Furthermore, pending receipt of a complete Section A response from Guangdong Petroleum, we will revisit the issue regarding the appropriate basis for EP for this PRC exporter's sales to the United States in the final determination.

During the POI, Zhujian sold subject merchandise to ICC through Guangdong Petroleum. In their questionnaire responses, both Zhujian and ICC claimed that ICC's prices to unaffiliated customers in the United States, rather than Guangdong Petroleum's prices to ICC, should form the basis for EP because neither Zhujian nor Guangdong Petroleum knew or had reason to know at the time of sale to ICC whether the merchandise was ultimately destined for the United States. After analyzing the record evidence in light of Zhujian and ICC's arguments, we have preliminarily determined that Guangdong Petroleum's prices to ICC are the more appropriate basis for calculating EP. As we understand the facts, ICC purchases persulfates from Guangdong Petroleum with the assistance of its Hong Kong office. ICC then warehouses the merchandise in New Jersey for resale to customers both inside and outside the United States. The record does not make clear whether this warehoused merchandise is entered for consumption or entered into a bonded warehouse in the United States. Nor is the record clear regarding the share of ICC's purchases from Guangdong Petroleum this warehoused merchandise accounts for. The record does indicate, however, that ICC is the U.S. importer of record. That is, Guangdong Petroleum sells the subject merchandise—in an arm's-length transaction—directly to the U.S. importer of record. This is, at first impression, an EP sales situation, requiring that Guangdong Petroleum's sales prices serve as the basis for EP. In such situations, the Department typically does not inquire into the disposition of the merchandise after importation.

At verification, we intend to examine, among other things, the role and function of ICC's Hong Kong office and the extent to which ICC enters the merchandise into a bonded warehouse or for consumption in the United States. We hereby invite interested parties to comment on this issue. Interested party comments must be submitted no later than January 6, 1997.

Fair Value Comparisons

To determine whether persulfates from the PRC sold to the United States by the PRC exporters receiving separate rates were made at less than fair value, we compared the EP to the NV, as specified in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

For both AJ and Wuxi, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (''CEP'') methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the factors of production.

We made company-specific adjustments as follows:

1. AJ

We calculated EP based on packed, CIF U.S. port prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for the following services which were provided by market economy suppliers: ocean freight; marine insurance; and U.S. inland insurance. We also deducted from the starting price, where appropriate, an amount for foreign inland freight and port construction fees. When these movement services were provided by nonmarket economy suppliers, we valued them using Indian rates.

2. Wuxi

We calculated EP based on packed, FOB PRC port prices to unaffiliated purchasers in the United States. Wuxi claimed that all the expenses for movement services were paid by the purchaser and, thus, we did not make any adjustments to the starting price.

Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the factory in the PRC which produced persulfates sold by the two exporters. We valued all the input factors using PI from India.

Factor Valuations

The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices. Where we were not able to rely on domestic prices, we used import prices to value factors. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices or, in the case of labor rates, consumer price indices, published in the International Monetary Fund's *International Financial Statistics.* For a complete analysis of surrogate values, see *Factors Memorandum*.

To value ammonium sulfate, caustic soda, caustic potash, sulfuric acid, and sodium sulfate we used public information from POI issues of the Indian publication *Chemical Weekly*. For potassium sulfate and anhydrous ammonia, we relied on import prices contained in the February and July 1995 issues of *Monthly Statistics of the Foreign Trade of India* (*Monthly Statistics*). To value ammonium persulfate, we used a price quotation obtained by interested parties from an Indian factory, the Rajendra Chemical Ltd., Bombay. For further discussion, see the *Factors Memorandum*.

To value coal (steam), we relied on public information reported in the antidumping investigation of *Pencils from the PRC*. (*See Final Determination of Sales at Less Than Fair Value: Case Pencils from the People's Republic of China,* 59 FR 55625, November 8, 1994.) For electricity, we relied upon public information from *Confederation of Indian Industries Handbook of Statistics 1995* to obtain an average price for electricity provided to large-size industries. For oil, we relied on public information reported in the antidumping investigation of *Polyvinyl Alcohol from the PRC*. (*See Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China* 61 FR 14057 (March 29, 1996) (*Polyvinyl Alcohol*)). To value water we relied on public information reported in the antidumping investigation of *Coumarin from the PRC*. (*See Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China,* 59 FR 66895, December 28, 1994) (*Coumarin*).

To value packing materials such as polyethylene liners and polypropylene sacks, we relied upon Indian import data from the February and July 1995 issues of *Monthly Statistics*.

Regarding wooden pallets, we relied on public information reported in the antidumping investigation of *Brake Drums and Brake Rotors from the PRC*. (*See Preliminary Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China,* 61 FR 53190, October 10, 1996).

To value labor, we inflated to POI values, 1990 labor data from the United Nations' publication *Yearbook of Labour Statistics* (*YLS*), and we relied on methodology used in the antidumping investigation of *Coumarin* (*See* also *Factors Memorandum*). Although one of the respondents provided 1994 Indian labor rates from the *1995 World Labor Report, Foreign Labor Trends,* we did not use these rates because they reflected the experience in the general manufacturing sector and not labor rates specific to the chemical sector.

To value truck freight, we used public information from the Indian periodical *The Times of India*. To value ocean freight we used public information from the antidumping investigation of *Coumarin*. To value containerization and loading, we relied on public information reported in the antidumping investigation of *Polyvinyl Alcohol*.

To value foreign brokerage and handling, we relied on public information reported in the antidumping investigation of *Stainless Steel Bar from India*. (*See Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India,* 59 FR 66915, December 28, 1996.) For marine insurance, we used public information reported in the antidumping investigation of *Sulfur Dyes, Including Sulfur Vat Dyes, from India*. (*See Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from India,* 58 FR 7535, 7538, February 8, 1993.)

To value FOH, SG&A and profit, we relied on the financial statements of Sanderson, an Indian producer of sulphuric acid and other chemicals, which were submitted by Zhujian/ICC, because this financial data was consistent with that obtained from other chemical producers. The alternative data submitted by the petitioner which relied on the financial statements of an Indian producer of hydrogen peroxide was inappropriate when benchmarked against the financial data for other chemical producers. (*See Factors Memorandum*.) We also determined that the data submitted by AJ, AJ Works, and Wuxi, which relied on aggregate financial data from the *Reserve Bank of India Bulletin* for the Indian metals and chemicals industries was inappropriate because it was not industry-specific. (*See Factors Memorandum*.)

Where appropriate, we have removed from the surrogate FOH and SG&A calculations the excise duty amount listed in the financial statements (*see Bicycles,* 61 FR 19039). We adjusted the FOH, SG&A, and profit percentages that the respondent calculated from Sanderson's financial statements as follows: (1) we included manufacturing energy expenses in the base to which the FOH rate is applied, (2) we included ''other'' expenses and ''miscellaneous'' expenses in SG&A, and (3) we calculated the profit percentage using profit before prior period adjustments. (*See Factors Memorandum*.)

Verification

As provided in section 782(i) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of persulfates from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service will require a cash deposit or posting of a bond equal to the estimated dumping margins by which the normal value exceeds the EP, as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Shanghai Ai Jian Import & Export Corporation	15.62
Sinochem Jiangsu Wuxi Import & Export Corporation	50.35
China-Wide Rate	76.65

China-Wide Rate

A China-Wide Rate has been assigned to persulfates based on the average margin contained in the petition, as amended by the Department. The China-Wide rate applies to all entries of that product except for entries from exporters/factories that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the corresponding U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 26, 1997, and rebuttal briefs, no later than March 31, 1997. A list of authorities used and a summary of arguments made in the briefs should accompany these briefs. Such summary should be limited to five pages total, including footnotes.

We will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. At this time, the hearing is scheduled for April 3, 1997, time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the Federal Register.

This determination is published pursuant to section 733(f) of the Act.

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above listed companies, in accordance with 19 CFR 353.22(h)(4).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 353.22(h).

Dated: December 18, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary, Import Administration.

[FR Doc. 96–32870 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–824]

Polyvinyl Alcohol From Taiwan: Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received a request to conduct a new shipper administrative review of the antidumping duty order on polyvinyl alcohol from Taiwan. In accordance with 19 CFR 353.22(h), we are initiating this administrative review.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or Dorothy Tomaszewski, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4194 or 482–0631, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request, pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 353.22(h), for a new shipper review of the antidumping duty order on polyvinyl alcohol from Taiwan, which has a March anniversary date.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 353.22(h)(6), we are initiating a new shipper review of the antidumping duty order on polyvinyl alcohol from Taiwan. We intend to issue the final results of review not later than 270 days from the date of publication of this notice.

Antidumping duty proceeding	Period to be reviewed
Taiwan: Polyvinyl Alcohol, A–583–824:	
Perry Chemical Corporation	05/01/96–10/31/96

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of the antidumping duty administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers six manufacturers/exporters of this merchandise to the United States during the period April 1, 1995 through March 31, 1996.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Jack Dulberger or Joseph Hanley, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5253.

Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limits for completion of the preliminary results until April 30, 1997. We are also extending the time limit for completion of our final results of review, which we will issue by October 31, 1997. *See* Memorandum from Jeffrey P. Bialos to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building.

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: December 18, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–32871 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DS–P

Dated: August 8, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–32864 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–533–810]

Stainless Steel Bar From India; Termination of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On September 18, 1996, the Department of Commerce (''the Department'') published a notice of initiation of a new shipper administrative review of the antidumping duty order on stainless steel bar from India. The Department is now terminating this review.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Vince Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0189 or 482–2815, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1996, Ferro Alloys Corporation Limited (''Facor'') requested that the Department conduct a new shipper review of the antidumping duty order on stainless steel bar from India. On September 18, 1996, the Department published in the Federal Register (61 FR 49112) a notice of initiation of a new shipper administrative review of the antidumping duty order on stainless steel bar from India covering Facor and the period February 1, 1996 through July 31, 1996.

On December 3, 1996, Facor requested that it be allowed to withdraw its request for a new shipper review and that the review be terminated. Therefore, the Department is now terminating the review.

Dated: December 17, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 96–32873 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DS–P

Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce (the Department), in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 1995 through September 30, 1996. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Maria MacKay, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTAL INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's annual list of subsidies on cheeses that were imported during the period October 1, 1995 through September 30, 1996.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: December 19, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross[1] subsidy	Net[2] subsidy
Austria	European Union Restitution payments.	$0.29	$0.29
Belgium	EU restitution payments	0.29	0.29
Canada	Export assistance on certain types of cheese.	0.26	0.26
Denmark	EU restitution payments	0.32	0.32
Finland	EU restitution payments	0.31	0.31
France	EU restitution payments	0.29	0.29
Germany	EU restitution payments	0.31	0.31
Greece	EU restitution payments	0.00	0.00

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY—Continued

Country	Program(s)	Gross[1] subsidy	Net[2] subsidy
Ireland	EU restitution payments	0.29	0.29
Italy	EU restitution payments	0.31	0.31
Luxembourg	EU restitution payments	0.29	0.29
Netherlands	EU restitution payments	0.28	0.28
Norway	Indirect (Milk) subsidy	0.42	0.42
	Consumer Subsidy	0.19	0.19
Total		0.61	0.61
Portugal	EU restitution payments	0.29	0.29
Spain	EU restitution payments	0.37	0.37
Switzerland	Deficiency payments	0.39	0.39
U.K.	EU restitution payments	0.30	0.30

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 96–32878 Filed 12–26–96; 8:45 am]
BILLING CODE 3510–DS–P

[C–201–810]

Cut-to-Length Steel Plate from Mexico; Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: On September 17, 1996 (61 FR 48883), in response to a request from the respondent, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on cut-to-length steel plate from Mexico. In accordance with 19 CFR 355.22(a)(5)(Interim Regulations, 60 FR 25137; May 11, 1995), the Department is now terminating this review because the respondent has withdrawn its request for review.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Kelly Parkhill, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 23, 1996, the Department received a request for an administrative review of this countervailing duty order from the respondent, Altos Hornos de Mexico, S.A. de C.V. (respondent), an exporter of the subject merchandise, for the period January 1, 1995, through December 31, 1995. No other interested party requested a review of the countervailing duty order. On September 17, 1996, the Department published in the Federal Register (61 FR 48883) a notice of ''Initiation of Countervailing Duty Administrative Review'' initiating the administrative review of respondent for that period. On November 26, 1996, respondent withdrew its request for review.

Section 355.22(a)(5) of the Department's interim regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. In this case, respondent has withdrawn its request for review within the 90-day period. No other interested party requested a review and we have received no other submissions regarding respondent's withdrawal of its request for review. Therefore, we are terminating this review of the countervailing duty order on cut-to-length steel plate from Mexico.

This notice is published in accordance with 19 CFR 355.22(a)(5).

Dated: December 18, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for AD/CVD Enforcement Group III.

[FR Doc. 96–32863 Filed 12–26–96; 8:45 am]
BILLING CODE 3510–DS–M

[C–559–001]

Certain Refrigeration Compressors From the Republic of Singapore; Extension of Time Limit for Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of extension of time limit for countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for its final results in the administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. The review covers the period April 1, 1994, through March 31, 1995.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Jean Kemp, AD/CVD Enforcement, Group III, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for the completion of the final results to no later than February 28, 1997, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA). (See Memorandum from Joseph A. Spetrini to Robert S. LaRussa on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the URAA (19 U.S. C. 1675(a)(3)(A)).

Dated: December 13, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary Enforcement Group III.

[FR Doc. 96–32876 Filed 12–26–96; 8:45 am]
BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The National Weather Service (NWS) is publishing proposed certifications for the proposed consolidations of:

(1) Evansville Weather Service Office (WSO) into the future Paducah, Central Illinois, Indianapolis, and Louisville Weather Forecast Offices (WFO);

(2) Wichita Falls WSO into the future Oklahoma City and Dallas/Fort Worth WFOs; and

(3) Astoria WSO into the future Portland WFO.

In accordance with Public Law 102–567, the public will have 60-days in which to comment on these proposed consolidation certifications.

DATES: Comments are requested by February 25, 1997.

ADDRESSES: Requests for copies of the proposed consolidation packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Public Law 102–567, the Secretary of Commerce must certify that these consolidations will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR-88D Radar Commissioning Report(s), User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable); and

(7) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Public Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certifications. If decisions to certify are made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate Congressional committees prior to consolidating the offices.

Dated: December 20, 1996.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 96–32899 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–12–M

COMMISSION OF FINE ARTS

Announcement; National Capital Arts and Cultural Affairs 1997 Grant Program

The 1997 National Capital Arts and Cultural Affairs Program has received an appropriation of $6,000,000. Washington, DC organizations which perform or exhibit the arts in the nation's capital and fulfill the following requirements may request an application package by writing the Commission of Fine Arts, National Capital Arts and Cultural Affairs Program, Pension Building, Suite 312, 441 F Street, NW. Washington, DC 20001.

Questions may be referred to Donald B. Myer, Program Administrator at 202–504–2200.

Charles H. Atherton,

Secretary.

1997 National Capital Arts and Cultural Affairs Program

Guidelines

In Public Law 99–190, as amended, the U.S. Congress authorized a grant program to support artistic and cultural programs in the District of Columbia. Its purpose is to provide grants for general operating support to organizations whose primary purpose is performing, exhibiting and/or presenting the arts.

Eligibility to Apply: To be eligible for a grant from the National Capital Arts and Cultural Affairs Program, an organization must be designated in 20 U.S.C. 956a or must satisfy all the following criteria:

1. The organization must have its principal place of business in the District of Columbia and must have the primary purpose of performing, exhibiting, and/or presenting the arts;

2. The organization must be engaged primarily in performing, exhibiting and/or presenting the arts in a facility or facilities located in the District of Columbia;

a. ''Performing'' is the public presentation before a live audience of dance, theater, opera, music and related forms.

b. ''Exhibiting'' is the public display to a live audience of the visual arts, including, but not limited to painting, sculpture, photography, works on paper, textiles, crafts, cultural artifacts, and media arts.

c. ''Presenting'' is the programming and/or presentation of ''Performing'' or ''Exhibiting'' as defined above;

3. The organization must allocate a substantial portion of its annual income to exhibiting, performing and/or

presenting art in facilities located in the District of Columbia;

4. The organization must be a not-for-profit, non-academic institution of demonstrated national repute; and

5. The organization must have an annual income, exclusive of federal or pass-through federal funds, in excess of $1 million for each of the three years prior to the year of application.

[FR Doc. 96–32904 Filed 12–26–96; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain

December 20, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in Bahrain and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1997 period.

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 61 FR 66263, published on December 17, 1996).

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 ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bahrain and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
237, 239, 330–336, 338, 339, 340–342, 345, 347, 348–354, 359, 431–436, 438–440, 442–448, 459, 630–636, 638, 639, 640–647, 648, 649, 650–654, 659, 831–836, 838, 839, 840, 842–847, 850–852, 858 and 859, as a group.	39,505,041 square meters equivalent.
Sublevels in Group I	
338/339	548,930 dozen.
340/640	263,367 dozen of which not more than 197,525 dozen shall be in Categories 340–Y/640–Y [1].

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–32984 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

December 20, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in Bangladesh and exported during the period January 1, 1997 through December 31, 1997 are based on the limits notified to the Textiles Monitoring Body pursuant to the

Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1997 period. The 1997 limits for Categories 338/339, 347/348 and 363 have been reduced for carryforward applied to the 1996 limits.

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 61 FR 66263, published on December 17, 1996).

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 ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	440,629 dozen.
331	1,116,315 dozen pairs.
334	134,426 dozen.
335	241,362 dozen.
336/636	431,924 dozen.
338/339	1,181,800 dozen.
340/640	2,671,533 dozen
341	2,343,153 dozen.
342/642	405,402 dozen.
347/348	1,991,808 dozen.
351/651	643,862 dozen.
352/652	9,605,759 dozen.
363	22,667,619 numbers.
369–S[1]	1,608,700 kilograms.
634	470,294 dozen.
635	304,695 dozen.
638/639	1,498,738 dozen.
641	981,144 dozen.
645/646	351,962 dozen.
647/648	1,326,313 dozen.
847	704,223 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–32985 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

December 20, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

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); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in Egypt and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits.

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 61 FR 66263, published on December 17, 1996).

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 ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Fabric Group 218–220, 224–227, 313–317 and 326, as a group.	98,244,930 square meters.

Category	Twelve-month restraint limit
Sublevels within Fabric Group	
218	2,508,000 square meters.
219	23,114,839 square meters.
220	23,114,839 square meters.
224	23,114,839 square meters.
225	23,114,839 square meters.
226	23,114,839 square meters.
227	23,114,839 square meters.
313	42,445,469 square meters.
314	23,114,839 square meters.
315	27,143,964 square meters.
317	23,114,839 square meters.
326	2,508,000 square meters.
Levels not in a group	
300/301	9,094,098 kilograms of which not more than 2,852,229 kilograms shall be in Category 301.
369–S [1]	1,368,627 kilograms.
338/339	2,608,824 dozen.
340/640	1,080,799 dozen.
448	18,850 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–32980 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

December 20, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 24, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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) 927–6705. 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 limits for certain categories are being adjusted, variously, for special shift, swing and carryforward.

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 62399, 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.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 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, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on December 24, 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 Level [1]
219	67,248,362 square meters.
313	35,536,053 square meters.
315	14,016,231 square meters.
317	36,258,002 square meters.
326	5,614,173 square meters.

[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 to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–32986 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 20, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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) 927–6705. 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 import restraint limits for textile products, produced or manufactured in India and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits. The limit for Categories 369–S has been reduced for carryforward applied in 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 61 FR 66263, published on December 17, 1996).

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 ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
218	12,989,042 square meters.
219	60,956,651 square meters.
313	34,753,868 square meters.
314	7,256,744 square meters.
315	12,188,423 square meters.
317	37,810,040 square meters.
326	8,593,191 square meters.
334/634	129,709 dozen.
335/635	577,464 dozen.
336/636	804,052 dozen.
338/339	3,723,716 dozen.
340/640	1,860,590 dozen.
341	3,996,788 dozen of which not more than 2,398,072 dozen shall be in Category 341–Y [1].
342/642	1,169,365 dozen.
345	173,647 dozen.
347/348	558,678 dozen.
351/651	247,181 dozen.
363	40,591,446 numbers.
369–D [2]	1,209,925 kilograms.
369–S [3]	622,938 kilograms.
641	1,361,441 dozen.
647/648	790,576 dozen.
Group II 200, 201, 220–229, 237, 239, 300, 301, 330–333, 349, 350, 352, 359–362, 600–607, 611–629, 630–633, 638, 639, 643–646, 649, 650, 652, 659, 665–O [4], 666, 669, 670, and 831–859, as a group.	106,168,919 square meters equivalent.

[1] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 665–O: all HTS numbers except 5702.10.9030, 5702.42.2020, 5702.92.0010 and 5703.20.1000 (rugs).

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–32987 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

December 20, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, 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) 927–6709. 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 import restraint limits for textile products, produced or manufactured in Macau and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits. The limits for certain categories have been reduced for carryforward applied to the 1996 limits.

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 61 FR 66263, published on December 17, 1996).

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 the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
219	2,778,300 square meters.
225	9,724,050 square meters.
313	6,945,750 square meters.
314	1,157,625 square meters.
315	3,472,875 square meters.
317	6,945,750 square meters.
326	2,778,300 square meters.
333/334/335/833/834/835.	249,644 dozen of which not more than 139,253 dozen shall be in Categories 333/335/833/835.
336/836	59,170 dozen.
338	321,377 dozen.
339	1,346,132 dozen.
340	304,183 dozen.
341	196,192 dozen.
342	88,756 dozen.
345	57,069 dozen.
347/348/847	760,690 dozen.
350/850	62,657 dozen.
351/851	71,006 dozen.
359–C/659–C[1]	355,028 kilograms.
359–V[2]	118,343 kilograms.
611	2,778,300 square meters.
625/626/627/628/629	6,945,750 square meters.
633/634/635	559,795 dozen.
638/639/838	1,646,202 dozen.
640	123,944 dozen.
641/840	213,028 dozen.
642/842	117,205 dozen.
645/646	290,537 dozen.
647/648	553,484 dozen.
659–S[3]	125,317 kilograms.
Group II	
400–469, as a group	1,413,938 square meters equivalent.
Sublevel in Group II	
445/446	76,227 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–32988 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 20, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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) 927–6714. 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 import restraint limits for textile products, produced or manufactured in Pakistan and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits. The 1997 limit for Category 338 is reduced for carryforward applied to the 1996 limit.

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 61 FR 66263, published on December 17, 1996).

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 ATC, but are designed to assist only in the

implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following limits:

Category	Twelve-month restraint limit
Specific limits	
219	7,438,144 square meters.
226/313	109,549,784 square meters.
237	361,764 dozen.
239	1,703,186 kilograms.
314	5,409,559 square meters.
315	72,910,978 square meters.
317/617	29,070,061 square meters.
331/631	2,215,537 dozen pairs.
334/634	213,678 dozen.
335/635	329,983 dozen.
336/636	434,117 dozen.
338	4,309,390 dozen.
339	1,229,704 dozen.
340/640	578,823 dozen of which not more than 217,058 dozen shall be in Categories 340–D/640–D [1].
341/641	651,176 dozen.
342/642	322,298 dozen.
347/348	719,579 dozen.
351/651	289,411 dozen.
352/652	723,528 dozen.
359–C/659–C [2]	1,302,351 kilograms.
360	4,649,160 numbers.
361	5,406,000 numbers.
363	42,493,480 numbers.
369–F/369–P [3]	2,170,586 kilograms.
369–R [4]	10,129,400 kilograms.
369–S [5]	662,695 kilograms.
613/614	21,691,862 square meters
615	23,076,443 square meters.
625/626/627/628/629	70,972,838 square meters of which not more than 35,486,420 square meters shall be in Category 625; not more than 35,486,420 square meters shall be in Category 626; not more than 35,486,420 square meters shall be in Category 627; not more than 7,342,018 square meters shall be in Category 628; and not more than 35,486,420 square meters shall be in Category 629.
638/639	412,475 dozen.
647/648	782,036 dozen.
666–P [6]	720,800 kilograms.
666–S [7]	3,816,000 kilograms.

[1] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[4] Category 369–R: only HTS number 6307.10.2020.

[5] Category 369–S: only HTS number 6307.10.2005.

[6] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[7] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

Imports charged to these category limits for the periods January 1, 1996 through December 31, 1996 and March 22, 1996 through December 31, 1996 (Categories 666–P and 666–S) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–32982 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

December 20, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, 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); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in Sri Lanka and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits. The limits for certain categories have been reduced for carryforward and special carryforward applied to the 1996 limits.

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 61 FR 66263, published on December 17, 1996).

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 the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	278,533 dozen.
314	4,158,097 square meters.
331/631	2,649,715 dozen pairs.
333/633	52,430 dozen.
334/634	583,983 dozen.
335/835	273,018 dozen.
336/636/836	264,397 dozen.
338/339	1,228,822 dozen.
340/640	1,066,116 dozen.
341/641	1,865,959 dozen of which not more than 1,243,972 dozen shall be in Category 341 and not more than 1,243,972 dozen shall be in Category 641.
342/642/842	638,986 dozen.
345/845	175,318 dozen.
347/348/847	1,104,864 dozen.
350/650	121,505 dozen.
351/651	301,932 dozen.
352/652	1,245,828 dozen.
359–C/659–C [1]	1,268,605 kilograms.
360	1,468,404 numbers.
363	11,878,602 numbers.
369–D [2]	944,815 kilograms.
369–S [3]	787,343 kilograms.
434	7,246 dozen.
435	15,528 dozen.
440	10,352 dozen.
611	5,751,248 square meters.
635	342,604 dozen.
638/639/838	927,672 dozen.
644	520,740 numbers.
645/646	208,295 dozen.
647/648	1,116,807 dozen.
840	275,901 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–32981 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

December 20, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE:DECEMBER 24, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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 of each Customs port or call (202) 927–6717. 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 limits for certain categories are being adjusted, variously for carryforward, swing and shift subtracted.

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 62396, 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.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 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, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on December 24, 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 [1]
Levels in Group I	
200	1,102,569 kilograms.
219	3,706,230 square meters.
300	4,032,180 kilograms.
301–P [2]	3,990,591 kilograms.
301–O [3]	923,827 kilograms.
363	19,689,375 numbers.
369–S [4]	214,165 kilograms.
611	14,296,887 square meters.
619	6,584,737 square meters.
620	6,928,693 square meters.
Group II	
237, 330–359, 431–459, 630–659 and 831–859, as a group.	267,245,923 square meters equivalent.
Sublevels in Group II	
331/631	1,576,650 dozen pairs.
334/634	600,486 dozen.
335/635/835	477,310 dozen.
336/636	307,492 dozen.
340	259,980 dozen.
341/641	613,840 dozen.
342/642	534,402 dozen.
345	274,422 dozen.
347/348/847	804,498 dozen.
351/651	216,649 dozen.
647/648	1,096,273 dozen.
Level not in a Group	
239	5,699,628 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 301–P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 301–O: only HTS numbers 5205.21.0000, 5205.22.0000, 5205.23.0000, 5205.24.0000, 5205.25.0000, 5205.41.0000, 5205.42.0000, 5205.43.0000, 5205.44.0000 and 5205.45.0000.

[4] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–32989 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

December 20, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in the United Arab Emirates and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1997 period. The 1997 levels for Categories 315 and 361 are zero. The levels for certain categories have been reduced for carryforward applied to the 1996 limits.

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 notices 61 FR 66263, published on December 17, 1996).

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 ATC, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended and extended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997 in excess of the following levels of restraint:

Category	Twelve-month restraint limit
219	1,138,253 square meters.
226/313	1,946,441 square meters.
315	–0–.
317	31,400,061 square meters.
326	1,837,444 square meters.
334/634	219,026 dozen.
335/635/835	150,357 dozen.
336/636	189,822 dozen.
338/339	573,747 dozen of which not more than 361,148 dozen shall be in Categories 338–S/339–S [1].
340/640	335,839 dozen.
341/641	311,463 dozen.
342/642	245,650 dozen.
347/348	426,212 dozen of which not more than 213,106 dozen shall be in Categories 347–T/348–T [2].
351/651	177,846 dozen.
352	327,856 dozen.
361	–0–.
363	6,021,317 numbers.
369–S [3]	80,499 kilograms.
369–O [4]	578,957 kilograms.
638/639	219,026 dozen.
647/648	332,495 dozen.

Category	Twelve-month restraint limit
847	208,776 dozen.

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[2] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6304.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

Imports charged to these category limits for the period beginning January 1, 1996 and extending through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–32983 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Coverage of Import Limits and Visa and Certification Requirements for Certain Part-Categories Produced or Manufactured in Various Countries

December 20, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage for import limits and visa and certification requirements.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

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).

To facilitate implementation of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), and textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), for goods entered into the United States for consumption or withdrawn from warehouse for consumption on and after January 1, 1997 for part-Categories 348–K, 348–T, 648–K and 648–T, regardless of the date of export, certain HTS classification numbers are being changed on all import controls and on all visa and certification arrangements for countries with these part-categories. These changes will be published in the 1997 Harmonized Tariff Schedule.

The changes in the HTS numbers will be reflected in the 1997 CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all monitoring and import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which include cotton and man-made fiber textile products in part-Categories 348–K, 348–T, 648–K and 648–T, produced or manufactured in various countries and imported into the United States on and after January 1, 1997.

Also, this directive amends, but does not cancel, all directives establishing visa and certification requirements for part-Categories 348–K, 348–T, 648–K and 648–T for which visa arrangements are in place with the Government of the United States.

Effective on January 1, 1997, you are directed to make the changes shown below in the aforementioned directives for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after January 1, 1997 for part-Categories 348–K, 348–T, 648–K and 648–T, regardless of the date of export:

Category	Obsolete number	New number
348–K	6104.62.2010	6104.62.2006 and 6104.62.2011.
	6104.62.2025	6104.62.2026 and 6104.62.2028.
348–T	6104.62.2010	6104.62.2006 and 6104.62.2011.
	6104.62.2025	6104.62.2026 and 6104.62.2028.
648–K	6104.63.2010	6104.63.2006 and 6104.63.2011.
	6104.63.2025	6104.63.2026 and 6104.63.2028.
648–T	6104.63.2010	6104.63.2006 and 6104.63.2011.
	6104.63.2025	6104.63.2026 and 6104.63.2028.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–32979 Filed 12–26–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment and Finding of No Significant Impact for the Relocation of the U.S. Army Defense Ammunition School and Center (USADACS) From Savanna Army Depot Activity, Illinois, to McAlester Army Ammunition Plant (MCAAP), Oklahoma

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the relocation of the U.S. Army Defense Ammunition School and Center (USADACS) from Savanna Army Depot Activity (SVAD), Illinois to McAlester Army Ammunition Plant (MCAAP), Oklahoma.

The Environmental Assessment (EA) evaluates the environmental impacts associated with the transfer of 228 civilian jobs from SVAD to MCAAP. It also involves the construction of MCAAP of a new headquarters/administration building, a new applied instruction facility, a new transportability text complex, and renovation of two existing structures for classroom and training aids space to support the USADACS.

The EA, which is incorporated into the Finding of No Significant Impact (FNSI), examines potential impacts of the proposed action and alternatives on 13 resource areas and areas of environmental concern: Land use, air quality, noise, water resources, geology, infrastructure, training areas, hazardous and toxic materials, biological resources and ecosystems, cultural resources, the sociological environment, economic development, and quality of life.

Based on the analysis found in the EA, which is hereby incorporated in this FNSI, it has been determined that the implementation of these realignments at MCAAP would have no significant or cumulatively significant impacts on the quality of the natural or human environment. Because no significant environmental impacts would result from implementation of the proposed action, an Environmental Impact Statement is not required and will not be prepared.

DATES: Inquiries will be accepted until January 27, 1997.

ADDRESSES: Copies of the EA and FNSI can be obtained by contacting Mr. Glen Coffee at the U.S. Army Corps of Engineers, Mobile District, ATTN: CESAM–PD–E, P.O. Box 2288, Mobile, Alabama 36628–0001 or by telephone at (334) 690–2729.

Dated: December 20, 1996.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 96–33008 Filed 12–27–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.163A]

Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (Library Services and Construction Act, Title IV); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

PURPOSE OF PROGRAM: Provides noncompetitive basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

ELIGIBLE APPLICANTS: The Secretary makes grant awards to eligible applicants that have submitted approved applications for authorized activities under Title IV of the Library Services and Construction Act. Eligible applicants are——

(a) Indian tribes recognized by the Secretary of the Interior to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(b) Alaska Native villages or regional or village corporations as defined in or established under the Alaska Native Claims Settlement Act; however, two or more Alaska Native villages, regional corporations, or village corporations may not receive basic grant allocations to serve the same population; and

(c) Organizations primarily serving and representing Hawaiian natives and recognized by the Governor of Hawaii.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: February 24, 1997.

APPLICATIONS AVAILABLE: January 6, 1997.

AVAILABLE FUNDS: $966,518 for Indian Tribes; $644,345 for Hawaiian Natives.

ESTIMATED AVERAGE SIZE OF AWARDS: $4,602 for Indian Tribes; $644,345 for Hawaiian Natives.

ESTIMATED NUMBER OF AWARDS: 210 for Indian Tribes; 1 for Hawaiian Natives.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: 12 months.

APPLICABLE REGULATIONS: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74 and 82 (for grants to Hawaiian native organizations); 80 (for grants to Indian tribes); 75, 77, 81 and 85 (for grants to both Hawaiian natives and Indian tribes).

FOR APPLICATIONS OR INFORMATION CONTACT: Kathy Price, U.S. Department of Education, 555 New Jersey Ave. N.W., Room 300, Washington, DC 20208–5571. Telephone: (202) 219–1670. Internet Address: (kathy__price@ed.gov).

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 351c(c)(2), 361(d), 364.

Dated: December 20, 1996.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 96–32941 Filed 12–26–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Draft Request for Proposals for Waste Acceptance and Transportation Services

AGENCY: Office of Civilian Radioactive Waste Management, U.S. Department of Energy.

ACTION: Request for comments on a draft request for proposals.

SUMMARY: The Office of Civilian Radioactive Waste Management (OCRWM) is responsible under the Nuclear Waste Policy Act, as amended, for accepting and transporting spent nuclear fuel (SNF) from commercial nuclear reactor sites to a Federal facility for storage or disposal. The Standard Contract for Disposal of Spent Fuel and/or High Level Waste (10 CFR Part 961) details the arrangements between the Department (DOE) and the owners and generators of SNF (Purchasers) for the Department to accept the SNF at the Purchasers' sites for transport to a Federal facility. Section 137(a)2 of the Nuclear Waste Policy Act, as amended, requires the utilization of private industry to the ''fullest extent possible'' in the transportation of SNF.

OCRWM anticipates seeking competitive proposals for commercial SNF acceptance, transportation and delivery services, including the provision of storage equipment, in accordance with the final version of this

draft Request for Proposals (RFP). In May 1996, OCRWM published in the Federal Register (61 FR 26508) and Commerce Business Daily, a Request for Expression of Interest and Comments on a previous draft Statement of Work (SOW) for these services. In July 1996, comments were sought from interested parties at a presolicitation conference. DOE is now requesting comments on all aspects of its proposed contracting approach embodied in this draft RFP. This version of the draft SOW, Section C, of this draft RFP has been changed, but the changes do not radically alter the approach or work scope.

DATES: Comments in response to this Notice should be received by the Department no later than March 31, 1997. It is anticipated that a presolicitation conference will be held in Washington, D.C. in February 1997 to discuss the draft RFP. A separate Notice will be issued identifying the date and exact location.

ADDRESSES: Written comments should be sent to: Michelle Miskinis, Contracting Officer, U. S. Dept. of Energy, 1000 Independence Ave. SW., Attention: HR–561.21, Draft RFP Number DE–RP01–97RW00320, Washington D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Miskinis (DOE/HR–561.21), 202–634–4413 or Ms. Beth Tomasoni (DOE/HR–561.21), 202–634–4408, (fax) 202–634–4419.

SUPPLEMENTARY INFORMATION: The following describes key features of the draft RFP:

Scope of Services:

Under the approach described in this draft RFP, DOE will purchase waste acceptance, transport and delivery services from a contractor-owned, contractor-operated operation. The contractor must: finance the project; acquire the transportation and storage system hardware needed to support the specified SNF delivery rates; apply for and receive required permits, licenses and approvals; interact with State, Tribal and local governments regarding institutional activities such as routing and prenotification; and provide any facilities needed to support the acquisition, transport and delivery operations of the system (unless provided otherwise) and deliver the SNF to a Federal storage or disposal facility. The contractor also will be required to deactivate facilities and equipment no longer required and dispose of all scrap and waste materials, including any hazardous and low level radioactive waste, generated through the performance of this contract. All costs for disposal of deactivated items, unused materials and waste materials will be the responsibility of the contractor.

The continental United States has been divided into four service regions for purposes of this procurement. To maximize competition, offerors will be expected to submit proposals to service each region in Phase A, but only one contractor per region will be authorized to proceed to Phase B. Offerors will be eligible to receive authorizations to proceed to Phase B for up to two regions. Contractors awarded contracts for a service region will be referred to as Regional Servicing Agents (RSA).

Project Risks

It is the intention of DOE's privatization approach to allocate the financial, regulatory, performance, and operational risks between DOE and the contractor in an equitable manner that both protects the interests of the Government and encourages industry participation. The draft RFP includes provisions for economic price adjustments and allowable financing costs in the event of a termination for convenience by the Government.

Because of the nature of the SNF, the contractor must operate in a strict regulatory environment. DOE's proposed approach is to rely, to the maximum extent practicable, on established and functioning external regulatory authorities while minimizing DOE involvement. The contractor must comply with all Nuclear Regulatory Commission and Department of Transportation rules and regulations governing the acquisition and operational phases of the procurement activity (Phases B and C, respectively). To the extent permitted by law, the contractor will be responsible for obtaining in its own name, and will be solely responsible for compliance with, all necessary permits, authorizations and approvals from Federal, state and local regulatory agencies and Tribal nations, and will assume the financial liability for any fines and penalties.

Contract Description

The draft RFP calls for a three-phased approach to the private sector's provision of the required services. In Phase A, which lasts one year, contractors will be required to develop four regional plans necessary for contractor acceptance and transportation of SNF and delivery of storage containers to a designated Federal facility. In Phase B, which lasts eight years, a contractor will develop the capability to implement the plans it prepared in Phase A. Phase B encompasses pre-operational start-up preparations prior to accepting SNF for transportation and delivery. It includes development and acquisition of required hardware and facilities, mobilization of resources and provision of initial storage systems and supporting hardware. Phase B would also include the production and delivery of storage equipment prior to the start of Phase C. Phase C, which will last five years, puts the contractor's plans into operation to accept and transport SNF. Initiation of Phase C is dependent on DOE establishing SNF receiving capability at a yet to be designated Federal facility. After receiving DOE authorization to begin Phase C, the contractor will commence waste acceptance and transportation operations and delivery of the SNF to the Federal facility.

DOE believes that there may be limited capacity to receive uncanistered SNF at initiation of Federal facility operations. It is expected that this capacity will increase as the Federal facility and RSA deployments progress during the first several years of operation and beyond. The RSA should consider use of canistered SNF shipments or some method of repackaging to the maximum extent practical during this transitional period. The site servicing plans prepared during Phase A should identify specific site applications where use of truck shipments (i.e., shipments of uncanistered SNF) may provide a clear advantage to the Department.

Contract Type

DOE intends to award one or more contracts in Phase A. DOE has structured the initial phase (Phase A) of the contract to be ''cost-shared''. DOE intends to offer the same ceiling fixed-price for work to all contractor(s) awarded Phase A contracts. Upon satisfactory completion of all Phase A deliverables, the contractor will receive the specified fixed-price irrespective of actual contractor costs. Certain of the Phase A contractors, based on delivered products, may be authorized to proceed with Phase B and C work.

No payments are expected to be made to the contractors during Phase B. Costs of Phase B work are expected to be recovered in the prices for Phase C services. Pricing of Phase C deliveries and pricing of potential Phase B and estimated Phase C termination costs will be developed and delivered during Phase A. Accordingly, after the successful completion of Phase A, DOE will not make payments to the contractor until commencement of SNF delivered at a designated Federal facility (Phase C). It is anticipated that payment

will be made at a fixed unit price per metric ton of SNF delivered. This price may vary by service region.

Contract Award Period and Performance

This overall waste acceptance, transportation and storage project is anticipated to last approximately forty years. DOE therefore anticipates periodically seeking competitive proposals from potential offerors on a regional basis over the forty-year period. DOE's current plans call for the Phase A contract award(s) to be made in April 1998 based on a July 1997 RFP release date and up to five months for evaluation by DOE of Phase A deliverables. Phase B would begin approximately seventeen months after the award of Phase A contract(s), subject to completion of the National Environmental Policy Act (NEPA) review. Phase C is anticipated to commence at the end of the third year of Phase B, (i.e., year 2002) after Congress has designated a Federal storage location. Thereafter, waste acceptance and transportation services would be recompeted in five-year increments.

Comments

OCRWM is interested in receiving comments relating to the draft RFP regarding the acquisition of waste acceptance and transportation services, especially with regard to the following issues:

1. Creative approaches for RSAs to interact with State, Tribal and local governments and interested parties in addressing key institutional issues such as routing and prenotification.
2. Structuring the procurement to provide sufficient financial incentive and other appropriate risk allocating mechanisms between DOE and contractors in order for industry to provide waste acceptance and transportation services.
3. Appropriate financial safeguards for delay in commencement of Phase C as a result of a delay in the start of operations of a Federal facility.
4. Other possible approaches for the RSA's to maximize their ability to service purchasers who cannot accommodate large rail canisters.
5. Any other regulatory requirements, terms or conditions that DOE should consider in formulating this acquisition.

DOE will consider and may utilize all information, recommendations, and suggestions provided in response to this notice. Respondents should not provide any information that they consider to be privileged or confidential or which the respondent does not want disclosed to the public. DOE does not intend to respond to comments, either to individual commentors or by publication of a formal notice. Copies of all comments will be placed in the DOE Forrestal Building Public Reading Room. Each submittal should consist of one original and three photocopies.

This notice should not be construed (1) as a commitment by the Department to enter into any agreement with any entity submitting comments in response to this Notice, (2) as a commitment to issue any RFP concerning the subject of this Notice, or (3) as a request for proposals.

The solicitation will be available for downloading on the internet from the ''Current Business Opportunities at Headquarters Procurement Operations'' Home Page located at address http://www.pr.doe.gov./solicit.html. It is also available on the OCRWM Home Page located at http://www.rw.doe.gov/. Interested parties that do not have the electronic capability to download the solicitation shall submit a written request to the Contracting Officer at the address listed above.

Issued in Washington, D.C. on December 18, 1996.

Daniel A. Dreyfus,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 96–32939 Filed 12–26–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–194–000]

El Paso Natural Gas Company, Notice of Proposed Changes in FERC Gas Tariff

December 20, 1996.

Take notice that on December 17, 1996, pursuant to Subpart C of Part 154 of the Commission's Regulations Under the Natural Gas Act, El Paso Natural Gas Company (El Paso) tendered for filing following tariff sheets, to become effective April 1, 1997:

Second Revised Volume No. 1–A

Original Sheet No. 210A
First Revised Sheet No. 211
Second Revised Sheet No. 217
Original Sheet No. 217A

El Paso states that these sheets are being tendered to modify El Paso's proposed pooling and intra-day scheduling tariff provisions that were originally proposed at Docket No. RP97–20–000.

El Paso requests waiver of the notice requirement of Section 154.207 of the Commission's Regulations to permit the tariff sheets to become effective April 1, 1997, when El Paso is scheduled to implement the GISB Standards.

El Paso states that copies of the filing were served upon all interstate pipeline system customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 7, 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 are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32894 Filed 12–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–155–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

December 20, 1996.

Take notice that on December 16, 1996, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP97–155–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct, own and operate an additional meter and appurtenant facilities at its existing metering station for Lafarge Corporation (Lafarge) in Paulding County, Ohio under Panhandle's blanket certificate issued in Docket No. CP83–83–000 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.

Panhandle's proposed facilities will consist of a two-inch turbine meter, approximately 60 feet of 2-inch pipe and appurtenant facilities. Panhandle states that the facilities will increase the capacity of the metering station from 17 Mcf per hour to 62 Mcf per hour and

that the volumes to be delivered would be with in the certificated entitlements of Lafarge. The estimated cost to modify the proposed facilities is approximately $40,000. Lafarge will reimburse Panhandle 100% of the total cost of the proposed project.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32895 Filed 12–26–96; 8:45 am]

BILLING CODE 6717–01–M

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

[Docket No. RP97–195–000]

December 20, 1996.

Take notice that on December 18, 1996, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to be effective January 15, 1997:

Substitute Fourth Revised Sheet No. 1
Substitute Second Revised Sheet No. 117
Substitute Second Revised Sheet No. 118
Substitute Fourth Revised Sheet No. 141
Substitute Original Sheet No. 142
Substitute Original Sheet No. 143
Substitute Original Sheet No. 144
Substitute Original Sheet No. 145
Substitute Original Sheet No. 146

Viking states that the purpose of this filing is to facilitate customer service on Viking's system by updating Viking's Customer Nomination Form (Sheet Nos. 117–118) and incorporating the Electronic Bulletin Board Access Service Agreement (Sheet Nos. 1, 141–146) in Viking's tariff. Viking originally filed the above-referenced tariff sheets as part of its Order No. 587 compliance filing on December 2, 1996. In the Letter Order issued on December 13, 1996 in Docket No. RP97–156–000, the Office of Pipeline Regulation rejected the above-referenced tariff sheets without prejudice as beyond the scope of Order No. 587 and found that ''[t]hese tariff changes are more appropriately dealt with in a Section 4 filing.'' December 13, 1996 Letter Order, p. 1.

Accordingly, Viking is now filing these sheets under Section 4 of the Natural Gas Act, 15 U.S.C. § 717c (1994).

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–32896 Filed 12–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG97–8–000, et al.]

P.H. Don Pedro, S.A., et al.; Electric Rate and Corporate Regulation Filings

December 19, 1996.

Take notice that the following filings have been made with the Commission:

1. In the Matter of P.H. Don Pedro, S.A.

[Docket No. EG97–8–000]

On December 11, 1996, P.H. Don Pedro, S.A., a corporation (sociedad WP) organized under the laws of Costa Rica (''Applicant''), with its principal place of business at Santo Domingo de Heredia del Hotel Bouganville 200 Mts. al Este de la Iglesia Católica (Primera Entrada Portón con Ruedas de Artilleria) Heredia, Costa Rica, 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.

Applicant intends to own and operate an approximately 14 megawatt (net), hydroelectric power production facility located in the District of Sarapiquí, Canton Alajuela, Province of Alajuela, Costa Rica.

Comment date: January 3, 1997, 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. Virginia Electric Power Company Richmond Power Enterprise, Richmond Power Enterprise L.P. and Enron Power Marketing, Inc., and Richmond Power Enterprise, L.P.

[Docket Nos. EC97–9–000, EL95–26–000 and QF90–104–002]

Take notice that on December 6, 1996, Virginia Electric Power Company (Virginia Power), Richmond Power Enterprise, L.P. (RPE), Enron Power Marketing, Inc. (EPMI) (collectively Applicants) filed joint applications for approval of disposition of Jurisdictional facilities and for approval of the transfer of wholesale power agreement. Specifically, the Applicants request approval for two related transactions: (1) the sale of 250 megawatt combined cycle cogeneration facility (the transfer to EPMI of RPE's interest in a Power Purchase and Operating Agreement between RPE and Virginia Power, under which RPE currently sells and Virginia Power purchases the entire electric capacity and energy output of the Facility. Additionally, RPE requests permission to withdraw the waiver application filed in Docket No. QF90–104–000 in regards to the Facility.

Comment date: January 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER97–716–000]

Take notice that on December 9, 1996, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), filed an executed Service Agreement between GPU and The Power Company of America, LP (TPC), dated November 12, 1996. This Service Agreement specifies that TPC has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No.

ER95–275–000 and allows GPU and TPC to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 12, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER97–717–000]

Take notice that on December 9, 1996, Florida Power & Light Company tendered for filing a proposed notice of cancellation of an umbrella service agreement with City of Tallahassee, Florida for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on July 9, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: January 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Public Service Company

[Docket No. ER97–718–000]

Take notice that on December 9, 1996, Maine Public Service Company tendered for filing an executed Service Agreement with Sonat Power Marketing, L.P.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER97–719–000]

Take notice that on December 9, 1996, Portland General Electric Company submitted an agreement with Pacific Northwest Generating Cooperative.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER97–720–000]

Take notice that on December 9, 1996, Eugene Water & Electric Board submitted an agreement with Pacific Northwest Generating Coopertive.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER97–721–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 9, 1996, 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 November 1, 1996 between Cinergy, CG&E, PSI and Energy Transfer Group, L.L.C. (ETC).

The Interchange Agreement provides for the following service between Cinergy and ETG.

1. Exhibit A—Power Sales by ETG
2. Exhibit B—Power Sales by Cinergy

Cinergy and ETG have requested an effective date of December 16, 1996.

Copies of the filing were served on Energy Transfer Group, L.L.C., the Texas Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER97–722–000]

Take notice that Cinergy Services, Inc. (Cinergy) on December 9, 1996, 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 November 1, 1996 between Cinergy, CG&E, PSI and Morgan Stanley Group Inc. (Morgan Stanley).

The Interchange Agreement provides for the following service between Cinergy and Morgan Stanley.

1. Exhibit A—Confirmation Letter
2. Exhibit B—Power Sales by Morgan Stanley
3. Exhibit C—Power Sales by Cinergy

Cinergy and Morgan Stanley have requested an effective date of December 9, 1996.

Copies of the filing were served on Morgan Stanley Capital Group Inc., the New York Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: Janaury 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER97–723–000]

Take notice that on December 9, 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 November 1, 1996 between Cinergy, CG&E, PSI and Strategic Energy Management, Inc. (Strategic).

The Interchange Agreement provides for the following service between Cinergy and Strategic.

1. Exhibit A—Power Sales by Strategic
2. Exhibit B—Power Sales by Cinergy

Cinergy and Strategic have requested an effective date of December 16, 1996.

Copies of the filing were served on Strategic Energy Management, Inc., the New York Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: Janaury 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER97–724–000]

Take notice that on December 9, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Florida Power & Light Company.

Cinergy and Florida Power & Light Company are requesting an effective date of December 16, 1996.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER97–725–000]

Take notice that on December 9, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Midcon Power Services Corp. under Rate GSS.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Company

[Docket No. ER97–726–000]

Take notice that on December 9, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to APS' Merchant Group under APS' Open Access Transmission Tariff filed in Compliance with FERC Order No. 888.

A copy of this filing has been served on the Arizona Corporation Commission.

Comment date: Janaury 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Interstate Power Company

[Docket No. ER97–727–000]

Take notice that on December 9, 1996, Interstate Power Company (IPW), tendered for filing a Notice of Cancellation of its Electric Service Agreement with the Board of Trustees of Municipal Utilities of McGregor, Iowa filed with FERC under Original Volume No. 1.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Non-Replacement Energy Agreement between PJM Companies and Illinova Power Marketing, Inc.

[Docket No. ER97–728–000]

Take notice that on December 9, 1996, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to the PJM Agreement, a Non-Replacement Energy Agreement between Illinova Power Marketing, Inc., and Public Service Electric and Gas Company, PECO Energy Company, Pennsylvania Power & Light Company, Baltimore Gas and Electric Company, Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power and Light Company, Potomac Electric Power Company, Atlantic City Electric Company, and Delmarva Power & Light Company. The PJM companies request an effective date of December 27, 1996.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Portland General Electric Company

[Docket No. ER97–729–000]

Take notice that Portland General Electric Company (PGE) on December 10, 1996, tendered for filing a proposed cancellation of its FPC Electric Tariff, Original Volume No. 1.

PGE respectfully requests the Commission grant a waiver of the notice requirements to allow the cancellation to become effective December 30, 1996.

A copy of this filing was caused to be served upon the entities listed in the body of the filing letter.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER97–730–000]

Take notice that on December 10, 1996, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Powertec International, L.L.C.

Cinergy and Powertec International, LLC are requesting an effective date of December 4, 1996.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. UtiliCorp United Inc.

[Docket No. ER97–731–000]

Take notice that on December 10, 1996, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with *Arkansas Power Authority*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to *Arkansas River Power Authority* pursuant to the tariff.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service agreement to become effective in accordance with its terms.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Ohio Power Company

[Docket No. ER97–732–000]

Take notice that Ohio Power Company (OPC), d/b/a American Electric Power (AEP), on December 10, 1996, tendered for filing with the Commission an agreement to establish a new delivery point dated March 14, 1996, between OPC and Buckeye Power, Inc. (Buckeye). Buckeye is an Ohio corporation not-for-profit, organized to own and operate facilities for the generation of electricity for mutual benefit for its members.

Buckeye has requested OPC provide a new delivery point pursuant to the provisions of the Power Delivery Agreement between OPC, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Columbus Southern Power Company and Toledo Edison Company, dated January 1, 1968.

OPC states that copies of its filing were served upon the Buckeye Power, Inc. and the Public Utilities Commission of Ohio.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–733–000]

Take notice that on December 10, 1996, Consolidated Edison Company of New York. (Con Edison) tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to KIAC Partners (KIAC).

Con Edison states that a copy of this filing has been served by mail upon KIAC.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–734–000]

Take notice that on December 10, 1996, Consolidated Edison Company of New York. (Con Edison) tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Electric Clearinghouse, Inc. (ECI).

Con Edison states that a copy of this filing has been served by mail upon ECI.

Comment date: Janaury 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–735–000]

Take notice that on December 10, 1996, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Vitol Gas & Electric, L.L.C. (Vitol).

Con Edison states that a copy of this filing has been served by mail upon Vitol.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–736–000]

Take notice that on December 10, 1996, Consolidated Edison Company of New York (Con Edison) tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 129, a facilities agreement with Orange and Rockland Utilities, Inc. (O&R). The Supplement provides for an increase in the monthly carrying charges. Con Edison has requested that this increase take effect as of November 1, 1996.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–737–000]

Take notice that on December 10, 1996, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 117, an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO). The Supplement provides for a decrease in the annual fixed carrying charges. Con Edison has requested that this decrease take effect as of October 1, 1996.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. The Cleveland Electric Illuminating Company

[Docket No. ER97–739–000]

Take notice that on December 10, 1996, The Cleveland Electric Illuminating Company (CEI), tendered for filing with the Federal Energy Regulatory Commission agreements between CEI and TransCanada Power Corp.; International Utility Consultants, Inc.; AES Power, Inc.; Federal Energy Sales, Inc.; Tennessee Power Company; and Wabash Valley Power Association, Inc.

CEI requests that the agreements be allowed to become effective on December 10, 1996.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Southern California Edison Company

[Docket No. ER97–740–000]

Take notice that on December 10, 1996, Southern California Edison Company (Edison) tendered for filing revisions to the wholesale interruptible tariff, Rate Schedule IR–1.0 between Edison and the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California and between Edison and the City of Vernon, California, FERC Rate Schedule Nos. 15.30, 16.25, 21.27, 31.26, 17.31, and 13.33, respectively.

Rate Schedule IR–1.0 is being revised to conform to changes authorized in Edison's retail interruptible tariff by the California Public Utilities Commission in Resolution E–3474. Edison requests that the Commission assign an effective date of February 8, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Great Bay Power Corporation

[Docket No. ER97–741–000]

Take notice that on December 10, 1996, Great Bay Power Corporation (Great Bay) tendered for filing a service agreement between USGen Power Services, L.P. and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreement is proposed to be effective November 18, 1996.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. The United Illuminating

[Docket No. ER97–743–000]

Take notice that on December 11, 1996, The United Illuminating Company (UI) tendered for filing a Service Agreement, dated November 15, 1996, between UI Transmission and UI Power Marketing for non-firm point-to-point transmission service under UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as supplemented.

UI requested an effective date of November 15, 1996 for the Service Agreement. Copies of the filing were served upon UI Power Marketing and upon Robert J. Murphy Executive Secretary, Connecticut Department of Public Utility Control.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. UtiliCorp United Inc.

[Docket No. ER97–744–000]

Take notice that on December 10, 1996, UtiliCorp Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, an amended and restated Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with VTEC Energy Inc. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to VTEC Energy Inc, pursuant to the tariff, and for the sale of capacity and energy by VTEC Energy Inc. to WestPlains Energy-Colorado pursuant to VTEC Energy Inc.'s Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by VTEC Energy Inc.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. UtiliCorp United Inc.

[Docket No. ER97–745–000]

Take notice that on December 10, 1996, UtiliCorp United Inc. tendered for filing on behalf of its operating division, Missouri Public Service, an amended and restated Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with VTEC Energy Inc. The Service Agreement provides for the sale of capacity and energy by Missouri Pubic Service to VTEC Energy Inc, pursuant to the tariff, and for the sale of capacity and energy by VTEC Energy Inc. to Missouri Public Service pursuant to VTEC Energy Inc.'s Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by VTEC Energy Inc.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. UtiliCorp United Inc.

[Docket No. ER97–746–000]

Take notice that on December 10, 1996, UtiliCorp Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, an amended and restated Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with VTEC Energy Inc. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to VTEC Energy Inc., pursuant to the tariff and for the sale of capacity and energy by VTEC Energy Inc. to WestPlains Energy-Kansas pursuant to VTEC Energy Inc.'s Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by VTEC Energy Inc.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Duke Power Company

[Docket No. ER97–747–000]

Take notice that on December 10, 1996, Duke Power Company (Duke)

tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Coral Power, L.L.C. (Coral Power). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Coral Power non-firm point-to-point transmission service under its Pro Forma Open Access Transmission Tariff.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Duke Power Company

[Docket No. ER97–748–000]

Take notice that on December 10, 1996, Duke Power Company (Duke) tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and American Electric Power Service Corporation (AEP) dated September 20, 1996. Duke requests an effective date of December 4, 1996.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER97–749–000]

Take notice that on December 11, 1996, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy) filed an executed Service Agreement between GPU and AYP Energy, Inc. (AYPE), dated December 3, 1996. This Service Agreement specifies that AYPE has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU and AYPE to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and effective date of December 3, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER97–750–000]

Take notice that on December 11, 1996, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy) filed an executed Service Agreement between GPU and V TEC Energy, Inc. (VTEC), dated November 27, 1996. This Service Agreement specifies that VTEC has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU and VTEC to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and effective date of November 27, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Kentucky Utilities Company

[Docket No. ER97–751–000]

Take notice that on December 11, 1996, Kentucky Utilities Company (KU) tendered for filing non-firm transmission service agreements with Federal Energy Sales, Inc. and Carolina Power & Light under its Transmission Services (TS) Tariff.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Kentucky Utilities Company

[Docket No. ER97–752–000]

Take notice that on December 11, 1996, Kentucky Utilities Company (KU) tendered for filing a service agreement with South Carolina Electric & Gas Company under its Power Services (PS) Tariff.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER97–753–000]

Take notice that on December 11, 1996, GPU Energy (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as GPU Energy) filed a Service Agreement between GPU and Equitable Power Services Company (Equitable) dated November 20, 1996. This Service Agreement specifies that Equitable has agreed to the rates, terms and conditions of the GPU Companies' open access transmission tariff filed on July 9, 1996 in Docket OA96–114–000.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 20, 1996, for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on Equitable.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. New England Power Company

[Docket No. ER97–754–000]

Take notice that on December 11, 1996, New England Power Company (NEP) filed a Service Agreement with The Power Company of America for non-firm, point-to-point transmission service under NEP's open access transmission tariff, FERC Electric Tariff, Original Volume No. 9.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Pennsylvania Power & Light Company

[Docket No. ER97–755–000]

Take notice that on December 11, 1996, Pennsylvania Power & Light Company (PP&L) filed a Service Agreement, dated August 3, 1996, with National Gas & Electric L.P. (National) for the sale of capacity and/or energy under PP&L's Short Term Capacity and Energy Sales Tariff. The Service Agreement adds National as an eligible customer under the Tariff.

PP&L requests an effective date of December 11, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to National and to the Pennsylvania Public Utility Commission.

Comment date: January 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Pennsylvania Power & Light Company

[Docket No. ER97–756–000]

Take notice that on December 11, 1996, Pennsylvania Power & Light Company (PP&L) filed a Service Agreement, dated September 26, 1996, with AYP Energy, Inc. (AYP) for the sale of capacity and/or energy under PP&L's Short Term Capacity and Energy Sales Tariff. The Service Agreement adds AYP as an eligible customer under the Tariff.

PP&L requests an effective date of December 11, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to AYP and to the Pennsylvania Public Utility Commission.

Comment date: January 3, 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. 96–32938 Filed 12–26–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5670–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Contractor Cumulative Claim and Reconciliation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Contractor Cumulative Claim and Reconciliation; OMB Control No. 2030–0016; expiration date 3/31/97. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 27, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0246.06.

SUPPLEMENTARY INFORMATION:

Title: Contractor Cumulative Claim and Reconciliation; OMB Control No. 2030–0016; EPA ICR No. 0246.06. This is a request for extension of a currently approved collection.

Abstract: At the conclusion of cost reimbursable contracts, contractors will report the cumulative costs incurred, including direct labor, materials, supplies, equipment, other direct costs, subcontracting, consultant fees, indirect costs and fixed fee. Contractors will report this information one time on EPA Form 1900–10. EPA will use this information to reconcile the contractor's costs. Establishment of the final costs and fixed fee is necessary for closeout of the contract.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 10/7/96 (61 FR 52449). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 minutes hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to adjust the existing methods to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; complete and review the collection of information; and to transmit or otherwise disclose the information.

Respondents/Affected Entities: Contractors with cost reimbursable contracts.

Estimated Number of Respondents: 65.

Frequency of Response: One per contract in closeout status.

Estimated Total Annual Hour Burden: 42.9 hours.

Estimated Total Annualized Cost Burden: $1,133.60.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 246.06 and OMB Control No. 2030–0016 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW Washington, DC 20503.

Dated: December 20, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–32966 Filed 12–26–96; 8:45 am]

BILLING CODE 6560–50–P

[ER-FRL–5476–2]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed December 16, 1996 Through December 20, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960579, FINAL EIS, NPS, AZ, Tumacacori National Historical Park, General Management Plan (GMP), Implementation, Santa Cruz County, AZ, Due: January 27, 1997, Contact: Dan Olson (416) 744–3968.

EIS No. 960580, FINAL EIS, MMS, AL, TX, MS, LA, Central and Western Planning Areas, Gulf of Mexico 1997

Outer Continental Shelf Oil and Gas Sales 166 (March 1997) and 168 (August 1997) Lease Offering, Offshore Marine Environment and coastal counties, Parishes of AL, MS, TX and LA, Due: January 27, 1997, Contact: Archie Melancon (703) 787–1547.

EIS No. 960581, REVISED FINAL EIS, AFS, SD, WY, Black Hills National Forest, 1996 Revision to Land and Resource Management Plan, Implementation, Custer, Lawrence and Meade Cos., SD and Crook and Weston Cos., WY, Due: January 27, 1997, Contact: John Rupe (605) 673–2251.

EIS No. 960582, FINAL EIS, SFW, NM, AZ, Mexican Wolf (Canis lupus baileyi) Reintroduction within the Historic Range, Implementation, in the Southwestern United States, Catron, Dona Ana, Grant and Lincoln Counties, NM and Apache and Greenlee Counties, AZ, Due: January 24, 1997, Contact: David R. Parsons (505) 248–6656.

EIS No. 960583, DRAFT SUPPLEMENT, FHW, NC, Wilmington Bypass Transportation Improvement Program, Updated Information, Construction from 1–40 to US 421, Funding, NPDES and US Coast Guard, and COE Section 10 and 404 Permits, New Hanover County, NC, Due: March 14, 1997, Contact: Nicholas L. Graf, P.E. (919) 856–4346.

EIS No. 960584, DRAFT EIS, USA, DC, Naval Sea Systems Command Headquarters (NAVSEA), Base Realignment and Closure Action, Relocation from Arlington, VA to Washington Navy Yard (WNY) in southeast Washington, DC, Due: February 10, 1997, Contact: Kim DePaul (703) 604–1233.

EIS No. 960585, FINAL EIS, AFS, CA, Cavanah Multi-Resource Management Project, Implementation, Enchancing Forest Health and Productivity, Tahoe National Forest, Foresthill Ranger District, Placer County, CA, Due: January 27, 1997, Contact: John Bradford (916) 478–6254.

EIS No. 960586, DRAFT EIS, AFS, MT, Basin Creek Drainage, Salvage Timber and Watershed Rehabilitation, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT, Due: February 10, 1997, Contact: Jeanne Higgins (406) 295–4693.

EIS No. 960587, DRAFT EIS, AFS, OR, Robinson-Scott Landscape Management Project, Timber Harvest and other Vegetation Management, Willamette National Forest, McKenzie Ranger District, Lane and Linn Counties, OR, Due: February 10, 1997, Contact: John Allen (541) 822–3381.

EIS No. 960588, DRAFT SUPPLEMENT, COE, NJ, DE, PA, Delaware River Comprehensive Navigation Channel Improvement, Additional Information, Beckett Street Terminal in New Jersey through Philadelphia Harbor, Implementation, several counties, NJ, DE and PA, Due: February 17, 1997, Contact: John Brady (215) 656–6555.

EIS No. 960589, FINAL EIS, FHW, PA, US 220 Transportation Improvements Project, Bald Eagle Village to Interstate 80 (I–80), Funding and COE Section 404 Permit, Blair and Centre Counties, PA, Due: February 10, 1997, Contact: Manuel A. Marks (717) 782–3461.

EIS No. 960590, DRAFT EIS, AFS, NV, Griffon Mining Project, Implementation, Issuance Plan of Operations Approval, Humboldt-Toiyabe National Forests, Ely Ranger District, White Pine County, NV, Due: February 10, 1997, Contact: David Valenzuela (702) 289–3036.

EIS No. 960591, DRAFT SUPPLEMENT, EPA, TX, Oak Hill Surface Lignite Mine (formerly known as the Martin Lake D Area Mine) Expansion into the DIII Area, Modification/Reissuance of a New Source NPDES Permit, Rusk County, TX, Due: February 10, 1997, Contact: Robert D. Lawrence (214) 665–2258.

EIS No. 960592, DRAFT EIS, SFW, WA, ID, WY, OR, MT, NV, and UT, Programmatic EIS—Impact of Artificial Salmon and Steelhead Production Strategies in the Columbia River Basin, Implementation, WA, OR, ID, WY, MT, NV and UT, Due: February 10, 1997, Contact: Ben Harrison (503) 231–2068.

EIS No. 960593, DRAFT EIS, USN, PA, Naval Air Warfare Center Aircraft Division (NAWCAD) Warminster, Disposal and Reuse, Bucks County, PA, Due: February 10, 1997, Contact: Kurt C. Frederick (610) 595–0728.

EIS No. 960594, REVISED FINAL EIS, USA, OR, Umatilla Depot Activity, Revision to Disposal of Chemical Agents and Munitions Stored, Construction and Operation, Morrow and Umatilla Counties, OR, Due: January 27, 1997, Contact: Kate Miller (410) 671–4181.

EIS No. 960595, DRAFT EIS, FHW, MN, MN–TH–14 Corridor Reconstruction, MN–TH–60 to I–35, Funding and COE Section 404 Permit Issuance, Blue Earth, Waseca and Steele Counties, MN, Due: February 10, 1997, Contact: Cheryl Martin (612) 291–6120.

Dated: December 23, 1996.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–32999 Filed 12–26–96; 8:45 am]

BILLING CODE 6560–50–U

[OPP–00464; FRL–5581–7]

National Workshop on the Regulation of Antimicrobial Pesticides; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Pesticide Programs (OPP) is hosting the National Workshop on the Regulation of Antimicrobial Pesticides to bring together the antimicrobial community for the first time to discuss the new law and the new legislation. The workshop will focus on the impact of The Food Quality Protection Act (FQPA) on antimicrobial regulation, establishing the new division, addressing immediate and long-term policy and process concerns, eliminating the current backlog of applications, and establishing a streamlined antimicrobial registration process. The two day forum will include plenary and breakout sessions.

DATES: The meeting will take place on January 8, 1997, from 9 a.m to 5:30 p.m., and January 9, 1997 from 8:30 a.m. to 5:30 p.m.

ADDRESS: The meeting will be held at: The Grand Hyatt Washington, 1000 H St., NW., Washington, DC, (202) 582–1234.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lawrence, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, Room 1114F, Arlington, VA; (703) 305–5454: e-mail: lawrence.susan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Food Quality Protection Act (FQPA), signed into law on August 3, 1996, (Public Law 104–170) amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) to reform and expedite the antimicrobial pesticide registration process. Within the same time frame, the OPP reorganization scheme included the formation of a new division to handle antimicrobial product registrations. The two events create a unique opportunity to better address the registration of antimicrobial products.

Registration information may be obtained by contacting Debra Rainey, TASCON, 7101 Wisconsin Avenue, Suite 1125, Bethesda, MD, 20814; (301) 907–3844; fax number (301) 907–9655. Space is limited to 300 participants.

List of Subjects

Enviornmental protection.

Dated: December 20, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–32973 Filed 12–26–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5671–2]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (P.L. 92–463), the U.S. Environmental protection Agency gives notice of a meeting of the Good Neighbor Environmental Board.

The Good Neighbor Environmental Board was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for advising the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico. The statute calls for the Board to have governmental and nongovernmental representatives from the States of Arizona, California, New Mexico and Texas, and from U.S. Government agencies. The Board meets at least twice annually.

The Board's agenda will focus primarily on discussion of federal agency programs in the border region and the Board's Annual Report to the President and the Congress.

The meeting is open to the public, with seating on a first-come, first-served basis. Members of the public are invited to provide oral and/or written comments to the Board. Time will be provided on February 6, 1997, to obtain input from the public.

DATES: The Board will meet on February 6 and 7, 1997. The Board will meet on February 6, 1997 from 8:30 a.m. to 5:30 p.m., and on February 7, 1997 from 8:00 a.m. to 2:00 p.m.

ADDRESSES: The Camino Real Hotel, 101 S. El Paso Street, El Paso, Texas 79901.

FOR FURTHER INFORMATION: Contact Mr. Robert Hardaker, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2477.

Date: December 17, 1996.

Robert Hardaker,

Designated Federal Officer, Good Neighbor Environmental Board.

[FR Doc. 96–32965 Filed 12–26–96; 8:45 am]

BILLING CODE 6560–50–M

[OPP–340105; FRL 5577–9]

Notice of Receipt of Requests for Amendments to Delete uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on June 25, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 26 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before June 25, 1997 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000100–00461**	D-Z-N Diazinon AG500	Diazinon	Pineapple, trefoil
000100–00524**	D-Z-N Diazinon MG 87%	Diazinon	Lawns (all granular products with greater than 5% active ingredient), olives, peanuts, pecans, rangegrass, pasture grasses, soybeans, sugarcane, walnuts (all States except CA, OR WA), wheat
001448–00107	Metam Concentrate	Metam-sodium	Control of roots and fungi in sewer systems
001812–00257	Direx 4L	Diuron	Bermudagrass
001812–00362	Direx 80DF	Diuron	Bermudagrass
002217–00077	LV400 2,4-D Weed Killer	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester)	Drainage ditchbanks
002217–00314	20% Granular 2,4-D Low Volatile	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester)	Aquatic uses

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
002217–00354	Lawn Weed Killer Granules	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester)	Aquatic uses
002217–00413	600LV 2,4-D Weed Killer	Acetic acid, (2,4- dichlorophenoxy)-. 2- ethylhexyl ester)	Drainage ditchbanks
002217–00468	LV6 2,4-D Weed Killer	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Drainage ditchbanks
002217–00648	Gordon's Brushkiller 801	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Drainage ditchbanks
002217–00651	Trimec 800 Herbicide	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Drainage ditchbanks
002217–00706	Best 4 Servis Brand 2,4-D Isooctyl Ester Technical	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Rice, sugarcane, aquatic uses
002217–00758	Trimec 937 Herbicide	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Drainage ditchbanks
002217–00774	EH 1068 Trimec Ester	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Drainage ditchbanks
002217–00775	EH 1073 Trimec Ester	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Drainage ditchbanks
002217–00804	Technical 2,4-D Low Volatile Ester	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Rice, sugarcane, aquatic uses
003125–00236	NEMACUR 15% Granular	Fenamiphos	Citrus uses
034704–00006	Clean Crop LV-6 Ester Weed Killer	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Drainage ditchbanks
034704–00124	Clean Crop Low Vol 4 Ester Weed Killer	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Drainage ditchbanks
034704–00125	Clean Crop Low Vol 6 Ester Weed Killer	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Drainage ditchbanks
034704–00607	Clean Crop Low Volatile 2D-2DP Herbicide	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Drainage ditchbanks
062719–00008	Esteron 6E	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Drainage ditchbanks
062719–00009	Weed Killer 4D	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Sugarcane, drainageditchbanks
068119–00002	WILFARM 2,4-D LV4	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester	Aquatic weed control,sugarcane, drainage ditchbanks, aquatic applications
068119–00003	WILFARM 2,4-D LV6	Acetic acid, (2,4- dichlorophenoxy)-, 2- ethylhexyl ester)	Aquatic weed control, sugarcane, drainage ditchbanks, aquatic applications

** – Additional deleted uses announced in FEDERAL REGISTER (61 FR 50294), September 25, 1996

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000100	Ciba-Geigy Corporation, Ciba Crop Protection, P.O. Box 18300, Greensboro, NC 27419.
001448	Buckman Laboratories, 1256 North McLean Blvd., Memphis, TN 38108.
001812	Griffin Corporation, P.O. Box 1847, Valdosta, GA 31603.
002217	PBI/Gordon Corp., 1217 W. 12th Street, P.O. Box 4090, Kansas City, MO 64101.
003125	Bayer Corporation, Agriculture Div., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120.
034704	Platte Chemical Co., 419 18th Street, P.O. Box 667, Greeley, CO 80632.
062719	DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268.
068119	Wilfarm L.L.C., 5401 N. Oak Trafficway, Gladstone, MO 64118.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: December 18, 1996.

Linda A. Travers,

Acting Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–32974 Filed 12–26–96; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of establishment of a new system of records maintained on individuals; request for comments.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Farm Credit Administration (FCA) is publishing a system notice, which indicates the establishment of a new Privacy Act system of records. The system notice provides information on the existence and character of the system of records for Internet access.

DATES: Written comments should be received by January 27, 1997. The FCA filed a New System Report with Congress and the Office of Management and Budget on December 20, 1996. This notice will be adopted without further publication on February 19, 1997, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: Written comments may be mailed (in triplicate) to Debra Buccolo, Privacy Act Officer, in care of Cindy Nicholson, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the offices of the Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Debra Buccolo, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4022, TDD (703) 883–4444.

or

Jane Virga, Office of General Counsel, Farm Credit Administration, McLean, Virginia, 22102–5090, (703) 883–4071, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, the FCA has identified a new system of records. The notice reflects designated points of contact for inquiring about the system, accessing the records, and requesting amendments to the records.

The new system of records is: FCA–19, FCA Internet Access System. As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, the FCA has sent notice of this proposed system of records to the Office of Management and Budget, the Committee on Government Reform and Oversight of the House of Representatives, and the Committee on Governmental Affairs of the Senate. The notice is published in its entirety below.

FCA–19

SYSTEM NAME:

FCA Internet Access System.

SYSTEM LOCATION:

Records are located at the Farm Credit Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA employees since November 1996.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to an employee's access to the Internet, including the employee's name, Web sites visited, dates, and times.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant 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, or rule, regulation, or order issued pursuant thereto.

Information in this record system 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 decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.

Information in this record system 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 and 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.

Disclosure 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.

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or to disclose them in a proceeding before a court or adjudicative body before which the Agency is authorized to appear, when

(a) The Agency, or any component thereof; or

(b) Any employee of the Agency in his or her official capacity; or

(c) Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency has agreed to represent the employee; or

(d) The United States, where the Agency determines that litigation is likely to affect the Agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the use of such records in the proceeding is deemed by the Agency to be relevant and necessary to the litigation, provided, however, that in each case, the Agency determines that disclosure of the records to the Department of Justice or the disclosure of such records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

In the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal, the relevant records may be referred, as a routine use, to the appropriate person to use as evidence.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information stored electronically.

RETRIEVABILITY:

Electronically retrievable by name.

SAFEGUARDS:

Access is limited to those whose official duties require access.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records schedule requirements.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Office of Resources Management, Farm Credit Administration, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

All inquiries about this system of records shall be addressed to: Privacy Act Officer, Farm Credit Administration, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to: Privacy Act Officer, Farm Credit Administration, McLean, VA 22102–5090, as provided in 12 CFR 603.310.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to: Privacy Act Officer, Farm Credit Administration, McLean, VA 22101–5090, as provided in 12 CFR 603.330.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or comes from information supplied by Agency officials.

Dated: December 20, 1996.

Jeanette Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 96–32923 Filed 12–26–96; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

December 19, 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 February 25, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

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.: 3060–0756.

Title: Procedural Requirements and Policies for Commission Processing Bell Operating Company Applications for the Provision of In-Region, InterLATA Services Under Section 271 of the Communications Act.

Form No.: N/A.

Type of Review: Extension.

Respondents: Businesses or other for profit.

Number of Respondents: 57.

Estimated Time Per Response: 292 hours (avg.)

Total Annual Burden: 16,660 hours.

Needs and Uses: 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 of 1934, as amended. 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 Act 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. 96–32869 Filed 12–26–96; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Submitted to OMB for Review and Approval December 19, 1996

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 27, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain—t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0730.

Title: Toll Free Service Access Codes—800/888 Number Release Procedures.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 18,660.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 18,660 hours.

Needs and Uses: The Commission has instructed Database Service Management, Inc. (DSMI) to collection authorization from the current 800 number subscriber and its Responsible Organization or the Toll Free Service Provider declining interim protection for the corresponding 888 number. DSMI will not release the 888 number from the pool of unavailable numbers into the general of pool of toll free numbers until it receives these authorizations.

OMB Approval No.: 3060–0404.

Title: Application for FM Translator or FM Booster Station License.

Form No.: FCC 350.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 250.

Estimated Time Per Response: 3.5 hour.

Total Annual Burden: 875 hours.

Needs and Uses: Licensees and permittees of FM Translators or FM Booster Stations are required to file FCC 350 to obtain a new or modified station license. This form will be revised to add the new requirements regarding antenna tower registeration. This unique antenna registration number identifies an antenna structure and must be used on all filings related to the antenna structure. Several questions will be added to the engineering portion of the form to collection this information. The data on the form 350 is used to confirm that the station has been built to terms specified in the outstanding construction permit.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 96–32868 Filed 12–26–96; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Submitted to OMB for Emergency Review and Approval

December 20, 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 emergency 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 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, the accuracy of the Commission's burden estimate, ways to enhance the quality, utility, and clarity of the information collected, and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The Commission is seeking emergency approval for this information collection by January 10, 1997 under the provisions of 5 CFR 1320.13.

DATES: Persons wishing to comment on this information collection should submit comments by December 30, 1996.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via Internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection contact Dorothy Conway at 202–418–0217 or via Internet at dconway(@)fcc.gov. Copies may also be obtained via fax by contacting the Commission's Fax on Demand System. To obtain fax copies call 202–418–0177 from the handset on your fax machine, and enter the document retrieval number indicated below for the collection you wish to request, when prompted.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: New Collection.

Title: FCC Auctions Customer Survey.

Type of Review: Emergency Collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,500.

Estimated Time for Response: .25 hours.

Total Annual Burden: 375 hours (.25 × 1,500 responses).

Total Cost to Respondents: 0.

Needs and Uses: Section 309(j)(3) of the Communications Act requires the Commission to establish a competitive bidding methodology for each class of licenses or permits that the Commission grants through the use of a competitive bidding system. The Commission is further directed to test alternative methodologies under appropriate circumstances in order to promote, among other things, ''the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays.'' The Commission is directed likewise to promote ''economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excess concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies and businesses owned by members of minority groups and women,'' and by encouraging ''efficient and intensive use of the electromagnetic spectrum.'' In addition, Section 309(j)(12) requires the Commission to evaluate the methodologies established by the Commission for conducting competitive bidding, comparing the advantages and disadvantages of such methodologies in terms of attaining these objectives.

The FCC Auctions Customer Survey is an important step in meeting these congressional requirements. By seeking input from auction participants, the Commission expects to gather information to evaluate the effectiveness of competitive bidding methodologies

used to date, and to improve the competitive bidding methodologies used in future auctions. Finally, the FCC Auctions Customer Survey will provide useful feedback in determining the extent to which the Commission is meeting its goal of providing participants in competitive bidding with the highest level of customer satisfaction through information dissemination and the responsiveness of the Commission staff to customer inquiries.

Document Retrieval Number: 000014.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 96–32935 Filed 12–26–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Network Freight Forwarding Services Inc., 8260 NW 68th Street, Miami, FL 33166; Officers: Pablo C. Quintero, President; Danae Rodriguez, Operations Director

MD America Co., 10506 Prospect Hill Drive, Houston, TX 77064; Hwa-Ching Wu, Sole Proprietor

Dated: December 23, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–32931 Filed 12–26–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Rescission of Order of Revocation

Notice is hereby given that the Orders and Notices revoking the licenses of Target International Shipping, Inc. and American International Brokerage, Inc., are being rescinded by the Federal Maritime Commission pursuant to section 14 and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/Addresses
2761	Target International Shipping, Inc., 317 St. Paul's Avenue, 8th Floor, Jersey City, NJ 07306.
3580	American International Brokerage, Inc., 4449 Dorchester Road, North Charleston, SC 29405.
1192	Contamar Shipping Corporation, 27 Park Place, New York, NY 10007.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 96–32903 Filed 12–26–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 21, 1997.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Granite State Bankshares, Inc. Employee Stock Ownership Plan, Keene, New Hampshire; to acquire an additional .57 percent, for a total of 10.38 percent, of the voting shares of Granite State Bankshares, Inc., Keene, New Hampshire, and thereby indirectly acquire Granite Bank, Keene, New Hampshire.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Iron Horse Bancshares, Inc., Mazomanie, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples State Bank, Mazomanie, Wisconsin.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Laguna Madre Bancshares, Inc., South Padre Island, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Laguna Madre Delaware Bancshares, Inc., Dover, Delaware, and thereby indirectly acquire First National Bank of South Padre Island, South Padre Island, Texas.

2. Laguna Madre Delaware Bancshares, Inc., Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of South Padre Island, South Padre Island, Texas.

Board of Governors of the Federal Reserve System, December 20, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–32920 Filed 12–26–96; 8:45 am]

BILLING CODE 6210–01–F

Notice to Engage in Nonbanking Activities

Deutsche Bank AG, Frankfurt (Main), Federal Republic of Germany (''Deutsche Bank''), has applied for Board approval pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) (''BHC Act'') and section 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) to engage *de novo*, through its wholly owned subsidiaries, Deutsche Morgan Grenfell Futures Inc. (''DMGFI'') and Deutsche Morgan Grenfell Inc. (''DMG''), both of New York, New York, in executing and clearing, executing without clearing, clearing without executing, and providing related services, including incidental advisory services, with respect to futures and options on futures on certain non-financial commodities. Deutsche Bank also proposes to engage in these activities through omnibus trading accounts established in the name of DMGFI with clearing members of exchanges on which neither DMGFI nor DMG would be a clearing member. Deutsche Bank proposes to conduct these activities throughout the world. The Board previously has determined that these activities are closely related to banking. *See, e.g., Citicorp*, 81 Federal Reserve Bulletin 164 (1995); *Northern Trust Corporation*, 79 Federal Reserve Bulletin 723 (1993).

Deutsche Bank's proposal is available for immediate inspection at the Federal Reserve Bank of New York and the offices of the Board in Washington, D.C. Interested persons may express their views on the proposal in writing, including on whether the proposed activities ''can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. § 1843(c)(8). Any request for a hearing on this notice must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the notice must be received not later than January 10, 1997, at the Reserve Bank indicated or to the attention of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

Board of Governors of the Federal Reserve System, December 20, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–32921 Filed 12–26–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National City Bancshares, Inc., Evansville, Indiana; to acquire First Federal Savings Bank of Leitchfield, Leitchfield, Kentucky, and thereby engage in operating a savings bank pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; and its subsidiary Norwest Investment Services, Minneapolis, Minnesota, to acquire the discount brokerage accounts of Central Bank & Trust, Fort Worth, Texas pursuant §§ 225.25(b)(15) and(16) of the Board's Regulation Y. Comments must be received by January 9, 1997.

2. Norwest Corporation, Minneapolis, Minnesota; and its subsidiary Norwest Mortgage, Inc., Des Moines, Iowa, to acquire the residential mortgage origination and servicing activities of Central Bank & Trust, Fort Worth, Texas, pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments must be received by January 9, 1997.

Board of Governors of the Federal Reserve System, December 20, 1996

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–32922 Filed 12–24–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Grant of petition for exemption.

SUMMARY: On April 15, 1996, the Commission published a notice in the Federal Register soliciting comments on a petition filed by Freightliner Corporation. The Commission now grants the petition and determines that the provisions of 16 CFR Part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of truck dealerships by Freightliner Corporation.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Myra Howard, Attorney, PC–H–238, Federal Trade Commission, Washington, D.C. 20580, (202) 326–2047.

SUPPLEMENTARY INFORMATION:

Before the Federal Trade Commission

Order Granting Exemption

In the Matter of a Petition for Exemption from the Trade Regulation Rule Entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures'' filed by Freightliner Corporation.

On April 15, 1996, the Commission published a notice in the Federal Register soliciting comments on a petition filed by Freightliner Corporation (''Freightliner''). Freightliner manufactures heavy-duty and medium-duty trucks, truck parts, and military tractors, and enters into distributorship agreements with business people throughout the United States to sell and service Freightliner's trucks and parts. The petition sought an exemption, pursuant to Section 18(g) of the Federal Trade Commission Act, from coverage under the Commission's Trade Regulation Rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures'' (''Franchise Rule'').

In accordance with Section 18(g), the Commission conducted an exemption proceeding under Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and invited public comment during a 60-day period ending June 14, 1996. No comments were received. After reviewing the petition, the Commission has concluded that the Petitioner's request should be granted.

The statutory standard for exemption requires the Commission to determine whether application of the Trade Regulation Rule to the person or class of persons seeking exemption is ''necessary to prevent the unfair or deceptive act or practice to which the rule relates.'' If not, an exemption is warranted.

The abuses that the disclosure remedy of the Franchise Rule is designed to prevent are most likely to occur, as the Statement of Basis and Purpose of the Rule notes, in sales where three factors are present:

(1) A potential investor has a relative lack of business experience and sophistication;

(2) The investor has inadequate time to review and comprehend the unique and often complex terms of the franchise agreement before making a major financial commitment; and

(3) A significant information imbalance exists in which the prospective franchisee is unable to obtain essential and relevant facts known to the franchisor about the investment.

The pre-sale disclosures required by the Franchise Rule are designed to negate the effect of any deceptive acts or practices where these conditions are present. The Rule provides investors with the material information they need to make an informed investment decision in circumstances where they might otherwise lack the resources, knowledge, or ability to obtain the information, and thus protect themselves from deception.

Where the conditions that create a potential for deception in the sale of franchises are not present, however, a regulatory remedy designed to prevent deception is unnecessary. Our review of the record in this proceeding persuades us that an exemption is warranted for that reason. The Petitioner has convincingly shown that the conditions that create a potential for a pattern or practice of abuse are absent; thus, there is no likelihood of unfair or deceptive acts or practices in the appointment of its truck dealership franchises.

The petition demonstrates that potential Freightliner dealers are and will continue to be a select group of highly sophisticated and experienced businesspeople; that they make very significant investments; and that they have more than adequate time to consider the dealership offer and obtain information about it before investing. We note in particular that Freightliner has a relatively small number of dealers, approximately 232; that prospective Freightliner dealers usually have years of experience in truck or other heavy duty equipment sales; that investment costs for Freightliner dealerships are approximately $4 million; and that prospective dealers participate in an extensive application and approval process, during which time a good deal of information is exchanged between the parties.

As a practical matter, investments of this size and scope typically involve knowledgeable investors, the use of independent business and legal advisors, and an extended period of negotiation that generates the exchange of information necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits. The Commission has reviewed the potential for unfair or deceptive acts or practices in connection with the licensing of motor vehicle dealership franchises on six prior occasions since 1980, and found no evidence or likelihood of a significant pattern or practice of abuse by any of the Petitioners. If any such evidence exists, it has not yet been brought to the Commission's attention in this or any of the prior proceedings.

Thus, both the record in this proceeding and all prior experience to date with other Franchise Rule exemptions for automobile dealerships support the conclusion that Petitioner's licensing of new truck dealers accomplishes what the Rule was intended to ensure. The conditions most likely to lead to abuses are not present in the licensing of Freightliner dealerships, and the process generates sufficient information to ensure that applicants will be able to make an informed investment decision. For these reasons, the Commission finds that the application of the Franchise Rule to Petitioner's licensing of truck dealer franchises is not necessary to prevent the unfair or deceptive acts or practices to which the Rules relates.

Accordingly, the Commission has determined that the provisions of 16 CFR Part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of truck dealerships by Freightliner Corporation.

It is so ordered.

Issued: December 6, 1996.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–32900 Filed 12–26–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State and Tribal Plans for the Child Care and Development Fund (Child Care and Development Block Grant.

OMB No.: 0970–0114.

Description: These legislatively-mandated plans serve as the agreement between the grantee and the Federal government describing how CCDF programs will be administered in conformance with legislative requirements, pertinent Federal regulations, and other applicable instructions and guidelines issued by ACF. This information will be used for Federal oversight of the Child Care and Development Fund.

Respondents: States, Virgin Islands, Puerto Rico, Guam, District of Columbia, Samoa, the Trust of Northern Marianna Islands and Tribal Governments.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118, State & Territory	56	.5	30	840
ACF–118A, Tribal	240	.5	30	3,600

Estimated Total Annual Burden Hours: 4,440.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 16, 1996.

Douglas J. Godesky,

Reports Clearance Officer.

[FR Doc. 96–32940 Filed 12–26–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96N–0487]

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 27, 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 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Geraldine M. Hogan, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1481.

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.

Title: Current Good Manufacturing Practices for Blood and Blood Components; Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting human immunodeficiency virus (HIV) Infection.

Description: The final rule requires that blood establishments prepare and follow written procedures when the blood establishments have collected Whole Blood, blood components, Source Plasma and Source Leukocytes later determined to be at risk for transmitting HIV infections. This final rule requires that when a donor who previously donated blood is tested in accordance with 21 CFR 610.45 on a later donation, and tests repeatedly reactive for antibody to HIV, the blood establishment shall perform more specific testing using a licensed test, and notify consignees who received Whole Blood, blood components, Source Plasma or Source Leukocytes from prior collections so that appropriate action is taken. Blood establishments and consignees are required to quarantine previously collected Whole Blood, blood components, Source Plasma and Source Leukocytes from such donors, and if appropriate, notify transfusion recipients. The agency is issuing this final rule to help ensure the continued safety of the blood supply, to help ensure that information is provided to users of blood and blood components, and to help ensure that transfusion recipients of blood and blood components at risk for transmitting HIV will be notified as appropriate.

Description of Respondents: Blood establishments (Business and Not-for-Profit).

The total estimated annual burden is 85,528 hours. FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING/DISCLOSURE BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.46(a)	3,015	60	180,900	.17	30,753
610.46(b)	3,015	60	180,900	.17	30,753
610.47(b)	200	16	3,200	.5	1,600
Total	.....	.....	.....	.....	63,106

ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
606.100(b)(19)	3,015	1	3,015	2	6,300
606.160(b)(1)(vii)	150	160	24,000	12.8	1,920
606.160(b)(1)(viii)	3,015	60	180,900	4.8	14,472
Total	.....	.....	.....	.....	22,422

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: December 20, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32882 Filed 12–26–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0400]

Points to Consider on Plasmid DNA Vaccines for Preventive Infectious Disease Indications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a points to consider (PTC) document entitled ''Points to Consider on Plasmid DNA Vaccines for Preventive Infectious Disease Indications.'' The PTC document is intended to provide manufacturers with preliminary guidance regarding the manufacture and preclinical evaluation of plasmid deoxyribonucleic acid (DNA) vaccines intended for clinical studies in preventive infectious disease indications and to assist manufacturers in the preparation of investigational new drug (IND) applications for use of these vaccines. This document is also intended to assist manufacturers with their product development plans for preventive vaccines for infectious diseases.

DATES: Written comments may be submitted at any time; however, to ensure comments are considered in any future revisions they should be submitted by February 25, 1997.

ADDRESSES: Submit written requests for single copies of ''Points to Consider on Plasmid DNA Vaccines for Preventive Infectious Disease Indications'' to the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. Persons with access to the INTERNET may obtain the document using the World Wide Web (WWW) or bounce-back e-mail. For WWW access, connect to CBER at ''http://www.fda.gov/cber/cberftp.html''. To receive the document by bounce-back e-mail, send a message to ''plasmid@a1.cber.fda.gov''. Submit written comments on the PTC document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this notice. A copy of the PTC document and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a PTC document entitled ''Points to Consider on Plasmid DNA Vaccines for Preventive Infectious Disease Indications.'' Plasmid DNA vaccines are defined as purified preparations of plasmid DNA designed to contain a gene or genes for the intended vaccine antigen as well as genes incorporated into the construct to allow for production in a suitable host system. The use of purified preparations of plasmid DNA constitutes a new approach to vaccine development.

The following topics are addressed in the PTC document to assist manufacturers with their product development plans: (1) CBER's approach to regulation of plasmid DNA preventive vaccines; (2) product considerations for an IND submission; (3) considerations for plasmid DNA vaccine modifications; (4) preclinical immunogenicity and safety evaluation; (5) use of adjuvants and devices to deliver the vaccine; (6) pre-IND meetings; and (7) IND submissions.

This PTC document is intended to provide manufacturers with information regarding concerns that are associated with the new technology of plasmid DNA preventive vaccines and to provide early guidance to the regulated industry. The goal is to create a regulatory environment that will encourage innovation and at the same time ensure that products are both safe and effective.

As with other PTC documents, FDA does not intend this PTC document to be all-inclusive and cautions that not all information may be applicable to all situations. The PTC document is intended to provide information and does not set forth requirements. FDA anticipates that manufacturers and other interested parties may develop alternative methods and procedures, and discuss them with FDA. FDA recognizes that advances will continue in the area of plasmid DNA vaccines and intends to update and revise the document in order to improve its usefulness.

Although the PTC document does not create or confer any rights for or on any person and does not operate to bind FDA or the public, it does represent CBER's current thinking regarding issues related to plasmid DNA vaccines.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding the PTC document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the PTC document and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Received comments will be considered in determining whether

further revision of the PTC document is warranted.

Dated: December 16, 1996.

William K. Hubbard.

Associate Commissioner for Policy Coordination.

[FR Doc. 96–32930 Filed 12–26–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0490]

Advanced Bionics™ Corp.; Premarket Approval of the CLARION® Multi-Strategy Cochlear Implant

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by the Advanced Bionics™ Corp., Sylmar, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the CLARION® Multi-Strategy Cochlear Implant. After reviewing the recommendation of the Ear, Nose, and Throat Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 22, 1996, of the approval of the application.

DATES: Petitions for administrative review by January 27, 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., 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jane G. Fredericksen, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080.

SUPPLEMENTARY INFORMATION: On June 30, 1994, the Advanced Bionics™ Corp., 12740 San Fernando Rd., Sylmar, CA 91342, submitted to CDRH an application for premarket approval of the CLARION® Multi-Strategy Cochlear Implant. The CLARION® Multi-Strategy Cochlear Implant is intended to restore a level of auditory sensation to individuals with profound sensorineural deafness via electrical stimulation of the auditory nerve. CLARION® is indicated for use in postlingually deafened adults, 18 years of age or older, with profound, bilateral, sensorineural deafness (greater than or equal to 90 decibels), who are unable to benefit from appropriately fitted hearing aids. Lack of aided benefit from a hearing aid is defined as scoring 20 percent or less on tests of open-set sentence recognition (i.e., Central Institute of the Deaf (CID) Sentences). Additionally, there should be no radiographic contraindications to receiver placement or electrode insertion.

On July 21, 1995, the Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended conditional approval of the application. On March 22, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 27, 1997 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. 96–32880 Filed 12–26–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA–605]

Agency information collection activities: Submission for OMB review; comment request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Hospital Provider of Extended Care Services (Swing-Beds) in the Medicare and Medicaid Programs, 42 CFR 447.280 and 482.66; *Form No.:* HCFA–605; *Use:* This is a facility identification and screening form. It will be completed by a hospital that is requesting approval. It initiates the process of determining the hospital's eligibility and also requests approval for their bed count category. *Frequency:* Other (one time usage for initial application); *Affected Public:* Business

or other for profit, Not for profit institutions, and Federal Government; *Number of Respondents:* 1,500; *Total Annual Hours:* 375.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance 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 18, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–33020 Filed 12–26–96; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Library of Medicine (NLM); Opportunity for a Cooperative Research and Development Agreement for Research and Development of Document Imaging and Information Retrieval Software and Systems

AGENCY: Lister Hill National Center for Biomedical Communications, NLM, NIH, DHHS.

ACTION: Notice.

SUMMARY: The Lister Hill National Center for Biomedical Communications (LHNCBC), an R&D division of the National Library of Medicine, seeks a Cooperative Research and Development Agreement (CRADA) with a software company with a reputation in the software research, development and marketing communities, as demonstrated by the quality of its information products, particularly its document imaging and information retrieval software and systems.

The Collaborator must be able to collaborate with NLM staff to produce high quality information products. The Collaborator must have a demonstrated record of success in privately producing and marketing scientific information resources.

The term of the CRADA will be up to five (5) years.

DATES: Interested parties should notify this office in writing no later than February 25, 1997. Parties should document their qualifications as identified in selection criteria in this initial submission. Parties will be subsequently selected for developing a formal proposal.

ADDRESSES: Inquires and proposals regarding this opportunity should be addressed to William Joseph Cotreau, J.D. (Tel. #301–496–0477, FAX #301–402–2177), Office of Technology Development, National Cancer Institute, Executive Plaza South, Suite 450, 6120 Executive Blvd. MSC 7182, Bethesda, Maryland 20892.

SUPPLEMENTARY INFORMATION: A CRADA is the anticipated joint agreement to be entered into by LHNCBC pursuant to the Federal Technology Transfer Act of 1986, as amended by the National Technology Transfer Act (Pub. L. 104–1993 (1996)) and by Executive Order 12591 of October 10, 1987. The Communications Engineering Branch of LHNCBC is presently developing document-imaging systems, called DocView and WILL. DocView is a client-software package, based in the Microsoft Windows environment, designed to handle document images received over the Internet via scanning systems such as Ariel and external client software such as MIME E–mail or Web browers. WILL is a document-sending system, integrating a scanner, PC, image processing boards, printer, barcode reader, fax, and other equipment. WILL is designed to automate almost all aspects of document production, from retrieval of requests to document delivery, and updating of request status.

Under the present proposal, the goal of the CRADA will be the development of the following technology:

- Development of Macintosh and Unix versions for DocView;
- Development of Netscape® Plug-in modules for Macintosh and Unix versions of DocView;
- Development of WILL for faster document capture, improved user interface, improved scanning abilities, and replacement of the present file management with a more efficient DBMS; and
- Development of an improved document-request interface for WILL.

All necessary existing rights and assets currently held by LHNCBC for the production of identified software will be transferred as needed to the Collaborator.

Party Contributions

The role of the LHNCBC includes the following:

(1) Provide Collaborator with the DocView and WILL source codes, if and as necessary, and all licenses necessary for the further development of DocView and WILL;

(2) Provide staff, expertise, and materials for the development of DocView software and the WILL system;

(3) Evaluate the work product of Collaborator to ensure progress toward meeting the CRADA goals; and

(4) Provide work space and equipment for production and testing of any document-retrieval software products developed.

The role of the successful Collaborator will include the following:

(1) Provide funding, if and as necessary, in support of production and dissemination of DocView and WILL;

(2) Provide expertise and assistance in the production and marketing of DocView and WILL;

(3) Provide staff, expertise, and materials for the development of DocView and WILL software; and

(4) Provide quality assurance testing, operator training, and user support for any document-manipulation software products resulting from this CRADA.

Selection Criteria

Proposals submitted for consideration should fully address each of the following qualifications:

(1) Expertise:

A. Demonstrated expertise in developing and producing high quality document imaging software and systems;

B. Demonstrated ability to secure national and international marketing and distribution of software;

C. Demonstrated expertise in overseeing all aspects of product development;

D. Demonstrated intellectual ability to guide development of product line which addresses the requirements of LHNCBC;

E. Demonstrated expertise in serving and supporting a significant client base; and

F. Familiarity with library systems and interlibrary loan and document delivery services.

(2) Reputation: The successful Collaborator must be reorganized in the software industry for:

A. Producing, marketing and supporting quality document imaging software;

B. Indications of high levels of satisfaction by software experts, libraries, document suppliers and

similar entities with the information products and services; and

C. The range of products and services it produces.

(3) Physical Resources:

A. An established headquarters with offices, space, and equipment;

B. Access to the organization during business hours by telephone, mail, e-mail, the Internet, and other evolving technologies; and

C. Sufficient financial and technologies resources to support, at a minimum, the current activities of the CRADA to meet the needs of LHNCBC.

Dated: December 12, 1996.

Barbara McGarey,

Office of Technology Transfer, National Institutes of Health.

[FR Doc. 96–32910 Filed 12–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institutes; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Purpose/Agenda: To review, discuss, and evaluate individual grant applications.

Committee Name: Subcommittee H—Clinical Trials Subcommittee

Date: January 24, 1997.

Time: 12:00 p.m.

Place: Telephone Conference Call, 6130 Executive Boulevard, Room 611C, Rockville, Maryland 20852.

Contact Person: John L. Meyer, Ph.D., Scientific Review Administrator, Grants Review Branch, DEA, NCI, Executive Plaza North, Room 611C, 6130 Executive Blvd., MSC 7403, Bethesda, Md 20892–7403, Telephone: 301–496–7721.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: December 20, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32911 Filed 12–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institutes; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Special Emphasis Panel (SEP):

Name of SEP: Cancer Education Grant Meeting.

Date: January 14, 1997.

Time: 3:00 pm.

Place: Executive Plaza North, Room 611A, 6130 Executive Boulevard, Bethesda, MD 20852.

Contact Person: Mary Bell, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 611A, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7978.

Purpose/Agenda: To evaluate, discuss, and review issues relating to the applications for the Cancer Education Grant Program (R25).

The meeting will be closed in accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. 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.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: December 20, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32912 Filed 12–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Cancellation of a Meeting

Notice is hereby given of the cancellation of the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, December 27, 1996, which was to have taken place as a telephone conference call originating in Room 6AS–25F, Natcher Building, National Institutes of Health, 4500 Center Drive, Bethesda, Maryland 20892–6600, and published in the Federal Register on December 17, 1996, 61 FR 66290.

This meeting is being cancelled due to an unanticipated schedule change.

Dated: December 20, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–32913 Filed 12–26–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4108–N–02]

Loan Guarantee Recovery Fund; Announcement of OMB Approval Number

AGENCY: Office of the Assistant Secretary of Community Planning and Development, HUD.

ACTION: Announcement of OMB Approval Number.

SUMMARY: On September 6, 1996 (61 FR 47404), the Department published in the Federal Register, a regulation authorizing a Loan Guarantee Recovery Fund and the procedures, terms and conditions by which HUD may use the fund to guarantee loans made by financial institutions to nonprofit organizations affected by acts of arson or terrorism pursuant to the Church Arson Prevention Act of 1996. In the ''Effective Date'' section of the rule, and consistent with the Paperwork Reduction Act of 1995, the September 6, 1996 rule advised the public that the OMB control number when received, would be announced by a separate notice in the Federal Register. The purpose of the notice is to announce the OMB approval number for the information collection requirements in the September 6, 1996 rule.

SUPPLEMENTARY INFORMATION: Accordingly, the OMB Approval Number for the Loan Guarantee Recovery Fund collection requirements established in accordance with the Church Arson Prevention Act of 1996 and set forth in HUD's implementing regulation, published in the Federal Register on September 6, 1996 at 61 47404 is 2506–0159. The approval number expires on March 31, 1997.

Dated: December 22, 1996.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 96–32963 Filed 12–26–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4124–N–18]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess of surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should need a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR Part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for user to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made suitable for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army: Mr. Derrick Mitchell, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 428–6083; Energy: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers).

Dated: December 19, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 12/27/96

Suitable/Unavailable Properties

Buildings (by State)

Louisiana

3 Office Buildings
St. James Terminal
St. James Co: St. James Paris LA 70086–
Landholding Agency: Energy
Property Number: 419640002
Status: Underutilized
Comment: 4326 sq. ft., 7877 sq. ft., and 7892 sq. ft., good condition.

Warehouse
St. James Terminal
St. James Co: St. James Paris LA 70086–
Landholding Agency: Energy
Property Number: 419640003
Status: Underutilized
Comment: 9830 sq. ft., good condition.

Laboratory
St. James Terminal
St. James Co: St. James Paris LA 70086–
Landholding Agency: Energy
Property Number: 419640004
Status: Underutilized
Comment: 1128 sq. ft., good condition.

Guard House
St. James Terminal
St. James Co: St. James Paris LA 70086–
Landholding Agency: Energy
Property Number: 419640005
Status: Underutilized
Comment: 420 sq. ft., good condition.

2 Dock Operator Bldgs.
St. James Terminal
St. James Co: St. James Paris LA 70086–
Landholding Agency: Energy
Property Number: 419640006
Status: Underutilized
Comment: 392 sq. ft. each.

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 104, Fort Rucker
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219640440
Status: Unutilized
Reason: Extensive deterioration.

6 Bldgs., Fort Rucker
#143T, 417, 1205, 1317, 4706, 40200
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219640441
Status: Unutilized
Reason: Extensive deterioration.

6 Bldgs, Fort Rucker
#334, 1448, 1449, 1450, 4526, 5608
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219640442
Status: Unutilized
Reason: Extensive deterioration.

5 Bldgs., Fort Rucker

#1018, 1426, 1475, 4028, 4029
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219640443
Status: Unutilized
Reason: Extensive deterioration.

6 Bldgs., Fort Rucker
#1021, 1443, 4702, 5609, 5613, 9807
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219640444
Status: Unutilized
Reason: Extensive deterioration.

Arizona

Bldgs. 15557, 15558
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219640478
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 64013
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 2196400479
Status: Unutilized
Reason: Extensive deterioration.

Arkansas

Bldg. 129
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640445
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 139, 2360
Fort Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640446
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 314
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640447
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 322
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640448
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 340
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 21964049
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 341
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640450
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 342
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640451
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 500
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640452
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 502, 503
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640453
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 504
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640454
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 505
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640455
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 506
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640456
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 507
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640457
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 525
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640458
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 775
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640459
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 800
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640460
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 857
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640461
Status: Unutilized
Reason: Extensive deterioration.

26 Bldgs.
Fort Chaffee
#1337, 1641–1652, 1654–1665, 1748
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640462
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 1504, 1574, 1633
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640463
Status: Unutilized
Reason: Extensive deterioration.

9 Bldgs.
Fort Chaffee
#1535, 1634, 1637–1638, 1667, 1670–1671, 1673, 1676
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640464
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1595
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640465
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1672
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640466
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1682
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640467
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1756
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640468
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1782
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640469
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1786
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640470
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2044
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640471
Status: Unutilized
Reason: Extensive deterioration.

16 Bldgs.

Fort Chaffee
#2062, 2400–2404, 2445–2449, 2455–2459
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640472
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 2065, 2460
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640473
Status: Unutilized
Reason: Extension deterioration.

Bldgs. 2125, 2221
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640474
Status: Unutilized
Reason: Extension deterioration.

Bldg. 2327
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640475
Status: Unutilized
Reason: Extension deterioration.

Bldg. 2425
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640476
Status: Unutilized
Reason: Extension deterioration.

Bldg. 2465
Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219640477
Status: Unutilized
Reason: Extension deterioration.

New Jersey

Bldg. 129
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219640480
Status: Unutilized
Reason: Extension deterioration.

Bldg. 506C
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219640481
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area Extension deterioration.

Bldg. 506D
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219640482
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area Extension deterioration.

South Carolina

Bldg. 2540
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640483
Status: Unutilized
Reason: Extension deterioration.

Bldg. 2542
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640484
Status: Unutilized
Reason: Extension deterioration.

Bldg. 2551
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640485
Status: Unutilized
Reason: Extension deterioration.

Bldg. 3512
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640486
Status: Unutilized
Reason: Extension deterioration.

Bldg. 3522
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640487
Status: Unutilized
Reason: Extension deterioration.

Bldg. 5040
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640488
Status: Unutilized
Reason: Extension deterioration.

Bldg. 9502
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640489
Status: Unutilized
Reason: Extensive deterioration.

Texas

Bldg. 454, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219640490
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 455, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219640491
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 11350, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219640492
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 11360, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219640493
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 703B
Longhorn Army Ammunition Plant
Karnack Co: Harrison, TX 75661–
Landholding Agency: Army
Property Number: 219640494
Status: Unutilized
Reason: Floodway.

Virginia

Bldg. T–105, Fort Monroe
Ft. Monroe, VA 23651–
Landholding Agency: Army
Property Number: 219640495
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–1100
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219640496
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–1102
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219640497
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–1214
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219640498
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–1219
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219640499
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–1230
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219640500
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–1306
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219640501
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–1308
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219640502
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–1528
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219640503
Status: Unutilized

Reason: Extensive deterioration.
Bldg. T–8202
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219640504
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–12070
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219640505
Status: Unutilized
Reason: Extensive deterioration.
Bldgs. 1028, 1042, 1044
Fort Story
Fort Story Co: Princess Ann VA 23459–
Landholding Agency: Army
Property Number: 219640506
Status: Unutilized
Reason: Extensive deterioration.
Sand Pool, Pool A, C
Fort Eustis
Ft. Eustis VA 23604–
Landholding Agency: Army
Property Number: 219640507
Status: Unutilized
Reason: Extensive deterioration.

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BILLING CODE 4210–29–M

[Docket No. FR–4043–N–02]

Announcement of Funding Awards, Federally Assisted Low Income Housing Drug Elimination Grants; Fiscal Year 1996

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

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding awards made by the Department under a Federal Register notice for the Federally Assisted Low Income Drug Elimination Grant Program. This announcement contains the names and addresses of the Federally Assisted Low Income Housing Drug Elimination Program grantees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Michael Diggs, Office of Multifamily Housing Asset Management and Disposition, Department of Housing and Urban Development, room 6176, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0558 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

These grants are authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by Section 581 of the Cranston-Gonzales National Affordable Housing Act (NAHA) of 1990 (Pub. L. 101–625, 104 Stat. 4079, approved November 28, 1990), enacted November 28, 1990. Section 581 of NAHA expanded the Drug Elimination Program to include Federally assisted, low-income housing.

At the time of the publication of the NOFA for the Federally Assisted Low-Income Housing Drug Elimination Program on April 4, 1996 (61 FR 15164), Congress had not yet enacted a fiscal year (FY) 1996 appropriation for HUD. In the NOFA, HUD estimated that $17,000,000 would be appropriated for the program. HUD's FY 1996 appropriation was subsequently enacted on April 26, 1996 (Pub. L. 104–134), providing exactly $17,662,362 for this drug elimination program to provide funding for carrying out drug elimination activities in accordance with the criteria of eligible activities as outlined in the NOFA.

After reviewing and ranking the applications according to the processes described in the April 4, 1996 NOFA, HUD, in accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), is hereby publishing the names and addresses of the grantees that received funding under the NOFA, and the amount of funds awarded to each. The total amount awarded during this period was $17,662,362 to 161 applicants.

Dated: December 19, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing/Federal Housing Commissioner.

Fiscal Year 1996 Drug Elimination Program Grantees

Property Number: 054–44030.
Recipient Name: Jean M. Farmer.
Property Name: Lakeshore Apartments.
Property Address: One Lakeside Road #20, Greeneville, SC 29611.
Contact Person: Jean Farmer (864) 277–6687.
Grant Amount: $125,000.

Property Number: 054–35037.
Recipient Name: James Archie.
Property Name: Mt. Zion AME Apartments I.
Property Address: 619 Ervin Court, Florence, SC 29506.
Contact Person: Clifford Smalls (803) 556–9577.
Grant Amount: $37,620.

Property Number: 054–94002.
Recipient Name: Patty Ownby.
Property Name: The Colony Apartments.
Property Address: 3435 West Beltline Blvd., Columbia, SC 29203.
Contact Person: Nancy Neuhauser (423) 525–7500.
Grant Amount: $125,000.

Property Number: 054–44005.
Recipient Name: James Archie.
Property Name: Mt. Zion ZME Apartments II.
Property Address: 619 Ervin Court, Florence, SC 29506.
Contact Person: Clifford Smalls (803) 556–9577.
Grant Amount: $19,380.

Property Number: 054–35045.
Recipient Name: Robert Hughes, Sr.
Property Name: Pardue St. Apartments.
Property address: 2901 Pardue Street, Lancaster, SC 29720.
Contact Person: Angela Chico-Agustin (913) 321–2262.
Grant Amount: $125,000

Recipient Name: Peter O'Connell.
Property Name: Parkway Village.
Property Address: 775 Parkway Blvd, Box 22A, Summerville, SC 29483.
Contact Person: Peter O'Connell (910) 375–1552.
Grant Amount: $124,795.

Property Number: 054–35388.
Recipient Name: James Kerr.
Property Name: River Oaks Apartments.
Property Address: 5324 Old Bush River Road, Columbia, SC 29212.
Contact Person: James Kerr (803) 559–0862.
Grant Amount: $118,705.

Property Number: 054–35499.
Recipient Name: Peter O'Connell.
Property Name: Prescott Manor.
Property Address: 1601 Prescott Road, Columbia, SC 29203.
Contact Person: Peter O'Connell (910) 375–1552.
Grant Amount: $124,112.

Property Number: 084–55042.
Recipient Name: Rita Orlando.
Property Name: Terrace View II.
Property Address: 220 Garfield, Kansas City, MO 64124.
Contact Person: Jack Oliver (913) 599–1661.
Grant Amount: $93,313.

Property Number: 084–55051.
Recipient Name: Rita Orlando.
Property Name: Benton Villa.
Property Address: 220 Garfield, Kansas City, MO 64124.
Contact Person: Jack Oliver (913) 599–1661.

Grant Amount: $32,630.
Property Number: 084–55027.
Recipient Name: Rita Orlando.
Property Name: Terrace View I Apartments.
Property Address: 220 Garfield, Kansas City, MO 64124.
Contact Person: Jack Oliver (913) 599–1661.
Grant Amount: $86,843.
Property Number: 084–55031.
Recipient Name: Rita Orlando.
Property Name: Valley View Apartments.
Property Address: 220 Garfield, Kansas City, MO 64124.
Contact Person: Jack Oliver (913) 599–1661.
Grant Amount: $99,962.
Property Number: 087–35007.
Recipient Name: Patty Ownby.
Property Name: Tabernacle Apartments.
Property Address: 2624 Wimpole Avenue, Knoxville, TN 37914.
Contact Person: Nancy Neuhauser (423) 525–7500.
Grant Amount: $118,750.
Property Number: 087–35049.
Recipient Name: Ray McElhaney.
Property Address: Gateway Village, W. Paine Street, Sevierville, TN 37862.
Contact Person: Ray McElhaney (423) 546–1485.
Grant Amount: $8,116.
Property Number: 087–35102.
Recipient Name: Patty Ownby.
Property Name: Green Hills Apartments.
Property Address: 1929 Natchez Avenue, Knoxville, TN 37915.
Contact Person: Nancy Neuhauser (423) 525–7500.
Grant Amount: $118,750.
Property Number: 083–55020.
Recipient Name: Jubilee Housing Inc. of KY 4.
Property Name: Carpenters Apartments.
Property Address: 3524 Georgetown Circle, Louisville, KY 40215.
Contact Person: James Daniel (502) 366–3890.
Grant Amount: $116,380.
Property Number: 083–44106.
Recipient Name: Westside Rehab Corp.
Property Name: Hickory Hills Manor Apartments.
Property Address: 120 Marlowe Ct., Frankfort, KY 40601.
Contact Person: Linda Archibald (214) 638–0265.
Grant Amount: $121,081.
Property Number: 083–35033.
Recipient Name: Virginia Street Baptist Homes, Inc.
Property Name: Woodland Heights Apartments.
Property Address: 2850 Greenville Road, Hopkinsville, KY 42240.
Contact Person: Debbie Dunn (502) 886–4601.
Grant Amount: $44,705.
Property Number: 053–35449.
Recipient Name: Grier Park, ALP/ Peter O'Connell.
Property Name: Grier Park Apartments.
Property Address: 3424 Oak Arbor Lane, Charlotte, NC 28205.
Contact Person: Peter O'Connell (910) 375–1552.
Grant Amount: $124,900.
Property Number: 053–35342.
Recipient Name: Lakeside Apartments, ALP/Peter O'Connell.
Property Name: Lakeside Apartments.
Property Address: 702 Lakeside Avenue, Burlington, NC 27215.
Contact Person: Peter O'Connell (910) 375–1552.
Grant Amount: $123,952.
Property Number: 061–44290.
Recipient Name: Capital Vanera Associates.
Property Name: Capital Vanira Apartments.
Property Address: 942 Capitol Ave., SE, Atlanta, GA 30315.
Contact Person: Valerie Calloway (404) 330–0966.
Grant Amount: $124,202.
Property Number: 061–44211.
Recipient Name: First Bedford Pines, LTD.
Property Address: Bedford Pines I, 496 Boulevard, NE, Atlanta, GA 30308.
Contact Person: Edna Moffett (404) 874–6313.
Grant Amount: $101,024.
Property Number: 061–35225.
Recipient Name: Fifth Bedford Pines, LTD.
Property Name: Bedford Pines V.
Property Address: 496 Boulevard, NE, Atlanta, GA 30308.
Contact Person: Edna Moffett (404) 874–6313.
Grant Amount: $77,399.
Property Number: 061–35306.
Recipient Name: Sixth Bedford Pines, LTD.
Property Name: Bedford Pines VI.
Property Address: 496 Boulevard, NE, Atlanta, GA 30308.
Contact Person: Edna Moffett (404) 874–6313.
Grant Amount: $54,604.
Property Number: 061–35213.
Recipient Name: Fourth Bedford Pines, LTD.
Property Name: Bedford Pines IV.
Property Address: 496 Boulevard, NE, Atlanta, GA 30308.
Contact Person: Edna Moffett (404) 874–6313.
Grant Amount: $106,505.
Property Number: 061–44261.
Recipient Name: Second Bedford Pines, LTD.
Property Name: Bedford Pines II.
Property Address: 496 Boulevard, NE, Atlanta, GA 30308.
Contact Person: Edna Moffett (404) 874–6313.
Grant Amount: $94,895.
Property Number: 061–44295.
Recipient Name: Third Bedford Pines, LTD.
Property Name: Bedford Pines III.
Property Address: 496 Boulevard, NE, Atlanta, GA 30308.
Contact Person: Edna Moffett (404) 874–6313.
Grant Amount: $82,610.
Property Number: 061–55056.
Recipient Name: Leroy Johnson.
Property Name: Martin Luther King Village.
Property Address: 380 Martin Street, Atlanta, GA 30312.
Contact Person: Valerie Calloway (404) 330–0966.
Grant Amount: $123,885.
Property Number: 061–35031.
Recipient Name: Highland Arms, LTD.
Property Name: Highland Arms/East Gate Apartments.
Property Address: 11 Fairmont School Road, Newnan, GA 30264.
Contact Person: Tink Norwood (912) 738–0085.
Grant Amount: $125,000.
Property Number: 061–55053/061–55070.
Recipient Name: Central Methodist Inc.
Property Name: Central Methodist I & II.
Property Address: 320 Fairburn Rd., SW, Atlanta, GA 30331.
Contact Person: Valeria Calloway (404) 330–0966.
Grant Amount: $125,000.
Property Number: 062–35002.
Recipient Name: Jackson Heights LTD 1.
Property Name: Forest Hills Apartments.
Property Address: 2615 Tempest Dr., Birmingham, AL 35211.
Contact Person: Mary Ann Poole (205) 967–7891.
Grant Amount: $125,000.
Property Number: 062–35157.
Recipient Name: Four Winds West Co., Inc.
Property Name: Four Winds West Apartments.
Property Address: 1301 Monroe Ave., SW, Birmingham, AL 35211.

Contact Person: Gail Olive (205) 933–1020.
Grant Amount: $16,272.
Property Number: 062–44002.
Recipient Name: A.M.E. Homes of Tuscaloosa, LTD 1.
Property Name: Creekwood Village.
Property Address: 1750 40th Avenue, Tuscaloosa, AL 35401.
Contact Person: Mary Ann Poole (205) 967–7891.
Grant Amount: $125,000.
Property Number: 062–44062.
Recipient Name: Summit Ridge Apartments, L.P.
Property Name: Summit Ridge Apartments.
Property Address: 149 Haversham Drive, Birmingham, AL 35315.
Contact Person: Lisa Holbrook (601) 956–6000.
Grant Amount: $84,834.
Property Number: FL29–K013001.
Recipient Name: Key Plaza Apartments II, LTD.
Property Name: Key Plaza Apartments.
Property Address: 105 E. Truman Apartments, Key West, FL 33040.
Contact Person: Norice James (305) 294–2626.
Grant Amount: $125,000.
Property Number: 066–35161.
Recipient Name: Adimas Management Corp.
Property Name: Lincoln Fields Apartments.
Property Address: 2045 N.W. 62nd Street, Miami, FL 33146.
Contact Person: William Wildon (205) 933–1020.
Grant Amount: $125,000.
Property Number: 065–55005.
Recipient Name: Pascagoula Housing Authority.
Property Name: New Carver Village, II.
Project Address: 1912–209 Live Oak Ave., Pascagoula, MS 39567.
Contact Person: John Switzer (601) 872–4385.
Grant Amount: $125,000.
Property Number: 065–55003.
Recipient Name: Pascagoula Housing Authority.
Property Name: New Carver Village, I.
Property Address: 1912–209 Live Oak Ave., Pascagoula, MS 39567.
Contact Person: John Switzer (601) 872–4385.
Grant Amount: $125,000.
Property Number: 065–35014.
Recipient Name: Brookvale Gardens Associates, LTD.
Property Name: Brookvale Garden Apartments.
Property Address: Everglade Avenue, Starkville, MS 39759.
Contact Person: Rick Greene (601) 948–6401.
Grant Amount: $125,000.
Property Number: 065–35250.
Recipient Name: Rebelwood Apartments, LTD.
Property Name: Rebelwood Apartments.
Property Address: 200 Rebelwood Dr., Jackson, MS 39212.
Contact Person: Sharon Jakubowsky (601) 956–4911.
Grant Amount: $125,000.
Property Number: 061–35302.
Recipient Name: Greentree Apartments, LTD.
Property Name: Greentree Apartments.
Property Address: 500 Greentree Drive, Columbus, MS 39701.
Contact Person: Gail Olive (205) 933–1020.
Grant Amount: $124,734.
Property Number: 074–35003.
Recipient Name: DMACC, Inc.
Property Name: Des Moines Area Council of Churches/DMACC.
Property Address: 1236 Oak Ridge Drive, Des Moines, IA 50314.
Contact Person: Margaret Toomey (515) 244–7702.
Grant Amount: $125,000.
Property Number: 081–35036.
Recipient Name: Alco Management, Inc.
Property Name: New Robinhood Apartments.
Property Address: 35 Union Avenue, Suite 200, Memphis, TN 38103.
Contact Person: George Caruso (901) 526–1211.
Grant Amount: $125,000.
Property Number: 056–55047.
Recipient Name: Office of Liquidation of accounts of The PRVRHC.
Property Name: Bayola Apartments.
Property Address: Calle Estrella Esq. Julian Blanco #1445, Santurce, PR 00907.
Contact Person: Antonia J. Cabrero (787) 756–0127.
Grant Amount: $87,553.
Property Number: 176–44018.
Recipient Name: Woodside Village, Ltd.
Property Name: Woodside Village, Ltd.
Property Address: 1019 E. 20th Avenue, Anchorage, AK 99501.
Contact Person: Roberta Uyakovieh (202) 347–6247.
Grant Amount: $95,000.
Property Number: 136–55010.
Recipient Name: John Berkley Mgt.
Property Name: Florin Meadows I.
Property Address: 7301 29th Street, Sacramento, CA 95822.
Contact Person: Jon Berkley (916) 753–5910.
Grant Amount: $125,000.
Property Number: 136–44034.
Recipient Name: William Hutton/ Alton Mgt.
Property Name: Florin Gardens Co-op East I.
Property Address: 2471 57th Avenue, Sacramento, CA 95822.
Contact Person: William Hutton (415) 693–9263.
Grant Amount: $125,000.
Property Number: CA16–E0000–028.
Recipient Name: Ujima Village.
Property Name: Community Dev. Comm. HACLA.
Property Address: 2 Coval Circle, Monterey, CA 95822.
Contact Person: Maria Badrakhow (213) 890–7135.
Grant Amount: $125,000.
Property Number: 122–44154.
Recipient Name: Verdes Del Oriente.
Property Name: Verdes Del Orientes, A Ltd.
Property Address: 360 West 3rd Street, San Pedro, CA 90731.
Contact Person: Troy Domiter (909) 653–6070.
Grant Amount: $124,050.
Property Number: 122–44094.
Recipient Name: G&K Management.
Property Name: Pioneer Gardens.
Property Address: 9030 Pioneer Blvd., Santa Fe Springs, CA 90670.
Contact Person: Michael Drandell (310) 653–5082.
Grant Amount: $125,000.
Property Number: 129–35076.
Recipient Name: San Diego Housing Commission.
Property Name: University Canyon.
Property Address: 2098 Via Las Cumbres, San Diego, CA 92113.
Contact Person: Pat Zamora (619) 525–3716.
Grant Amount: $125,000.
Property Number: 129–35004.
Recipient Name: Villa Nueva, Inc.
Property Name: Via Nueva Apartments.
Property Address: 3604 Beyer Boulevard, San Diego, CA 92154.
Contact Person: Armando Hurtado (619) 662–1188.
Grant Amount: $125,000.
Property Number: 082–35029.
Recipient Name: Rental Management, Inc.
Property Name: Terrace Green Apartments.
Property Address: 8223 Scott Hamilton Drive, Little Rock, AR 72209.
Contact Person: Sam Sexton (501) 782–7268.
Grant Amount: $125,000.
Property Number: 082–44018.
Recipient Name: Rental Management, Inc.

Property Name: Jefferson Manor Apartments.
Property Address: 2600 John Ashley, North Little Rock, AR 72114.
Contact Person: Sam Sexton (501) 782–7268.
Grant Amount: $125,000.
Property Number: 082–44072.
Recipient Name: Westside Rehab, Corporation.
Property Name: Fair Oaks Apartments.
Property Address: 9600 West 36th Street, Little Rock, AR 72204.
Contact Person: Linda Archibald (214) 638–0265.
Grant Amount: $124,690.
Property Number: 082–EH005.
Recipient Name: Rental Management, Incorporated.
Property Name: Gorman Towers.
Property Address: 3800 Grand Avenue, Ft. Smith, AR 72904.
Contact Person: Sam Sexton (501) 782–7268.
Grant Amount: $125,000.
Property Number: 082–35017.
Recipient Name: Rental Management, Incorporated.
Project Name: Hillsboro Townhouse.
Property Address: 1600 E. Hillsboro, El Dorado, AR 71730.
Contact Person: Sam Sexton (501) 782–7268.
Grant Amount: $125,000.
Property Number: 082–44019.
Recipient Name: Rental Management, Incorporated.
Property Name: Allied Gardens Estates.
Property Address: 5221 Johnson, Ft. Smith, AR 72904.
Contact Person: Sam Sexton (501) 782–7268.
Grant Amount: $125,000.
Property Number: 123–44050.
Recipient Name: Casa Mesa Estates, Ltd.
Property Name: Casa Mesa Estates.
Property Address: 1251 S. Mesa Drive, Mesa, AZ 85210.
Contact Person: Phillip Shea (602) 997–0013.
Grant Amount: $76,380.
Property Number: 123–44017.
Recipient Name: Franmar Manor Partnership.
Property Name: Franmor Manor.
Property Address: 3825 West McDowell, Phoenix, AZ 85009.
Contact Person: Phillip Shea (602) 997–0013.
Grant Amount: $80,180.
Property Number: 123–44028.
Recipient Name: El Rio Joint Venture.
Property Name: Greenview Apartments.
Property Address: 1617 West El Rio Drive, Tucson, AZ 85705.
Contact Person: Phillip Shea (602) 997–0013.
Grant Amount: $88,480.
Property Number: 123–11071.
Recipient Name: Essex Management.
Property Name: Coronado Courts.
Property Address: 1836 Bonita Avenue, Douglas, AZ 85607.
Contact Person: Beverly Hogan (520) 364–4637.
Grant Amount: $125,000.
Property Number: 101–35037.
Recipient Name: CKJ Realty and Management.
Property Name: Wise Harris Arms.
Property Address: 605 26th Street, Denver, CO 80205.
Contact Person: Clinton Williams (303) 297–2433.
Grant Amount: $25,000.
Property Number: 101–94006.
Recipient Name: Boston Fin. Property Management.
Property Name: Windsor Court.
Property Address: 1550 Juliet Court, Auvoa, CO 80205.
Contact Person: Kathy Kingman (303) 730–0271.
Grant Amount: $64,500.
Property Number: 064–44032.
Recipient Name: Melanie OHaway.
Property Name: Versailles Arms Apartments.
Property Address: 14639l Saigon Drive, New Orleans, LA 70129.
Contact Person: Melanie OHaway (504) 254–2564.
Grant Amount: $125,000.
Property Number: 116–55002.
Recipient Name: Lake Crest L.P.
Property Name: Mountain View I Apartments.
Property Address: 2323 Kathryn Avenue, S.E., Albuquerque, NM 87110.
Contact Person: Rudy Cupich (505) 293–7462.
Grant Amount: $125,000.
Property Number: 117–44036.
Recipient Name: Elmwood Manor Apartments, Incorporated.
Property Name: Elmwood Manor Apartments.
Property Address: 615 West 11th, Hobart, OK 73165.
Contact Person: Pamela Cotner (405) 752–5229.
Grant Amount: $125,000.
Property Number: 118–55012.
Recipient Name: Normandy Apartments, Ltd..
Property Name: Normandy Apartments.
Property Address: 6221 E. 38th Street, Tulsa, OK 74135.
Contact Person: Kelly Simmons (918) 622–4428.
Grant Amount: $125,000.
Property Number: 091–35107.
Recipient Name: KTP, Incorporated.
Property Name: Knollwood Townhouses.
Property Address: 25 Knollwood, Rapid City, SD 57701.
Contact Person: Rusty Fleming (303) 423–2845.
Grant Amount: $64,467.
Property Number: 091–44044.
Recipient Name: KTP, Incorporated.
Property Name: Upper Knollwood Townhouses.
Property Address: 25 Knollwood, Rapid City, SD 57701.
Contact Person: Rusty Fleming (303) 423–2845.
Grant Amount: $49,491.
Property Number: 115–55014.
Recipient Name: TGII0, Incorporated.
Property Name: Lexington Manor.
Property Address: 5201 Kostory 2, Corpus Christi, TX 78415.
Contact Person: Robert Rogers (210) 721–3391.
Grant Amount: $124,365.
Property Number: 114–35045.
Recipient Name: Jasper Housing Development.
Property Name: Aneview Apartments.
Property Address: 700 Pollard, Jasper, TX 75951.
Contact Person: David Oyer (412) 661–2032.
Grant Amount: $124,948.
Property Number: 113–44006.
Recipient Name: Blue Water Garden Apartments.
Property Name: Blue Water Garden Apartments.
Property Address: 612 Irving Street, Hereford, TX 79045.
Contact Person: Sue Aumaugher (512) 694–8444.
Grant Amount: $125,000.
Property Number: 112–35257.
Recipient Name: Lake June Village II.
Property Name: Lake June Village II.
Property Address: 1226 North Masters, Dallas, TX 75217.
Contact Person: Vernon Butler (214) 767–9480.
Grant Amount: $111,692.
Project Number: TX16–E000–045.
Recipient Name: Dallas Housing Authority.
Property Name: Cedar Glen Apartments.
Property Address: 2906 E. Kiest Boulevard, Dallas, TX 75216.
Contact Person: Melissa Hassenfratz (214) 767–9480.
Grant Amount: $125,000.
Property Number: 127–65079.
Recipient Name: Martin Seelig.
Property Name: The Downtowner.
Property Address: 308 Fourth Avenue South, Seattle, WA 98104.

Contact Person: Jennifer Seelig (206) 454–0885.
Grant Amount: $55,468.
Property Number: OR16–HO29–115.
Recipient Name: Housing Authority of Lane County.
Property Name: Abbie Lane.
Property Address: 1011 Abbie Lane, Eugene, OR 97401.
Contact Person: Merrilee Eisen (503) 687–4090.
Grant Amount: $63,635.
Property Number: 121–35654.
Recipient Name: MLK/Marcus Garvey Square Cooperative.
Property Name: MLK/Marcus Garvey Square Cooperative.
Property Address: 1680 Eddy Street, San Francisco, CA 94115.
Contact Person: Loren Sanborn (415) 391–4321.
Grant Amount: $121,625.
Property Number: 121–44208.
Recipient Name: Bethel Housing Corporation.
Property Name: Freedom West I.
Property Address: 820 McAllister Street, San Francisco, CA 94102.
Contact Person: Alfred Reynolds (415) 693–9263.
Grant Amount: $125,000.
Property Number: 121–44423.
Recipient Name: Bethel Housing Corporation.
Property Name: Freedom West II.
Property Address: 820 McAllister Street, San Francisco, CA 94102.
Contact Person: Alfred Reynolds (415) 693–9263.
Grant Amount: $125,000.
Property Number: 121–35016.
Recipient Name: Monte Alban Apartments.
Property Name: Monte Alban Apartments.
Property Address: 1324 Santee Drive, San Jose, CA 95122.
Contact Person: Debora Burch (408) 262–5474.
Grant Amount: $125,000.
Property Number: 121–44137.
Recipient Name: Apollo Limited Partnership.
Property Name: Apollo Housing.
Property Address: 1065 8th Street, Oakland, CA 94607.
Contact Person: William H. Harrison (415) 461–8660.
Grant Amount: $125,000.
Property Number: 121–44381.
Recipient Name: Casa San Pablo.
Property Name: Casa San Pablo.
Property Address: 5270 N. San Pablo, Fresno, CA 93704.
Contact Person: Michael E. Drandell (310) 280–5082.
Grant Amount: $125,000.
Property Number: 121–35661.
Recipient Name: Runnymede Gardens.
Property Name: Runnymede Gardens.
Property Address: 2301 Cooley Avenue, East Palo Alto, CA 94303.
Contact Person: Michael E. Drandell (310) 280–5082.
Grant Amount: $75,656.
Property Number: 121–44265.
Recipient Name: Livermore Gardens.
Property Name: Livermore Gardens.
Property Address: 5720 East Avenue, Livermore, CA 94550.
Contact Person: Michael E. Drandell (310) 280–5082.
Grant Amount: $75,000.
Property Number: 121–44049.
Recipient Name: Diamond View Resnt's Association.
Property Name: Diamond View Apartments.
Property Address: 296 Addison Street, San Francisco, CA 94131.
Contact Person: Annette McKinney (415) 334–2698.
Grant Amount: $125,000.
Property Number: 017–35089.
Recipient Name: Freshwater Pond, L.P.
Property Name: Freshwater Pond.
Project Address: Thistle Lane, Enfield, CT 06082.
Contact Person: Karen Dean (860) 939–1309.
Grant Amount: $125,000.
Property Number: CT26H045–004.
Recipient Name: City of Norwalk PHA (as private owner).
Property Name: Colonial Village.
Property Address: 24 ½ Monroe Street, South Norwalk, CT 06856–0508.
Contact Person: Curtis O. Law (203) 838–8471.
Grant Amount: $125,000.
Property Number: 023–55089.
Recipient Name: Coalition for a Better Acre.
Property Name: North Canal Apartments.
Project Address: 170B Fr. Morrissette Boulevard, Lowell, MA 01854.
Contact Person: Nancy Turner (508) 970–2122.
Grant Amount: $125,000.
Property Number: 023–35245 &142NI.
Recipient Name: Madison Park Housing Corporation.
Project Name: Madison Park Village.
Project Address: 122 DeWitt Drive, Boston, MA 02120.
Contact Person: Diana J. Kelly (617) 449–7887.
Grant Amount: $125,000.
Property Number: 023–44115.
Recipient Name: Pynchon Partners II.
Property Name: Edgewater Apartments.
Property Address: 101 Lowell Street, Springfield, MA 01107.
Contact Person: Edward Allen (413) 788–6109.
Grant Amount: $125,000.
Property Number: MA06K023–001.
Recipient Name: Cobbet Hill Associates.
Property Name: Cobet Hill Apartments.
Property Address: 498 Essex Street, Lynn, MA 01902.
Contact Person: Alison Levins (617) 581–2180.
Grant Amount: $119,668.
Property Number: MA06A001–001.
Recipient Name: The Wellington Company.
Property Name: Wellington Community.
Property Address: 714 Main Street, Worcester, MA 01610.
Contact Person: June Harger (508) 756–1490.
Grant Amount: $124,960.
Property Number: MA06H058–045.
Recipient Name: Dorchester Bay Economic Dev. Corp..
Property Name: Cottage Brook Apartments.
Project Address: 622 Dudley Street, Boston, MA 02125.
Contact Person: June Harger (508) 756–1490.
Grant Amount: $124,960.
Property Number: 023–94007.
Recipient Name: Blue Hill Housing Limited Partnership.
Property Name: Blue Hill Apartments.
Property Address: 168 Seaver Street, Boston, MA 02121.
Contact Person: Bea Clark (610) 278–1733.
Grant Amount: $125,000.
Property Number: 023–44002.
Recipient Name: Southfield Gardens Company.
Property Name: Southfield Gardens.
Property Address: 165 Carl Avenue, # 348, Brockton, MA 02402.
Contact Person: Frank Cevetello (617) 423–7000.
Grant Amount: $125,000.
Property Number: IN36L000042.
Recipient Name: Quinn I Ltd. Partnership dba Meadows.
Property Name: Meadows Apartments (& IN36L000043).
Property Address: 4004 Meadows Drive, Indianapolis, IN 46205.
Contact Person: Paula Quinn (317) 574–4700.
Grant Amount: $116,000.
Property Number: 046–35578.
Recipient Name: Dayton Nrthlnd. Village Apts, Ltd.

Property Name: Dayton Northland Village Apartments.
Property Address: 2021 Palisades, Dayton, Ohio 45414.
Contact Person: Nancy Neuhauser (423) 525–7500.
Grant Amount: $125,000.
Property Number: 047–35184.
Recipient Name: Stuyvesant LDHA.
Property Name: Stuyvesant Apartments.
Property Address: 140 Madison SE, Grand Rapids, MI 49503.
Contact Person: Melaine DeVary (517) 351–6840.
Grant Amount: $121,000.
Property Number: 092–44007.
Recipient Name: Skyline Twrs Co./ Sentinel Mgmt.
Property Name: Skyline Towers.
Property Address: 1247 St. Anthony Avenue, St. Paul, MN 55104.
Contact Person: Melanie DeMars (612) 831–5002.
Grant Amount: $125,000.
Property Number: 044–94054.
Recipient Name: MLK Ltd Dividend Hsng. Assctn.
Property Name: Martin Luther King Apartments.
Property Address: 595 Chene, Detroit, MI 48207.
Contact Person: Nancy Hopkins (810) 851–9600.
Grant Amount: $98,896.
Property Number: 043–44001*.
Recipient Name: Agler Green.
Property Name: Agler Green (*018,052,067,102).
Property Address: 3274 Gatewood Ct., Columbus, OH 43219.
Contact Person: Jackie Sowards (304) 744–9041.
Grant Amount: $125,000.
Property Number: IL06K0001&3.
Recipient Name: Michigan Blvd. Associates.
Property Name: Michigan Blvd. Apartments.
Property Address: 50 East 47th Street, Chicago, IL 60653.
Contact Person: Carla Kennedy (312) 335–2675.
Grant Amount: $125,000.
Property Number: 075–94002.
Recipient Name: Juneau Avenue Associates, Ltd.
Property Name: Windsor Court Apartments.
Property Address: 1831 W. Juneau, Milwaukee, WI 53233.
Contact Person: Nancy Neuhauser (423) 525–7500.
Grant Amount: $125,000.
Property Number: 073–44381.
Recipient Name: Asscs. of Triangle, Inc.
Property Address: Caravelle Commons.
Property Name: 1643 N. Park Avenue Indianapolis, IN 46202.
Contact Person: Aaron L. Thomas (317) 842–6612.
Grant Amount: $88,000.
Property Number: 044–94008.
Recipient Name: Auburn Hills Ths. Ltd. Partnership.
Property Name: Spring Lake Village.
Property Address: 252 Carriage Circle Pontiac, MI 48342.
Contact Person: Jim Reuschlein (810) 647–0980.
Grant Amount: $125,000.
Property Number: 071–44042.
Recipient Name: Assisi Homes-DeKalb, Inc.
Property Name: DeKalb Plaza Apartments.
Property Address: 1325 West Lincoln Highway, DeKalb, IL 60115.
Contact Person: Katie Grand (708) 462–9271.
Grant Amount: $125,000.
Property Number: 046–35198.
Recipient Name: United Services No. 2.
Property Name: United Services No. 2.
Recipient Address: 1534 Race Street, Cincinnati, OH 45210.
Property Address: Scattered Sites.
Contact Person: Thomas Denhart (513) 241–6328.
Grant Amount: $91,738.
Property Number: 046–44082.
Recipient Name: Phoenix Apartments.
Recipient Address: 1534 Race Street, Cincinnati, OH 45210.
Property Name: Phoenix Apartments.
Property Address: Scattered Sites.
Contact Person: Thomas Denhart (513) 241–6328.
Grant Amount: $124,745.
Property Number: 071–35524.
Recipient Name: Bethel New Life, Inc.
Property Name: West End Rehab.
Property Address: 4455 West End, Chicago, IL 60624.
Contact Person: Lawrence Grisham (312) 826–5540.
Grant Amount: $116,100.
Property Number: 046–35521.
Recipient Name: Hickory Woods Apartments.
Property Name: Hickory Woods Apartments.
Property Address: 2333 Hidden Meadows Drive, Cincinnati, OH 45223.
Contact Person: Bobby Artist (513) 489–1990 (ext 125).
Grant Amount: $125,000.
Property Number: 044–44060.
Recipient Name: Parkview Apartments NP Hsng. Corp.
Property Name: Parkview Apartments.
Property Address: 596 S. Hamilton Street, Ypsilanti, MI 48197.
Contact Person: Dr. Lee Jones (313) 665–9104.
Grant Amount: $117,923.
Property Number: WI39K901001.
Recipient Name: Ziegler-Limbach of Kenosha A.
Property Name: Ziegler-Limbach of Kenosha.
Property Address: 4007 45th Street, Kenosha, WI 53140.
Contact Person: Fran Spindler (608) 784–2935.
Grant Amount: $125,000.
Property Number: 043–EH277.
Recipient Name: Ohio Baptist Gnrl Cnv Natl Bapt.
Property Name: Love Zion New Salem (Mnr EH311).
Property Address: 2436 Innis Road, Columbus, OH 43224.
Contact Person: Rosalind Swinger (615) 259–4332.
Grant Amount: $125,000.
Property Number: 0464171.
Recipient Name: Centennial Estate Cooperative.
Property Name: Centennial Estate.
Property Address: 9801 Mangham Drive, Cincinnati, OH 45215.
Contact Person: Ramona M. Nelson (513) 961–6011.
Grant Amount: $125,000.
Property Number: 071–44124.
Recipient Name: Sherwood Glen on the Fox.
Property Name: Foxview Apartments II.
Property Address: 3 Oxford Road, Carpentersville, IL 60110.
Contact Person: Diane Petersen (847) 418–7771.
Grant Amount: $124,896.
Property Number: 071–44069.
Recipient Name: Sherwood Glen on the Fox.
Project Name: Foxview Apartments I.
Project Address: 3 Oxford Road, Carpentersville, IL 60110.
Contact Person: Diane Petersen (847) 418–7771.
Grant Amount: $124,896.
Property Number: 071–44176.
Recipient Name: Atrium Village Associates.
Property Name: Atrium Village.
Property Address: 300 West Hill Street, Chicago, IL 60610.
Contact Person: Nancy Spira (312) 642–8707.
Grant Amount: $125,000.
Property Number: 046–35511.
Recipient Name: Field Ertel Townhouses.
Property Name: Field Ertel Townhouses.
Property Address: 12120 Mason Montgomery Road, Cincinnati, OH 45242.
Contact Person: Bobby Artist (513) 489–1900, ext. 125.

Grant Amount: $125,000.
Property Number: 044–44005*.
Recipient Name: Lancaster Village Cooperative.
Property Name: Lancaster Village Coop *6/7/8.
Property Address: 633 Palmer Drive, Pontiac, MI 48342.
Contact Person: Leona Patterson (810) 373–4780.
Grant Amount: $125,000.
Property Number: 046–35369.
Recipient Name: Dunlap Apartments.
Recipient Address: 1534 Race Street.
Property Name: Dunlap Apartments.
Property Address: Scattered Sites, Cincinnati, OH 45210.
Contact Person: Thomas Denhart (513) 241–6328.
Grant Amount: $123,763.
Property Number: 046–35290.
Recipient Name: Green Apartments.
Recipient Address: 1534 Race Street.
Property Name: Green Apartments.
Property Address: Scattered Sites, Cincinnati, OH 45210.
Contact Person: Thomas Denhart (513) 241–6328.
Grant Amount: $70,225.
Property Number: 071–35492.
Recipient Name: New West/Burnham Management.
Property Name: Evergreen Terrace I.
Property Address: 350 North Broadway Street, Joliet, IL 60435.
Contact Person: Diane LaPointe (312) 553–3656.
Grant Amount: $125,000.
Property Number: 044–024NI.
Recipient Name: Dartmouth Square LDHA.
Property Name: Dartmouth Square.
Property Address: 26382 Colgate, Inkster, MI 48141.
Contact Person: Angela England (810) 647–0980.
Grant Amount: $125,000.
Property Number: 046–35517.
Recipient Name: Rolling Ridge Apartments.
Property Name: Rolling Ridge Apartments.
Property Address: 258–259 Yearling Court, Cincinnati, OH 45211.
Contact Person: Bobby Artist (513) 489–1900, ext. 125.
Grant Amount: $125,000.
Property Number: 092–44133.
Recipient Name: Heartland Realty Investors Inc.
Property Name: Briarhill Apartments.
Property Address: 7025 Woodland Drive, Eden Prairie, MN 55346.
Contact Person: Joan Van Putten (612) 937–1735.
Grant Amount: $125,000.
Property Number: 072–NI001.
Recipient Name: Danville Preservation Corp.
Property Name: Vermillion Gardens.
Property Address: 1213 Garden Drive, Unit C, Danville, IL 61832.
Contact Person: Dilia Saeedi (312) 443–1360.
Grant Amount: $99,250.
Property Number: 043–35084.
Recipient Name: U.S. 51 c/o Broad Street Mgmt.
Property Name: U.S. 51 c/o Broad Street Mgmt.
Property Address: 935 East Broad Street, Columbus, OH 43205.
Contact Person: Pat Hartman (614) 253–0984.
Grant Amount: $125,000.
Property Number: 046–35344.
Recipient Name: Mt. Auburn Good Housing Foundtn.
Property Name: Hillside Apartments.
Property Address: 1713–33 Sycamore Street, Cincinnati, OH 45219.
Contact Person: Ramona M. Nelson (513) 961–6011.
Grant Amount: $125,000.
Property Number: 043–35275.
Recipient Name: Greenfield Meadows, Ltd.
Property Name: Southpark Apartments.
Property Address: 891 Greenfield Drive, Columbus, OH 43223.
Contact Person: Patty Owensby (615) 525–7500.
Grant Amount: $125,000.
Property Number: 047–35005.
Recipient Name: Interfaith Hs. of Kalamazoo, Inc.
Property Name: Interfaith Homes.
Property Address: 1037 Patwood Court, Kalamazoo, MI 49007.
Contact Person: John Katsma (616) 382–0012.
Grant Amount: $109,025.
Property Number: 073–92003.
Recipient Name: LaSalle Pk HMS-Nt Pft Apts Cmt.
Property Name: Lasalle Park Homes.
Property Address: 102 South Falcon Street, South Bend, IN 46619.
Contact Name: Robert Toothaker (219) 234–9923.
Grant Amount: $86,860.
Property Number: 023–3522 & seven others.
Recipient Name: Cruz Management Company, Inc.
Recipient Address: 2315 Washington Street, Boston (Roxbury) MA 02119.
Property Name: Eight (8) Scattered Sites and individual addresses.
Contact Person: Amy Belyea (617) 445–8117.
Grant Amount: $125,000.
Property Number: MA06HO58060.
Recipient Name: Noral Housing Associates.
Recipient Address: 75 Central Street, Boston (Dorchester) MA 02109.
Property Name: Noral Housing.
Property Address: Ten (10) Scattered Sites.
Contact Person: Enrico Gilbert (617) 738–5100.
Grant Amount: $125,000.
Property Number: MA 06HO52067.
Recipient Name: Urban Edge Housing Corporation.
Recipient Address: 2010 Columbus Avenue, Boston (Roxbury) MA 02119.
Property Name: Self-Help Apartments.
Property Address: Three (3) Scattered Sites, Boston (Roxbury & Jamaica Plain), MA.
Contact Person: Leroy Stoddard (607) 541–2596.
Grant Amount: $118,363.
Property Number: MA06HO58107.
Recipient Name: Bay Meadow Achievers.
Property Name: Bay Meadow Apartments.
Property Address: 100 Bay Meadow Road, Springfield, MA 01109.
Contact Person: Paula Hatch (413) 733–3316.
Grant Amount: $63,434.
Property Number: MA06E000023.
Recipient Name: Gibraltar Associates.
Property Name: Mandela Apartments.
Property Address: 10 Hammond Street, Boston (Roxbury) MA 02120.
Contact Person: Carolyn Gibson (617) 445–0650.
Grant Amount: $107,450.
Property Number: 023–089NI.
Recipient Name: Mystic Valley Towers Associates.
Property Name: Mystic Valley Towers.
Property Address: 3610 Mystic Valley Parkway, Medford, MA 02155.
Contact Person: Michael Milko (617) 391–1810.
Grant Amount: $124,878.
Property Number: 023–44114.
Recipient Name: Pynchon Partners.
Property Name: Pynchon Terrace.
Property Address: 101 Lowell Street, Springfield, MA 01107.
Contact Person: Edward Allen (413) 788–6109.
Grant Amount: $125,000.
Property Number: 023–44210.
Recipient Name: The Cooperative of Charleston.
Property Name: Charles New Town Cooperative.
Property Address: 10 Old Ironsides Way, Boston (Charlestown) MA 02129.
Contact Person: Erik Thelen (617) 242–0808.
Grant Amount: $124,965.
Property Number: 023–020NI.
Recipient Name: Riverside Village Company.
Property Name: Riverside Village.

Property Address: 24 State Street, Leominster, MA 01453.
Contact Person: Mary Lou Walker (617) 262–2836.
Grant Amount: $125,000.
Property Number: 023–36602.
Recipient Name: Harbor Point Community Task Force.
Property Name: Harbor Point Apartments.
Property Address: 1 North Point Drive, Boston (Dorchester) MA 02125.
Contact Person: Ruby Jaudoo (617) 288–5701.
Grant Amount: $124,769.
Property Number: MA06A001002.
Recipient Name: Whittier Terrace Associates.
Property Name: Whittier Terrace.
Property Address: 86 Austin Street, Worchester, MA 01609.
Contact Person: Joseph Salvia (508) 791–1472.
Grant Amount: $123,715.
Property Number: 023–35253.
Recipient Name: Villa Nueva Vista Associates.
Property Name: Villa Nueva Vista.
Property Address: 36 Cumberland Street, Springfield, MA 01107.
Contact Person: Sharon Starinovich (413) 737–7748.
Grant Amount: $114,741.
Property Number: 023–55179.
Recipient Name: Georgetowne II Limited Partnership.
Property Name: Georgetowne House II.
Property Address: 400A Georgetowne Drive, Boston (Hyde Park) MA 02136.
Contact Person: Paul Martin (617) 364–3020.
Grant Amount: $47,845.
Property Number: 023–55058.
Recipient Name: Georgetowne I Limited Partnership.
Property Name: Georgetowne House I.
Property Address: 400A Georgetowne Drive, Boston (Hyde Park) MA 02136.
Contact Person: Paul Martin (617) 364–3020.
Grant Amount: $77,155.
Property Number: 026–55001–02655002.
Recipient Name: Northgate Housing Limited Partnership.
Property Name: Northgate/Greenfield Apartments.
Property Address: 275 Northgate Road, Burlington, VT 05401.
Contact Person: Susi Taylor (802) 658–2722.
Grant Amount: $124,579.
Property Number: 016–55003.
Recipient Name: Providence Bldg., Sanitary & Educational Asso.
Property Name: Chase Wiggin Village.
Property Address: 207 Cranston Street, Providence, RI 02907.
Contact Person: Jacquelyn E. McDonald.
Grant Amount: $125,000.
Property Number: NJE087231PB2.
Recipient Name: Jersey City Housing Authority.
Property Name: 254 Bergen Avenue.
Property Address: 254 Bergen Avenue, Jersey City, NY 07306.
Contact Person: Maria T. Maio (201) 547–6753.
Grant Amount: $125,000.
Property Number: 012–57313.
Recipient Name: Lewis Morris Associates.
Property Name: Lewis Morris Apartments.
Property Address: 1749 Grand Concourse, Bronx, NY 10453.
Contact Person: Hector Pincro (212) 947–1644.
Grant Amount: $125,000.
Property Number: 012–035NI.
Recipient Name: Starrett City Associates.
Property Name: Starrett at Spring Creek.
Property Address: 1320 Pennsylvania Avenue, Brooklyn, NY 11239.
Contact Person: Devorah L. Fong (718) 240–4545.
Grant Amount: $124,000.
Property Number: 012–35088.
Recipient Name: Jackson Terrace Associates.
Property Name: Jackson Terrace.
Property Address: 100 Terrace Avenue, Hempstead, NY 11550.
Contact Person: Peter Florey (516) 745–0150.
Grant Amount: $125,000.
Property Number: 012–019NI.
Recipient Name: Sea Park West Houses, Inc.
Property Name: Sea Park West.
Property Address: 2930 West 39th Street, Brooklyn, NY 11224.
Contact Person: Natalie J. Weinthal (718) 240–4130.
Grant Amount: $45,000.
Property Number: 014–039NI.
Recipient Name: Boriquen Associates.
Property Name: Los Flamboyanes.
Property Address: 100 Boriquen Plaza, Rochester, NY 14620.
Contact Person: Elizabeth Kurtz (716) 427–7390.
Grant Amount: $125,000.
Property Number: 052–44200.
Recipient Name: Orchard Mews Associates.
Property Name: Orchard Mews Apartments.
Property Address: 568 Orchard Street, Baltimore, MD 21201.
Contact Person: Angela Wickham (410) 523–2021.
Grant Amount: $125,000.
Property Number: 034–44106.
Recipient Name: Hillrise Mutual Housing Assoc., Inc.
Property Name: Hillrise Apartments.
Property Address: 241 Locust Street, Lancaster, PA 17602.
Contact Person: Seraida Morales (717) 291–1911.
Grant Amount: $103,832.
Property Number: 033–44074.
Recipient Name: Insignia Management Group.
Property Name: Carnegie Towers.
Property Address: 820 Capital Drive, Carnegie, PA 15106.
Contact Person: John Skaro (412) 644–6884.
Grant Amount: $108,000.
Property Number: 051–44201.
Recipient Name: Ruffin Rd. Associates LTD Partnership.
Property Name: Ruffin Road Apartments.
Property Address: 2219–A Ruffin Road, Richmond, VA 23234.
Contact Person: Regina Harris (804) 672–2236.
Grant Amount: $42,540.
Property Number: 045–35149.
Recipient Name: Willbrian Apartments, LTD.
Property Name: Willbrian Apartments.
Property Address: Ewart Drive, Beckley, WV 25801.
Contact Person: Billy P. Shadrack (704) 249–7543.
Grant Amount: $40,000.
Property Number: 000–44142.
Recipient Name: Brentwood Associates Limited Partnership.
Property Name: Brookland Manor Apartments.
Property Address: 1289 Brentwood Road, N.E., Washington, D.C. 20018.
Contact Person: Arlene Simons (301) 961–1780.
Grant Amount: $122,544.

[FR Doc. 96–32964 Filed 12–26–96; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for a Plant, Fringed Campion, for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for fringed campion (*Silene polypetala*), an endangered plant native to hardwood

forests in central Georgia and on the Flint-Apalachicola bluffs at the southern border of Georgia and adjoining Florida. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before February 25, 1997 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Jacksonville Field Office, Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216 (Telephone: 904–232–2580, FAX 904–232–2404). Written comments and materials regarding the plan should be addressed to the Field Supervisor, at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Linda Finger at the above address (Telephone: 904–232–2580 ext. 107).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened plants and animals to the point where they are secure self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice, and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

Fringed campion inhabits hardwood bottoms and ravines in a very limited geographic range. As a result, it was probably comparatively rare even before the time of European contact. The greatest threat to this forest species is the progressive alteration or degradation of its habitat due to logging. The resultant increased sunlight, lack of replenishment of the humus layer, and growth of aggressive exotic weeds such as Japanese honeysuckle, act in concert to eliminate this species. Browsing of flowering stems by deer impact reproduction by seed.

The actions needed to recover this species are: 1) Protect populations. 2) Preserve genetic stock from acutely threatened populations. 3). Monitor populations to determine trends and developing threats. 4) Control exotic pest plants. 5) Search for additional populations. 6) Reestablish fringed campion at protected locations, if necessary. 7) Manage sites to maintain and/or enhance populations. Most opportunities to conserve this plant will be on private land because only two sites are in public ownership and no public land acquisition is contemplated. Landowners are not obliged in any way to conserve the plant on their property.

Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered prior to the approval of the plans.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 10, 1996.

David Hankla,

Field Supervisor.

[FR Doc. 96–33021 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–55–P

U.S. Fish and Wildlife Service

Availability of a Draft Programmatic Environmental Impact Statement on Impacts of Artificial Salmon and Steelhead Production Strategies in the Columbia Basin

AGENCIES: U.S. Fish and Wildlife Service, (lead agency), National Marine Fisheries Service, Bonneville Power Administration (cooperating agencies).

ACTION: Notice of availability and schedule of public workshops.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service), the National Marine Fisheries Service (NMFS) and the Bonneville Power Administration (BPA) have issued a draft Programmatic Environmental Impact Statement (PEIS) on Impacts of Artificial Salmon and Steelhead Production Strategies in the Columbia Basin. The draft PEIS frames the policy level issues associated with the agencies' proposals to change salmon and steelhead fish hatchery production in Columbia Basin and discusses the cumulative impact issues within the basin's salmon and steelhead mainstem migration corridor. This notice is being furnished pursuant to the Council on Environmental Quality Regulations for Implementing The Procedural Provisions of the National Environmental Policy Act (NEPA) Regulations (40 CFR 1506.6).

DATES: Written comments are requested by February 10, 1997.

Three public informational workshops have been scheduled to explain the proposals and receive comments. All of the workshops will be held from 1:00 pm to 5:00 pm and 7:00 pm to 9:00 pm.

January 14, 1997, Red Lion—Downtowner, Boise, Idaho

January 16, 1997, Red Lion Inn, Pasco, Washington

January 21, 1997, Red Lion Hotel—Lloyd Center, Portland, Oregon

ADDRESS WRITTEN COMMENTS: Send comments to PEIS Team Leader, U.S. Fish and Wildlife Service, 911 NE 11 Ave, Portland, Oregon, 97232–4181.

FOR FURTHER INFORMATION CONTACT: Lee Hillwig, U.S. Fish and Wildlife Service, Telephone: 503–872–2766 or Dave Riley, Telephone: 503–226–2460.

Copies of the Draft PEIS are available for review at the following libraries:

Astoria Public Library, Astoria, Oregon

Deschutes County Library, Bend, Oregon

Hood River County Library, Hood River, Oregon

King County Library System, Seattle, Washington

Multnomah County Library, Portland, Oregon

North Central Regional Library, Wenatchee, Washington

Seattle Public Library, Seattle, Washington

Yakima Valley Regional Library, Yakima, Washington

SUPPLEMENTARY INFORMATION: Columbia Basin fish managers continue to struggle to meet a variety of fishery obligations and mandates that often compete for scarce resources. Management of fish hatcheries is one of many factors affecting overall fish populations within the basin. In recognition of the need to develop a systemwide salmon and steelhead artificial production strategy in the Columbia Basin that better

balances responses to competing legal mandates, the Fish and Wildlife Service, National Marine Fisheries Service, and Bonneville Power Administration are proposing policy level changes in Columbia Basin salmon and steelhead fish hatchery production. These proposals are contained in the Draft Programmatic Environmental Impact Statement on Impacts of Artificial Salmon and Steelhead Production Strategies in the Columbia Basin.

A. Development of the Draft EIS

This draft PEIS has been developed cooperatively by the U.S. Fish and Wildlife Service, Pacific Division (lead agency); the National Marine Fisheries Service, and the Bonneville Power Administration.

In the development of this draft PEIS, the U.S. Fish and Wildlife Service has initiated action to assure compliance with the purpose and intent of the National Environmental Policy Act of 1969, as amended. Extensive scoping activities were undertaken preparatory to developing the EIS with a variety of Federal, State, and local entities. A Notice of Intent to prepare the EIS was published in the Federal Register on July 25, 1994.

Key issues addressed in this draft PEIS are identified as the effects that implementation of various alternatives would have upon (1) production for fisheries, (2) fish stock diversity, and (3) social and economic conditions.

B. Alternatives Analyzed in the Draft EIS

The draft PEIS examines a range of alternatives from closure of all or most fish hatcheries to abandoning most fish habitat improvement programs and relying almost exclusively on increased artificial production. The preferred action proposes systemwide, policy-level decisions to better meet competing fishery obligations and mandates. Key components include:

- Limiting overall basin artificial production to current levels or very small increases,
- Shifting some emphasis of outplanting strategies from downstream (below Bonneville Dam) to the upstream and/or tributary streams,
- Implementing measures to more fully assess risks where site specific hatchery management changes are contemplated,
- Establishing an enhanced natural production objective, and
- Proposing aggressive subbasin planning and monitoring for hatchery programs and adaptive management measures for hatchery practices where indicated.

At the programmatic or systemwide level, the PEIS frames the policy level issues associated with the proposed actions and discusses the cumulative impact issues within the basin's salmon and steelhead mainstream migration corridor.

Dated: December 13, 1996.

Michael J. Spear,

William W. Stelle, Jr.,

For the U.S. Fish and Wildlife Service:

Dated: December 19, 1996.

For the National Marine Fisheries Service:

[FR Doc. 96–32925 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–55–P

Preparation of a joint Environmental Impact Statement /Environmental Impact Report for Federal and State Actions Associated with Furthering the Purposes of the September 28, 1996, Agreement Between the United States, State of California, and MAXXAM, Inc. and its Subsidiary, Pacific Lumber Company

AGENCY: Fish and Wildlife Service, Interior. (Lead Agency)

Cooperating Agencies:

National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.
Environmental Protection Agency
Forest Service, Agriculture
Bureau of Land Management, Interior
California State Resources Agency
California State Department of Forestry and Fire Protection
California State Department of Fish and Game

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service and National Marine Fisheries Service (collectively ''the Services''), Environmental Protection Agency (EPA), U.S. Bureau of Land Management (BLM), U.S. Forest Service (USFS), and California Resources Agency (Agency), California Department of Forestry and Fire Protection (CDF), and California Department of Fish and Game (CDFG) intend to gather information necessary for the preparation of an Environmental Impact Statement (EIS)/ Environmental Impact Report (EIR). The EIS/EIR will consider the Federal and State actions associated with the September 28, 1996 agreement, (agreement) namely:

(1) Transfer of the Headwaters Forest and the Elk Head Forest and adjacent forest lands, totaling approximately 7,500 acres, to the United States and California in exchange for (i) the Elk River Exchange Property (described below), and (ii) property and other consideration from both the United States and California (including cash) having an aggregate fair market value of $300 million;

(2) Acquisition by the United States and California of the approximately 9,600-acre Elk River Timber Company property through exchange for up to 10,000 acres of National Forest System lands in the Eldorado, Plumas, Stanislaus, and Tahoe National Forests or other considerations;

(3) Transfer of approximately 7,775 acres of the Elk River Timber Lands (the Elk River Exchanged Property) to the Pacific Lumber Company and its parent MAXXAM, Inc. in return for acquisition of the Headwaters Forest and Elk Head Forest; with the remaining approximately 1,825 acres of the Elk River Timber lands becoming part of the Headwaters-Elk Head Reserve;

(4) Issuance of an incidental take permit under the Endangered Species Act (Act) by the Services in anticipation of a permit application by The Pacific Lumber Company (a subsidiary of MAXXAM, Inc.) to take federally listed species and requesting assurances regarding other species occurring or potentially occurring on the remaining lands of The Pacific Lumber Company, the Elk River Property, and any other timberlands or timber harvesting rights acquired by Pacific Lumber and its parent MAXXAM, Inc. as a result of the above described transactions; and

(5) Approval of The Pacific Lumber Company's Sustained Yield Plan (SYP) by CDF including consideration of conservation measures or plans addressing State-listed species.

The EIS/EIR will also consider any actions by other Federal or State agencies that are necessary or appropriate to perform the agreement.

This notice is being furnished pursuant to the Council on Environmental Quality Regulations for Implementing The Procedural Provisions of the National Environmental Policy Act (NEPA) Regulations (40 CFR sections 1501.7 and 1508.22) to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be considered in preparation of the EIS.

To satisfy both Federal and State environmental policy act requirements, the above Federal agencies and California agencies are conducting a joint scoping process for the preparation of environmental documents. In order to expedite the planning process, the above agencies request all scoping

comments to this notice be received by February 10, 1997.

DATES: As an opportunity for interested persons to comment on the scope of the EIS, public scoping meetings are scheduled as follows:

- Thursday, January 16, 1997, Oakland Convention Center, West Hall, 550 Tenth Street (at Broadway), Oakland, California
- Thursday, January 23, 1997, Red Lion Hotel, 3100 Camino del Rio Court, Bakersfield, California
- Tuesday, January 28, 1997, Red Lion Hotel, 1830 Hilltop Drive, Redding, California
- Thursday, January 30, 1997, Radisson Hotel, 500 Leisure Lane, Sacramento, California
- Wednesday, February 5, 1997, Redwood Acres Fairgrounds, Franceschi Hall, 3750 Harris Street, Eureka, California

All scoping meetings will be held from 1:00 p.m. to no later than 4:00 p.m., and from 6:00 p.m. to no later than 9:00 p.m.

ADDRESS: Comments regarding the scope of the EIS should be addressed to Mr. Bruce Halstead, U.S. Fish and Wildlife Service, 1125 16th Street, Room 209, Arcata, CA 95521–5582. Comments should be received on or before January 31, 1997, at the above address. Written comments may also be sent by facsimile to (707) 822–8136. Comments received will be available for public inspection by appointment during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday) at the above office; please call for an appointment.

FOR FURTHER INFORMATION CONTACT: Dennis Mackey, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181, Telephone: (503) 231–6241. Specific information regarding the location of the National Forest System lands proposed for exchange may be obtained from Phil Bayles, 630, Sansome Street, San Francisco, CA 94111, (415) 705–2772.

SUPPLEMENTARY INFORMATION: MAXXAM, Inc. and its subsidiary, Pacific Lumber Company own and manage approximately 200,000 acres of commercial forest land in Northern California. Pacific Lumber Company and MAXXAM Corporation signed an agreement on September 28, 1996, with the United States, and the State of California. The agreement calls for transfer of approximately 7,500 acres of private forest lands in the Headwaters and Elk Head forests to State and Federal ownership in exchange for the Elk River Exchange Property and a combination of cash and yet to be determined assets, valued at $300 million. The Federal and State assets currently proposed for exchange include the following, however, it should be noted these may change during the planning process and any changes would be disclosed in the appropriate environmental documents:

- Approximately 2,967 acres of timber land in Humboldt County, California (estimated to contain 11 million board feet of timber) managed by the BLM,
- Federal mineral interests in California, managed by BLM, many of which are located in Kern County,
- Approximately 30 acres of excess land adjacent to Chet Holifield Federal Office in Laguna Niguel, California,
- Not more than 17,000 acres of National Forest System lands are proposed for exchange to Elk River Timber Company for a portion of the lands known as the Elk River Timber Company property. The 17,000 acres are identified on four National Forests, including 7,000 on the Eldorado National Forest, 2,000 on the Plumas National Forest, 7,000 on the Stanislaus National Forest , and 1,000 on the Tahoe National Forest. The precise acreage that would actually be exchanged will be that amount equaling approximately $30,000,000 in value based on actual appraisal, current at the time of decision. Cash or other valuable considerations up to $30,000,000 in value may be substituted, and
- Approximately 9,013 acres of State property within the Latour State Forest, 1,100 acres of State agricultural land in San Bernardino County, approximately 1,313 acres (in 18 parcels, 13 of which are less than 40 acres) of State General Surplus property, including the 488-acre California Department of Forestry (CDF) Black Mountain property, 140-acre CDF Deadwood Camp property, and 415-acre Rector Canyon property, 5 parcels approximating 110 acres within the city limits of Eureka, and 25 parcels of surplus Caltrans property (24 of which are less than 10 acres), including the Transbay Bus Terminal.

The USFS, pursuant to National Forest Management Act (NFMA) of 1976, and BLM, pursuant to Federal Land Policy and Management Act (FLPMA) of 1976 are agencies authorized to acquire, excess, exchange, and transfer Federal lands and will be the agencies primarily responsible for furthering the federal realty actions.

The agreement also calls for the expedited development and submission by Pacific Lumber Company and processing by the Services of an application for an incidental take permit, which would be accompanied by a Habitat Conservation Plan (HCP), pursuant to the provisions of section 10(a)(1)(B) of the Act. Under the terms of the agreement, Pacific Lumber Company is to develop a multi-species habitat conservation plan for forested lands currently within their ownership, as well as other lands which would be acquired by Pacific Lumber under the agreement. It is anticipated that the permit application for incidental take will include the threatened northern spotted owl (*Strix occidentalis caurina*), the threatened marbled murrelet (*Brachyramphus marmoratus marmoratus*), the threatened bald eagle (*Haliaeetus leucocephalus*), and the endangered American peregrine falcon (*Falco peregrinus anatum*) as well as an agreement covering conservation of unlisted species including the proposed threatened steelhead (*Oncorhynchus mykiss*) and proposed threatened coho salmon (*Oncorhynchus kisutch*).

Once completed, it is expected that Pacific Lumber Company will submit the HCP as part of the incidental take permit application process, as required under the provisions of section 10(a)(2)(A) of the Act. The Service and NMFS will evaluate the incidental take permit application and associated HCP in accordance with section 10(a)(2)(B) of the Act, and its implementing regulations. The environmental review of the HCP will be conducted in accordance with the Act and the requirements of NEPA and its implementing regulations. A No Action/No Project alternative will be considered consistent with the requirements of NEPA and CEQA. As a cooperating agency EPA will also review the plan for consistency with the provisions of the Clean Water Act. Several streams in watersheds in which Pacific Lumber owns land are listed as water quality limited under Section 303(d) of the Clean Water Act. If feasible, EPA will work with Pacific Lumber Company, sister Federal Agencies, the State, and the public to address water quality issues of these limited waterbodies at the same time the HCP and SYP are developed.

As a party to the agreement, the Agency has agreed to the expedited development and submission by Pacific Lumber and processing by the CDF of a Sustained Yield Plan pursuant to the provisions under Article 6.75 of the California Forest Practice Rules including consideration of conservation measures or plans addressing State-listed species under the California Endangered Species Act. Land transactions proposed under the agreement may be subject to the approval of the Eureka City Council, California Transportation Commission,

or the State of California legislature. The State-sponsored actions are being reviewed under the California Environmental Quality Act.

Dated: December 19, 1996.

Michael J. Spear,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 96–32926 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Federal Geographic Data Committee (FGDC); Public Meetings of the FGDC Facilities Working Group

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice is to invite public participation in meetings of the FGDC Facilities Working Group and subgroups. The major topics for this meeting are: development of a Facility/Installation ID standard; development of a utility data content standard; and development of an environmental hazard data content standard, and an accuracy standard for facility mapping.

TIME AND PLACE: 10 February 1997, from 1:00 p.m. until 3:00 p.m. The meeting will be held at Headquarters U.S. Army Corps of Engineers, in Room 8222D of the Pulaski Building, 20 Massachusetts Avenue, NW, Washington, DC. The Pulaski building is located just a few blocks west of Union Station. The standards development project teams will also meet in the same place at the following times: the Facility ID and Environmental Hazards Standards Teams will meet from 9:00 a.m.–12:00 noon and the Utilities Standard Team will meet from 3:15 p.m.–4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Jennifer Fox, FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; telephone (703) 648–5514; facsimile (703) 648–5755; Internet ''gdc@usgs.gov''.

SUPPLEMENTARY INFORMATION: The FGDC is a committee of Federal agencies engaged in geospatial activities. The FGDC Facilities Working Group specifically focuses on geospatial data issues related to facilities and facility management. A facility is an entity with location, deliberately established as a site for designated activities. A facility database might describe a factory, a military base, a college, a hospital, a power plant, a fishery, a national park, an office building, a space command center, or a prison. The database for a complex facility may describe multiple functions or missions, multiple buildings, or even a county, town, or city. The objectives of the Working Group are to: promote standards of accuracy and currentness in facilities data which is financed in whole in part by Federal funds; exchange information on technological improvements for collecting facilities data; encourage the Federal and non-Federal community to identify and adopt standards and specifications for facilities data; and to promote the sharing of facilities data among Federal and non-Federal organizations

Dated: December 19, 1996.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 96–33026 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[AK–962–1410–00–P]

Alaska; Notice for Publication, AA–9243; 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(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Calista Corporation for approximately 680.8 acres. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian, Alaska

T. 1 S., R. 95 W.,
  Sec. 31.
T. 2 S., R. 96 W.,
  Sec. 1;
  Sec. 2.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. 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 27, 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.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–32928 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–§§–P

[NM–932–1320–7; OKNM 91571, et al.]

Notice of Coal Lease Offering; Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale by sealed bid.

SUMMARY: Notice is hereby given that certain coal resources in the tracts described below in Le Flore County, Oklahoma, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 181 *et seq.*), and the Surface Mining and Reclamation Act of 1977.

DATES: The lease sale will be held at 10:00 a.m., January 31, 1997. Sealed bids must be submitted on or before 10:00 a.m., January 31, 1997. Each bid should be clearly identified by tract and/or serial number on the outside of the envelope containing the bid(s).

ADDRESSES: The lease sale will be held in the Bureau of Land Management Conference Room, Tulsa District Office, 7906 E. 33rd Street, Suite 121, Tulsa, Oklahoma 74145. Sealed bids must be submitted to the Cashier, Tulsa District Office, Attention: Laura Stich, 7906 E. 33rd Street, Suite 121, Tulsa, Oklahoma 74145.

FOR FURTHER INFORMATION CONTACT: Gary Stuckey, BLM, Tulsa District Office, (918) 621–4115.

SUPPLEMENTARY INFORMATION: The tracts will be leased to the qualified bidder(s) submitting the highest cash offer provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for these tracts is $100.00 per acre or fraction thereof. No bid that is less than $100.00 per acre or fraction thereof, will be considered. This $100.00 per acre is a regulatory minimum, and is not intended to reflect fair market value of the tracts. Bids should be sent by certified mail, return receipt, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after the time specified above will not be considered. The fair market value of each tract will be

determined by the authorized officer after the sale.

If identical high sealed bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

All the tracts in this lease offering contain split estate lands. Except where specified, the proposed mining method is surface mining techniques. The regulations at 43 CFR 3427 set out the protection that shall be afforded qualified surface owners of split estate lands (as defined at 43 CFR 3400.0–5(gg)).

Tract No. 1—Rock Island Tract—OKNM 91571

Coal Offered: The coal resource to be offered in Tract No. 1 (OKNM 91571), will be mined by both surface *and underground* mining methods in the following described lands located in Le Flore County, Oklahoma:

Indian Meridian

T. 8 N., R. 25 E., Le Flore Co., OK
sec. 23, S½;
T. 8 N., R. 26 E., Le Flore Co., OK
sec. 12, S½S½;
sec. 13, N½;
sec. 14, NE¼, S½NW¼, and N½SW¼;
sec. 15, N½SE¼ and SW¼SE¼;
sec. 21, N½NE¼;
sec. 22, NW¼NW¼;
T. 8 N., R. 27 E.,
sec. 7, S½NE¼SW¼, S½SW¼, S½SE¼, S½N½SE¼, and N½NE¼SE¼;
sec. 8, SW¼, and N½N½SE¼;
sec. 9, S½N½ and N½N½S½;
sec. 10, SW¼NW¼ and NW¼SW¼.
Containing 2,120.00 acres, more or less.

The lands described below may only be mined by underground mining techniques. No surface mining is allowed

T. 8 N., R. 25 E., Le Flore Co., OK
sec. 23, S½SW¼, S½NW¼SW¼, S½N½NW¼SW¼, S½S½NE¼SW¼, and W½SE¼;
T. 8 N., R. 26 E., Le Flore Co., OK
sec. 12, S½S½;
sec. 13, NW¼NE¼NW¼;
sec. 14, N½NE¼;
sec. 22, NW¼NW¼;
T. 8 N., R. 27, E.,
sec 7, E½SE¼NW¼SE¼SW¼, SW¼NE¼SE¼SW¼, W½SE¼NE¼SE¼SW¼, SE¼SW¼SW¼SE¼SW¼, E½SW¼SE¼SW¼, and SW¼SE¼SE¼SW¼;
sec. 9, S½S½NW¼, and N½SE¼NE¼;
sec. 10, N½SW¼NW¼.

The lease tract consists of three non-contiguous parcels. The largest occurs on the Hackett and Spiro quadrangles and extends from section 10, T. 8 N., R. 27 E. to Section 15, T. 8 N., R. 26 E. The small central parcel lies in sections 21 and 22, T. 8 N., R. 26 E. The western parcel lies in section 23, T. 8 N., R. 25 E. While this last parcel is some 4 miles from the other parcels, the intervening lands are non-Federal. The Federal lands adjoining it on the west are encumbered by the Poteau River and consequently cannot be leased nor developed. The parcel therefore does not fit with any larger tract and is most logically mined in conjunction with the fee coal to the east. After consultation with the applicant, it was decided to include these lands with Rock Island tract rather than set offer it as a separate lease which would be costlier and less efficient for both the government and any potential lessee.

Coal resources on the tract occur in two beds: the Upper and Lower Hartshorne. These beds are separated by about 80 feet of interburden in the eastern and central parcels but only about 50 feet in the western parcel. The beds dip south, away from the Backbone anticline, at about 2° in the western parcel and at about 5° in the eastern parcels. There is a small graben in the Hackett quadrangle which has dropped the coals 40 to 60 feet and which may reduce recovery in the immediate area. Other local faulting will most likely be encountered.

The Upper Hartshorne on the eastern and central parcels is thin, split by partings of bone and rock. It is not considered recoverable.

The Lower Hartshorne on the eastern parcel has a rock parting that ranges up to 3 feet thick. Coal above the parting has been designated the Upper Split and that below, the Lower Split. The Upper Split ranges from 0.9 to 4.9 feet thick, averaging 2.7 feet. Where it thins, the Lower Split appears to thicken. The Lower Split ranges from 0.7 to 3.25 feet thick averaging 2.4 feet.

In the western parcel, both the Upper and Lower Hartshorne are considered minable. The Upper bed averages 3.8 feet thick and the Lower 4.4 feet. The two beds are separated by about 50 feet of interburden. Recoverable coal resources are estimated to be 4.3 million tons. Reserve estimates were made to a depth of 150 feet, intercepting the Lower Hartshorne coal bed.

According to the projected monthly production of 25,000 tons stated in the original lease application, coal reserves in this lease will be depleted within 14 years.

The critical quality parameters are: Upper Hartshorne: Ash 6.9%, BTU/lb 14,125; Sulfur 0.8%. Lower Hartshorne: Ash 5.2%; BTU/lb 14,310; Sulfur 1.0% (Table 1, OFR 79–495).

Tract No. 2—OKNM 94663

Indian Meridian

T. 9 N., R. 24 E.,
sec. 3, NE¼SW¼, N½SW¼SW¼, SW¼SW¼SW¼, SE¼SW¼SW¼, and NW¼SE¼SW¼.
Containing 90.00 acres, more or less.

The lands described below may only be mined by underground mining techniques. No surface mining is allowed

Indian Meridian

T. 9 N., R. 24 E., LeFlore Co., OK
Sec. 3, S½SE¼SW¼SW¼.

Geological information for this application indicates the surface minable coal is the Stigler coal bed with estimated average thickness of 1.3 feet. The coal is considered to be a good quality, medium volatile bituminous rank coal which could be used as a blend in the production of coke. The area applied-for contains an estimated 138,000 tons of recoverable Federal coal. Reserve estimates are made to a depth of 70 feet.

Projected production would be 24,000 to 30,000 tons per year depending upon market conditions. The coal would be mined in 5 or 6 years at the projected rate of production.

The Stigler coal averages 2 percent moisture, 25 percent volatile matter, 4 to 10 percent ash, and 66 to 72 percent fixed carbon content in the general area of the application. The heating value of the coal is approximately 13,000 British thermal units (Btu) per pound.

Surface Owner Information

There are currently 13 qualified surface owner consents on file for application to lease OKNM 91571. For application to lease OKNM 94663, it has been determined that there is one qualified surface owner. These consents are posted and are available for viewing at either the Tulsa District Office or the New Mexico State Office at the addresses shown above. They are also available for inspection at the BLM office located at 221 N. Service Rd., Moore, OK 73160–4946.

Rental and Royalty

The leases issued as a result of this lease offering will require payment of an annual rental of $3.00 per acre, or fraction, thereof, and a royalty payable to the United States of 12½ percent of the value of the coal removed from a surface mine and 8 percent of the value of the coal removed from an underground mine. The value of the

coal will be determined in accordance with 30 CFR § 206.250.

Notice of Availability

Bidding instructions for the offered tracts are included in the Detailed Statement of Coal Lease Sale. Copies of the proposed coal lease sale and detailed statement are available upon request in person or by mail from the New Mexico State Office, P.O. Box 27115, 1474 Rodeo Road, Santa Fe, NM 87502–0115, or the Tulsa District Office at the address shown above. The case files are available for inspection during normal business hours *only* at the Santa Fe BLM Office at the address indicated.

Dated: December 18, 1996.

Richard A. Whitley,

Acting State Director.

[FR Doc. 96–32745 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–01–M

[CA–060–7122–00–D063; CACA 35800]

California Desert District; Availability of Draft Environmental Impact Statement (DEIS); U.S. Army's Land Acquisition Project for the National Training Center, Fort Irwin, California; Proposed Withdrawal of Public Lands and Proposed Amendment to the California Desert Conservation Area Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management (BLM) Department of the Interior has prepared, by third party contractors to the U.S. Army Corps of Engineers, Los Angeles District, a Draft Environmental Impact Statement (DEIS) analyzing the impacts to the human environment of the U.S. Army's proposed expansion of the National Training Center (NTC) at Fort Irwin. The NTC is located approximately 35 miles northeast of Barstow in north-central San Bernardino County, California. The proposed action is (1) the withdrawal and transfer of jurisdiction to the U.S. Army of approximately 310,296 acres of public lands managed by the BLM, and (2) an amendment of the California Desert Conservation Area Plan. This DEIS analyzes environmental impacts of the proposed action, five alternatives and the no action alternative, and identifies mitigation measures. This DEIS was prepared to comply with the Council on Environmental Quality's regulations (40 CFR Parts 1500–1508) for implementing the National Environmental Policy Act of 1969, 43 U.S.C. 1701.

DATES: A ninety (90) day public review and comment period on the DEIS and proposed plan amendment begins on January 3, 1997. Written comments relating to the DEIS will be accepted until April 4, 1997. Written or oral comments may also be presented at the five public meetings to be held in February 1997 at the following locations and times:

San Bernardino, February 6, 1997, 7:00 p.m.—County Government Center, County Supervisors Hearing Room, 385 North Arrowhead Avenue, San Bernardino, CA 92415

Victorville, February 13, 1997, 7:00 p.m.—Victorville City Hall, City Council Chambers, 14343 Civic Drive, Victorville, CA 92392

Barstow, February 18, 1997, 7:00 p.m.—Barstow City Hall, City Council Chambers, 220 East Mountain View Avenue, Barstow, CA 92311

Baker, February 20, 1997, 2:00 p.m.—Baker Community Center, Baker Blvd., Baker, CA 92309

Sacramento, February 24, 1997, 2:00 p.m. & 7:00 p.m.—Sacramento City Hall, City Council Chambers, 915 ''I'' Street, Sacramento, CA 95814

The public meetings will be conducted in two parts. At each location, a one-half hour ''open house'' will precede the formal public hearing. During the open house, information about the proposed action and the environmental review process will be provided by the Army and BLM representatives. Comments on the DEIS will be recorded only during the public hearing part.

ADDRESSES: Send written comments to the BLM, Barstow Resource Area Office, Attention: Mike DeKeyrel, Project Manager, 150 Coolwater Lane, Barstow, CA 92311. Written comments relating to the DEIS will be accepted if postmarked no later than April 4, 1997.

SUPPLEMENTARY INFORMATION: The Army proposed action was developed from an Army Land Use Requirements Study (LURS) completed in 1985 and updated in 1993, which determined that an additional 222,000 net maneuverable acres are needed for the National Training Center's combat training mission.

The BLM has not selected a lead Federal agency preferred alternative in this DEIS. After public review and consideration of the comments to the DEIS, the BLM will select a preferred alternative in the Final EIS.

Under the Engle Act of February 28, 1958, 43 U.S.C. 155–158, military withdrawals of over 5,000 acres are subject to Congressional review. This DEIS and the public review will enable the BLM and the Army to develop recommendations on the proposed action through completion of a Final EIS and Records(s) of Decision. The recommendations will be reviewed by the Secretary of the Interior in coordination with the Department of Defense.

Copies of an executive summary of the DEIS, and the entire DEIS document including technical appendices, are available for review at the BLM Barstow Resource Area Office at the above address; at the BLM California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507; and at the BLM California State Office, 2135 Butano Drive, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Mike DeKeyrel, Project Manager at the above Barstow Resource Area address and at (619) 255–8730.

Dated December 20, 1996.

Molly S. Brady,

Assistant District Manager, Planning and Renewable Resources.

[FR Doc. 96–32924 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–40–M

[OR–056–1220–00;GP7–0044]

Motor Vehicle Closure; Prineville District

AGENCY: Bureau of Land Management, Department of the Interior, Prineville District.

ACTION: Notice is hereby given that effective immediately, the following legally described area below, including all roads and trails, is closed to motor vehicle use year-round.

LEGAL DESCRIPTION: This closure order applies to the entire area, and all roads and trails within the area, located on Public Lands in Township 16 South, Range 13 East, Sections 25, 35, 36; Township 16 South, Range 14 East, Section 19, 29, 30, 31, 32, 33, 34; Township 17 South, Range 13 East, Sections 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27; and Township 17 South, Range 14 East, Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 30 W.M. Southeast of the Powell Butte Highway; East of the subdivisions known as Cimmarron City, Terry Drive, and Sunset Acres; North of Alfalfa Market Road; West of the subdivision known as Cascade View Estates; West of Johnson Market Road; and Southwest of the B.P.A. Powerline Right of Way #ORE 010362. Exemptions to this closure are: Portions of BLM Roads 6589–A and 6589 where 6589–A

intersects the Powell Butte Highway at Township 17 South, Range 13 East, and the southwest quarter of Section 3; Mayfield Pond Access Road which originates where it intersects Alfalfa Market Road at Township 17 South, Range 13 East, and the SE quarter of Section 26 and continues north towards the B.P.A. Powerline; the Access Road into the North Mayfield Pond Pasture beginning in Township 17 South, Range 13 East, and the east half of Section 23; and the B.P.A. Powerline Right of Way #ORE 010362, All other roads, trails, and BLM managed public lands are closed to motorized vehicle use. The purpose of this closure is to protect resource values in this area and increase visitor safety and public satisfaction. More specifically, this closure is to reduce impacts to soils, vegetation, wildlife, and adjacent landowners and to reduce unsafe access off of main roads or highways. Exemptions to this closure order apply to administrative personnel, allotment permittees, the National Guard, the Electric companies for access along and maintenance of the existing powerlines and right of ways, landowners with inholdings, and the Central Oregon Irrigation District for maintenance of irrigation canals. Other exemptions to this closure order may be made on a case by case basis by the authorized officer. This emergency order will be evaluated in the Urban Interface plan Amendment to the 1989 Brothers/La Pine Resource management Plan. The authority for this closure is 43 CFR 8364.1: Closure and restriction orders.

SUPPLEMENTARY INFORMATION: Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

FOR FURTHER INFORMATION CONTACT: Karen Perault, BLM Prineville District Office, P.O. Box 550, Prineville, Oregon 97754, (Telephone 541–416–6711).

Dated: December 16, 1996.

Donald L. Smith,

Associate District Manager, Prineville District Office.

[FR Doc. 96–33028 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–33–M

[UT–917–07–0777–52]

Notice of Availability of Final Standards for Rangeland Health and Guidelines for Grazing Management for Bureau of Land Management (BLM) Lands in Utah and State Director's Record of Decision

SUMMARY: The Utah Bureau of Land Management has developed Standards for Rangeland Health and Guidelines for Grazing Management for the public lands in Utah, pursuant to the Grazing Regulations (43 CFR 4100) of August, 1995. This document is available to the public. A 30-day protest period is provided which will run concurrently with the Governor's Consistency Review. This 30-day period ends January 24, 1997. At the end of that period, the State Director's Decision will become final and the ''Standards and Guidelines'' will be forwarded to the Secretary of the Interior for his approval which places them in effect.

DATES: A 30-day protest period is provided which ends January 24, 1997.

FOR FURTHER INFORMATION CONTACT: Deane Zeller, Team Leader, Bureau of Land Management, Utah State Office, 324 South State Street, Salt Lake City, Utah, 84111; phone (801) 539–4052.

SUPPLEMENTARY INFORMATION: The Utah Standards and Guidelines have been developed in consultation with the Resource Advisory Council and with public participation. They have been provided to the Governor of Utah for his review for consistency with State and local plans in accordance with 43 CFR 1600. Public meetings were held in various locations within the State.

When approved by the Secretary, the Standards and Guidelines constitute the State Director's Policy and Planning Guidance. As such, they will be used by all BLM offices in Utah as guidance for land use planning, developing rangeland improvement projects, issuing grazing permits and leases, and general grazing administration. The Standards will apply to all land uses (where law and regulations do not dictate otherwise) and Guidelines will apply to all grazing on public lands. Appropriate National Environmental Protection Act (NEPA) compliance will be performed on implementation actions, such as land use plan amendments, preparation of new land use plans, permit issuance, rangeland improvements, etc., prior to any decisions taken under these Standards and Guidelines.

It has been determined that these Standards and Guidelines are in conformance with existing BLM land use plans. That conformance review, NEPA compliance, and other documents associated with the Standards and Guidelines are available to the public at the BLM's Utah State Office.

Dated: December 19, 1996.

William G. Lamb,

Utah BLM State Director.

[FR Doc. 96–32936 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–DQ–M

[AZ–050–97–1430–01; AZA 29058]

Arizona; Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification of Public Land for Recreation and Public Purposes Lease/Conveyance, La Paz County, Arizona.

SUMMARY: The following described public land has been examined and found suitable for classification for lease and conveyance under the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.):

Gila and Salt River Meridian, Arizona

T. 3 N., R. 19 W.,
sec. 20, S½SE¼SE¼SE¼.
Containing 5 acres, more or less.

SUPPLEMENTARY INFORMATION: The Quartzsite, Arizona, Fire Department has filed an R&PP application amending their original legal description for a fire station (Fire Station #3) that would be located in La Paz Valley along County 53rd Street North approximately 6 miles south of Quartzsite. A facility is needed in this part of the Fire District to serve the nearby subdivision which currently has no fire station. This land is identified in the Yuma District Resource Management Plan, as amended, as having potential for disposal. Leave and conveyance of the land for recreational or public purposes would be in the public interest.

Lease and conveyance, when issued, will contain the following reservations to the United States:

1. Rights-of-way for ditches and canals constructed by the authority of the United States.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

And will be subject to:

1. The provisions of the R&PP Act and all applicable regulations of the Secretary of the Interior.

2. Those rights for a public road granted to the La Paz County Department of Public Works (AZA 25925).

3. Those rights for a buried telephone cable granted to Southwestern Telephone Company (AZA 22967).

Upon publication of this notice in the Federal Register, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease and conveyance under the R&PP Act, leasing under the mineral

leasing laws, and material disposal laws.

CLASSIFICATION COMMENTS: For a period of 45 days from the date of publication of this Notice in the Federal Register, interested parties may submit comments to the Field Manager, Yuma Field Office, 2555 E. Gila Ridge Road, Yuma, Arizona 85365. Comments should address the suitability of the land for a fire station. Comments on the classification are restricted to whether the land is physically suited for the above mentioned use, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a fire station.

EFFECTIVE DATE: Any adverse comments will be reviewed by the Arizona State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective February 25, 1997. The lands will not be offered for lease and conveyance until after the classification becomes effective.

FOR FURTHER INFORMATION CONTACT: Dave Curtis, Realty Specialist, Yuma Field Office, 2555 E. Gila Ridge Road, Yuma, AZ 85365, telephone (520) 317–3237.

Dated: December 17, 1996.

Gail Acheson,

Field Manager, Yuma.

[FR Doc. 96–32907 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–32–M

[Docket No. 4310–DN; MT–067–07–3120–00]

Notice of Intent; Judith-Valley-Phillips Resource Management Plan Amendment; Petroleum County, Montana

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice is hereby given that the Judith-Valley-Phillips Resource Management Plan will be amended by the Judith Resource Area, Lewistown, Montana.

SUMMARY: The Bureau of Land Management (BLM) will amend the Judith-Valley-Phillips Resource Management Plan (RMP) with respect to management of public lands at the Cat Creek Oil field in Petroleum County. The BLM proposes exchanging 80 acres of Federal surface estate in Petroleum County for 175.44 acres of mineral estate in Flathead County. The Federal land is legally described as the SW¼NE¼, SE¼NW¼ of Section 14, T. 15 N., R. 29 E., P.M.M., Petroleum County, Montana. The private mineral estate is legally described as Lot 5, Section 28; Lots 3, 7, 8, Section 29; and E½NE¼, Section 32 of T. 34 N., R. 20 W., P.M.M., Flathead County, Montana.

Disposal of the Federal lands was not analyzed in the Judith-Valley-Phillips Resource Management Plan (RMP) and associated Environmental Impact Statement. Disposal of Federal land requires that the specific tract be identified in the land use plan with the criteria to be met for exchange and discussion of how the criteria have been satisfied. This will be part of the plan amendment and environmental assessment. The Judith Resource Area, Lewistown District, Bureau of Land Management will prepare an environmental assessment to analyze the effects of disposal

PUBLIC PARTICIPATION: Comments and recommendations on this notice to amend the Judith-Valley-Phillips RMP should be received on or before January 27, 1997.

ADDRESSES: Comments should be sent to the Judith Resource Area, P.O. Box 1160, Lewistown, MT 59457–1160.

FOR FURTHER INFORMATION CONTACT: Chuck Otto, Area Manager, Judith Resource Area, P.O. Box 1160, Lewistown, MT 59457–1160, 406/538–7461.

Dated: December 13, 1996.

David L. Mari,

District Manager.

[FR Doc. 96–33029 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–84–P

[Docket No. 4310–DN; MT–065–07–3120–00]

Notice of Intent; Judith-Valley-Phillips Resource Management Plan Amendment; Phillips County, MT

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice is hereby given that the Judith-Valley-Phillips Resource Management Plan will be amended by the Phillips Resource Area, Malta, Montana.

SUMMARY: The Bureau of Land Management (BLM) will amend the Judith-Valley-Phillips Resource Management Plan (RMP) with respect to management of public lands in Phillips County. The BLM proposes the sale of 80.00 acres more or less to the Phillips County Airport Commission. The land is legally described as the S½SE¼, section 11 T. 30 N., R. 29 E., P.M.M., Phillips County, Montana. The land would be sold under authority of section 203(a)(1) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) and in accordance with the procedures set forth in 43 CFR 2710 at fair market value. All minerals, ditches and canals, would be reserved to the United States. Disposal of these Federal lands was not analyzed in the Judith-Valley-Phillips RMP and associated Environmental Impact Statement. Disposal of Federal land requires that the specific tract be identified in the land use plan with the criteria to be met for sale and discussion of how the criteria have been satisfied. This will be part of the plan amendment and environmental assessment. The Phillips Resource Area, Lewistown District, Bureau of Land Management will prepare an environmental assessment to analyze the effects of disposal.

PUBLIC PARTICIPATION: Comments and recommendations on this notice to amend the Judith-Valley-Phillips RMP should be received on or before January 27, 1997.

ADDRESS: Comments should be sent to the Phillips Resource Area, 501 South 2nd St. East, Malta, MT 59538.

FOR FURTHER INFORMATION CONTACT:

Rick Hotaling, Area Manager, Phillips Resource Area, 501 South 23nd St East, Malta, MT 59538, 406/654–1240.

Dated: December 13, 1996.

David L. Mari,

District Manager.

[FR Doc. 96–33031 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–84–M

[CA–930–1430–01; CACA 34911]

Conveyance of Mineral Interests in California; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In the notice document 96–3436 beginning on page 6020 in the issue of Thursday, February 15, 1996, make the following correction: On page 6021, delete Assessor's Parcel Number 42–150–86 from the legal description.

Dated: December 17, 1996.

Duane Marti,

Acting Chief, Branch of Lands.

[FR Doc. 96–33027 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–40–P

National Park Service

Submission of Study Package for Office of Management and Budget Review Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Big Cypress National Preserve.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) and Virginia Polytechnic Institute and State University propose to conduct a survey of the characteristics, perceptions, behavior, and park management preferences of Off-Road Vehicle (ORV) users within the Big Cypress National Preserve. The goal is to categorize these visitor characteristics by vehicle type, primary recreational activity, and management zone visited. Results will be used by park planners, park managers, and members of the public in identifying and considering alternative management options that may become incorporated into the ORV Management Plan for Big Cypress National Preserve. The study package including the proposed survey questionnaire has been submitted to the Office of Management and Budget for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on a proposed information collection request (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The purpose of the proposed ICR is to document ORV users' activities; perceptions of crowding, conflict, and other problems; management preferences; attitudes about the environment and its protection; satisfaction level and benefits; and socio-demographic characteristics. This information will be used by park planners, park managers, and members of the public to recommend and consider alternative management options to be incorporated into the ORV Management Plan for Big Cypress.

There were no public comments, other than a request by another park unit to be kept informed of the BICY planning effort, received or submitted to OMB for review as a result of publishing in the Federal Register a 60 day notice of intention to request clearance of information collection for this survey at Big Cypress National Preserve.

DATES: Public comments will be accepted until January 27, 1997.

SEND COMMENTS TO: Office of Information and Regulatory Affairs for OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20503; and also to: Joseph W. Roggenbuck, Ph.D., Department of Forestry, Virginia Polytechnic Institute and State University, Blacksburg, VA 24061–0324.

FOR FURTHER INFORMATION OR A COPY OF THE QUESTIONNAIRE SUBMITTED FOR OMB REVIEW, CONTACT: Joseph W. Roggenbuck, 540–231–7418.

SUPPLEMENTARY INFORMATION:

Title: Big Cypress National Preserve Off-Road Vehicle Visitor Use Study.

Form: Not applicable.

OMB Number: To be assigned.

Expiration Date: To be assigned.

Type of Request: Request for new clearance.

Description of Need: The National Park Service needs information about the characteristics, perceptions, behavior, and management preferences of ORV users within the Preserve to support development of an ORV Vehicle Management Plan. The proposed information to be collected is not available from existing records, sources, or observations.

Description of Respondents: Individuals who currently hold NPS-issued ORV permits or who are non-owning riders of ORVs in Big Cypress National Preserve.

Estimated Average Number of Respondents: 666.

Estimated Average Number of Responses: 400.

Estimated Average Burden House Per Response: 40 minutes.

Estimated Annual Reporting Burden: 266 hours.

Estimated Frequency of Response: One time.

Dated: December 23, 1996.

Terry N. Tesar,

Information Collection Clearance Officer, Audits and Accountability Team, National Park Service.

[FR Doc. 96–32995 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–70–M

Devils Tower National Monument, Wyoming

AGENCY: National Park Service, Interior.

ACTION: Notice—Final decision, reconsideration of a portion of the Devils Tower Climbing Management Plan.

SUMMARY: The National Park Service (NPS) has reconsidered certain portions of the Final Climbing Management Plan for Devils Tower National Monument which address climbing limitations based on concerns about Indian religious and cultural values.

DATES: The final decision was signed by the National Park Service on November 26, 1996.

ADDRESSES: Comments may be addressed to: Superintendent, Devils Tower National Monument, P.O. Box 10, Devils Tower, Wyoming 82714–0010.

FOR FURTHER INFORMATION CONTACT: Deborah O. Liggett, Superintendent, Devils Tower National Monument. Telephone 307–467–5283.

SUPPLEMENTARY INFORMATION:

Background

The NPS, pursuant to a notice published in the Federal Register on August 8, 1996 (61 FR 41424), has reconsidered those portions of the Devils Tower National Monument Final Climbing Management Plan (FCMP) which address climbing limitations based on concerns about religious and cultural values of Indian tribes. Thirty-five written comments were received from the public in response to the Federal Register notice. On November 26, 1996, upon consideration of the public comments received and the entire record of the FCMP, the National Park Service modified the FCMP in certain respects by adoption of an addendum to the FCMP. Copies of the modified FCMP are available upon request. The National Park Service also reviewed the environmental assessment of the effects of the FCMP and determined that it continues to adequately consider the impacts that the FCMP, as modified, will have on the Monument. Further, NPS determined that the Finding of No Significant Impact made in connection with the

FCMP remains valid for the FCMP as modified.

Dated: December 20, 1996.

Rick Gale,

Deputy Chief, Ranger Activities Division, National Park Service.

[FR Doc. 96–32862 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 21, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by January 13, 1997.

Beth Savage,

Acting Keeper of the National Register.

IDAHO

Ada County

Idaho State Forester's Building, 801 S. Capitol Blvd., Boise, 96001591

Sensenig, Emerson and Lucretia, House, 1519 W. Jefferson St., Boise, 96001590

Twin Falls County

Twin Falls Warehouse Historic District, Roughly bounded by 2nd Ave., 4th St. S and W, and Minidoka Ave., Twin Falls, 96001592

IOWA

Buchanan County

Shellito, Dr. Judd C. and Margaret S. Clarke, House, 310 5th Ave., SE, Independence, 96001588

Weins Commercial Building, 129—131 2nd Ave., NE, Independence, 96001585

Lee County

Joy, C. R., House, 816 Grand Ave., Keokuk, 96001587

Linn County

Damour, William and Sue, House, 1844 2nd Ave., SE, Cedar Rapids, 96001586

Shelby County

Christiansen, Jens Otto, House (Ethnic Historic Settlement of Shelby and Audobon Counties MPS), 2105 College Ave., Elk Horn, 96001584

MINNESOTA

Pine County

St. Croix Recreational Demonstration Area (Minnesota State Park CCC/WPA/Rustic Style MPS) off MN 48, along the St. Croix National Scenic Riverway, Clover, Ogema, Crosby, Munch, and Chengwatana Townships, Hinckley vicinity, 96001594

St. Louis County

Hearding, John Harris, Grammar and High School and John A. Johnson Grammar School, Jct. of 4th Ave. N and First St. W, Aurora, 96001593

MISSOURI

Chariton County

Chariton County Jail and Sheriff's Residence, 305 S. Cherry St., Keytesville, 96001597

Henry County

Clark, C. M. and Vina, House, 704 California Ave., Montrose, 96001598

St. Louis County

Kraus, Russell and Ruth Goetz, House, 120 N. Ballas Rd., Kirkwood, 96001595

St. Louis Independent City

Centenary Methodist Episcopal Church, South, 55 Plaza Sq., St. Louis, 96001596

MONTANA

Mineral County

Alberton School (Alberton MPS) 216 Railroad St., Alberton, 96001599

Bestwick's Market (Alberton MPS) Railroad St., E of jct. with I–90, Alberton, 96001600

Brinks House (Alberton MPS) 416 Railroad St., Alberton, 96001601

Chadwick House (Alberton MPS) 320 Railroad St., Alberton, 96001602

Methodist Church of Alberton (Alberton MPS) 802 Railroad St., Alberton, 96001604

Railroad Depot (Alberton MPS) 701 Railroad St., Alberton, 96001603

Thorn House (Alberton MPS) 140 2nd St., Alberton, 96001605

Wilson House (Alberton MPS) 114 Adams St., Alberton, 96001606

NEW MEXICO

Bernalillo County

San Antonio Church and Cemetery (Religious Properties of New Mexico MPS) Jct. of NM 14 and NM 536, NW corner, San Antonito, 96001607

VIRGINIA

Pulaski County

Turner, Francis A. and Rose M., House, 1004 Cherry St., Avoca, 96001583

[FR Doc. 96–32996 Filed 12–26–96; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–753–756 (Preliminary)]

Cut-to-Length Carbon Steel Plate From China, Russia, South Africa, and Ukraine

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury [2] by reason of imports from China, Russia, South Africa, and Ukraine of cut-to-length carbon steel plate,[3] provided for in provisions of headings 7208 though 7212 of the Harmonized Tariff Schedule of the United States (HTS),[4] that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, as amended in 61 FR 37818 (July 22, 1996), the Commission also gives notice of the commencement of the final phase of its

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Crawford determines that there is a reasonable indication that an industry in the United States is materially injured by reason of the subject imports.

[3] For the purposes of these investigations, cut-to-length carbon steel plate is hot-rolled iron and nonalloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1,250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, and whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and nonalloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, and whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included in this definition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded from this definition are plates that are characterized as grade X–70 plates.

[4] Cut-to-length carbon steel plate is currently covered by the following statistical reporting numbers of the HTS: 7208.40.3030; 7208.40.3060; 7208.51.0030; 7208.51.0045; 7208.51.0060; 7208.52.0000; 7208.53.0000; 7208.90.0000; 7210.70.3000; 7210.90.9000; 7211.13.0000; 7211.14.0030; 7211.14.0045; 7211.90.0000; 7212.40.1000; 7212.40.5000; and 7212.50.0000.

investigations. The Commission will issue a final phase notice of scheduling which will be published in the Federal Register as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in an investigation under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of an affirmative final determination in an investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On November 5, 1996, a petition was filed with the Commission and the Department of Commerce by Geneva Steel Co., Provo, UT, and Gulf States Steel, Inc., Gadsden, AL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of cut-to-length carbon steel plate from China, Russia, South Africa, and Ukraine. Accordingly, effective November 5, 1996, the Commission instituted antidumping investigations Nos. 731–TA–753–756 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of November 13, 1996 (61 FR 58216). The conference was held in Washington, DC, on November 26, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 20, 1996. The views of the Commission are contained in USITC Publication 3009 (December 1996), entitled *Cut-to-length Carbon Steel Plate from China, Russia, South Africa, and Ukraine: Investigations Nos. 731–TA–753–756 (Preliminary).*

Issued: December 20, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–33013 Filed 12–26–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–376]

Advice Concerning the Addition of Certain Pharmaceutical Products and Chemical Intermediates to the Pharmaceutical Appendix to the HTS

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: December 20, 1996.

SUMMARY: Following receipt on December 18, 1996, of a request from the United States Trade Representative, the Commission instituted investigation No. 332–376, Advice Concerning the Addition of Certain Pharmaceutical Products and Chemical Intermediates to the Pharmaceutical Appendix to the Harmonized Tariff Schedule of the United States, under section 115 of the Uruguay Round Agreements Act (19 U.S.C. 3524) and section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

As requested by the USTR, the Commission will provide: (1) A summary description of the products contained in the existing Pharmaceutical Appendix and the modifications to be made to that Appendix; (2) an explanation of the relationship of the ''zero-for-zero'' initiative, including the Pharmaceutical Appendix, to the HTS; and (3) estimates of current U.S. imports and, where possible, U.S. exports, of the products included in the existing Pharmaceutical Appendix and the proposed additions to the Appendix, based on product groupings as necessary. The Commission will submit its report to the USTR by January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Information on general aspects of the study may be obtained from Elizabeth Nesbitt, Office of Industries (202–205–3355) or, on legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). A copy of the Federal Register notice announcing the institution of this investigation and the annex listing the products under consideration can be downloaded from the Commission's Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov) or may be obtained by contacting the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, or at 202–205–1802.

BACKGROUND: During the Uruguay Round, the United States and 16 other major trading countries agreed to the reciprocal elimination of duties on approximately 7,000 pharmaceutical products and chemical intermediates (the latter are to be used primarily for the production of pharmaceuticals), and their derivatives, resulting in the ''zero-for-zero'' initiative in pharmaceuticals. Effective January 1, 1995, U.S. imports of these products, as enumerated in the Pharmaceutical Appendix to the Harmonized Tariff Schedule of the United States (HTS), now enter free of duty under general note 13 to the tariff schedule. The 17 countries also agreed to conduct a review, at least once every 3 years, to identify products to be added to the Pharmaceutical Appendix. Negotiators from several countries, including the United States, have recently been engaged in the first review and have reached agreement on the addition of 496 pharmaceutical products and chemical intermediates. Addition to the list would provide duty-free treatment to these products and their derivatives.

According to the request letter from the USTR, a coalition of pharmaceutical companies from several WTO members (which the Pharmaceutical Research and Manufacturers of America (PhRMA) coordinated) submitted the initial list of candidates for addition to the existing Appendix to the pharmaceutical agreement. Moreover, the letter states that USTR consulted with the Administration's Industry Sector Advisory Committee-3 (ISAC–3; chemicals) throughout the negotiations and that this ISAC has endorsed the final list of items under consideration.

Section 111(b) of the Uruguay Round Agreements Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 115 of the Act, to proclaim duty-free treatment under the ''zero-for-zero'' initiative for additional pharmaceutical products to be added, such as those now under consideration. One of the requirements set out in section 115 is that the President obtain advice regarding the proposed action from the United States International Trade Commission.

Issued: December 20, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–33014 Filed 12–26–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–360]

International Harmonization of Customs Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Request for public comment on draft proposals for chapters 50–63 (Textiles).

EFFECTIVE DATE: December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202–205–2595), or Jan Summers (202–205–2605).

Parties having an interest in particular products or HTS chapters and desiring to be included on a mailing list to receive available documents pertaining thereto should advise Diane Whitfield by phone (202–205–2610) or by mail at the Commission, 500 E St SW, Room 404, Washington, D.C. 20436. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. The media should contact Margaret O'Laughlin, Director, Office of Public Affairs (202–205- 1819).

BACKGROUND: Following receipt of a letter from the United States Trade Representative (USTR) on January 25, 1995, the Commission instituted Investigation No. 332–360, International Harmonization of Customs Rules of Origin, under section 332(g) of the Tariff Act of 1930 (60 FR 19605, April 19, 1995).

The investigation is intended to provide the basis for Commission participation in work pertaining to the Uruguay Round Agreement on Rules of Origin (ARO), under the General Agreement on Tariffs and Trade (GATT) 1994 and adopted along with the Agreement Establishing the World Trade Organization (WTO).

The ARO is designed to harmonize and clarify nonpreferential rules of origin for goods in trade on the basis of the substantial transformation test; achieve discipline in the rules' administration; and provide a framework for notification, review, consultation, and dispute settlement. These harmonized rules are intended to make country-of-origin determinations impartial, predictable, transparent, consistent, and neutral, and to avoid restrictive or distortive effects on international trade. The ARO provides that technical work to those ends will be undertaken by the Customs Cooperation Council (CCC) (now informally known as the World Customs Organization or WCO), which must report on specified matters relating to such rules for further action by parties to the ARO. Eventually, the WTO Ministerial Conference is to ''establish the results of the harmonization work program in an annex as an integral part'' of the ARO.

In order to carry out the work, the ARO calls for the establishment of a Committee on Rules of Origin of the WTO and a Technical Committee on Rules of Origin (TCRO) of the WCO. These Committees bear the primary responsibility for developing rules that achieve the objectives of the ARO.

A major component of the work program is the harmonization of origin rules for the purpose of providing more certainty in the conduct of world trade. To this end, the agreement contemplates a 3-year WCO program, which was formally initiated in July, 1995. Under the ARO, the TCRO is to undertake (1) to develop harmonized definitions of goods considered wholly obtained in one country, and of minimal processes or operations deemed not to confer origin, (2) to consider the use of change in Harmonized System classification as a means of reflecting substantial transformation, and (3) for those products or sectors where a change of tariff classification does not allow for the reflection of substantial transformation, to develop supplementary or exclusive origin criteria based on value, manufacturing or processing operations or on other standards.

The draft rules for chapters 50–63 of the Harmonized System that are being made available for public comment cover goods that are not considered to be wholly made in a single country. The rules rely largely on the change of heading as a basis for ascribing origin. Copies of the proposed revised rules will be available from the Office of the Secretary at the Commission, from the Commission's Internet web server (http://www.usitc.gov), or by submitting a request on the Office of Tariff Affairs and Trade Agreements voice messaging system, 202–205–2592. Due to their length, the rules will not be available by FAX. These proposals are intended to serve as the basis for the U.S. proposal to the Technical Committee on Rules of Origin of the WCO. The proposals are based on the principles of application enacted by Congress in Section 334 of the Uruguay Round Agreements Act (19 U.S.C. 3592) with respect to country of origin determinations for textile goods but may not necessarily reflect or restate existing Customs treatment in all cases for all current nonpreferential purposes. Based upon a decision of the Trade Policy Staff Committee, the proposals are intended for future harmonization for the nonpreferential purposes indicated in the ARO for application on a global basis. The proposals may undergo change as proposals from other government administrations and the private sector are received and considered.

Under the circumstances, the proposals should not be cited as authority for the application of current domestic law.

If eventually adopted by the TCRO for submission to the Committee on Rules of Origin of the World Trade Organization, these proposals would comprise an important element of the ARO work program to develop harmonized, non-preferential country of origin rules, as discussed in the Commission's earlier notice. Thus, in view of the importance of these rules, the Commission seeks to ascertain the views of interested parties concerning the extent to which the proposed rules reflect the standard of substantial transformation provided in the Agreement.

Forthcoming Commission notices will advise the public on the progress of the TCRO's work and will contain any harmonized definitions or rules that have been provisionally or finally adopted.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning this phase of the Commission's investigation. Written statements should be submitted as quickly as possible, and follow-up statements are permitted; but all statements must be received at the Commission by the close of business on February 7, 1997 in order to be considered. Information supplied to the Customs Service in statements filed pursuant to notices of that agency has been given to us and need not be separately provided to the Commission. Again, the Commission notes that it is particularly interested in receiving input from the private sector on the effects of the various proposed rules and definitions on U.S. exports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of

section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Office of the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Issued: December 23, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–33012 Filed 12–26–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval; Sponsor's notice of change of address.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by December 29, 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. Deborah Bond, 202–395–7316, 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 25, 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.

Overview of this Information Collection

(1) *Type of Information Collection:* New Information Collection.

(2) *Title of the Form/Collection:* Sponsor's Notice of Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–865. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required, as well as a brief abstract:* Primary: Individuals or Households. The form will be used by every sponsor who has filed an affidavit of support under section 213A of the INA to notify the Service of a change of address. The data will be used to locate a sponsor if there is a request for reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 respondents at .233 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 23,300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

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 20, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–32929 Filed 12–26–96; 8:45 am]

BILLING CODE 4410–18–M

Office for Victims of Crime

[OJP (OVC) No. 1109]

ZRIN No. 1121–ZA56

Office for Victims of Crime Fiscal Year 1996 Discretionary Program Plan (Supplement)

AGENCY: Office of Justice Programs, Office for Victims of Crime, Justice.

ACTION: Public announcement of availability of discretionary funds for training and technical assistance.

SUMMARY: The Office for Victims of Crime (OVC) publishes this supplemental notice to announce the availability of discretionary funds for a competitive program to provide training and technical assistance to build capacity of victim service agencies nationwide. See 61 F.R. 21294.

DATES: Application kit will be available beginning January 15, 1997.

All applications are due March 14, 1997.

ADDRESSES: Office for Victims of Crime, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Donna Ray, 202/616–3572.

SUPPLEMENTARY INFORMATION:

Introduction

OVC is a component of the Office of Justice Programs within the U.S. Department of Justice. The Office serves as the Federal focal point for improving the treatment of crime victims and ensuring that their rights and interests are met. In addition to its role as a national victims' advocate, OVC is responsible for administering two formula grant programs authorized by the Victims of Crime Act, as amended (the victim assistance and compensation grant programs), supporting national scope training and technical assistance activities via discretionary grants, and providing training and technical assistance for Federal and state law enforcement personnel involved in investigations, prosecutions, corrections and the provision of direct services to victims of crime. See 42 U.S.C. 10601–10605.

Application Process

The application kit for OVC's Technical Assistance and Conference Series will be available beginning January 15, 1997 and will serve as a request for proposal. It will contain a detailed description of this competitive program and complete forms and instructions for developing the application. The Program

Announcement and Application Kit will describe: The purpose of the program, background, goal, program strategy, eligibility requirements, award period, award amount, and application due date. A panel of qualified Government employees will be established to review and rank the applications. Applicants may be public or private non-profit or for-profit organizations (for-profit organizations must waive their profit in order to be eligible). Awards will be made to an organization or agency offering the greatest potential for achieving the program's goals on the basis of information provided in the applicants' proposal and assessments of past performance on OVC/OJP grants. Funding decisions will be made by the Director of OVC. The anticipated funding level of this program for FY97 and future years is not guaranteed but is contingent upon the amount of funding available in those years for discretionary purposes. All applications are due March 14, 1997.

Purpose

The purpose of this cooperative agreement is to provide training and technical assistance to federal, state, tribal, and local agencies, formula and special emphasis grantees, and other public and private non-profit organizations involved in activities related to crime victims. The assistance may be provided in the form of conferences, workshops, focus groups, training programs, site-specific technical assistance, development of publications and other materials, or other forms of assistance which encourage the effective implementation of the Victims of Crime Act of 1984, as amended. The cooperative agreement will provide for on-site training and technical assistance to address significant operational problems commonly experienced by agencies, as well as, immediate on-site technical assistance to communities that have experienced an incident resulting in large numbers of crime victims. It is intended to encourage states to include the policies, programs and strategies developed through OVC's promising practices and other discretionary grants, into their state and local community services for crime victims.

The OVC Training and Technical Assistance Center (TTAC) will offer a centralized access point for information about OVC's training and technical assistance resources. It will develop and disseminate training and technical assistance materials on topics of interest to the field, and mobilize specialized teams to address these topics and other identified areas of need. The TTAC will also assess and evaluate the training and technical assistance provided by TTAC components to ensure that high standards of quality are maintained.

Dated: December 19, 1996.

Aileen Adams,

Director, OVC.

[FR Doc. 96–32885 Filed 12–26–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection of the ETA 539, Weekly Claims and Extended Benefits Trigger Data and the ETA 538, Advance Weekly Initial and Continued Claims Report; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision and extension of the collection of the ETA 538, Advance Weekly Initial and Continued Claims Report and the ETA 539, Weekly Claims and Extended Benefits Trigger. The proposed change is to the reported initial claims figure on the ETA 538. With the advent of increased direct telephone claims taking of interstate initial claims, to have the most accurate and timely data requires the interstate component of this item be changed to the sum of all agent and liable interstate claims taken directly by the State in the report. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 25, 1997.

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Cynthia Ambler, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, room S–4231, 200 Constitution Ave. NW., Washington, DC, 20210; telephone number (202) 219–9204; fax (202) 219–8506 (these are not toll free numbers) or e-mail amblerc@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 538 and ETA 539 reports contain information on initial claims and continued weeks claimed. These figures are important economic indicators. The ETA 538 is a quick look that allows U.S. figures to be released to the public five days after the close of the period. The ETA 539 contains more refined economic indicators that are publishable on a State level as well as information of the Extended Benefits trigger level and the background data supporting it. Several States have begun using the telephone for interstate claimants to file directly with liable States, by-passing the agent State. This trend will continue. It is necessary to change what is being reported as initial claims on the ETA 538 so that claims are not double counted or missed entirely. Therefore the definition of interstate claims to be reported on the ETA 538 has been changed to all those claims received directly from the claimant by the reporting State, whether in an agent or liable capacity, during the report week.

II. Current Actions

The ETA 538 and ETA 539 reports continue to be needed to verify the

trigger for the Extended Benefits program and to allow publication of timely and accurate economic indicators for the nation.

Type of review: Extension with change.

Agency: Employment and Training Administration.

Title: Weekly Claims and Extended Benefits Trigger Data Advance Weekly Initial and Continued Claims Report.

OMB Number: 1205–0028.

Agency Number: ETA 538 and ETA 539.

Affected Public: State Government.

Cite/Reference/Form/etc: ETA 538 and ETA 539.

Total Respondents: 53.

Frequency: Weekly.

Total Responses: 5,512.

Average Time per Response: 20 minutes.

Estimated Total Burden Hours: 3,675.

Total Burden Cost (capital/start): Estimated at $110,240 which is an allowable cost under the administrative grants awarded to States by the Federal Government.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 18, 1996.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

[FR Doc. 96–33024 Filed 12–26–96; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribe in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modification issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be in the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organizations, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume VI

California
- CA960100 (December 27, 1996)
- CA960105 (December 27, 1996)
- CA960109 (December 27, 1996)
- CA960110 (December 27, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Massachusetts
- MA960018 (March 15, 1996)

Volume II

None

Volume III

Georgia
- GA960022 (Mar. 15, 1996)
- GA960087 (Mar. 15, 1996)

Kentucky
- KY960004 (Mar. 15, 1996)
- KY960025 (Mar. 15, 1996)
- KY960026 (Mar. 15, 1996)
- KY960027 (Mar. 15, 1996)
- KY960028 (Mar. 15, 1996)
- KY960029 (Mar. 15, 1996)

Volume IV

Indiana
- IN960002 (Mar. 15, 1996)
- IN960003 (Mar. 15, 1996)
- IN960004 (Mar. 15, 1996)
- IN960006 (Mar. 15, 1996)
- IN960018 (Mar. 15, 1996)

Michigan
- MI960002 (Mar. 15, 1996)
- MI960003 (Mar. 15, 1996)
- MI960004 (Mar. 15, 1996)
- MI960005 (Mar. 15, 1996)
- MI960007 (Mar. 15, 1996)
- MI960012 (Mar. 15, 1996)
- MI960030 (Mar. 15, 1996)
- MI960031 (Mar. 15, 1996)
- MI960047 (Mar. 15, 1996)
- MI960062 (Mar. 15, 1996)
- MI960063 (Mar. 15, 1996)
- MI960064 (Mar. 15, 1996)

Ohio
- OH960001 (Mar. 15, 1996)

OH960029 (Mar. 15, 1996)
OH960035 (Mar. 15, 1996)
OH960036 (Mar. 15, 1996)
OH960038 (Mar. 15, 1996)

Volume V

Arkansas
AR960001 (Mar. 15, 1996)
AR960008 (Mar. 15, 1996)
Iowa
IA960001 (Mar. 15, 1996)
IA960005 (Mar. 15, 1996)
Louisiana
LA960001 (Mar. 15, 1996)
LA960004 (Mar. 15, 1996)
LA960005 (Mar. 15, 1996)
LA960015 (Mar. 15, 1996)
LA960017 (Mar. 15, 1996)
LA960018 (Mar. 15, 1996)
LA960060 (Mar. 15, 1996)
Nebraska
NE960011 (Mar. 15, 1996)
New Mexico
NM960001 (Mar. 15, 1996)

Volume VI

Arizona
AZ960002 (Mar. 15, 1996)
AZ960004 (Mar. 15, 1996)
AZ960005 (Mar. 15, 1996)
AZ960006 (Mar. 15, 1996)
AZ960007 (Mar. 15, 1996)
AZ960010 (Mar. 15, 1996)
AZ960011 (Mar. 15, 1996)
AZ960012 (Mar. 15, 1996)
AZ960013 (Mar. 15, 1996)
AZ960014 (Mar. 15, 1996)
AZ960015 (Mar. 15, 1996)
AZ960016 (Mar. 15, 1996)
AZ960017 (Mar. 15, 1996)
AZ960018 (Mar. 15, 1996)
California
CA960029 (Mar. 15, 1996)
CA960050 (Apr. 12, 1996)
CA960061 (Apr. 12, 1996)
CA960064 (Apr. 12, 1996)
CA960066 (Apr. 12, 1996)
CA960069 (Apr. 12, 1996)
CA960070 (Apr. 12, 1996)
CA960084 (Apr. 12, 1996)
CA960085 (Apr. 12, 1996)
Colorado
CO960001 (Mar. 15, 1996)
Montana
MT960001 (Mar. 15, 1996)
MT960003 (Mar. 15, 1996)
MT960004 (Mar. 15, 1996)
MT960006 (Mar. 15, 1996)
Washington
WA960008 (Mar. 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (701) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions included an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 20th day of December 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–32767 Filed 12–26–96; 8:45 am]

BILLING CODE 4510–27–M

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Consumer Price Index Revision Housing Survey.''

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 25, 1997.

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E. Washington, D.C. 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Price Index (CPI) is the only index compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The CPI is used most widely as a measure of inflation, and serves as an indicator of the effectiveness of Government economic policy. It also is used as a deflator of other economic series, that is, to adjust other series for price changes and to translate these series into inflation-free dollars.

II. Current Actions

This request addresses not only the 1998 Revision of the Housing Index and the new Housing sample selection, it includes the transition to computer-Assisted Data Collection (CADC) technology.

For the CPI Housing Survey, the revision means implementing a new sample in new and existing Primary Sampling Units. The methodology for index calculation includes both a Geometric Mean Test Index and a Laspeyres Index. Survey sample

selection utilized an expenditure weight algorithm which can be used to calculate both indexes. Field representative will use hand-held pen computers and transmit collected data back to Washington, D.C. electronically.

Type of Review: New.

Agency: Bureau of Labor Statistics.

Title: Consumer Price Index Housing Survey.

OMB Number: 1220-New.

Affected Public: Individuals or households; business or other for-profit.

Total Respondents: 136,612.

Frequency: Semi-annually.

Total Respondents: 149,482.

Average Time Per Response: 7 minutes.

Estimated Total Burden Hours: 16,694.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 23rd day of December, 1996.

W. Stuart Rust, Jr.,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 96–33025 Filed 12–26–96; 8:45 am]

BILLING CODE 4510–24–M

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises the Mine Safety and Health Administration's (MSHA) user fees for testing, evaluation, and approval of certain products manufactured for use in underground mines. These fees are based on fiscal year 1996 data and reflect changes in approval processing operations, as well as costs incurred to process approval actions.

DATES: These fee schedules are effective from January 1, 1997, through December 31, 1997. Approval applications postmarked before January 1, 1997, will be charged under the fee schedules as published on January 22, 1996.

FOR FURTHER INFORMATION CONTACT: John Faini, Acting Chief, Approval and Certification Center, R.R. 1, Box 251, Triadelphia, West Virginia 26059.

SUPPLEMENTARY INFORMATION: In general, MSHA has computed the revised fees based on the cost to the government to provide testing, evaluation, and approval of products manufactured for use in underground mines. On May 8, 1987 (52 FR 17506), MSHA published a final rule, 30 CFR part 5–Fees for Testing, Evaluation, and Approval of Mining Products, which established the specific procedures for fee calculation, administration, and revisions. This revised fee schedule is established in accordance with the procedures of that rule.

The final rule for 30 CFR part 7, Subpart E—Diesel Engines Intended for Use in Underground Coal Mines and Subpart F—Diesel Power Packages Intended for Use in Areas of Underground Coal Mines Where Permissible Electric Equipment is Required, was issued on October 25, 1996. This final rule also revised 30 CFR part 36 to apply to diesel equipment for coal mines, and removed 30 CFR parts 31 and 32. Fees for applications under this rule are listed in this notice. Approvals will no longer be issued under 30 CFR parts 31 and 32.

Dated: December 20, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

FEE SCHEDULE EFFECTIVE JANUARY 1, 1997

[Based on FY 1996 data]

Action title	Hourly rate (dollars)	Flat rate (dollars)
30 CFR PART 7—PRODUCT TESTING BY THIRD PARTY:		
12 Approval Evaluation-Battery Assemblies	$51	.....
12 Approval Evaluation-Brattice and Ventilation Tubing	57	.....
12 Approval Evaluation-Multiple-Shot Blasting Units	51	.....
12 Approval Evaluation-Electric Motor Assemblies	51	.....
12 Approval Evaluation-Electric Cables and Splice Kits	56	.....
12 Approval Evaluation-Diesel Engines [1]	57	.....
12 Approval Evaluation-Diesel Power Packages [2]	57	.....
14 Approval Extension-Battery Assemblies	51	.....
14 Approval Extension-Brattice and Ventilation Tubing	53	.....
14 Approval Extension-Multiple-Shot Blasting Units	51	.....
14 Approval Extension-Electric Motor Assemblies	51	.....
14 Approval Extension-Electric Cables and Splice Kits	54	.....
14 Approval Extension-Diesel Engines [1]	57	.....
14 Approval Extension-Diesel Power Packages [2]	57	.....
40 Stamped Notification Acceptance Program (SNAP)	.....	363
30 CFR PART 15—EXPLOSIVES:		
12 Approval Evaluation [3]	61	.....
Permissibility Tests for Explosives:		
Weigh-in	.....	462
Physical Exam: First size	.....	325
Chemical Analysis	.....	1,977
Air Gap-Minimum Product Firing Temperature	.....	460
Air Gap-Room Temperature	.....	352
Pendulum Friction Test	.....	163
Detonation Rate	.....	352
Gallery Test 7	.....	7,436
Gallery Test 8	.....	5,533

FEE SCHEDULE EFFECTIVE JANUARY 1, 1997—Continued

[Based on FY 1996 data]

Action title	Hourly rate (dollars)	Flat rate (dollars)
Toxic Gases (Large Chamber)		805
Permissibility Tests for Sheathed Explosives:		
Physical Examination		128
Chemical Analysis		1,044
Gallery Test 9		1,944
Gallery Test 10		1,944
Gallery Test 11		1,944
Gallery Test 12		1,944
Drop Test		648
Temperature Effects/Detonation		672
Toxic Gases		580
14 Approval Extension	61	
30 CFR PART 18—ELECTRIC MOTOR DRIVEN EQUIPMENT AND ACCESSORIES:		
12 Approval—Machines (testing included)	57	
12 Approval—Instruments (testing included)	53	
14 Approval Extension—Machines (testing included)	57	
14 Approval Extension—Instruments (testing included)	53	
15 Acceptance Evaluation [3]	54	
Acceptance Testing:		
Explosion Test	47	
Wall Thickness Test	58	
Surface/Temperature Test	47	
Impact Test	46	
Thermal Shock Test	47	
Product Flame Test	57	
Compressibility Test (asbestos substitutes)	57	
16 Certification Evaluation (testing included)	49	
17 Acceptance Extension [3]	54	
Product Flame Test	57	
18 Certification Extension (testing included)	49	
21 Field Modification (testing included)	57	
23 Field Approval		97
26 Permit—Machines (testing included)	58	
26 Permit—Instruments (testing included)	58	
30 Intrinsic Safety Determination (testing included)	58	
31 Intrinsic Safety Determination Ext (testing included)	56	
32 Simplified Certification (testing included)	49	
34 Simplified Certification Extension (testing included)	36	
40 Stamped Notification Acceptance Program (SNAP)		363
41 Longwall Approval (testing included)	57	
42 Longwall Approval Extension (testing included)	57	
45 Shearer Evaluation (testing included)	58	
46 Shearer Evaluation Extension (testing included)	58	
47 Permit—Extension of Time		292
48 Permit Modification—Machines	56	
48 Permit Modification—Instruments (testing included)	54	
30 CFR PART 19—ELECTRIC CAP LAMPS:		
12 Approval (testing included)	53	
14 Approval Extension (testing included)	52	
40 Stamped Notification Acceptance Program (SNAP)		363
30 CFR PART 20—ELECTRIC MINE LAMPS:		
12 Approval (testing included)	54	
14 Approval Extension (testing included)	52	
40 Stamped Notification Acceptance Program (SNAP)		363
30 CFR PART 21—FLAME SAFETY LAMPS:		
12 Approval (testing included)	54	
14 Approval Extension (testing included)	54	
40 Stamped Notification Acceptance Program (SNAP)		363
30 CFR PART 22—PORTABLE METHANE DETECTORS:		
12 Approval (testing included)	54	
14 Approval Extension (testing included)	54	
40 Stamped Notification Acceptance Program (SNAP)		363
30 CFR PART 23—TELEPHONES AND SIGNALING DEVICES:		
12 Approval (testing included)	56	
14 Approval Extension (testing included)	54	
40 Stamped Notification Acceptance Program (SNAP)		363
30 CFR PART 24—SINGLE-SHOT BLASTING UNITS:		
12 Approval (testing included)	58	
14 Approval Extension (testing included)	58	
40 Stamped Notification Acceptance Program (SNAP)		363

FEE SCHEDULE EFFECTIVE JANUARY 1, 1997—Continued

[Based on FY 1996 data]

Action title	Hourly rate (dollars)	Flat rate (dollars)
30 CFR PART 26—LIGHTING EQUIPMENT FOR ILLUMINATION:		
12 Approval (testing included)	58	
14 Approval Extension (testing included)	58	
40 Stamped Notification Acceptance Program (SNAP)		363
30 CFR PART 27—METHANE MONITORING SYSTEMS:		
16 Certification (testing included)	53	
18 Certification Extension (testing included)	54	
40 Stamped Notification Acceptance Program (SNAP)		363
30 CFR PART 28—D.C. CURRENT FUSES:		
12 Approval (testing included)	59	
14 Approval Extension (testing included)	59	
40 Stamped Notification Acceptance Program (SNAP)		363
30 CFR PART 29—PORTABLE DUST ANALYZERS AND METHANE MONITORS:		
12 Approval (testing included)	54	
14 Approval Extension (testing included)	54	
40 Stamped Notification Acceptance Program (SNAP)		363
30 CFR PART 33—DUST COLLECTORS:		
12 Approval without Cert. of Performance (testing included)	58	
14 Approval Extension (testing included)	58	
16 Certification Evaluation (testing included)	58	
18 Certification Extension (testing included)	58	
21 Field Modification	58	
29 Dust Collector Approval with Cert. of Performance		181
40 Stamped Notification Acceptance Program (SNAP)		363
30 CFR PART 35—FIRE-RESISTANT HYDRAULIC FLUIDS:		
12 Approval (testing included)	54	
14 Approval Extension (testing included)	53	
30 CFR PART 36—MOBILE DIESEL-POWERED EQUIPMENT:		
12 Approval	60	
14 Approval Extension	57	
16 Certification–Engines (testing included)	54	
18 Certification Extension-Engines (testing included)	54	
21 Field Modification	58	
27 Certification–Diesel Components (testing included)	57	
28 Certification Ext–Diesel Components (testing included)	57	
40 Stamped Notification Acceptance Program (SNAP)		363
30 CFR PART 74—COAL MINE DUST PERSONAL SAMPLER UNITS:		
12 Approval	54	
00 OTHER A&CC SERVICES:		
15 Acceptance—Overcurrent Relays (testing included)	54	
15 Statement of Test and Evaluation (ST&E)		61
15 Material Acceptance (testing included)	54	
15 Monitor and Power System (MAPS) (testing included)	55	
15 Acceptance-Ground Check Monitor/Ground Wire Devices (testing included)	54	
17 Acceptance Ext-Overcurrent Relays (testing included)	54	
17 Acceptance Ext-Interim Criteria (testing included)	52	
17 Statement of Test and Evaluation (ST&E) Extension	32	
17 Material Acceptance Extension (testing included)	54	
17 Acceptance Extension-Ground Check Monitor/Ground Wire Devices (testing included)	54	
20 Stamped Revision Acceptance (SRA) [4]		305
24 Acceptance—Panic Bar	54	
33 Generic Statement of Test and Evaluation (ST&E)	54	
35 Administration Records Update	15	
37 Acceptance—Interim Criteria [3]	56	
Interim Criteria Testing: Product Flame Test	58	
40 Stamped Notification Acceptance Program (SNAP)		363
40 Stamped Notification Acceptance Program (SNAP) ST&E	32	
41 Approval—Longwall Area Lighting	56	
42 Approval Extension—Longwall Area Lighting	54	
50 Mine Wide Monitoring System (MWMS) Evaluation	56	
52 Mine Wide Monitoring System (MWMS) Barrier Classification		80
54 Mine Wide Monitoring System (MWMS) Sensor Classification	57	
00 Retesting for Approval as a Result of Post-Approval Product Audit [5]		

[1] Applications for Diesel Engines (Subpart E) postmarked after November 25, 1996, must be submitted under 30 CFR Part 7 Third Party Testing.

[2] Diesel Power Packages (Subpart F) final rule was issued October 25, 1996. The phase-in period for this program is 3 years.

[3] Full approval fee consists of evaluation cost plus applicable test costs.

[4] Fee covers SRA application accompanied by up to five documents.

[5] Fee based upon the approval schedule in effect at the time of retest.

Note: When testing and evaluation are required at locations other than MSHA's premises, the applicant shall reimburse MSHA for traveling, subsistence, and incidental expenses of MSHA's representation in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 96–32994 Filed 12–26–96; 8:45 am]

BILLING CODE 4510–43–P

Office of the Assistant Secretary for Veterans' Employment and Training

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of the Assistant Secretary for Veterans' Employment and Training is soliciting comments concerning the proposed revision of the collection of the Federal Contractor Veterans' Employment Report (VETS–100).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section on or before February 25, 1997.

The Department of labor is particularly interested in comments which:

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments should be submitted to Jeffrey C. Crandall, Director of Planning, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Avenue, NW, Room S–1313, Washington D.C. 20210. Telephone: (202) 219–9110; fax: (202) 219–4773.

Copies of comments submitted by the public will be available for review at the Department of Labor, 200 Constitution Avenue, NW, Room S–1316, Washington, D.C. 20210 between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Rob M. Wilson, Chief, Division of Enforcement, at the address immediately above, (202) 219–9110.

SUPPLEMENTARY INFORMATION:

I. Background

The Veterans' Employment and Training Service is required by 38 USC 4212(d) to collect information from Federal contractors and subcontractors on the number of Vietnam era veterans and the number of special disabled veterans in their workforce, as well as the number of new hires during the reporting period who are Vietnam era or special disabled veterans. Pursuant to this statute, employers with Federal contracts or subcontracts of $10,000 or more must file VETS–100 reports annually. The VETS–100 data collection program has existed since 1987. Regulations to implement the statute were published on March 4, 1987. The VETS–100 data are used by the Veterans' Employment and Training Service (VETS) to monitor compliance with the statute. The information is also shared with the Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor, and other Federal procurement officials.

II. Current Actions

Through this information collection request, the Veterans' Employment and Training Service (VETS) seeks to reinstate the collection of the Employer Identification Number (EIN). The implementing regulation for the VETS-100 data collection program instructed respondents to provide the EIN number with other company identifiers. Practice over the years has led to the use of an identification number which is unique to this data collection. Currently, employers are assigned a specific identification number for purposes of this report only. The system in place is incompatible with other data base information pertaining to Federal contractors maintained by other Federal agencies such as the Equal Employment Opportunity Commission (EEOC) and the General Services Administration (GSA).

Also, at its inception, the VETS-100 form was modeled after the EEO-1 form and the reports were completed on the same time cycle.

Federal contractors and subcontractors with fifty or more employees and contracts or subcontracts of $50,000 or more are required to submit the EEO-1 form. The threshold for the VETS-100 submission is $10,000 or more regardless of employment levels. Thus almost all larger contractors are currently filling out both forms but for a different time period and submission date. This request, if approved, will change the VETS-100 file date to September 30 of each current year to commence in 1998. Currently the date for filing the VETS-100 is March 31. The EEOC form currently collects the Employer Identification number and the Dun & Bradstreet number from Federal contractor respondents. The inclusion of these numbers on the VETS-100 form would be consistent with existing practice for the EEO-1 report collection. The Dun and Bradstreet number is a standard business identifier used in the Federal Procurement Database system, maintained by GSA as well as in common procurement practice. VETS proposal would facilitate the sharing of information through use of common identifier(s).

With the proposed changes, information derived from the VETS-100 collection process would be more useful to veteran staff in local employment service offices who call upon Federal contractors for purposes of job development for veterans.

The proposed cycle change and use of common identifiers should not place an undue burden on Federal contractors who already provide the EIN and Dun & Bradstreet number to EEOC on the EEO-1 form. Reporting on the same cycle will further facilitate completing the reports, as the same pay period may be used for each. The EEO-1 and the VETS-100 each stand on their own, but common identifiers will enable efficient information sharing to occur.

Type of Review: Revision/Extension.

Agency: Office of the Assistant Secretary for Veterans' Employment and Training.

Title: Federal Contractor Veterans Employment Report (VETS-100).

OMB Number: 1293–0005.

Agency Number: 1291.

Affected Public: Business or other for-profit/not-for-profit institutions who have Federal contracts of at least $10,000.

Total Respondents: 190,000.

Frequency: Annually.

Total Responses: 291,000.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 145,500.

Total Burden Cost: $727,500.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 20, 1996.

Jeffrey C. Crandall,

Director of Planning.

[FR Doc. 96–33023 Filed 12–26–96; 8:45 am]

BILLING CODE 4510–79–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting: Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on January 5, 1997. The meeting will begin at 10 a.m. and continue until the committee concludes its agenda.

LOCATION: Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of December 13–14, 1996.
3. Consider and act on draft revisions to 45 C.F.R. Part 1612, the Corporation's interim regulation restricting lobbying and certain other activities by grantees.
4. Consider and act on draft revisions to 45 C.F.R. Part 1620, the Corporation's interim regulation on priorities in the allocation of resources.
5. Consider and act on draft revisions to 45 C.F.R. Part 1626, the Corporation's interim regulation restricting legal assistance to aliens.
6. Consider and act on draft revisions to 45 C.F.R. Part 1627, the Corporation's interim regulation on subgrants and dues.
7. Consider and act on draft revisions to Part 1636, the Corporation's interim regulation on disclosure of plaintiff identity and statement of facts.
8. Consider and act on draft revisions to 45 C.F.R. Part 1637, the Corporation's interim regulation on representation of prisoners.
9. Consider and act on draft revisions 45 C.F.R. Part 1638, the Corporation's interim regulation on solicitation of clients.
10. Consider and act on draft revisions to 45 C.F.R. Part 1639, the Corporation's interim regulation on welfare reform.
11. Consider and act on draft revisions to 45 C.F.R. Part 1640, the Corporation's interim regulation on the application of Federal law on waste, fraud and abuse to LSC funds.
12. Consider and act on draft revisions to 45 C.F.R. Part 1642, the Corporation's interim regulation on attorneys' fees.
13. Consider and act on proposed revisions to 45 C.F.R. Part 1609, the Corporation's regulation on fee-generating cases.
14. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante at (202) 336–8892.

Dated: December 24, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–33153 Filed 12–24–96; 1:24 pm]

BILLING CODE 7050–01–P

Sunshine Act Meeting; Sunshine Act Meeting of the Corporation's Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on January 6, 1997. The meeting will begin at 9:30 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE., 11th Floor Board Room, Washington, DC.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the executive session, the Board will consider and act on proposed policies and procedures for annual performance reviews of the Corporation's President and Inspector General. In addition, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 USC § 552b(c)(2) & (10)] and the corresponding regulation of the Legal Services Corporation [45 C.F.R. § 1622.5(a) & (h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be posted for public inspection at Corporation headquarters, 750 First Street NE., Washington, DC 20002, in its 11th floor reception area, and will also be available upon request.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of Sept. 30, 1996, open session.
3. Approval of minutes of Sept. 30, 1996, executive session.
4. Approval of minutes of Nov. 30, 1996, teleconference.
5. Chairman's and Members' Reports.
6. Election of officers of the Board.
7. President's Report.
8. Inspector General's Report, including a report on the OIG technology project.
9. Consider and act on the report of the Board's Finance Committee.
10. Consider and act on the report of the Board's Operations and Regulations Committee:
   a. Consider and act on draft revisions to 45 C.F.R. Part 1612, the Corporation's interim regulation restricting lobbying and certain other activities by grantees.
   b. Consider and act on draft revisions to 45 C.F.R. Part 1620, the Corporation's interim regulation on priorities in the allocation of resources.
   c. Consider and act on draft revisions to 45 C.F.R. Part 1626, the Corporation's interim regulation restricting legal assistance to aliens.
   d. Consider and act on draft revisions to 45 C.F.R. Part 1627, the Corporation's interim regulation on subgrants and dues.
   e. Consider and act on draft revisions to Part 1636, the Corporation's interim regulation on disclosure of plaintiff identity and statement of facts.
   f. Consider and act on draft revisions to 45 C.F.R. Part 1637, the Corporation's interim regulation on representation of prisoners.
   g. Consider and act on draft revisions 45 C.F.R. Part 1638, the Corporation's interim regulation on solicitation of clients.
   h. Consider and act on draft revisions to 45 C.F.R. Part 1639, the Corporation's interim regulation on welfare reform.
   i. Consider and act on draft revisions to 45 C.F.R. Part 1640, the Corporation's interim regulation on the application of Federal law on waste, fraud and abuse law to LSC funds.
   j. Consider and act on draft revisions to 45 C.F.R. Part 1642, the Corporation's interim regulation on attorneys' fees.
   k. Consider and act on proposed revisions to 45 C.F.R. Part 1609, the Corporation's regulation on fee-generating cases.
11. Consider and act on the report of the Board's Provision Committee.
12. Consider and act on the report of the Board's Presidential Search Committee.
13. Consider and act on proposed policies and procedures for annual performance

reviews of the Corporation's President and Inspector General.

CLOSED SESSION:

14. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.
15. Consider and act on proposed policies and procedures for annual performance reviews of the Corporation's President and Inspector General.

OPEN SESSION:

16. Schedule board and committee meetings through December 1997.
17. Public comment.
18. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: December 24, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–33154 Filed 12–24–96; 1:24 pm]

BILLING CODE 7050–01–P

Sunshine Act Meeting; Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Provision for the Delivery of Legal Services Committee of the Legal Services Corporation's Board Directors will meet on January 5, 1997. The meeting will begin at 2 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of September 29, 1996.
3. Status report on implementation of § 509 of Pub. L. 104–134.
4. Status report on 1995 grantee audits.
5. Status report on activities of the Office of Program Operations, including its reorganization, the status of competition for 1997 grants, restrictions enforcement and follow-up, and other matters.
6. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: December 24, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–33155 Filed 12–24–96; 1:24 pm]

BILLING CODE 7050–01–P

Sunshine Act Meeting; Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation's Board of Directors will meet on January 5, 1997. The meeting will begin at 4 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of September 29, 1996.
3. Staff report on efforts at subletting existing LSC office space.
4. Review and consideration of budget and expenses through November 30, 1996.
5. Develop a recommendation to make to the Board of Directors on a final FY '97 Consolidated Operating Budget.
6. Develop a recommendation to make to the Board of Directors on an FY 1998 budget mark for submission to Congress.
7. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: December 24, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–33156 Filed 12–24–96; 1:24 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–144]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that TECH 2000, L.L.C., of Roswell, Georgia, has applied for an exclusive license to practice the invention described in U.S. Patent No. 5,277,959, entitled ''Composite Flexible Blanket Insulation,'' which was issued on January 11, 1994, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Kenneth L. Warsh, Patent Counsel, Ames Research Center.

DATES: Responses to this notice must be received by February 25, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Warsh, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035–1000; telephone (415) 604–1592.

Dated: December 17, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–32866 Filed 12–26–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection for requesting permission to use privately-owned equipment to microfilm archival holdings in the National Archives of the United States and Presidential libraries. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before February 25, 1997 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (PIRM–POL), Room 4100, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7270; or electronically mailed to nancy.allard@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the proposed information collections and supporting statements should be directed to Nancy Allard at telephone number 301–713–6730, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request to Microfilm Records.
OMB number: 3095–0017.
Agency form number: none.
Type of review: Regular.
Affected public: Companies and organizations that wish to microfilm archival holdings in the National Archives of the United States or a Presidential library for micropublication.
Estimated number of respondents: 5.
Estimated time per response: 10 hours.
Frequency of response: On occasion (when respondent wishes to request permission to microfilm records).
Estimated total annual burden hours: 50.
Abstract: The information collection is prescribed by 36 CFR 1254.92. The collection is prepared by companies and organizations that wish to microfilm archival holdings with privately-owned equipment. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.94, to evaluate the records for filming and to schedule use of the limited space available for filming.

Dated: December 22, 1996.

L. Reynolds Cahoon,

Assistant Archivist for Policy and IRM Services.

[FR Doc. 96–32993 Filed 12–26–96; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Submission for OMB Review: Comment Request

Title of Proposed Collection: National Survey of College Graduates.

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. Such a notice was published at Federal Register 51723, dated October 3, 1996. No comments were received.

The materials are now being sent to OMB for Review. Send any written comments to Desk Officer, OMB, 3145–0141, OIRA, Office of Management and Budget, Washington, DC 20503. Comments should be received by January 31, 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 equality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Survey of College Graduates (NSCG), formerly called National Survey of Natural and Social Scientists and Engineers, has been conducted biennially since the 1970's. In the 1997 NSCG, persons identified as trained and/or working in science and engineering, who responded to the 1995 survey, will be contacted again. The purpose of this longitudinal study is to provide national estimates on the science and engineering workforce and changes in employment, education and demographic characteristics. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), formerly called the Scientific and Technical Personnel Data System (STPDS), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, a subsequently amended, includes a statutory charge to ''. . . provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.'' The National Survey of College Graduates is designed to comply with these mandates by providing information on the supply and utilization of nation's scientists and engineers. The NSCG provides the majority of records into the SESTAT data system. The NSF uses this information to prepare congressionally mandated reports such as Science and Engineering Indicators and Women and Minorities in Science and Engineering. A public release file of collected data, edited to protect respondent confidentiality, will be made available to researchers on CD–ROM and on the World Wide Web.

The Bureau of the Census, as in the past, will conduct the study for NSF through an interagency agreement. Respondents from the 1995 NSCG, who had at least a bachelor's degree in science engineering as of 1990 Decennial Census, or who worked in science and engineering jobs as of April 1993, will be contacted in 1997. The sample design included oversampling of minority college graduate population and varying sampling rates to represent specific fields of science and engineering. Sample members will be sent mail questionnaires, and non-respondents to the mail questionnaire will be followed up by telephone or personal visit interview.

The 1997 NSCG sample size will be about 53,000 and an unweighted response rate of 95 percent is anticipated (94 percent was obtained on the previous cycle). The amount of time required to complete the questionnaire may vary depending on individuals' circumstances but on the average, it will take about 25 minutes. The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey will be entirely voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

Dated: December 20, 1996.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 96–32897 Filed 12–26–96; 8:45 am]

BILLING CODE 7555–01–M

Submission for OMB Review: Comment Request

Title of Proposed Collection: Survey of Doctorate Recipients.

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. Such a notice was published at Federal Register 51723, dated; October 3, 1996. No comments were received.

The materials are now being sent to OMB for Review. Send any written comments to Desk Officer, OMB, 3145–0020, OIRA, Office of management and Budget, Washington, DC 20503. Comments should be received by February 4, 1996.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Survey of Doctorate Recipients (SDR) has been conducted biennially since 1973. For the 1997 cycle, a sample of individuals under the age of 76 who have earned doctoral degrees in science and engineering from U.S. institutions will be surveyed. The purpose of the study is to provide national estimates describing the relationship between education and employment for Ph.D. recipients in science and engineering. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), formerly called the Scientific and Technical Personnel Data System (STPDS).

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to ''* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.'' The Survey of Doctorate Recipients is designed to comply with these mandates by providing information on the supply and utilization of doctorate level scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force model, which produces national estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as Women and Minorities in Science and Engineering and Science and Engineering Indicators. A public release file of collected data, designed to protect respondent confidentiality, is expected to be made available to researchers on CD–ROM and on the World Wide Web.

The survey sample design includes oversampling of recent Ph.D. recipients and minority recipients and varying sampling rates to represent specific fields of science and engineering. A total of approximately 58,000 individuals is expected to be sampled for the survey. Sample members will be requested to complete a 30 minute interview conducted by computer-assisted telephone interviewing (CATI) or mail. An unweighted response rate of 85 percent is anticipated. The survey will be collected in conformance with the Privacy Act of 1974. Each sample member's participation will be entirely voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

Dated: December 23, 1996.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 96–32932 Filed 12–26–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to the Office of Management and Budget (OMB) Review

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: Nuclear Material Events Database (NMED).

2. Current OMB approval number: 3150–0178.

3. How often the collection is required: Agreement States are requested to report events to NRC electronically or by hard copy within one month of notification from an Agreement State licensee that an incident or event involving the industrial, commercial and/or academic use of radioactive byproduct materials, or the use of radioactive materials for medical diagnosis, therapy, or research has occurred. In addition, Agreement States are requested to report events that may pose a significant health and safety hazard to the NRC Headquarters Operations Officer within the next working day of notification by an Agreement State licensee.

4. Who is required or asked to report: Current Agreement States and any State receiving Agreement State status in the future.

5. The number of annual respondents: 29.

6. The number of hours needed annually to complete the requirement or request: 705 hours (an average of approximately one hour per response) for all existing Agreement States reporting; any new Agreement State would add approximately 25 reports per year or 25 burden hours.

7. Abstract: NRC regulations require NRC licensees to report incidents and events involving the use of radioactive byproduct material, and source material, such as those involving a radiation overexposure, a leaking or contaminated sealed source, release of excessive contamination of radioactive material, lost or stolen radioactive material, equipment failures, and abandoned well logging sources. Medical misadministrations are required to be reported in accordance with 10 CFR 35.33. Agreement State licensees are also required to report these events and medical misadministrations to their individual Agreement State regulatory authorities under compatible Agreement State regulations. NRC is requesting that the Agreement States voluntarily submit summary information on events and medical misadministrations involving the use of nuclear materials regulated pursuant to the Atomic Energy Act, in a uniform electronic format, for assessment and identification of any facility/site specific or generic safety concerns that could have the potential to impact public health and safety; and to evaluate actions necessary to prevent their occurrence at the same or other facilities.

Submit, by February 25, 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). 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, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 20th day of December, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–32946 Filed 12–26–96; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

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: Applicant Self-Assessment, NRC Form 563.

2. Current OMB approval number: 3150–0177.

3. How often the collection is required: The Applicant Self-Assessment will be requested from basically qualified external applicants applying for engineering and scientific positions at the time their initial application is received in the NRC's Office of Personnel.

4. Who will be required or asked to report: Basically qualified external applicants applying for engineering and scientific positions with the NRC.

5. The number of annual respondents: 1,500.

6. The number of hours needed annually to complete the requirement or request: 125 hours (five minutes per response).

7. Abstract: The Applicant Self-Assessment will be used to collect uniform information from external applicants as to which technical specialties they possess that are unique to the needs of the NRC. This information will be reviewed by Office of Personnel staff and used to match applicants' technical specialties with those required by selecting officials when an engineering or scientific vacancy position is to be filled.

Submit, by February 25, 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). 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 the notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 20th day of December, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–32947 Filed 12–26–96; 8:45 am]

BILLING CODE 7590–01–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR 35.32 and 35.33, ''Quality Management Program and Misadministrations''.

3. The form number if applicable: Not Applicable.

4. How often the collection is required:

For quality management program (QMP):

Reporting: One time submittal of a quality management program (QMP) for each existing and new licensee, when the QMP is modified, or when new modalities (uses) are added to an existing license.

Ten Agreement States, who should have adopted the rule by January 1995, have not done so. Therefore, this estimate includes the one-time burden for the development of QMPs by these ten Agreement State licensees.

Recordkeeping: Records of written directives, administered dose or dosage, annual review, and recordable events, for 3 years.

For Misadministrations:

Reporting: Whenever a misadministration occurs.

Recordkeeping: Records of misadministrations for 5 years.

5. Who will be required or asked to report: NRC Part 35 licensees who use byproduct material in limited diagnostic and therapeutic ranges and similar type of licensees regulated by Agreement States.

6. An estimate of the number of responses: Approximately 2,919 per year.

7. The estimated number of annual respondents: 6300

8. An estimate of the total number of hours needed annually to complete the requirement or request: 34,743 hours for applicable licensees (24,400 hrs/yr for reporting and 10,343 hrs/yr for recordkeeping).

9. An indication of whether section 3507(d), Pub. L. 104–13 applies: Not Applicable

10. Abstract: In the medical use of byproduct material, there have been instances where byproduct material was not administered as intended or was administered to a wrong individual, which resulted in unnecessary exposures or inadequate diagnostic or therapeutic procedures. The most frequent causes of these incidents were: insufficient supervision, deficient procedures, failure to follow procedures, and inattention to detail. In an effort to reduce the frequency of such events, the NRC requires licensees to implement a quality management program (§ 35.32) to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by an authorized user physician.

Collection of this information enables the NRC to ascertain whether misadministrations are properly identified, evaluated, and investigated by the licensee and that corrective action is taken. Additionally, NRC has a responsibility to inform the medical community of generic issues identified in the NRC review of misadministrations.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal 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 should be directed to the OMB reviewer by January 27, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0171), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 20th day of December 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–32948 Filed 12–26–96; 8:45 am]

BILLING CODE 7590–01–P

Draft Standard Review Plans on Antitrust and Financial Qualifications and Decommissioning Funding Assurance

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Standard Review Plans.

SUMMARY: The NRC is seeking public comment on Draft Standard Review Plans (SRPs) on Antitrust and Financial Qualifications and Decommissioning Funding Assurance. The Draft SRP on Antitrust Reviews reflects current staff practice in carrying out the antitrust mandate required by the Atomic Energy Act in review of construction permit and operating license applications, amendment applications, and in antitrust enforcement actions. The Draft SRP on Financial Qualifications and Decommissioning Funding Assurance provides procedures used to evaluate initial license applications and license transfer applications with respect to financial qualifications and to determine if licensees are complying with NRC requirements for ensuring that adequate decommissioning funds are available. The SRPs are being published to obtain public comments and do not reflect the Commission's final positions. The public comments will be considered in evaluating whether the NRC review process in this area should be changed. The Draft SRPs will be available on NRC electronic bulletin boards and in the NRC's Public Document Room.

DATES: The public is invited to submit comments on the draft SRPs by March 15, 1997. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date. On the basis of the submitted comments, the Commission will determine whether to modify the draft SRPs before issuing them in final form.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., Federal workdays.

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed by using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC–EDIN subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC–EDIN subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial telephone number for the main FedWorld BBS, (703) 321–3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory

Information Mail.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using the NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the NRC–EDIN Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld can also be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC–EDIN Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Examine copies of comments received at: The NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1255, e-mail RSW1@nrc.gov; or for the Antitrust SRP, Michael J. Davis, telephone (301) 415–1016, e-mail MJD1@nrc.gov.

SUPPLEMENTARY INFORMATION: The Draft Standard Review Plan on Antitrust describes the procedures used by the NRC staff to implement the antitrust review and enforcement prescribed in Sections 105 and 186 of the Atomic Energy Act of 1954, as amended and will replace the original NUREG–0970. These procedures are principally covered by the Commission's Rules and Regulations in 10 CFR 2.101, 2.102, 2.2, 50.33a, 52.77, 50.80, and 50.90. These procedures set forth the steps and criteria the staff applies in the antitrust review of combined construction permit/operating license applications and amendments to construction permits, operating licenses, and combined licenses. In addition, the procedures describe how the staff enforces compliance by licensees with antitrust license conditions.

The Draft Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance describes the process the NRC staff uses to review the financial qualifications and methods of providing decommissioning funding assurance required of power reactor licensees. This draft SRP will be used as the basis for reviews as the electric utility industry moves from an environment of rate regulation toward greater competition. The NRC is concerned that rate deregulation and disaggregation resulting from various restructuring actions involving power reactor licensees could have adverse effects on the protection of public health and safety.

Dated at Rockville, Maryland, this 20th day of December, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–32951 Filed 12–26–96; 8:45 am]

BILLING CODE 7590–01–P

Oconee Nuclear Station, Units 1, 2, and 3; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; Correction.

SUMMARY: This document corrects a notice appearing in the Federal Register on December 18, 1996 (61 FR 66699), that considers issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, issued to the Duke Power Company. This action is necessary to correct an erroneous date.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, telephone (301) 415–7163.

SUPPLEMENTARY INFORMATION: On page 66701, in the first column, in the second complete paragraph, the date is changed from ''January 2, 1997'', to read ''January 17, 1997.''

Dated at Rockville, Maryland, this 20th day of December, 1996.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 96–32949 Filed 12–26–96; 8:45 am]

BILLING CODE 7590–01–P

[IA 96–100]

In the Matter of John Maas; Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. John Maas was employed as President of National Circuits Caribe, Inc. (NCCI) in Fajardo, Puerto Rico, in 1991. NCCI possessed and used radioactive materials at its Fajardo, Puerto Rico facility under the authority of a general license issued by the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 31.5. The general license authorized the licensee to use byproduct material contained in devices designed and manufactured for the purpose of gauging or controlling thickness of materials during industrial processes. NCCI filed for bankruptcy under Chapter 11 in Puerto Rico in March 1991 but the case was dismissed in October 1991 due to lack of response from the company. The Fajardo facility was abandoned sometime around October 1991.

II

On June 23, 1993, the NRC was notified by the Commonwealth of Puerto Rico's Bureau of Radiological Health (Bureau) of the discovery of radioactive sources and a quantity of hazardous chemicals on property leased from the Puerto Rico Industrial Development Corporation (PRIDCO) by NCCI. Bureau personnel indicated that the abandoned sources had been found in an abandoned building by PRIDCO personnel.

The NRC, Region II, staff performed an inspection of the site on June 30, 1993, and determined there were five sources containing microcurie amounts of Thallium-204 or Promethium-147. The sources were in backscatter gauges that were authorized for use by NCCI under an NRC general license, specified in 10 CFR 31.5. The staff determined that the source/gauges had been abandoned at the site since October 1991. NRC and PRIDCO oversaw the disposal of the gauges, which was completed in September 1994.

The NRC Office of Investigations (OI) conducted an investigation, documented in OI Report No. 2–93–044 dated January 31, 1996, to determine whether NCCI had deliberately abandoned licensed material at the plant site. Based on the evidence developed and reviewed, OI determined that during approximately October 1991, the five generally licensed backscatter gauges were deliberately abandoned by the licensee, with the knowledge of the President of the company, Mr. Maas.

Mr. Maas, the former President of NCCI, was prosecuted by the Department of Justice and on December 5, 1995, pled guilty to the charges of (1) willfully and knowingly storing or causing to be stored hazardous wastes for longer than ninety days without having first obtained a permit or interim status for said storage, in violation of Title 42, United States Code, Section 6928(d)(2) (a) and (2) willfully and knowingly abandoning devices containing byproduct radioactive materials, in violation of Section 223 of the Atomic Energy Act of 1954, as amended, Title 42, United States Code, Section 2273 and 10 CFR 31.5(c)(6). On August 8, 1996, Mr. Maas was sentenced to probation and required to perform community service.

III

The Commission's regulation in 10 CFR 30.10 requires, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any regulation issued by the Commission. Based on the facts set forth above, the staff concluded that Mr. Maas engaged in deliberate misconduct that caused the licensee to abandon devices containing byproduct material in violation of 10 CFR 31.5(c)(6). As President of NCCI, Mr. Maas was responsible for ensuring that NCCI conducted activities in accordance with NRC requirements. The NRC must be able to rely on licensees and their officials and employees to comply with NRC requirements. Mr. Maas' actions in causing NCCI to violate 10 CFR 31.5 have raised serious doubts as to whether he can be relied on to comply with NRC requirements.

The NRC staff sent a letter dated October 10, 1996, to Mr. P. M. Sandler, Mr. Maas' attorney, containing the proposed terms of this Order which are set out in Section IV of this Order. The proposed terms are that Mr. Maas be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order, and is required to notify the NRC of his first involvement in NRC-licensed activities during the five years following the prohibition period. The NRC staff requested Mr. Sandler to review the proposed items with Mr. Maas and, if Mr. Maas agreed to the proposed terms of this Order, have him indicate his agreement with those terms by signing an enclosed acknowledgement. By letter dated October 22, 1996, Mr. Sandler transmitted the acknowledgement of the proposed provisions of the Order which had been signed by Mr. Maas. In the acknowledgement, Mr. Maas indicated that he understood the proposed provisions, committed to complying with them, and consented to the issuance of an Order confirming these provisions. In the acknowledgment, Mr. Maas also waived his right to have a hearing on such an Order.

I find that Mr. Maas' commitments as set forth in the letter of October 22, 1996, are acceptable and necessary and conclude that with these commitments public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Mr. Maas' commitments in the October 22, 1996 letter be confirmed by this Order. As stated above, Mr. Maas has agreed to this action. Pursuant to 10 CFR 2.202, I have also determined, based on Mr. Maas' consent and on the significance of the conduct described above, that public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered, effective immediately, that:*

1. For a period of five years from the date of this Confirmatory Order, Mr. Maas is prohibited from engaging in or exercising control over individuals engaged in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) Using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

2. At least five days prior to the first time that Mr. Maas engages in, or exercises control over, NRC-licensed activities within a period of five years following the five-year prohibition in Section IV.1 above, he shall notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement, under oath or affirmation, that Mr. Maas understands NRC requirements, that he is committed to compliance with NRC requirements, and that provides a basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Regional Administrator, Region II, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Maas of good cause.

V

In accordance with 10 CFR 2.202, any person adversely affected by this Confirmatory Order, other than Mr. Maas, may submit an answer to this Order, and may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The request for a hearing shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which any other person adversely affected relies and the reasons as to why the Confirmatory Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323 and to Mr. Maas. If a person other than Mr. Maas requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any

hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland this 12th day of December 1996.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 96–32950 Filed 12–26–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Advisory Committee on Reactor Safeguards (ACRS).

SUMMARY: The Advisory Committee on Reactor Safeguards was established by Section 29 of the Atomic Energy Act (AEA) in 1954. Its purpose is to provide advice to the Commission with regard to the hazards of proposed or existing reactor facilities, to review each application for a construction permit or operating license for certain facilities specified in the AEA, and such other duties as the Commission may request. The AEA as amended by PL–100–456 also specifies that the Defense Nuclear Safety Board may obtain the advice and recommendations of the ACRS.

Membership on the Committee includes individuals experienced in reactor operations, management; probabilistic risk assessment; analysis of reactor accident phenomena; design of nuclear power plant structures, systems and components; and mechanical, civil, and electrical engineering.

The Nuclear Regulatory Commission has determined that renewal of the charter for the ACRS until December 23, 1998 is in the public interest in connection with the statutory responsibilities assigned to the ACRS. This action is being taken in accordance with the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, NRC, Washington, DC 20555; telephone: (301) 415–1963.

Dated: December 23, 1996.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 96–32952 Filed 12–26–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Federal Use of Standards

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments on proposed revision of OMB Circular No. A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.''

SUMMARY: The Office of Management and Budget (OMB) is revising Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.'' Public Law 104–113, the National Technology Transfer Act of 1995 (hereinafter known as P.L. 104–113), was passed by Congress to codify existing policies in A–119, to establish additional reporting requirements, and to authorize the National Institute of Standards and Technology (NIST) to coordinate conformity assessment activities of the agencies. P.L. 104–113 was signed into law by the President on March 13, 1996. This proposed revision of Circular A–119 implements the new law and makes certain other modifications.

DATES: Comments are requested on the proposed revisions to Circular A–119 no later than February 25, 1997.

ADDRESSES: Direct written comments to: Information Policy and Technology Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB Room 10236, Washington, D.C., 20503. E-mail comments may be sent to: huth__v@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: Virginia Huth, Information Policy and Technology Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236 NEOB, Washington, D.C., 20503. Telephone: 202–395–3785. The text of this proposed revision and of the current OMB Circular A–119 are available electronically on the OMB Home page in the documents section at http://www.whitehouse.gov/WH/ EOP/OMB. The current version of A–119 is available in paper format by contacting the OMB Publications Office at (202) 395–7332. To request a fax of the current A–119, call (202) 395–9068.

SUPPLEMENTARY INFORMATION: Section 12(d) of the National Technology Transfer Act of 1995 (P.L. 104–113, or ''the Act'') codified the policies of Circular A–119. Section 12(d)(1) states that ''Except as provided in paragraph (3) of this subsection, all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.''

To carry out this requirement, Section 12(d)(2) states that agencies and departments ''shall consult'' with those bodies and ''shall * * * participate'' with them in developing voluntary consensus standards ''when such participation is in the public interest and is compatible with agency and departmental missions, authorities, priorities, and budget resources.''

Finally, Section 12(d)(3) states that, where it would be ''inconsistent with applicable law or otherwise impractical'' to use standards that those bodies develop or adopt, an agency or department may use other standards; however, the head of the agency or department must send to OMB ''an explanation of the reasons for using such standards.'' The law states that, beginning with fiscal year 1997, OMB will transmit to Congress and its Committees an annual report summarizing all explanations received in the preceding year.

This Circular provides instructions, beginning with FY 97, for agencies to report explanations of instances in which agencies used standards which were not developed by voluntary consensus standards bodies. For FY 96, OMB issued a letter on May 17, 1996, to the heads of departments and agencies notifying them of the Act and of the new reporting requirement. For the period March 13, 1996 (date of enactment of the Act) to September 30, 1996, any explanations that agencies have generated should be transmitted to NIST no later than January 31, 1997, for forwarding to OMB.

The Act's legislative history confirms that Section 12(d) was intended to codify the Circular's policies. See 142 Cong. Rec. H1265 (daily ed. February

27, 1996) (statement of Rep. Morella); 142 Cong. Rec. S1080–81 (daily ed. February 7, 1996) (statement of Sen. Rockefeller); 141 Cong. Rec. H14333–34 (daily ed. December 12, 1995) (statements of Reps. Brown and Morella).

Accordingly, the revisions proposed to the Circular are not intended to change the policy with respect to agencies' use of voluntary consensus standards, but instead are intended to conform the Circular's terminology to the Act and to increase the Circular's clarity and effectiveness.

Summary of Changes

This proposed revision incorporates the following changes:

(1) Section 5 clarifies the definitions for ''agency'' and ''standard.'' The definition for ''adoption'' has been replaced by a definition for ''use.'' The definition for ''voluntary standards'' has been replaced by a definition for ''voluntary consensus standards.'' The definition for ''voluntary standards bodies'' has been replaced with a definition for ''voluntary consensus standards bodies.'' New definitions for ''conformity assessment,'' ''impractical,'' ''performance standard,'' and ''technical standard'' have been added. Finally, terminology throughout the Circular has been modified to reflect these changes.

(2) Section 6a has been revised to state that these policies apply to all policy objectives and activities, including procurement and regulatory activities, to clarify that these policies do not pre-empt or restrict agencies' authorities and responsibilities to regulate, and to clarify that agencies retain discretion to decline to use an existing voluntary consensus standard if the agency determines that such standard is inconsistent with applicable law or otherwise impractical.

(3) Section 6b has been modified to state that agencies are to refrain from actively participating in standards development committees when involvement in such committees does not clearly relate to the mission of the agency and to avoid dominating committee proceedings. Section 7b.6 has been modified to state that agency support for standards development activities is not to be contingent upon the outcome of the standards activity.

(4) Section 6c has been modified to reflect the need for greater coordination among the federal agencies prior to their participation on technical committees. The material in Section 7c, which provides guidance on this subject, was formerly Sections 8b.2(a–e) and 8b.3. Some minor changes were made to ensure consistency in terminology. Section 9c has been added in order to make coordination of standards activities the explicit responsibility of the Standards Executive.

(5) Section 7a.5 has been added to describe one way in which agencies may identify voluntary consensus standards.

(6) Section 8 establishes procedures for reviewing existing voluntary consensus standards when issuing or revising a regulation or initiating a procurement. Such procedures provide for public notice and comment on proposed standards and require agencies to respond to public comment and to explain the final outcome.

(7) Section 10a establishes requirements for reporting on exceptions to the use of voluntary consensus standards, as required by P.L. 104–113. The reporting requirements of Section 10b, although not required by statute, have been retained. The language has been modified to provide for coordination with the reporting requirements in Section 10a.

(8) Section 10 directs the National Institute of Standards and Technology to issue guidance to the agencies in order to promote the coordination of Federal, State, and local standards activities and conformity assessment activities with the private sector, as required by Section 12(b) of P.L. 104–113.

Accordingly, OMB Circular A–119 is proposed to be revised as set forth below.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

To the Heads of Executive Departments and Establishments

Subject: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities

1. *Purpose.* This Circular establishes policy to be followed by agencies in working with voluntary consensus standards bodies and in using voluntary consensus standards, in accordance with Section 12(d) of the National Technology Transfer and Advancement Act (hereinafter cited as P.L. 104–113). It also implements reporting requirements for the use of voluntary consensus standards and addresses the role of the National Institute for Standards and Technology (NIST) in coordinating conformity assessment activities.

2. *Rescissions.* This Circular supersedes OMB Circular No. A–119, dated October 20, 1993, which is rescinded.

3. *Background.* Many standards that are developed by voluntary consensus standards bodies are appropriate or adaptable for the Government's purposes. The adoption of such standards, whenever practicable and appropriate, eliminates the cost to the Government of developing its own standards. At the same time, Government participation in standards-related activities provides incentives and opportunities to establish standards that serve national needs. Moreover, harmonization of standards promotes efficiency and economic competition, thus encouraging long-term growth for U.S. enterprises. Adoption of standards developed by voluntary consensus standards bodies also furthers the policy of reliance upon the private sector to supply Government needs for goods and services, as stated in OMB Circular No. A–76, ''Performance of Commercial Activities.''

4. *Applicability.* This Circular applies to all agency participation in voluntary consensus standards activities, domestic and international, but not to activities carried out pursuant to treaties and international standardization agreements.

5. *Definitions.* As used in this Circular:

a. *Agency* means any executive department, independent commission, board, bureau, office, agency, Government-owned or controlled corporation or other establishment of the Federal Government, including any regulatory commission or board, except for independent regulatory commissions insofar as they are subject to separate statutory requirements regarding the use of voluntary consensus standards. It does not include the legislative or judicial branches of the Federal Government.

b. *Conformity assessment* means any procedures used directly or indirectly to determine if relevant requirements in technical regulations or standards are fulfilled. The activities which are commonly termed ''conformity assessment'' include product testing, inspection and/or certification, including self-certification; accreditation of testing and calibration laboratories; and management system registration (for both quality and environment). Conformity assessment procedures include: sampling, testing and inspection, evaluation, verification and assurance of conformity, laboratory accreditation (for both testing and calibration), registration accreditation, and approval.

c. *Impractical,* with respect to an agency's decision not to use an existing voluntary consensus standard, includes circumstances in which such use would demonstrably fail to serve the agency's program needs; would be infeasible; would be unnecessarily duplicative, inadequate, inefficient, or inconsistent with agency mission; or would impose more burdens, or would be less useful, than the use of another standard.

d. *Performance standard* means a standard that states requirements in terms of required results with criteria for verifying compliance but without stating the methods for achieving required results. A performance standard defines the functional requirements for the item, the environment in which it must operate, and interface and interchangeability characteristics, while a design standard specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed. ''Performance standard'' is a subset of ''standard'' as defined in section 5f. of this Circular.

e. *Secretary* means the Secretary of Commerce or that Secretary's designee.

f. *Standard* (or ''technical standard,'' as found in P.L. 104–113), as used in this Circular, means: (1) Common and repeated use of rules, conditions, guidelines or characteristics for products or related processes and production methods; (2) the definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, designs, or operations; measurement of quality and quantity in describing materials, products, systems, services, or practices; or descriptions of fit and measurements of size; (3) ''performance standard'' as defined above; or (4) ''non-government standard'', which is defined as a standardization document developed by a private sector association, organization or technical society which plans, develops, establishes or coordinates standards, specifications, handbooks, or related documents. The term does not include professional standards of personal conduct, institutional codes of ethics, or standards issued by individual companies. It also does not include standards created under other legal authority, such as those contained in the United States Pharmacopeia and the National Formulary, as referenced in 21 U.S.C. 351. A ''Standard'' may also be a ''voluntary consensus standard,'' as defined below, or it may be what are commonly referred to as ''industry standards'' or ''de facto standards,'' which are developed by industry associations which do not always adhere to the full consensus process.

g. *Technical Standard,* as used in this Circular, is synonymous with ''standard.'' Examples of technical standards include, but are not limited to, size and strength specifications; technical performance criteria for a product, process, or material; test methods; procurement guidelines; sampling procedures; business practices; management systems; definitional standards; and installation safety codes.

h. *Use* means (i) use of the latest edition of a standard in whole, in part, or by reference for procurement purposes, and (ii) the inclusion of the latest edition of a standard in whole, in part, or by reference in regulation(s).

i. *Voluntary consensus* standards are standards developed or used by voluntary consensus standards bodies, both domestic and international, and which are made available in a manner which includes provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties. A ''Voluntary consensus standard'' may also be known in common usage as a ''voluntary standard,'' a ''consensus standard,'' or a ''consensus technical standard.''

j. *Voluntary consensus standards bodies* are domestic or international organizations which plan, develop, establish, or coordinate voluntary standards using agreed-upon procedures. For purposes of this Circular, ''voluntary, private sector, consensus standards bodies,'' as cited in P.L. 104–113, is an equivalent term. These bodies may include nonprofit organizations, industry associations, accredited standards developers, professional and technical societies, institutes, committees, task forces, or working groups. P.L. 104–113 and this Circular encourage the participation of government representatives in these bodies to increase the likelihood that the standards they develop will meet both public and private sector needs. A voluntary consensus standards body observes principles such as openness, balance of interest, and due process. Further, voluntary consensus standards bodies operate by consensus, which is defined as general agreement, characterized by the absence of sustained opposition to substantial issues by any important part of the concerned interests. Consensus requires that all views and objections be considered and that an effort be made toward their resolution.

6. *Use and Development of Voluntary Consensus Standards.* a. Agencies shall use existing voluntary consensus standards, both domestic and international, in their regulatory and procurement activities as a means of carrying out policy objectives or activities determined by the agencies, unless use of such standards would be inconsistent with applicable law or otherwise impractical. Agencies shall use such voluntary consensus standards for test methods, procurement guidelines, management systems, sampling procedures, or protocols to determine whether established regulatory limits or targets have been met. This requirement does not preempt or restrict agencies' authorities and responsibilities to make regulatory decisions authorized by statute. Such regulatory authorities and responsibilities include determining the level of acceptable risk; setting the level of protection; and balancing risk, cost, and availability of technology in establishing regulatory standards. Agencies retain discretion to decline to use existing voluntary consensus standards if the agency determines that such standards are inconsistent with applicable law or otherwise impractical.

b. Agencies shall consult with voluntary consensus standards bodies and shall participate with such bodies in their development and adoption of voluntary consensus standards when, in the determination of the agencies, participation is in the public interest and is compatible with their missions, authorities, priorities, and budget resources. Agency representatives shall refrain from actively participating in voluntary consensus standards bodies or their committees when involvement does not relate to the mission of the agency. In all cases, agency representatives shall ensure that the agency's influence does not dominate proceedings.

c. Agencies shall coordinate their participation in voluntary consensus standards bodies so that: (1) The most effective use is made of agency resources and representatives; (2) the views expressed by such representatives are in the public interest and, at a minimum, do not conflict with the interests and established views of the agencies; (3) the positions among agencies serving on the same technical committees are consistent with administration policy; and (4) agency technical and policy positions are clearly defined and known in advance to all federal participants on a given committee.

7. *Guidelines.* In implementing the policy established by this Circular,

agencies should recognize the positive contribution of standards development and related activities. When properly conducted, standards development can increase productivity and efficiency in Government and industry, expand opportunities for international trade, conserve resources, improve health and safety, and protect the environment. It also must be recognized, however, that these activities, if improperly conducted, can suppress free and fair competition; impede innovation and technical progress; exclude safer and less expensive products; or otherwise adversely affect trade, commerce, health, or safety. Full account in carrying out this policy shall be taken of the impact on the economy, applicable Federal laws, policies, and national objectives, including, for example, laws and regulations relating to antitrust, national security, small business, product safety, environment, metrication, technological development, and conflicts of interest. The following guidelines are provided to assist and govern the agencies' use of, and participation in the development and adoption of, voluntary consensus standards.

a. *Use of Voluntary Consensus Standards.* (1) In the interests of promoting trade and implementing the provisions of the Agreement on Technical Barriers to Trade and the Agreement on Government Procurement (commonly referred to as the Technical Barriers to Trade (TBT) Agreement and the ''Procurement Code,'' respectively) of the World Trade Organization, international standards (standards developed and/or adopted by international voluntary consensus standards bodies) should be considered in procurement and regulatory applications.

(2) In using voluntary consensus standards, preference should be given to standards based on performance criteria when such criteria may reasonably be used in lieu of design, material, or construction criteria.

(3) Voluntary consensus standards used by agencies should be referenced, along with their dates of issuance and sources of availability, in appropriate publications, regulatory orders, and related in-house documents. Such use should take into account the rights of copyright holders and other similar obligations.

(4) Agencies should not be inhibited from developing and using government standards in the event that voluntary consensus standards bodies cannot or do not develop a needed, acceptable standard in a timely fashion. Nor should this Circular be construed as committing any agency to the use of a voluntary consensus standard which, after due consideration, is determined by the agency to be inconsistent with applicable law or otherwise impractical.

(5) Voluntary consensus standards may be identified through databases of standards maintained by the National Institute of Standards and Technology (NIST) or by voluntary consensus standards bodies.

b. *Participation in Voluntary Consensus Standards Bodies.* (1) Participation by knowledgeable agency employees in the standards activities of voluntary consensus standards bodies, both domestic and international, should be actively encouraged and promoted by agency officials when consistent with P.L. 104–113 and this Circular.

(2) Agency employees who participate in standards activities of voluntary consensus standards bodies shall do so as specifically authorized agency representatives. Agency representatives shall refrain from actively participating in standards development committees when involvement in such committees does not relate to the mission of the agency. Agency participation in voluntary consensus standards bodies does not necessarily connote agency agreement with, or endorsement of, decisions reached by such organizations.

(3) Agency representatives shall participate in such bodies' development of voluntary consensus standards that:

(i) Will eliminate the necessity for development or maintenance of separate Government standards; and

(ii) Will further such national goals and objectives as increased use of the metric system of measurement; environmentally sound and energy efficient materials, products, systems, services, or practices; and public health and safety.

(4) Agency representatives serving as members of voluntary consensus standards bodies should participate actively and on an equal basis with other members. In doing so, agency representatives should not seek to dominate such groups. Active participation includes full involvement in discussions and technical debates, registering of opinions and, if selected, serving as chairpersons or in other official capacities. Agency representatives may vote, in accordance with the procedures of the voluntary consensus standards body, at each stage of standards development unless prohibited from doing so by law or their agencies.

(5) The number of individual agency participants in a given voluntary standards activity should be kept to the minimum required for effective presentation of the various program, technical, or other concerns of Federal agencies.

(6) Agency support provided to a voluntary consensus standards activity shall be limited to that which is clearly in furtherance of an agency's mission and responsibility. Agency support shall not be contingent upon the outcome of the standards activity. Normally, the total amount of Federal support should be no greater than that of all other participants in that activity, except when it is in the direct and predominant interest of the Government to develop or revise a standard and its development or revision appears unlikely in the absence of such support. The form of agency support, subject to legal and budgetary authority, and availability of funds, may include:

(i) Direct financial support; e.g., grants, sustaining memberships, and contracts;

(ii) Administrative support; e.g., travel costs, hosting of meetings, and secretarial functions;

(iii) Technical support; e.g., cooperative testing for standards evaluation and participation of agency personnel in the activities of voluntary consensus standards bodies;

(iv) Joint planning with voluntary consensus standards bodies to facilitate a coordinated effort in identifying and developing needed standards; and

(v) Participation of agency personnel.

(7) Participation by agency representatives in the policy-making processes of voluntary consensus standards bodies, in accordance with the procedures of those bodies, is encouraged—particularly in matters such as establishing priorities, developing procedures for preparing, reviewing, and approving standards, and developing or adopting new standards. In order to maintain the independence of such organizations, however, agency representatives should refrain from involvement in the internal management of such organizations (e.g., selection of salaried officers and employees, establishment of staff salaries and administrative policies).

(8) This Circular does not provide guidance concerning the internal operating procedures that may be applicable to voluntary consensus standards bodies because of their relationships to agencies under this Circular. Agencies should, however, carefully consider what laws or rules may apply in a particular instance because of these relationships. For example, these relationships may involve the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), or a

provision of an authorizing statute for a particular agency.

c. *Coordination of participation in voluntary consensus standards bodies and standards activities.* Agency Standards Executives, designated under section 9c., shall coordinate agency participation in voluntary consensus standards bodies. This coordination shall include, but need not be limited to:

(1) Establishing procedures to ensure that agency representatives participating in voluntary consensus standards bodies will, to the extent possible, ascertain the views of the agency on matters of paramount interest and will, at a minimum, express views that are not inconsistent or in conflict with established agency views; and will, to the extent possible, ensure that the agency's participation in voluntary consensus standards bodies is consistent with agency missions.

(2) Ensuring, when two or more agencies participate in a given voluntary consensus standards body, that they coordinate their views on matters of paramount importance so as to present, whenever feasible, a single, unified position and, where not feasible, a mutual recognition of differences;

(3) Cooperating with the Secretary in carrying out his/her responsibilities under this Circular;

(4) Consulting with the Secretary, as necessary, in the development and issuance of internal agency procedures and guidance implementing this Circular, including the development and harmonized implementation of an agency-wide directory identifying agency employees participating in standards developing groups;

(5) Submitting, as described in section 10, in response to the request of the Secretary, a report on exceptions to the use of existing voluntary consensus standards and a report on the status of agency standards policy activities; and

(6) Reviewing their existing standards within five years of issuance of this Circular, and at least once every five years thereafter, and replacing through applicable procedures those for which an adequate and appropriate voluntary consensus standard can be substituted.

8. *Procedures.* a. When issuing or revising a regulation, agencies shall review for use existing voluntary consensus standards. Such review shall include:

(1) A request for comment within the preamble of a Notice of Proposed Rulemaking (NPRM). Such request shall provide:

(i) When an existing voluntary consensus standard is being proposed for use, a statement which identifies such standard, as well as the identity of any alternative voluntary consensus standards which may have been identified and/or considered, and an explanation of why the proposed standard should be used;

(ii) When the agency has determined to not propose for use an existing voluntary consensus standard, a statement which identifies such standard, provides a preliminary explanation for why such standard would not be used, and invites the public to comment and to explain why such standard or an alternative voluntary consensus standard should be used; or

(iii) When no existing voluntary consensus standard has been identified, a statement which invites the public to identify such voluntary consensus standards and to explain why such standard should be used; and

(2) A discussion in the preamble of a Final Rulemaking that restates the discussion in the proposed rule, acknowledges and summarizes any comments received and responds to them, and explains the agency's final decision. The final rule shall provide:

(i) When an existing voluntary consensus standard is being used, a statement that identifies such standard and any alternative voluntary consensus standards which have been identified;

(ii) When an existing voluntary consensus standard is not being used, a statement that identifies such standard and explains why such use would be inconsistent with applicable law or otherwise impractical; or

(iii) When no existing voluntary consensus standard has been identified, a statement to that effect.

(b) When initiating a procurement, agencies shall consider using existing voluntary consensus standards. (1) Where the solicitation is for products that incorporate government-unique standards, the solicitation shall include a statement which identifies the standards to be used and provides offerors an opportunity to suggest alternatives in the nature of existing voluntary consensus standards that meet the government's requirements. Where such suggestions are made and do not result in a replacement of government-unique standards by existing voluntary consensus standards, the agency shall explain why such use is inconsistent with law or otherwise impractical.

(2) Where the solicitation is for commercial, off-the-shelf products, or for products that rely on existing voluntary consensus standards, or for products that do not rely on government-unique standards, the requirement in subsection (1) above shall not apply.

9. *Responsibilities.* a. The Secretary shall:

(1) Coordinate and foster executive branch implementation of this Circular and may provide administrative guidance to assist agencies in implementing this Circular;

(2) Continue the Interagency Committee on Standards Policy (ICSP), chaired by the National Institute of Standards and Technology (NIST), in order to consider their views and to advise the Secretary and agency heads in the Circular;

(3) As described in section 10, report to the Office of Management and Budget (OMB), with the assistance of NIST, concerning implementation of the policy provisions of this Circular; and

(4) Establish procedures for agencies to use when developing directories described in paragraph 7c(4) and establish procedures to make these directories available to the public.

b. Heads of Agencies shall:

(1) Implement section 6 of this Circular in accordance with the guidelines in section 7 and the procedures in section 8;

(2) In the case of an agency with significant interest in the use of standards, designate a senior level official as the Standards Executive who shall be responsible for agency-wide implementation of this Circular and who shall represent the agency on the ICSP.

c. The Standards Executive's responsibilities shall include, but not be limited to, those described in section 7c.

10. *Reporting Requirements.* a. *Agency Reports on exceptions to use of existing voluntary consensus standards.* As required by P.L. 104–113, beginning for fiscal year 1997 and every fiscal year thereafter, agencies shall report to OMB, through NIST, no later than December 31 of the following fiscal year, any decisions by the agency during that fiscal year to use a government-unique standard in lieu of an existing voluntary consensus standard, along with an explanation of the reason(s) why use of such standard would be inconsistent with applicable law or otherwise impractical, as described in sections 8a.(2)(ii) and 8b.(1) of this Circular.

b. *Agency Reports on Standards Policy Activities.* To assist OMB in its reporting to Congress, beginning for fiscal year 1996 and every fiscal year thereafter, agencies shall submit information to OMB, through NIST, on the status of agency interaction with voluntary consensus standards bodies, no later than December 31 of the following fiscal year. Such reporting

shall include the nature and extent of agency participation in the development and use of voluntary consensus standards, including:

(1) The number of voluntary consensus standards bodies in which there is agency participation;

(2) The number of voluntary consensus standards the agency has used since the last report which have come about as a result of the requirements set forth in sections 8a. and 8b. of this Circular;

(3) Identification of voluntary consensus standards that have been substituted for other standards as a result of an agency review under paragraph 7c(6) of this Circular;

(4) An evaluation of the effectiveness of the guidelines in section 7 and recommendations for any changes; and

c. No later than January 31 of the following fiscal year, NIST shall transmit to OMB such explanations as are received under section 10a. and a summary report of the information received under section 10b.

10. *Conformity Assessment.* Section 12(b) of P.L. 104–113 requires NIST to coordinate Federal, State, and local standards activities and conformity assessment activities with private sector standards activities and conformity assessment activities, with the goal of eliminating unnecessary duplication and complexity in the development and promulgation of conformity assessment requirements and measures. To ensure effective coordination, NIST shall issue guidance to the agencies.

11. *Policy Review.* This Circular shall be reviewed for effectiveness by the OMB three years from the date of issuance.

12. *Inquiries.* For information concerning this Circular, contact the Office of Management and Budget, Office of Information and Regulatory Affairs: Telephone 202/395–3785.

[FR Doc. 96–32917 Filed 12–26–96; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Request For Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549.

Extension:

Reproposed Rule 13h–1; SEC File No. 270–358; OMB Control No. 3235–0408.

Rule 19d–2; SEC File No. 270–204; OMB Control No. 3235–0205.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is publishing the following summary of collections for public comment.

Reporposed Rule 13h–1 was proposed pursuant to Sections 13 of the Securities Exchange Act of 1934 (the ''Act'').[1] Rule 13h–1 will enable the Commission to gather timely large trader information in the form necessary for the reconstruction of trading activity in periods of market stress and for surveillance, enforcement, and other regulatory purposes. Without this information, the Commission would not be able to perform the reconstructions of trading activity necessary for evaluating periods of markets stress and other regulatory purposes.

The staff estimates that there are 630 broker-dealers that will be subject to the recordkeeping and reporting requirements of the reproposed rule. In addition, the staff estimates, based upon analysis of previous requests for similar information, that 750 investors will be large traders subject to the identification requirements of the reproposed rule. Therefore, the Staff estimates that there will be (630+750=1,380) 1,380 respondents under the reproposed rule.

Precise cost estimates are impossible to calculate because the commentators on the original proposal did not provide specific details on costs. Nevertheless, the staff estimates that annually the 1,380 respondents will require approximately 11,444 hours to comply with the reproposed rule. Further, the staff estimates that, on average, each response hour will cost approximately $12.00, and therefore the total annual cost of complying with the rule will be approximately $137,328.

Rule 19d–2 under the Act prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency.

It is estimated that approximately 30 respondents will utilize this application procedure annually, with a total burden of 90 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–2 is 3 hours. The average cost per hour is approximately $30. Therefore, the total cost of compliance for the respondents is $2,700.

Written comments are invited on: (a) whether the proposed collection information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Officer of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: December 19, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–32955 Filed 12–26–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Section 13 of the Act was amended by the addition of Subsection (h) (15 U.S.C. § 78m(h) (1990)) when Section 3 of the Market Reform Act of 1990 (Pub. L. No. 101–432, 104 Stat. 963 (1990)) was enacted.

[Investment Company Act Release No. 22411; 812–10242]

Harris Trust & Savings Bank, et al.; Notice of Application

December 19, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Harris Trust & Savings Bank (''Harris Bank''), Harris Bankcorp, Inc. (''Harris Bankcorp''), Bank of Montreal, Harris Insight Funds Trust (the ''Harris Funds''), HT Insight Funds, Inc. (the ''HT Funds'' and, collectively with the Harris Funds, the ''Funds''), and the Harris Trust & Savings Bank Trust for Collective Investment of Employee Benefit Accounts (the ''CIF'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit the CIF to transfer securities to certain portfolios of the Funds in exchange for portfolio shares.

FILING DATES: The application was filed on July 10, 1996 and amended on December 4, 1996 and December 17, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 13, 1997 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Harris Trust & Savings Bank and Harris Bankcorp, 111 West Monroe Street, Chicago, Illinois 60603; Bank of Montreal, First Canadian Place, 100 King Street West, First Bank Tower, Toronto, Canada MSX1A1; and Harris Insight Funds Trust and HT Insight Funds, Inc., One Exchange Place, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Elizabeth G. Osterman, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Harris Bank is an Illinois state-chartered bank and a member bank of the Federal Reserve System. Harris Bank is a wholly-owned subsidiary of Harris Bankcorp, a bank holding company. Harris Bankcorp is a wholly-owned subsidiary of Harris Bankcorp, a bank holding company. Harris Bankcorp is a wholly owned subsidiary of Bankmont Financial Corp., which is a wholly owned subsidiary of Bank of Montreal, a publicly traded Canadian banking institution. Harris Bank serves as trustee, investment manager, and/or custodian for numerous employee benefit plans qualified under section 401 of the Internal Revenue Code and certain governmental plans. The assets of some of these employee benefit plans are invested in the CIF, a collective investment fund sponsored by Harris Bank and for which Harris Bank acts as trustee.

2. The CIF includes assets of retirement benefit plans for the benefit of employees of entities unaffiliated with Harris Bank (''Other Plans'') as well as assets of retirement plans for the benefit of employees of Harris Bank and its affiliates (''Affiliated Plans'') (Other Plans and Affiliated Plans collectively referred to as ''Plans''). Plan assets in the CIF are invested in one or more investment funds (''CIF Portfolios'') with varying investment objectives.

3. HT Funds is a Maryland corporation registered under the Act as an open-end management investment company. Harris Funds is a Massachusetts business trust registered under the Act as an open-end management investment company. Shares of the Funds are divided into portfolios (the ''Portfolios''). Harris Bank serves as the investment adviser to the Portfolios.

4. Harris Bank has sold the portion of its investment management business that consists of managing the assets of defined benefit pension plans of large corporations. Because Harris Bank is leaving the large corporation pension business, certain of the CIF Portfolios will no longer be needed to manage large company pension plan assets. Harris Bank is terminating five of the CIF Portfolios and intends to transfer in-kind the assets of those five CIF Portfolios and Affiliated Plan assets of four additional CIF Portfolios to corresponding Portfolios with substantially similar investment objectives in exchange for shares of that Portfolio (the ''Proposed Transactions''). Harris Bank may decide at a later date to terminate additional CIF Portfolios.

5. Affiliated Plan assets of the CIF will be transferred as follows: the Investment Reserve Fund into the Harris Insight Money Market Fund; the Marketable Bond Fund into the Harris Insight Bond Fund; the Government Agency Intermediate Fund into the Harris Insight Intermediate Government Bond Fund; the Convertible Fund into the Harris Insight Convertible Securities Fund; the Common Stock Fund into the Harris Insight Equity Fund; The Index Fund into the Harris Insight Index Fund; the International Equity Fund into the Harris insight International Fund; the Balanced Fund into the Harris Insight Balanced Fund; and the Special Capital Fund into the Harris Insight Value Equity Fund.

6. The assets of the CIF representing Other Plans may be converted into Funds in accordance with a series of non-action letters in which the SEC staff has permitted similar conversions of collective trust funds into mutual funds.[1] The Affiliated Plans are unable to rely on the no-action letters, however, because such relief has been conditioned on affiliated persons, or affiliated persons of affiliated persons, of the registered investment company into which assets will be transferred having no beneficial interest in the Proposed Transactions. Applicants are requesting exemptive relief for the transfer of CIF assets into the Funds only on behalf of the Affiliated Plans owning five percent or more of the assets of the CIF.[2] Applicants also request relief for any registered open-end management investment company that may be advised by Harris Bank or any entity controlling, controlled by, or under common control with Harris Bank, and any other collective investment funds that may be sponsored by Harris Bank which Harris Bank in the future may decide to convert into registered, open-end investment companies, and in which, at that time, Affiliated Plans have invested assets.

7. Applicants will institute the following procedure to ensure the protection of Plan participants in the Proposed Transactions. Each Affiliated Plan will have an employee benefit review committee (the ''Committee'') that serves as fiduciary for that Plan. The Proposed Transactions will be subject to the prior authorization of a fiduciary which will be independent of Harris Bank, Harris Bankcorp, Bank of Montreal, and their affiliates. The independent fiduciary will be subject, as will the Committee, to fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 (''ERISA''). Such independent fiduciary will be retained solely for the purpose of determining the fairness to the Affiliated Plans of the Proposed Transactions. Under section 404(a) of ERISA, such fiduciaries must ensure that the investment of the Affiliated Plans' assets is prudent and operates exclusively for the benefit of participating employees of Harris Bank and its affiliates and of their beneficiaries.

8. Before transferring the Affiliated Plans' CIF assets to the Portfolios, Harris

[1] *See, e.g.,* The DFA Investment Trust Company (pub. avail. Oct. 17, 1995); Federated Investors (pub. avail. Apr. 21, 1994); and Lincoln National Investment Management Company (pub. avail. Apr. 25, 1976).

[2] *See* Letter to Stradley Ronon Stevens & Young (pub. avail. Mar. 21, 1996) (clarifying the staff's position that a less than five percent beneficial interest in a collective trust fund conversion by an affiliated person of a fund, or an affiliated person of such affiliated person, is not, in and of itself, a disqualifying affiliation for purposes of rule 17a–7).

Bank will seek and obtain the approval of the Committee and each Affiliated Plan's independent fiduciary. Harris Bank will provide the Committee and the independent fiduciaries with a current prospectus for the relevant Portfolios and a written statement giving full disclosure of the fees to be received by Harris Bank and/or its affiliates and the terms of the Proposed Transactions. The disclosure will explain why Harris Bank believes that the investment of assets of the Affiliated Plans in the Portfolios is appropriate.

9. On the basis of such information, the Committee and the Independent fiduciary will decide whether to authorize Harris Bank to invest the relevant Affiliated Plan's CIF assets in the Fund and to receive fees from the Fund. Harris Bank does not charge Plan level fees to Affiliated Plans; it does charge Plan level fees to Other Plans. Harris Bank will rebate to each Other Plan its proportionate share of all advisory fees payable to Harris Bank by the Funds and it may do so as well for the Affiliated Plans.

10. Plans that are invested in the terminating CIFs and whose independent fiduciaries do not consent to the conversion will be redeemed out of the CIF in accordance with the terms of the CIF prior to the conversion. All of the assets of the CIFs representing the interests of the consenting Plans will be converted in a single transaction on the same day.

11. As of the date of the Transfer, Harris Bank, on behalf of the terminating CIF Portfolios, will deliver to the corresponding Portfolio securities equal in value to the aggregate interest of each participating Plan in exchange for Fund shares with a total net asset value equal to the market value of the transferred assets as of the date of the transfer. The Fund shares received by the CIF then will be distributed, *pro rata*, to all Plans whose interests were converted as of the date. If any assets of a CIF Portfolio are not appropriate for its corresponding Fund Portfolio, Harris Bank intends to sell such assets in the open market through an unaffiliated brokerage firm prior to the transfer.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security of other property. Section 2(a)(3) of the Act, in relevant part, defines ''affiliated person'' to include: (a) Any person directly or indirectly owning, controlling, or holding with the power to vote, five percent or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and (c) if such other person is an investment company, any investment adviser thereof.

2. Section 6(c) provides that the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transactions are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act.

4. Because the CIF may be viewed as acting as principal in the Proposed Transactions and because the CIF and the Funds may be viewed as being under the common control of Harris Bank within the meaning of section 2(a)(3)(C) of the Act, the Proposed Transactions may be subject to the prohibitions contained in section 17(a).

5. Applicants request an order under sections 6(c) and 17(b) granting an exemption from section 17(a), to the extent necessary to effect the Proposed Transactions.[3] Applicants submit that the terms of the Proposed Transactions satisfy the standards for an exemption set forth in sections 6(c) and 17(b).

6. Applicants believe that the terms of the transfers of CIF assets to the Funds are reasonable and fair to the Affiliated Plans, to the Other Plans invested in the CIF, and to existing and prospective shareholders of the Funds, and do not involve overreaching on the part of any applicant. The Proposed Transactions will comply with rule 17a–7 and conditions under the Act, and also will comply with the policy behind the conditions of rule 17a–8 under the Act. Applicants assert that the fact that the Proposed Transactions are designed as in-kind transfers does not negatively affect their fairness. Indeed, if the Proposed Transactions were effected in cash, the Plans would have to sell their securities, thereby incurring brokerage commissions or the adverse effects of mark-downs. Moreover, the Fund would purchase similar securities in the market, causing a second round of brokerage commissions and the adverse effects or mark-ups. In addition, because time could elapse between the sale of Plan securities and the repurchase of similar securities, no assurance could be given that the Funds would be able to purchase those securities at the price for which Plan securities had been sold. In contrast, applicants believe that the Proposed Transactions would not expose the Plans' assets to transaction costs or timing risk.

7. Applicants contend that the requested exemptive relief also would be consistent with the purposes intended by the policies and provisions of the Act. Applicants believe that the Proposed Transactions do not give rise to the abuses that section 17(a) was designed to prevent. A primary purpose underlying section 17(a) is a prevent a person with a pecuniary interest in a transaction from using his or her position with a registered investment company to benefit himself or herself to the detriment of the company's shareholders. After the Proposed Transactions, each Affiliated Plan will be a shareholder in a Portfolio with substantially similar investment objectives to the CIF Portfolio from which their assets were transferred. In this sense, applicants believe that the Proposed Transactions can be viewed as a change in the form in which assets are held, rather than as a disposition giving rise to section 17(a) concerns. Moreover, any transfer will be subject to extensive review and evaluation by independent fiduciaries whose actions are governed by ERISA and by the disinterested members of the board of directors (trustees) of the Funds.

8. Applicants submit that the Proposed Transactions meet the section 6(c) standards for relief as necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Harris Bank believes that the Funds may offer the Plans advantages over the CIFs as pooled investment vehicles. Sponsors of and participants in the Plans will be able to monitor more easily the performance of their investments on a daily basis, since information concerning the investment performance of the Portfolios will be available in daily newspapers of general circulation. Additionally, the mutual

[3] Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. *See* Keystone Custodian Funds, 21 S.E.C. 295, 298–99 (1945). Section 6(c), along with section 17(b), frequently is used to grant relief from section 17(a) to permit an ongoing series of future transactions.

fund vehicle will afford Harris Bank a better opportunity to market its investment management services and, assuming those marketing efforts result in greater assets under management, will allow for economies of scale, greater diversification and risk spreading. Also, Plan participants will have the benefit of the heightened disclosure applicable to mutual funds under the federal securities laws and the Plans, as shareholders, of a Fund, will have the opportunity to exercise voting and other shareholder rights. Further, shares of the Funds issued as part of the Proposed Transactions will be issued at prices equal to their net asset values. In addition, the assets of the Affiliated Plans will be valued pursuant to objective standards and are the type that the Portfolios otherwise would purchase through market transactions. Moreover, the Proposed Transactions are subject to independent fiduciary approval. Applicants contend, therefore, that the transfers will afford no opportunity for affiliated persons of the Funds to effect a transaction detrimental to the other shareholders of the Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The Proposed Transactions will comply with the terms of rule 17a–7(b)–(f).

2. The Proposed Transactions will not occur unless and until: (a) the boards of directors (trustees) of the Funds (including a majority of their disinterested members) and the Committee and the Affiliated Plans' independent fiduciaries find that the Proposed Transactions are in the best interests of the Funds and the Affiliated Plans, respectively; and (b) the boards of directors (trustees) of the Funds (including a majority of their disinterested members) find that the interests of the existing shareholders of the Funds will not be diluted as a result of the Proposed Transactions. These determinations and the basis upon which they are made will be recorded fully in the records of the Funds and the Plans, respectively.

3. In order to comply with the policies underlying rule 17a–8, any conversion will have to be approved by the Funds' board of directors (trustees) and any Affiliated Plan's independent fiduciaries who would be required to find that the interests of beneficial owners would not be diluted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–32957 Filed 12–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22410; 811–3663]

PaineWebber/Kidder, Peabody Government Money Fund, Inc.; Notice of Application

December 19, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: PaineWebber/Kidder, Peabody Government Money 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 November 6, 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 13, 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. Applicant, c/o Dianne E. O'Donnell, Legal Department, Mitchell Hutchins Asset Management Inc., 1285 Avenue of the Americas, 18th Floor, New York, New York 10019.

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 an open-end, diversified management investment company organized as a corporation under the laws of the State of Maryland. On February 9, 1983, applicant registered under section 8(a) of the Act and filed a registration statement on Form N–1A pursuant to section 8(b) of the Act and the Securities Act of 1933, covering an indefinite number of shares of common stock. The registration statement was declared effective on May 9, 1983, and the initial public offering of common stock commenced thereafter.

2. On July 20, 1995, applicant's Board of Directors approved an Agreement and Plan of Reorganization and Dissolution (''Plan'') between applicant and PaineWebber RMA Money Fund, Inc. on behalf of its series, PaineWebber RMA U.S. Government Portfolio (''PW Fund''), whereby PW Fund was to acquire all the assets of applicant in exchange solely for shares of beneficial interest in PW Fund and the assumption by PW Fund of all of applicant's liabilities. In accordance with rule 17a–8 of the Act, applicant's directors determined that the reorganization was in the best interests of applicant and that the interests of applicant's existing shareholders would not be diluted as a result.[1]

3. According to applicant's proxy statement, the directors considered a number of factors in approving the Plan, including, (a) the similarity of the investment objectives, policies, and restrictions of the funds, (b) the effect of the reorganization on expected investment performance, (c) the effect of the reorganization on the expense ratio of the PW Fund relative to each fund's current expense ratio, and (d) possible alternatives to the reorganization, including continuing to operate on a stand-alone basis or liquidation.

4. Proxy materials relating to the Plan and the transactions contemplated thereby and a combined prospectus relating to the shares of PW Fund to be issued were mailed to applicant's shareholders on or about October 13, 1995. At a special meeting held on November 10, 1995, applicant's shareholders approved the Plan.

5. On November 20, 1995 (the ''Closing Date''), applicant had

[1] Applicant and PW Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and/or common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

236,411,46.15 shares of common stock outstanding, having an aggregate net asset value of $236,258,547.89 and a per share net asset value of $1.00. There were no other classes of securities of applicant outstanding. Pursuant to the Plan, applicant transferred to PW Fund all rights, title, and interest in and to applicant's assets. In exchange therefor, PW Fund assumed all liabilities, debts, obligations, and duties of applicant, and issued to applicant the number of shares of PW Fund determined by dividing the net asset value of a share of applicant by the net asset value of a share of PW Fund, in each case as of the close of regular trading on the New York Stock Exchange, Inc. on the Closing Date.

6. On the Closing Date, applicant liquidated and distributed *pro rata* to its shareholders of record, determined as of the close of business on the Closing Date, the shares of PW Fund received by applicant in the reorganization, in exchange for such shareholders' shares of applicant.

7. The expenses incurred in connection with the reorganization consisted primarily of legal expenses, expenses of printing and mailing communications to shareholders, registration fees, and miscellaneous accounting and administrative expenses. These expenses totalled approximately $225,000 and were borne by applicant and PW Fund in proportion to their respective net assets.

8. As of the date of the application, applicant has no assets, debts or liabilities, and has no securityholders. Applicant is not a party to any litigation or administrative proceedings. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for winding-up of its affairs.

9. On November 20, 1995, applicant filed Articles of Transfer with the Maryland State Department of Assessments and Taxation. Applicant intends to file Articles of Dissolution with the State of Maryland.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–32958 Filed 12–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22409; 811–5168]

PaineWebber/Kidder, Peabody California Tax Exempt Money Fund; Notice of Application

December 19, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: PaineWebber/Kidder, Peabody California Tax Exempt Money 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 November 6, 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 13, 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. Applicant, c/o Dianne E. O'Donnell, Legal Department, Mitchell Hutchins Asset Management Inc., 1285 Avenue of the Americas, 18th Floor, New York, New York 10019.

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 an open-end, non-diversified management investment company organized as a business trust under the laws of the Commonwealth of Massachusetts. On May 18, 1987, applicant registered under section 8(a) of the Act and filed a registration statement on Form N–1A pursuant to section 8(b) of the Act and the Securities Act of 1933, covering an indefinite number of shares of beneficial interest. The registration statement was declared effective on August 4, 1987, and the initial public offering of shares commenced thereafter.

2. On July 20, 1995, applicant's Board of Trustees approved an Agreement and Plan of Reorganization and Termination (''Plan'') between applicant and PaineWebber Managed Municipal Trust on behalf of its series, PaineWebber RMA California Municipal Money Fund (''PW Fund''), whereby PW Fund was to acquire all the assets of applicant in exchange solely for shares of beneficial interest in PW Fund and the assumption by PW Fund of all of applicant's liabilities. In accordance with rule 17a–8 of the Act, applicant's directors determined that the reorganization was in the best interests of applicant and that the interests of applicant's existing shareholders would not be diluted as a result.[1]

3. According to applicant's proxy statement, the trustees considered a number of factors in approving the Plan, including, (a) the compatibility of the investment objectives, policies, and restrictions of the funds, (b) the investment performance of the funds, (c) the effect of the reorganization on expected investment performance, (d) the effect of the reorganization on the expense ratio of the PW Fund relative to each fund's current expense ratio, and (e) possible alternatives to the reorganization, including continuing to operate on a stand-alone basis on liquidation.

4. Proxy materials relating to the Plan and the transactions contemplated thereby and a combined prospectus relating to the shares of PW Fund to be issued were mailed to applicant's shareholders on or about November 2, 1995. At a special meeting held on December 4, 1995, applicant's shareholders approved the Plan.

5. On December 11, 1995 (the ''Closing Date''), applicant had 120,122,110.24 shares of beneficial interest, par value $.001 per share of applicant outstanding, having an

[1] Applicant and PW Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and/or common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

aggregate net asset value of $120,039,529.79 and a per share net asset value of $1.00. Pursuant to the Plan, applicant transferred to PW Fund all rights, title, and interest in and to applicant's assets. In exchange therefor, PW Fund assumed all liabilities, debts, obligations, and duties of applicant, and issued to applicant the number of shares of PW Fund determined by dividing the net asset value of a share of applicant by the net asset value of a share of PW Fund, in each case as of the close of regular trading on the New York Stock Exchange, Inc. on the Closing Date.

6. On the Closing Date, applicant liquidated and distributed *pro rata* to its shareholders of record, determined as of the close of business on the Closing Date, the shares of PW Fund received by applicant in the reorganization, in exchange for such shareholders' shares of applicant.

7. The expenses incurred in connection with the reorganization consisted primarily of legal expenses, expenses of printing and mailing communications to shareholders, registration fees, and miscellaneous accounting and administrative expenses. These expenses totalled approximately $150,000 and were borne by applicant and PW Fund in proportion to their respective net assets.

8. As of the date of the application, applicant has no assets, debts or liabilities, and has no securityholders. Applicant is not a party to any litigation or administrative proceedings. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for winding-up of its affairs.

9. Applicant intends to file appropriate documentation to terminate its existence in Massachusetts, as required by Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–32959 Filed 12–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38066; File No. SR–MSRB–96–12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Approval of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to the Permanent Operation of the Continuing Disclosure Information System of the Municipal Securities Information Library System

December 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 28, 1996, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–96–12). The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments of the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed rule change for upgrading its interim Continuing Disclosure Information (''CDI'') System of the Municipal Securities Information Library® (''MSIL®'') system to CDINet, the Board's proposed permanent system for processing and disseminating continuing disclosure information and notices of material events.[1] The changes are as follows:

1. The current limit of 10 pages per document for fax and paper submissions will be changed to 25 pages. For documents exceeding 25 pages, the first 25 pages will be transmitted, with the full text made available to subscribers by mail, upon request. The capacity of the system to transmit documents will also be increased.

2. CDINet will replace the interim CDI System's modem submission system with a secure Web page on the Internet that may be used by submitters of disclosure documents.

3. The annual subscription price for CDINet will be increased to $23,000.

[1] The Municipal Securities Information Library and MSIL are registered trademarks of the Board. The MSIL® system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991), is a central facility through which information about municipal securities is collected, stored and disseminated.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The tests of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 6, 1992, the Securities and Exchange Commission (''Commission'' or ''SEC'') approved the CDI Pilot system for an 18-month period.[2] The CDI System began operating on January 23, 1993, and functions as part of the Board's MSIL® system. The CDI System accepts and electronically disseminates voluntary submissions of official disclosure notices relating to outstanding issues of municipal securities, *i.e.*, continuing disclosure information. During its first phase of operation, the System accepted disclosure notices only from trustees. On May 17, 1993, the System also began accepting disclosure notices from issuers.[3]

On November 10, 1994, the Commission approved an amendment to its Rule 15c2–12 which prohibits dealers from underwriting issues of municipal securities unless the issuer commits, among other things, to provide material events notices to the Board's CDI System or to all Nationally Recognized Municipal Securities Information Repositories (''NRMSIRs'') and to the applicable state information depository.[4] In addition, the rule prohibits dealers from recommending municipal securities without having a system in place to receive material events notices. To conform to the new Commission requirements, the Board revised the CDI System and implemented an interim System

[2] Securities Exchange Act Rel. No. 30556 (April 6, 1992). A complete description of the CDI System is contained in File No. SR–MSRB–90–4, Amendment No. 1.

[3] On May 17, 1993, the Board reported to the Commission on the initial phase of operation of the CDI System regarding technical, policy and cost issues and proposed enhancements to the System.

[4] Securities Exchange Act Rel. No. 34961 (Nov. 10, 1994).

designed to accept material event notices while a larger permanent system was being designed.[5] The interim System increased the capacity of the system to enable it to process 200 documents per day and increased the page limit per document from three to 10. The Commission has approved operation of the interim System through December 31, 1996.[6]

The Board's experience with operating the interim CDI System since July 3, 1995, has demonstrated that the System operates reliably. The queue of notices broadcast to subscribers in the interim System, however, has become quite large, resulting in broadcasts continuing past the 5:00 p.m. official closing time. This typically occurs if the number of notices to broadcast exceeds the 200-notice capacity for which the interim System was designed.[7] The proposed permanent system, CDINet, is designed to broadcast 500 notices a day at a higher speed to address this situation.

CDINet

There are three areas of change from the interim System to CDINet. The first area relates to the length of documents submitted to the System and how they will be handled. Currently, the interim CDI System will accept and disseminate submissions of up to 10 pages, plus a voluntary cover sheet.[8] CDINet will accept fax and paper submissions of up to 25 pages. Should a submission exceed 25 pages, the first 25 pages and the cover sheet will be disseminated, with a notice to subscribers that the submission exceeds 25 pages. The System will then make available a copy of the complete submission to subscribers upon request, by express or regular mail, at their expense.

In addition, the interim CDI System was designed with the capability to disseminate up to 200 10-page submissions a day. While CDINet will increase the length of fax and paper notices it will disseminate from 10 pages to 25 pages, experience with the interim CDI System indicates that the vast majority of submissions will be no longer than two to three pages.[9] CDINet is designed to disseminate up to 500 three-page submissions a day.

Regarding processing time, the Commission stated in the Release approving the amendments to Rule 15c2–12 that 15 minutes might be an appropriate turnaround time for dissemination of material event notices by NRMSIRs, but that it would further discuss the issue during the NRMSIR recognition process. The Board will use its best efforts to maintain a quick turnaround time for documents sent by facsimile and Internet to CDINet, but it is not possible to guarantee a 15-minute turnaround to subscribers if large numbers of documents are received in a short period of time. The Board will ensure that any document with a voluntary cover sheet received by facsimile, Internet, or mail will be disseminated the same day it is received. Depending upon the volume of documents received, documents that refer in their title to one of the 12 material events described in SEC Rule 15c2–12 but do not have voluntary cover sheets will be disseminated on the same day, if possible, but documents with cover sheets have higher dissemination priority.

The second change to the interim CDI System is to replace the current modem submission system with a secure Web page on the Internet. The interim System continued to use the modem submission system developed for the original CDI Pilot. That system requires, among other things, that the issuer or its agent install software developed by the Board on a personal computer and make their submissions by having their modems dial the CDI System at the Board's offices. The CDINet Web page will permit issuers or their agents to use commonly available Web browser software and make their submissions over the Internet. The other requirements of the modem submission system, *i.e.*, the need to receive written authorization, a user name, and a password from the Board and the need for submissions to be in ASCII format only, will remain in effect on the CDINet Web page.[10] Finally, since submissions in ASCII format are substantially smaller, in terms of computer storage, than the equivalent submission in fax format, the CDINet Web page will accept and disseminate submissions of any length.

The third change to the CDI System is to raise the annual subscription fee from $16,000 plus telephone charges, to $23,000, plus telephone charges. The Board currently has seven subscribers and does not charge subscribers for any redistribution that they may make of the information receive from the CDI System. In its original filing with the Commission regarding subscriber fees for the CDI Pilot, the Board stated that:

> While Board funds will be expended, at least initially, to implement and operate the [CDI] Pilot system, the Board intends that user fees eventually will cover the operational costs of any permanent system. The Board, however, does not intend to or expect to make a profit from the operation of the system.[11]

The increased fee better reflects the Board's operational costs of the CDI System, but is not expected to produce excess revenues or profits.

As with the pilot and interim Systems, the notices sent to subscribers from CDINet will be available to any interested person at the Board's Public Access Facility in Alexandria, Virginia. The cost of copying notices in the Public Access Facility will remain 20 cents per page.

To design the permanent system, the Board staff met with representatives from CDI subscribers and all NRMSIRs in New York City on March 26, 1996, to receive their comments regarding possible changes to the interim CDI System. The changes proposed in this filing were developed after considering their comments.

The Board requests that the Commission approve the permanent system before the approval for the operation of the interim System expires on December 31, 1996.

2. Statutory Basis

The Board has proposed this rule change pursuant to Section 15B(b)(2)(C) of the Act, which requires, in pertinent part, that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect

[5] The Board also terminated the pilot phase of the CDI System and filed its Report on the Conclusion of the CDI Pilot of the Municipal Securities Information Library® System with the Commission on August 25, 1995.

[6] Securities and Exchange Act Rel. No. 35911 (June 28, 1995); Securities Exchange Act Rel. No. 36610 (Dec. 20, 1995); Securities Exchange Act Rel. No. 37771 (Oct. 1, 1996).

[7] The largest number of notices broadcast by the interim System in one day was 305 on November 1, 1996.

[8] The cover sheet was in use in the interim System and provides identifying information about the issuer, the securities at issue, and the material event being disclosed. Use of the cover sheet is voluntary for submitters.

[9] From July 3, 1995 through October 22, 1996, the interim CDI System disseminated 13,341 submissions. The total number of pages disseminated in those submissions was 29,810. Thus, the average number of pages in a submission has been between two to three pages.

[10] In adopting the amendment to SEC Rule 15c2–12, the Commission stated that NRMSIRs will not be required to verify the accuracy of the information submitted, only to accurately convey the information. Securities Exchange Act Rel. No. 34961 at n. 155 (Nov. 10, 1994). The Board similarly asserts that it is not required to undertake to establish the authenticity or accuracy of documents submitted, but that it will attempt to ensure accurate dissemination of documents accepted into the System.

[11] SEC File No. SR–MSRB–93–1, Jan. 12, 1993 at 2.

to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSIL® system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board will continue to operate the output side of the CDI System to ensure that the information is available to any party who wishes to subscribe to the service. As with all MSIL® system services, this service is available, on equal terms, to any party requesting the service.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received. As noted above, the Board consulted with system users in developing CDINet.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–96–12 and should be submitted by January 17, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the MSRB's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, the requirements of Section 15B(b)(2)(C) and the rules and regulations thereunder. Specifically, the Commission believes that the CDI System, which is a component of the MSIL System, by making available official disclosure notices about existing municipal issues, will increase the integrity and efficiency of the municipal securities market, and help to ensure that the prices charged for an issue in the secondary market reflect all available official information about that issue.

The Commission finds good cause for approving SR–MSRB–96–12 prior to the thirtieth day after the date of publication in the Federal Register, in that accelerated approval is appropriate to provide for uninterrupted operation of the CDI System, especially because approval of the pilot program will expire on December 31, 1996.[12] The Commission believes that the CDI System has been proven to be reliable and that permanent approval is appropriate. The Commission notes that the CDI System has been in continuous operation since January 23, 1993, and the changes proposed in this rule proposal primarily represent a technical enhancement to the System.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[13], that the proposed rule change is hereby approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–32956 Filed 12–26–96; 8:45 am]

BILLING CODE 8010–01–M

[12] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[13] 15 U.S.C. 78s(b)(2).

[Release No. 34–38065; File No. SR–SCCP–96–08]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of a Proposed Rule Change to Amend the Participants Fund Formula for Continuous Net Settlement Participants

December 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 21, 1996, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–SCCP–96–08) as described in Items, I, II, and III below, which items have been prepared primarily by SCCP. On October 8, and November 20, 1996, SCCP filed amendments to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend SCCP's participants fund formula for its continuous net settlement (''CNS'') participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend SCCP's participants fund formula relating to its CNS participants. Currently, the participants

[1] 15 U.S.C. 78s(b)(1).

[2] Letters from Linda S. Christie, Staff Counsel, SCCP, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (September 18, September 30, and November 18, 1996).

[3] The Commission has modified the text of the summaries submitted by SCCP.

fund contribution of each of SCCP's CNS participants is based upon the larger of (1) $1,000 for every twenty-five trading units of one hundred shares based on the participant's monthly average of trading activity during the preceding three months or (2) the participant's aggregate dollar amount of all long trades at their execution price for the prior three months divided by the number of days in the prior three months multiplied by two percent.[4]

SCCP proposes to amend its CNS participants fund formula to assess each CNS participant (1) two percent (2%) of the value of its average daily gross buy trades derived over a rolling three month period, plus (2) one-half of one percent (.5%) of the gross value of its sell trades to the extent that value exceeds the gross value of the buy trades derived over the same rolling three month period. The terminology of buys or sells for purposes of calculating participants fund contributions refer to a participant's gross trades and not netted positions.

CNS automatically nets each participants buy and sell trades to a net long or a net short position thereby giving rise to only a net exposure to any particular participant. SCCP's CNS participants fund formula bases its calculation of fund contributions on the basis of gross trade positions which should yield a greater amount upon which to base participants' fund computations than an amount derived from net trade positions. SCCP will recalculate each participant's deposit requirement at the end of each month based upon the previous three months prior to the most recent month.[5] The required participants fund contribution will be rounded up in $5,000 increments. SCCP also proposes to create a $15,000 minimum contribution for CNS participants.

SCCP believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the proposal should assure the safeguarding of securities and funds in its custody or control or for which it is responsible.

[4] Securities Exchange Act Release Nos. 37623 (August 29, 1996), 61 FR 47229 [File No. SR–SCCP–96–07] (notice of filing and order granting accelerated approval on a temporary basis of a proposed rule change seeking permanent approval of the participants fund formulas).

[5] For example, at the end of December, SCCP will use activity from September, October, and November to calculate each participant's deposit requirement.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP believes that the proposed rule change will not impose any burden on competition not permitted by the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SCCP consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to the file number SR–SCCP–96–08 and should be submitted by January 17, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

[6] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–32954 Filed 12–26–96; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF SPECIAL COUNSEL

Appointment of Members to the Performance Review Board

AGENCY: U.S. Office of Special Counsel.

ACTION: Notice of Appointment of a Member to the Performance Review Board.

SUMMARY: This notice publishes the name of the Chair, Performance Review Board as required by 5 U.S.C. 4314(c)(4).

The following person has been appointed to and will serve as Chair of the Performance Review Board for Senior Executives in the U.S. Office of Special Counsel: John A. Kelley, Director for Management, U.S. Office of Special Counsel.

FOR FURTHER INFORMATION CONTACT: M. Marie Glover, Director of Personnel, Management Division, U.S. Office of Special Counsel, 1730 M Street, NW., Suite 300, Washington, D.C. 20036–4505, (202) 653–8964.

Signed on this 20th day of December, 1996.

James A. Kahl,

Deputy Special Counsel.

[FR Doc. 96–32918 Filed 12–26–96; 8:45 am]

BILLING CODE 7405–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 30, 1996 [FR 61, page 46017–46018].

DATES: Comments must be submitted on or before January 27, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Earl Coles, Office of Information

Management Programs, (202) 366–054, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Guide to Reporting Highway Statistics.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2125–0032.

Form Number(s): FHWA–531, 532, 534, 541, 543, 551M, 556, 561, 562, 571, 536, 566, and 539.

Affected Public: The 50 States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Marianas and the Virgin Islands.

Abstract: The authority to collect this information is contained in the Department of Transportation (DOT) Act of 1966 (Pub.L. 89–670; 49 U.S.C. 301 (4), which charges the Secretary of Transportation to promote and undertake development, collection, and dissemination of technological, statical, economic, and other information relevant to domestic and international transportation. Title 23, United States Code, Section 307(a) authorizes the DOT to engage in studies to collect data concerning highway development financing, modernization, safety, maintenance, and traffic conditions and to publish the results of such research. Title 23, United States Code, Section 307(e) requires the Secretary of Transportation to report biennially to Congress on the Nation's highway needs. The Commercial Motor Vehicle Safety Act of 1986 established a major Federal interest in the States' driver licensing programs. The driver license data collected under this Guide are critical in evaluating the effects of the regulations mandated by the Act. The Act also established a three-part grant program to aid the States in the development and implementation of licensing procedures for commercial drivers and requires that the ''supplemental'' grant funds be distributed among the States according to the number of commercial driver tests administered and the number of commercial licenses issued. The various forms included in the Guide are designed to provide for the reporting of statistics that show motor-fuel usage, motor-vehicle registrations and use, drivers, and the taxes and fees paid and collected from these sources and the purposes for which these funds are expended. The Guide provides for the collection of information that describes policies and procedures for assembling statistical data from the existing files of State agencies on motor-vehicle registration and fees, motor-fuel use and taxation, driver licensing, highway taxation and finance, and other related subjects, and the reporting of these data to the Federal highway Administration.

Estimated Annual Burden: The total annual burden is 38,738 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, 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, DC, on December 19, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–32997 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Draft Parts 27 and 29 Advisory Circular Information; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA is announcing a public meeting to discuss proposed updates of advisory circulars (ACs) 27–1, Certification of Normal Category Rotorcraft, and 29–2A, Certification of Transport Category Rotorcraft and a draft appendix to ACs 27–1 and 29–2A addressing rotorcraft emergency flotation systems.

DATES: The meeting will begin at 9 a.m. PST on February 5, 1997.

ADDRESSES: The meeting will be held at the Anaheim Hilton and Towers, Huntington Theatre Room, 888 Convention Way, Anaheim, California 92802, telephone (714) 750–4321 (Headquarters hotel for the Helicopter Association International (HAI) convention.)

FOR FURTHER INFORMATION CONTACT: Kathy Jones, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0110, telephone (817) 222–5359 or fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The public meeting will address a draft appendix to ACs 27–1 and 29–2A pertaining to emergency flotation systems used on rotorcraft not specifically certificated for ditching but used for operations over-water. This material, when finalized, will become an appendix to ACs 27–1 and 29–2A. The public meeting will also address the recently proposed updates to ACs 27–1 and 29–2A, and the public comments received as a result of the FAA's request for comments published in the Federal Register on September 11, 1996 (61 FR 48000).

Meeting Procedures

The meeting is being chaired by the Rotorcraft Directorate. Participants will also include FAA representatives from Flight Standards and Legal Counsel; JAA representatives from engineering and operations; and industry groups from the U.S. and Europe.

The following procedures will be used to conduct the meeting:

1. Registration will be from 8–9 a.m. PST on February 5, 1997. There will be no registration fee. Preregistration is recommended and may be accomplished by contacting the person listed under the caption **FOR FURTHER INFORMATION CONTACT**.

2. The meeting will be recorded by a court reporter, and transcripts will be available for purchase directly from the court reporter.

3. Statements by the FAA will be made to facilitate discussion and should not be taken as expressing a final FAA position.

4. The FAA will consider all material presented at the meeting by participants. Handouts will be accepted at the discretion of the chairperson; however, enough copies should be provided for distribution to all participants.

Issued in Fort Worth, Texas, on December 16, 1996.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–33001 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Prepare a Supplemental Environmental Impact Statement for Seattle-Tacoma International Airport, Seattle, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Northwest Mountain Region of the Federal Aviation Administration (''FAA'') and the Port of Seattle (''Port'') announce that the FAA and the Port, acting as joint lead agencies, intend to prepare a Supplemental Environmental Impact Statement (SEIS) for a proposal by the Port to develop a new parallel runaway and other airport facility improvements to be examined in an update to the Seattle-Tacoma International Airport (Sea-Tac Airport) Master Plan.

SUPPLEMENTARY INFORMATION: On April 24, 1995, the FAA published in the Federal Register, a Notice of Availability of the Draft Environmental Impact Statement (DEIS) [60 FR 20149] for a proposal by the Port to develop a new parallel runway and other airport facility improvements at Seattle-Tacoma International Airport (Sea-Tac Airport). Public comments were taken on the DEIS from the date of its release until August 3, 1995. During the comment period, two public hearings were held, on June 1, 1995 and June 14, 1995. Final Environmental Impact Statement (FEIS) Appendix T, located in Volumes 5, 6, and 7, contains the transcript from the public hearings, and letters commenting on the DEIS which were received from the public and government agencies. FEIS Appendix R contains responses to the issues presented during the comment period.

The FEIS, approved by the FAA on February 1, 1996, was released to the public on February 9, 1996, (see 61 FR 5056). The FEIS addressed areas of public concern by way of modifications to the DEIS text and specific responses to public comments. The U.S. Environmental Protection Agency (EPA) published a notice of the availability of the approved FEIS, pursuant to 40 CFR 1506.10 (61 FR 6243) in the Federal Register on February 16, 1996.

Although the FAA did not solicit public comments on the FEIS (on issues other than air quality conformity), several public agencies, community groups, and citizens have nevertheless submitted written comments for agency consideration since issuance of the FEIS. An FAA Record of Decision was never issued for the proposed development.

During the intervening months, both the FAA and the Port have determined that the forecasts of aircraft activity and enplaned passengers used in the above referenced draft and final EIS's did not adequately account for the actual growth which has taken place at Seattle-Tacoma International Airport in the past year nor the potential for faster growth rates than expected in the EIS's. New forecasts have been prepared which will be used to determine: (1) changes in the timing of when certain development projects will be needed to meet the needs of the airport and (2) potential environmental impacts from proposed development.

The requirement for preparing the proposed SEIS is governed by Council on Environmental Quality Regulations (40 CFR Part 1502.9(c)) which defines two circumstances requiring the preparation of supplements to draft or final impact statements, as follows: (1) ''The agency makes substantial changes in the proposed action that are relevant to environmental concerns''; or (2) ''There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts''. The FAA and the Port believe both conditions new exist, therefore SEIS will be prepared.

The FAA and Port of Seattle have identified the following key areas for discussion in the SEIS including, but not limited to: noise and land use, social and socio-economic impacts, biotic communities, construction, earth, transportation and air quality.

Issued in Renton, Washington on December 20, 1996.

Lowell H. Johnson,

Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington.

[FR Doc. 96–33003 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (97–04–U–00–MGW) to Use the Revenue From a Passenger Facility Charge (PFC) at Morgantown Municipal (Hart Field) Airport, Morgantown, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Morgantown Municipal (Hart Field) Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 27, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Elonza Turner, Beckley Airports Field Office, Main Terminal building, 469 Airport Circle, Beaver, West Virginia 25813–6216.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bill Plutt, Airport Manager for the City of Morgantown of at the following address Morgantown Municipal (Hart Field) Airport Morgantown, West Virginia 26505

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Morgantown under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Elonza Turner, Beckley Airports Field Office, Main Terminal building 469 Airport Circle, Beaver, West Virginia 25813–6216 (Tel. 304–252–6216). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Morgantown Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 20, 1996, the FAA determined that the application to use the revenue form a PFC submitted by the City of Morgantown was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 17, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $2.00

Proposed charge effective date: January 1, 1995

Proposed charge expiration date: December 1, 2001

Total estimated PFC revenue: $251,200

Brief description of proposed projects: The PFC funds will be utilized to fund the local share of a proposed AIP project to repair Taxiway ''A''.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Morgantown.

Issued in Jamaica, New York on December 20, 1996.

Thomas Felix,

Acting Manager, Planning & Programming Branch, Eastern Region.

[FR Doc. 96–33004 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application (97–01–C–00–IPT) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Williamsport-Lycoming County Airport, Williamsport, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Williamsport-Lycoming County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 27, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Lawrence W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas Hart, Executive Director of the Williamsport Municipal Airport Authority at the following address: Williamsport-Lycoming County Airport, Montoursville, Pennsylvania 17754.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Williamsport Municipal Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011. 717–782–4548. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Williamsport-Lycoming County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On November 21, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Williamsport Municipal Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 18, 1997.

The following is a brief overview of the application.

Application number: 97–01–C–00–IPT
Level of the proposed PFC: $3.00
Proposed charge effective date: February 1, 1997
Proposed charge expiration date: November 1, 1998
Total estimated PFC revenue: $230,000

Brief description of proposed projects: The PFC funds will be utilized to fund the following projects.

—Install perimeter fencing
—Purchase Handicapped Passenger Lift
—Remove obstruction to Part 77 surface

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Williamsport Municipal Authority.

Issued in Jamaica, New York on December 20, 1996.

Thomas Felix,

Acting Manager, Planning & Programming Branch, Eastern Region.

[FR Doc. 96–33005 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Maglev Study Advisory Committee; Notice of First Meeting

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

ACTION: Notice of First Meeting of the Maglev Study Advisory Committee.

SUMMARY: As required by Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and 41 C.F.R. § 101–6.1015(b), the Federal Railroad Administration (FRA) gives notice of the first meeting of the Maglev Study Advisory Committee (''MSAC''). The purposes of the meeting are to address prerequisite organizational issues, to receive briefings on relevant FRA maglev studies and state of the art in maglev technology, and to discuss MSAC involvement in the DOT study to evaluate the near-term applications of maglev technology in the United States.

DATES: The first meeting of the MSAC is scheduled for 10:00 a.m. EST on Thursday, January 9, 1997. Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notice of future meetings will be published in the Federal Register.

ADDRESSES: The first meeting of the MSAC will be held in the 7th floor Conference Room at FRA Headquarters, 1120 Vermont Avenue NW, Washington, D.C. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Those with special needs should inform Mr. Mongini 5 days in advance of the meeting so that appropriate facilities can be provided. Subsequent meetings will be held at locations and dates to be announced.

FOR FURTHER INFORMATION CONTACT: Arrigo Mongini, Deputy Associate Administrator for Railroad Development, FRA RDV–2, 400 7th Street, S.W., Washington, D.C. 20590, (202)-632–3286.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of the first meeting of the Maglev Study Advisory Committee. This notice is being published less than fifteen days prior to the date of the announced meeting due to scheduling conflicts. The meeting is scheduled for 10:00 a.m. EST on January 9, 1997, and will be held in the 7th floor Conference room at FRA Headquarters, 1120 Vermont Avenue NW (near Thomas Circle) in Washington, D.C.

Background

Pursuant to Section 359(d) of the National Highway System Designation Act of 1995 (NHS Designation Act), (Public Law 104–59), the Secretary of Transportation will conduct a study to evaluate the near-term applications of magnetic levitation ground transportation technology in the United States, with particular emphasis in identifying projects which would warrant immediate application of such technology.

The study will also evaluate the use of innovative financing techniques for the construction and operation of such projects. The actual study will be conducted by the Federal Railroad Administration (FRA) within the Department of Transportation (DOT). The NHS Designation Act provides that the study be undertaken in consultation with an advisory committee, which will serve as advisor to DOT on the conduct of the study and on the drafting of study documents prepared by DOT staff. This committee, the Maglev Study Advisory Committee, has been established. As provided for in the NHS Designation Act, it consists of 8 people representing differing disciplines and interests relative to high speed ground transportation, who were chosen by the Secretary for their backgrounds in magnetic levitation transportation, design and construction, public and private finance, and infrastructure policy disciplines.

It is the purpose of this notification to announce the date and place of the first (organizational) meeting of this Committee. At this meeting Federal Railroad Administrator, Jolene Molitoris will address the Committee, and FRA staff members and consultants will provide background for the study, including relevant prior studies performed at FRA and elsewhere, and a discussion of the state of maglev technology and its applications. The Committee may also elect a chair and discuss its involvement in the study. Adjournment is expected prior to 5:00 pm. Members of the public are entitled and encouraged to attend the meeting as observers.

Issued in Washington, D.C. on December 20, 1996.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 96–32945 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–06–P

Maritime Administration

[Docket No. M-O25]

Request for Public Comment on the Causes of Diversion of Cargo From U.S. East Coast Ports

AGENCY: Maritime Administration, United States Department of Transportation.

ACTION: Notification of public outreach meeting.

SUMMARY: On July 24, 1996, as part of a plan to help sustain long-term growth of the Port of New York/New Jersey, the Department of Transportation announced its intention to study the causes of cargo diversion from U.S. East Coast ports (i.e., the transhipment of U.S. waterborne imports and exports through nearby foreign ports) and to recommend any additional measures that are needed to enhance the international competitiveness of our East Coast ports. An announcement of the information collection phase of this study appeared as a notice in the Federal Register on November 12, 1996, with comments requested by December 27, 1996.

Information was requested on the impact of the following domestic and foreign factors affecting the diversion of cargo from U.S. East Coast ports: shipper and carrier routing preferences; shifting international trade patterns; constraints on the U.S. transportation infrastructure; federal, state and local laws and regulations; port charges and other transportation-related fees; ''Global Alliances'' of ocean carriers and their impact on port calls and port rotations; landside and waterside interface problems and intermodal factors; aggressive port marketing initiatives; direct and indirect subsidies for port and intermodal infrastructure; and any other factors that impact on the flow of cargo through U.S. East Coast ports. Data on the volume, value and composition of diverted cargo, as well as any other information related to the subject, was also sought. The Department also solicited comments on measures that are needed to enhance the international competitiveness of our East Coast ports through the 21st Century.

A public outreach meeting will be held in Washington, D.C. on Thursday, January 9, 1997, in Room 9230–34 of the Department of Transportation Nassif Building (400 7th Street, SW) from 10:00 AM until noon. Anyone wishing to address the meeting on the above topics or related matters should contact the Maritime Administration in advance, and provide four copies of their statements prior to the outreach meeting, if possible.

Participants are urged to express their views on the relative significance of the various factors affecting cargo diversion. Specific examples of cargo diversion and submission of relevant data are encouraged, as well as any views on measures that the Department might undertake to improve the international competitiveness of U.S. East Coast ports.

FOR FURTHER INFORMATION CONTACT: Bruce J. Carlton, Associate Administrator for Policy, International Trade and Marketing (202) 418–8144.

By Order of the Maritime Administrator.

Dated: December 20, 1996.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 96–32893 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–81–P

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. Application numbers with the suffix ''P'' denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before January 13, 1997.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application

Number	Applicant	Renewal of exemption
9248–M	Reaction Products Los Angeles, CA [1]	9248
9758–M	Suunto Carlsbad, CA [2]	9758
9998–M	Accumulators, Inc. Houston, TX [3]	9998
10429–M	Baker Performance Chemicals, Inc. Houston, TX [4]	10429
10974–M	International Paper Erie, PA [5]	10974
11005–M	Pressure Technology, Inc. Hanover, MD [6]	11005
11458–M	Creative Products Inc. of Rossville Rossville, IL [7]	11458

[1] To modify the exemption to provide for cargo vessel and cargo or passenger aircraft as additional modes of transportation.
[2] To modify the exemption to provide technical changes to nonrefillable, non-DOT specification inside container conforming to DOT–2P specification.
[3] To renew and modify the exemption to provide for additional designed hydraulic accumulators with a design pressure not to exceed 6,000 psig.
[4] To modify the exemption to increase the capacity allowance to 793 gallons for IBCs mounted on vehicles for use in transporting Class 3 and Class 8 liquids.
[5] To modify the exemption to provide for hydrogen peroxide, aqueous solutions, 5.1 as an additional class of material.
[6] To modify the exemption to provide for additional designed non-DOT specification cylinders and alternative testing criteria.
[7] To provide for modification of pallet-sized display packs used for consumer commodities that exceed the gross weight limit for limited quantity packages.

Number	Applicant	Parties to exemption
3216–P	Air Products and Chemicals, Inc Allentown, PA	3216
6293–P	PRIMEX Technologies, Inc St. Marks, FL	6293
6530–P	nexAir, LLC Memphis, TN	6530
6691–P	Welders Supply d/b/a Raimy Corporation Erie, PA	6691
6691–P	nexAir, LLC Memphis, TN	6691
8451–P	Primex Technologies, Inc St. Petersburgh, FL	8451
8554–P	J & D Explosives, Inc Meyersdale, PA	8554
8786–P	Chrysler Corporation Auburn, Hills, MI	8786
9275–P	Scent 1–2–3 New York, NY	9275
9275–P	Perfumes Isabell New York, NY	9275
9414–P	Matheson Gas Products East Rutherford, NJ	9414
9723–P	PVS Transportation, Inc Detroit, MI	9723
9723–P	Progressive Disposal Group, Inc West Chester, PA	9723
10429–P	Water Chemical Service, Inc Aberdeen, MD	10429
10441–P	Progressive Disposal Group, Inc West Chester, PA	10441
10933–P	Progressive Disposal Group, Inc West Chester, PA	10933
10938–P	Westvaco Kraft Division, Charleston, SC Richmond, VA	10938
10938–P	Westvaco Bleachboard Division, Covington, VA Richmond, VA	10938

Number	Applicant	Parties to exemption
10938–P	Westvaco Fine Papers Division, Wickliffe, KY Richmond, VA	10938
10938–P	Westvaco Fine Papers Division, Luke, MD Richmond, VA	10938
10938–P	Westvaco Chemical Division, Charleston, SC Richmond, VA	10938
10938–P	Westvaco Chemical Division, DeRidder, LA Richmond, VA	10938
10949–P	PVS Transportation, Inc Detroit, MI	10949
11043–P	Progressive Disposal Group, Inc West Chester, PA	11043
11044–P	Chem-Tech, Ltd Des Moines, IA	11044
11055–P	Environmental Transport Systems Fargo, ND	11055
11156–P	D.C. Guelich Explosive Co Clearfield, PA	11156
11207–P	Houston Lighting & Power Company Houston, TX	11207
11294–P	Precision Industrial Maintenance, Inc Scotia, NY	11294
11294–P	Progressive Disposal Group, Inc West Chester, PA	11294
11296–P	Advanced Environmental Technical Services Flanders, NJ	11296
11401–P	Frequency and Time Systems, Inc Beverly, MA	11401
11454–P	PRIMEX Technologies, Inc St. Marks, FL	11454
11602–P	Emerson Electric Co St. Louis, MO	11602
11602–P	Adelanto Aluminum Co., Inc Hesperia, CA	11602
11624–P	Resource Recovery Corporation Tacoma, WA	11624
11624–P	Burlington Environmental dba Philip Environmental Renton, WA	11624
11624–P	Belshire Environmental Services, Inc Lake Forest, CA	11624
11624–P	Findly Chemical Disposal, Inc Fontana, CA	11624
11725–P	National Aeronautics & Space Administration (NASA) Greenbelt, MD	11725
11750–P	Allied Signal, Inc Morristown, NJ	11750
11788–P	Trilla Steel Drum Corporation Chicago, IL	11788

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 18, 1996.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 96–32886 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 27, 1997.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

New Exemptions

Application number	Applicant	Regulation(s) affected	Nature of exemption thereof
11789–N	Mallard Creek Polymers, Inc., Charlotte, NC.	49 CFR 174.67(i)&(j)	To authorize rail cars to remain attached to connectors during the entire unloading process without the physical presence of an unloader. (mode 2)
11790–N	U.S. Enrichment Corp., Bethesda, MD.	49 CFR 172.302(c)	To authorize the transportation of uranium hexafluoride in non-DOT 5A specifications cylinders without required markings. (mode 1)
11791–N	The Coleman Co., Inc., Wichita, KS.	49 CFR 178.33(a)	To authorize the manufacture, mark and sale of non-DOT-Specification 2Q, inner non-refillable metal receptacles with alternative testing criteria and wall thickness. (modes 1, 2, 3, 4)
11793–N	Bilstein Corp. of America, San Diego, CA.	49 CFR 172.200–204, 172.300, 173.306(f)(2)(iii), 173.306(f)(3)(i), 174.24, 177.817.	To authorize the manufacture, mark and sale of gas-charged shock absorbers, cartridges, and struts containing compressed gas, for transportation in commerce as accumulators shipped without required labels, markings, shipping papers and testing requirements. (modes 1, 2, 3, 4, 5)
11794–N	Countrymark Cooperative, Mt. Vernon, IN.	49 CFR 174.67(i)&(j)	To authorize rail cars to remain connected during unloading of certain hazardous materials without the physical presence of an unloader. (mode 2)
11795–N	Wellman Inc., Florence, SC	49 CFR 174.67(i)&(j)	To authorize rail cars to remain connected during unloading of Class 9 material without the physical presence of an unloader. (mode 2)
11796–N	Morton International Inc., Ogden, UT.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To authorize the transportation in commerce of a non-DOT specification cylinder which exceeds the quantity limitation exception for compressed gases at a volume of 7.50 in. to be used as a component of a hybrid air bag system. (modes 1, 2, 3, 4, 5)
11797–N	Cryodyne Technologies, Radnor, PA.	49 CFR 173.201, 173.202, 173.203.	To authorize the transportation in commerce of non-DOT specification cylinders constructed of stainless steel for use in transporting Class 3 material. (modes 1, 2, 3, 4)
11798–N	Air Products & Chemicals Inc., Allentown, PA.	49 CFR 173.34(e)(15), 173.34(e)(15)(ii).	To authorize the transportation in commerce of DOT specification 3A or 3AA cylinders for use in transporting various gases classed in Division 2.1 (modes 1, 2, 3, 4, 5)
11799–N	Cryonix, Inc., Rockville, MD	49 CFR 173.196	To authorize the transportation in commerce of alternative secondary packaging consisting of heat sealed, plastic sleeve, packed in small quantities with absorbent material to be transported inside commercial freezer, for use in transporting Infectious substances, Division 6.2 (mode 1)
11800–N	General Fire Extinguisher Corp., Northbrook, IL.	49 CFR 173.309	To authorize the transportation in commerce of fire extinguishers, that exceed quantity limitation, for use in transporting liquefied compressed gas. (modes 1, 2, 3, 4, 5)
1–11801–N	Wacker Silicones Corp., Adrian, MI.	49 CFR 172.301, 172.400, 173.212(c), 173.213.	To authorize the transportation in commerce of non-authorized packagings that are not properly marked or labeled for use in transporting Toxic Solid, Inorganic, n.o.s., Division 6.1 (mode 1)
11803–N	Process Engineering, Plaistow, NH.	49 CFR 173.319, 179.400	To authorize the transportation in commerce of various classes of non-flammable cryogenic liquids in DOT–113A60W tank cars. (mode 2)
11804–N	Advertising Unlimited, Inc., Red Wing, MN.	49 CFR 173.156, 173.184	To authorize an emergency exemption for the transportation in commerce of a safety kit containing two highway fusees, one tire inflator, and one fire extinguisher as a consumer commodity, ORM–D. (modes 1, 2)
11805–N	Persons represented by the NPGA, Washington, DC.	49 CFR 178.337–11(a)(1)(I) & (a)(1)(v).	To authorize the transportation in commerce of certain DOT Specification MC–330 and MC–331 cargo tanks, containing Propane, which do not meet the self-closing stop valve and excess flow valve requirements and to continue construction, certification, inspection and testing. (mode 1)
11806–N	Mississippi Tank Co., Hattiesburg, MS.	49 CFR 178.337–11(a)(1)((I) & (a)(1)(v).	To authorize the transportation in commerce of certain DOT Specification MC–330 and MC–331 cargo tanks, containing compressed gases, which do not meet the self-closing stop valve and excess flow valve requirements and to continue construction, certification, inspection and testing. (mode 1)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 20, 1996.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 96–32887 Filed 12–26–96; 8:45 am]

BILLING CODE 4910–60–M

Surface Transportation Board

[STB Finance Docket No. 33310]

Housatonic Railroad Company, Inc.—Corporate Family Transaction Exemption—Danbury Terminal Railroad Company

Housatonic Railroad Company, Inc. (HRRC)[1] and Danbury Terminal Railroad Company (DTRR),[2] Class III railroads, have jointly filed a verified notice of exemption. The exempt transaction is a merger of DTRR into HRRC.[3]

The transaction is expected to be consummated on December 31, 1996.

HRRC will assume operation of DTRR's rail lines and operating rights in the States of Connecticut and New York.[4] The proposed merger is intented to enable the merged carrier to provide more efficient service to shippers. The merger will also eliminate the significant administrative burden and expense associated with billing and accounting services.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33310, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Edward J. Rodriquez, Esq., Housatonic Railroad Company, Inc., 67 Main Street, P.O. Box 298, Centerbrook, CT 06409.

Decided: December 18, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–32780 Filed 12–26–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33308]

Pittsburgh Industrial Railroad, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation and the Pittsburgh, Chartiers and Youghiogheny Railway Company

Pittsburgh Industrial Railroad, Inc. (PIR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate certain railroad lines of Consolidated Rail Corporation and the Pittsburgh, Chartiers and Youghiogheny Railway Company (PC&Y), a subsidiary of Conrail, located in Pennsylvania. The rail lines being acquired from Conrail are: (i) between milepost 0.0, at Char Jct., and milepost 2.5, at Carnegie (Canon Industrial Track); (ii) between milepost 0.5, near Carnegie, and milepost 20.4, at South Strabane Township (Canon Industrial Track); (iii) between milepost 2.5, at Esplen Interlocking, and milepost 11.0, at Collier Township (Carnegie Secondary); (iv) between milepost 0.0, at Collier Township, and milepost 0.8, at Heidelburg Borough (Superior Industrial Track); and (v) between milepost 0.0, at Houston Borough, and milepost 1.0, at Chartiers Township (Westland Branch), for a total of 32.7 miles. The rail lines being acquired from PC&Y are: (i) between milepost 0.0, at McKees Rocks, and milepost 7.5, at Carnegie; (ii) between milepost 8.9, at Woodville Station, and milepost 10.3 at Collier Township; (iii) between milepost 0.0, at McKees Rocks, and milepost 6.5, at Neville Island (Neville Island Branch); and (iv) between milepost 0.0, at Collier Township, and milepost 0.6, at Collier Township (Painter's Run Branch), for a total of 16.0 miles. PIR also seeks to acquire incidental trackage rights over .80 miles of rail line owned by CSX Transportation, Inc., between milepost 1.7 and milepost 2.5 at Neville Island.

The purpose of these trackage rights are to connect the PC&Y's rail lines being acquired by PIR.

The parties intended to consummate the proposed transaction on December 6, 1996.

This transaction is related to STB Finance Docket No. 33309, *RailTex, Inc.—Continuance in Control Exemption—Pittsburgh Industrial Railroad, Inc.*, where RailTex, Inc. will continue to control PIR, upon it becoming a Class III rail carrier.

If the verified 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. 33308, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, D.C. 20005.

Decided: December 20, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–32962 Filed 12–26–96; 8:45 am]

BILLING CODE 4915–00–P

[1] HRRC operates approximately 72.29 miles of track, of which approximately 36.25 miles are within the State of Connecticut and owned by the State of Connecticut, and of which approximately 36.04 miles are within the Commonwealth of Massachusetts and owned by HRRC.

[2] DTRR operates approximately 89.1 miles of track, of which approximately 47.1 miles are located in the State of Connecticut and owned by Maybrook Railroad Company, and of which 42 miles are located in the State of New York and owned by Metro North Commuter Railroad. DTRR also holds approximately 10 miles of incidental overhead trackage rights over tracks owned by the State of Connecticut within the State of Connecticut.

[3] HRRC and DTRR are wholly owned subsidiaries of Housatonic Transportation Company.

[4] No ownership interests are transferred or otherwise affected by this transaction.

[STB Finance Docket No. 33309]

RailTex, Inc.—Continuance in Control Exemption—Pittsburgh Industrial Railroad, Inc.

Railtex, Inc. (RailTex), a noncarrier holding company, has filed a notice of exemption to continue in control of Pittsburgh Industrial Railroad, Inc. (PIR), upon PIR's becoming a Class III railroad. The transaction is scheduled to be consummated on December 6, 1996.

The transaction is related to STB Finance Docket No. 33308, *Pittsburgh Industrial Railroad, Inc.—Acquisition Operation Exemption—Consolidated Rail Corporation and the Pittsburgh, Chartiers and Youghiogheny Railway Company,* wherein PIR seeks to acquire 32.7 miles of rail line from Consolidated Rail Corporation and 16.0 miles of rail line from the Pittsburgh, Chartiers and Youghiogheny Railway Company.

RailTex controls 21 Class III common carriers and three carriers that operate in Canada by rail: San Diego & Imperial Valley Railroad Company, Inc., operating in California; North Carolina & Virginia Railroad Company, Inc. (including Virginia Southern Division), operating in North Carolina and Virginia; South Carolina Central Railroad Company, Inc. (including Carolina Piedmont Division, operating in South Carolina; Mid-Michigan Railroad, Inc. (including Northeast Kansas & Missouri Division and Texas Northeastern Division, operating in Texas, Kansas, Missouri and Michigan; Chesapeake & Albemarle Railroad Company, Inc., operating in Virginia and North Carolina; Michigan Shore Railroad Company, Inc., operating in Michigan; New Orleans Lower Coast Railroad Company, Inc., operating in Louisiana; Dallas, Garland & Northeastern Railroad, Inc., operating in Texas; Indiana Southern Railroad, Inc., operating in Indiana; Missouri & Northern Arkansas Railroad Company, Inc., operating in Kansas, Missouri and Arkansas; Salt Lake City Southern Railroad Company, Inc., operating in Utah; Grand Rapids Eastern Railroad, Inc., operating in Michigan; Central Oregon & Pacific Railroad, Inc., operating in Oregon and California; New England Central Railroad, Inc., operating in Vermont, New Hampshire, Massachusetts, and Connecticut; Georgia Southwestern Railroad Company, Inc. (including Georgia & Alabama Division and Georgia Southwestern Division, operating in Alabama and Georgia; Austin & Northwestern Railroad Company, Inc. (including Texas-New Mexico Division), operating in Texas and New Mexico; Cincinnati Terminal Railway Company, operating in Ohio; Indiana and Ohio Railroad, Inc., operating in Indiana and Ohio; Indiana & Ohio Railway Company, operating in Ohio; Indiana & Ohio Central Railroad, Inc., operating in Ohio; and Connecticut Southern Railroad, Inc., operating in Connecticut and Massachusetts.

RailTex states that: (1) the railroads will not connect with each other or any railroad in their corporate family; (ii) the acquisition is not part of a series of anticipated transactions that would connect the twenty one railroads with each other or any railroad in their corporate family; and (iii) the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class II rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified 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. 33309, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, D.C. 20005.

Decided: December 20, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–32960 Filed 12–26–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–167 (Sub-No. 1168X)]

Consolidated Rail Corporation—Abandonment Exemption—in Brooke and Hancock Counties, WV

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 4.00-mile portion of its line of railroad known as the Weirton Secondary Track between milepost 35.70 and milepost 39.70 in Brooke and Hancock Counties, WV.

Conrail has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 26, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

6, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 16, 1997, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John K. Enright, Associate General Counsel, Consolidated Rail Corporation, 2001 Market Street—16A, Philadelphia, PA 19101–1416.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 31, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 20, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–32961 Filed 12–26–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 16, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0052.

Form Number: PD F 1011.

Type of Review: Extension.

Title: Resolution Authorizing (1) Disposition of Securities Held by Organization, and (2) Executive and Delivery of Bonds of Indemnity.

Description: Form PD F 1011 is used by an organization to dispose of securities and/or execute bonds of indemnity.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 485.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 243 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 96–33006 Filed 12–26–96; 8:45 am]

BILLING CODE 4810–40–U

Submission for OMB Review; Comment Request

December 12, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: In order to begin the surveys described below in January 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by December 26, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.

Project Number: SOI–023.

Type of Review: Revision.

Title: 1997 TeleFile Automated and Written Customer Satisfaction Surveys.

Description: These surveys are being conducted because IRS needs to be aware of the impact on taxpayers who will receive the 1997 TeleFile booklet in terms of acceptance, burden, frustrations, and questions they may have in using the system and/or choosing to obtain and file the paper forms.

Respondents: Individuals or households.

Estimated Number of Respondents: 7,517.

Estimated Burden Hours Per Respondent:

Automated Survey—2 minutes
Written Survey—12 minutes

Frequency of Response: Other.

Estimated Total Reporting Burden: 1,723 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 96–33007 Filed 12–26–96; 8:45 am]

BILLING CODE 4830–01–U

Customs Service

Customs Broker Licensure Examination

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: General notice and request for comments.

SUMMARY: This notice announces that the United States Customs Service has entered into an interagency agreement with the United States Office of Personnel Management to assist in the development and administration of the Customs Broker Licensure Examination. Customs invites the general public to comment on what areas the broker's examination should focus. Customs is also inviting the general public and Customs employees to generate multiple choice items to be used on the examination.

DATES: Written comments should be received on or before January 31, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments and test items to Office of Personnel Management, Attn: PRDC, Room 6457—Customs Broker Project, 1900 E St., NW, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn: Broker Examination, Room 1328, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–0051.

SUPPLEMENTARY INFORMATION:

Background

The written Customs Broker Licensure Examination, pursuant to 19 U.S.C. 1641(b)(2) and 19 CFR 111.13(a), is designed to determine the applicant's knowledge of Customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters and his fitness to render valuable service to importers and exporters. The applicant must obtain a grade of at least 75 percent to pass.

Customs has entered into an interagency agreement with the Office of Personnel Management to assist in the development of the broker examination. Customs invites the general public, other federal agencies and Customs employees to comment on what areas the broker licensure examination should focus and to suggest multiple choice items to be used on the examination.

Comments

Please use the following guidelines when generating your multiple choice items:

First, identify your topic and make sure it covers information:

(1) contained in the Harmonized Tariff Schedule of The United States (1996) or Title 19, Code of Federal Regulations (19 CFR Parts 1 to 199) Revised as of April 1, 1996; and

(2) important to the work performed as a Customs Broker.

The use of regulations in your own experience may be a good starting point.

Second, write a question or a stem of a question (e.g., Which of the following is sufficient to establish the right to make entry for * * * ?). The statement may take the form of either a direct question or an incomplete statement. Simplify the item as much as possible. This means eliminating unnecessary information from the question (information not needed to answer the question), using easily understood words where possible, and placing most of the information in the question/stem, not in the response options. Make sure the item only addresses one concept and is not asking multiple questions or addressing multiple content areas. After the question/stem is written, generate a correct response. The correct response should be defensible as being the only correct answer listed in the options.

Finally, generate at least four parallel and attractive response options. Try to ensure that the response options are similar in grammatical structure, length, and complexity to the correct response. Try to make sure the other response options are good distractors (i.e., they may seem attractive to test takers whose knowledge is superficial). The responses ''none of these'' or ''none of the above'' should not be used as options. The following may be helpful in creating distractors: Use of true statements that do not answer the question correctly; use of familiar phrases; and use of common mathematical mistakes or inverted numbers.

All items should contain the following information when complete:

(1) the item stem or question;

(2) at least five responses, one of which is the correct answer;

(3) an indication of the correct answer by marking it with an asterisk;

(4) a reference for the item (e.g., Title 19, CFR, Section 111.36 paragraph (b)(2)(I)). It is important that all items be referenced to either the Harmonized Tariff Schedule of The United States (1996) or Title 19, Code of Federal Regulations; and

(5) the item writer's name and work phone number.

If you would like more information on writing appropriate test items, please contact Ernest Paskey at 202–606–1160. Once you have written the test items, please send your items to OPM through either:

(1) fax: (202) 606–1399, Attn: Christelle La Police; or

(2) postal mail: Christelle La Police, Office of Personnel Management, Attn: PRDC, Room 6457- Customs Broker Project, 1900 E St., NW, Washington, D.C. 20415.

Important Note: To ensure security of the test items and avoid misplaced/lost items, we request that you call OPM at (202) 606–0820 and ask for a member of the Customs Broker Team prior to transmitting a FAX. Test items will be accepted no later than January 31, 1997. Copies of the items that you develop and other related materials should not be distributed to anyone else.

Dated: December 20, 1996.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 96–32915 Filed 12–26–96; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Proposed Collection; Comment Request for Form 8851

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8851, Summary of Medical Savings Accounts.

DATES: Written comments should be received on or before February 25, 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 form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Summary of Medical Savings Accounts.

OMB Number: 1545–1508.

Form Number: 8851.

Abstract: This form will be used by the IRS to determine whether the numerical limits set forth in Internal Revenue Code section 220(j)(1) regarding the establishment of medical savings accounts have been exceeded.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 7 hr., 42 min.

Estimated Total Annual Burden Hours: 1,540,000.

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 18, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–32991 Filed 12–26–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8820

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8820, Orphan Drug Credit.

DATES: Written comments should be received on or before February 25, 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 form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Orphan Drug Credit

OMB Number: 1545–1505

Form Number: 8820

Abstract: Filers use this form to elect to claim the orphan drug credit, which is 50% of the qualified clinical testing expenses paid or incurred with respect to low or unprofitable drugs for rare diseases and conditions, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 8 hr., 27 min.

Estimated Total Annual Burden Hours: 169

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 18, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–32992 Filed 12–26–96; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

Submission for OMB Review; Comment Request

December 20, 1996.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

OMB Number: 1550–0072.

Form Number: MCH–1 and MCH–2.

Type of Review: Extension of an already approved collection.

Title: Mutual Holding Company.

Description: This information collection applies to mutual holding companies and their subsidiaries. The collection is necessary to fulfill statutory requirements and facilitate the review of transactions presenting risks to the safety and soundness of an institution.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 7.

Estimated Burden Hours Per Respondent: 375 hours.

Frequency of Response: 1.

Estimated Total Reporting Burden: 2,625 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 96–32901 Filed 12–26–96; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Friday
December 27, 1996

Part II

Environmental Protection Agency

40 CFR Part 72 et al.

Acid Rain Program; Permits, Alowance System, Sulfur Dioxide Opt-Ins, Continuous Emission Monitoring, Excess Emissions, and Appeal Procedures; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72, 73, 74, 75, 77, and 78

[FRL–5656–8]

RIN 2060–AF43, AF46, and AF47

Acid Rain Program: Permits, Allowance System, Sulfur Dioxide Opt-Ins, Continuous Emission Monitoring, Excess Emissions, and Appeal Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; revisions of permits, allowance system, sulfur dioxide opt-ins, continuous emission monitoring, excess emissions, and appeal procedures rules.

SUMMARY: Title IV of the Clean Air Act (the Act) authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The purpose of the Acid Rain Program is to significantly reduce emissions of sulfur dioxide and nitrogen oxides from utility electric generating plants in order to reduce the adverse health and ecological impacts of acidic deposition (or acid rain) resulting from such emissions. On January 11 and March 23, 1993, the Agency promulgated final rules governing permitting, the allowance system, continuous emissions monitoring, excess emissions, and appeal procedures.

After considering its experience in applying these rules since 1993, the Agency believes that the permitting, excess emissions, and appeal procedures rules (as well as minor aspects of the monitoring rule) can be streamlined and improved in order to reduce the burden on utilities, State and local permitting authorities, and EPA. The rule revisions in today's proposal streamline the Acid Rain Program while still ensuring achievement of its statutory goals of reducing sulfur dioxide and nitrogen oxides emissions.

In addition, EPA is revising allocations of sulfur dixoxide allowances. Each allowance authorizes the emission of one ton of sulfur dioxide. Under the Acid Rain Program, utility units (i.e., fossil fuel-fired boilers or turbines) are allocated allowances and must not emit sulfur dioxide in excess of the amount authorized by the allowances that they hold. EPA proposes to revise certain units' allowances in response to litigation, in light of Agency errors in making the allocations or errors in data relevant to whether facilities are covered by the Acid Rain Program, or because of more recent information concerning the construction or commercial operation of new units.

DATES: Comments on the regulations proposed by this action must be received on or before January 27, 1997.

ADDRESSES: *Comments.* All written comments must be identified with the appropriate docket number (Docket No. A–95–56) and must be submitted in duplicate to EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington DC 20460.

Docket. Docket No. A–95–56, containing supporting information used to develop the proposal is available for public inspection and copying from 8:30 a.m. to 12 p.m. and 1 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section at the above address. Information concerning the original rules and some of the revisions proposed today is found in Docket Nos. A–90–38 (permits), A–91–43 and A–92–06 (allowances), A–90–51 (continuous emissions monitoring), A–91–68 (excess emissions), A–91–69 (general), and A–93–15 (appeals). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, at (202) 233–9074, U.S. Environmental Protection Agency, 401 M St. SW, Acid Rain Division (6204J), Washington, DC 20460 (concerning revisions of parts 73 and 75); Dwight C. Alpern, Attorney-advisor, at (202) 233–9151 (same address) (concerning all other revisions); or the Acid Rain Hotline at (202) 233–9620.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are fossil-fuel fired boilers or turbines that serve generators producing electricity for sale. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Electric service providers

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 72.6 and the exemptions in §§ 72.7 and 72.8 of title 40 of the Code of Federal Regulations and the revised §§ 72.6, 72.7, 72.8, and 72.14 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** Section.

Organization

The information in this preamble is organized as follows:

I. Part 72: Applicability of and Exemptions From Acid Rain Program

A. Revisions Concerning Applicability

Section 72.6 explains what types of units are ''affected units'' subject to emissions reduction or limitation

requirements and other requirements of the Acid Rain Program and what types of units are not affected units. Under § 72.6(b) (5) and (6), qualifying facilities and independent power production facilities meeting certain requirements are not affected units. One such requirement is that the facility had, as of November 15, 1990, a qualifying power purchase commitment, which may be in the form of a letter of intent that is followed by a power sales agreement. Under section 405(g)(6)(A) of the Act, the power sales agreement must be executed ''within a reasonable time'' following the letter of intent. In July 1992 (57 FR 29940, 29947 (July 7, 1992)), EPA proposed a two-year deadline or no later than November 15, 1992 for execution of the power sales agreement. That deadline was not commented on and was made final in March 1993 (58 FR 15634, 15648 (March 23, 1993)). Subsequently, EPA has received public comment that the two-year deadline created a hardship for independent power producers negotiating with multiple regulated purchasers.

To implement the statutory language regarding the time frame for execution of a power sales agreement, EPA could set a fixed deadline (as in the current rule) or could determine a reasonable time frame on a case-by-case basis as part of an applicability determination. Particularly where questions of the applicability of the Acid Rain Program are involved, EPA maintains that it is preferable to establish clear-cut lines. Moreover, EPA is concerned that the two-year period in the current rule for execution of an agreement does not take account of the time necessary to complete agreements where multiple utility purchasers are involved.

Therefore, EPA is proposing to revise the deadline to three years from letter of intent to execution of a power sales agreement. Since under section 405(g)(6)(A) of the Act, the letter of intent must be in place by November 15, 1990, this means that the power sales agreement must have been executed by November 15, 1993, rather than by November 15, 1992 as under the current rule. Public comment indicates that the additional year is reasonable for independent power producers negotiating with multiple regulated purchasers. EPA requests comments on this revision.

Section 72.6(c) sets out procedures for petitioning for a determination from the Administrator as to whether a unit is an affected unit covered by the Acid Rain Program. The current regulation allows the submission of the petition by a certifying official, rather than requiring that the unit have a designated representative who would make the submission. However, the regulation has a general reference to, and requires compliance with, § 72.21, which requires that submissions be made by a designated representative and include certain certifications. To prevent confusion, EPA proposes revisions that pinpoint the certification and notice requirements in § 72.21 that a certifying official's petition must meet. In addition, language is added to § 72.6(c)(1) to clarify that it is the certifying official of an owner or operator of a unit that may submit a petition, and some superfluous language is removed. Further, this section is revised to allow a petition to be submitted at any time but indicating that, if possible, the petition should be submitted before the issuance of an Acid Rain permit. While EPA wants to facilitate the submission of petitions where owners or operators are uncertain as to the status of their unit under the Acid Rain Program, EPA's determination on the petition may obviate the processing and issuance of a permit for the unit.

B. Revisions to Exemptions

In the current rule, EPA established two exemptions from Acid Rain Program requirements. First, in § 72.7 EPA provided for an exemption from requirements concerning permitting, allowances, and continuous emissions monitoring for small, new units (i.e., units that commence commercial operation on or after November 15, 1990 and serve generators with a total nameplate capacity of 25 MWe or less) burning clean fuels. The exemption was adopted because emissions from these units were considered to be *de minimis.* 58 FR 3390, 3594 (January 11, 1993). Second, in § 72.8 EPA provided for an exemption from Phase II permitting requirements for affected units that retire permanently prior to the issuance of a Phase II Acid Rain permit. Units that submitted petitions for such an exemption could also be exempted from monitoring requirements under § 75.67.

1. Fuel Use and Fuel Testing Requirements Under New Units Exemption

EPA is proposing to modify the limitation on fuel use and the requirements for fuel testing under the new units exemption. Under the current rule, units must use exclusively fuels with a sulfur content of 0.05 percent or less by weight, and specified tests to measure sulfur content must be performed for each delivery of fuel (other than natural gas, which is presumed to meet the sulfur content requirement). The records of such tests must be retained at the source for 5 years.

In contrast, today's proposal requires units to use only gaseous fuel with an annual average sulfur content of 0.05 percent by weight or less and only nongaseous fuel that separately meets this same annual average sulfur content limit. The proposal includes formulas for calculating the annual average percentage sulfur content by weight for gaseous fuels and for nongaseous fuels. Similar to the approach in the current rule requiring sampling and sulfur content testing of fuel deliveries, the formulas require use of the measured sulfur content of periodic samples of fuel deliveries during the year to calculate the annual average sulfur content of fuel burned during the year. The formulas require sampling of fuel at least once for each delivery or, for fuel that is delivered to the unit continuously by pipeline, at least once each quarter that the fuel is delivered. Unlike the current rule, the formulas do not require the use of any specific testing methods to measure sulfur content. Sampling and testing of sulfur content of fuel, which may be performed by the fuel supplier rather than the unit's owners and operators, are necessary in order to demonstrate whether the sulfur content limit is met. As under the current rule, the owners and operators of an exempt unit bear the burden of proving compliance with the requirements of the exemption.

However, if the only gaseous fuel burned is natural gas, the proposal provides that the 0.05 percent annual average limit for gaseous fuel is assumed to be met without making any calculations or conducting any sampling or testing. This is consistent with the current § 72.7(d)(2)(ii), which provides that natural gas (which is defined as a ''fluid mixture of hydocarbons containing'', *inter alia,* 20 grains or less of sulfur (40 CFR 72.2)) is assumed to meet the 0.05 percent limit on each delivery of fuel. Moreover, consistent with the current rule, which excludes (through the 0.05 percent sulfur content limit on each delivery) any use of coal by the units, and because the sulfur content of a coal delivery is not necessarily uniform, the proposal expressly bars the use of coal or coal-derived fuel (except coal-derived gas with a sulfur content no greater than natural gas) by exempt units.

EPA believes that the fuel use and testing requirements in the proposal are sufficiently stringent to ensure that minimal emissions from the exempt units and are significantly less

burdensome for the owners and operators of the units involved, which in many cases are municipally owned units. Allowing a unit to burn some fuel that exceeds 0.05 percent sulfur by weight so long as the annual average sulfur content of its fuel (weighted by the weight of the fuel) does not exceed that level will have little effect on the total SO_2 emissions for the year. Separate sulfur content limits are established by gaseous and nongaseous fuels so that very clean gaseous fuel (e.g., pipeline natural gas) cannot be used to offset nongaseous fuel with a sulfur content significantly higher than 0.05 percent. EPA notes that, under this approach, a unit will be able to use landfill or digester gas, which has a higher sulfur content than natural gas but lower than some nongaseous fuels.[1] Using the annual average will give owners and operators more flexibility in that a single delivery of fuel in excess of the limit will not automatically invalidate the exemption, as is the case under the current rule.

EPA also believes that prescribing more detailed testing methods is unnecessary because the appropriate testing methods may vary depending on the specific fuel involved and testing data from the fuel supplier may be sufficient to establish the sulfur content of the fuel.[2] The proposal requires owners and operators to keep records for 5 years (or longer if required in writing by EPA or the permitting authority) that demonstrate that the sulfur content limit has been met. This approach gives owners and operators more flexibility to determine what type of information will support such a demonstration, but the proposal also emphasizes that the burden of proof is on the owners and operators.

2. Administration of New Units Exemption

The purpose of the exemption, of course, is to relieve owners and operators of the burden of complying with permitting, allowance, and monitoring requirements for clean new units and to reduce the concomitant administrative burden on permitting authorities. In issuing new unit exemptions under the current rule, the Agency has found that the procedures for obtaining and maintaining an exemption are somewhat less burdensome than the procedural requirements for units required to have Acid Rain permits. However, the Agency has concluded that the exemption procedures are still more burdensome than necessary. In particular, the current rule provides that: a potentially exempt unit must have a designated representative and submit a petition for a written exemption; the permitting authority must issue a written exemption after providing public notice (e.g., in a local newspaper) and a comment period; and the exemption must be renewed every five years.

The current rule requires a significant amount of processing for each unit that seeks to obtain an exemption. The Agency has already granted about 130 new unit exemptions using current procedures, and, despite extensive public notice, not one comment has been received during the public comment periods. Based on its experience with these exemptions, EPA does not believe that requiring a designated representative to be appointed for each clean unit and submission and processing of forms for a new units exemption every five years provides any significant environmental benefit.

The proposal makes the new unit exemptions largely automatic for those units that meet the criteria, discussed above, concerning capacity, annual fuel use, and recordkeeping. In general, no designated representative, petition for exemption, or renewal petition is required.[3]

The only exception to this approach is for units that are listed and allocated one or more allowances on Table 2 or 3 of § 73.10. Because they are being exempt from the requirement to hold allowances to cover emissions, they should not retain their allowance allocations. The proposal requires the designated representative (who handle the unit's allowance account) to submit to EPA and the State permitting authority a statement that: the unit meets, and will continue to meet, the exemption requirements; he or she is surrendering allowances in the same amount, and of the same or earlier compliance use date as, the unit's allocated allowances; and he or she is returning the proceeds for any allowances withheld from the unit for EPA allowance auctions under subpart E of part 73. However, apparently because the owners and operators of some small units are small entities and not fully aware of their obligations under the Acid Rain Program, some potentially exempt units have still not selected designated representatives even though the units are allocated allowances. In order to facilitate implementation of the exemptions by small entities, the proposal provides that, if there is no designated representative, a certifying official of each owner of the unit may make this submission. This reflects the desirability of ensuring that each owner (or the designated representative representing all owners) is aware of the allowance surrender. The unit will not be exempt until EPA actually deducts the allowances from the unit account in the Allowance Tracking System and receives the allowance auction proceeds. Upon deduction of the allowances, the unit account is closed.

Although units that meet the exemption criteria and are not allocated allowances are automatically exempt, the proposal requires the designated representative (or a certifying official of each owner) of such unit to submit to EPA and the State permitting authority a statement that the unit meets and will continue to meet the exemption, which are referenced in the statement. EPA anticipates providing a standard form for designated representatives or certifying officials for exempt units (whether or not they have allocated allowances) to submit the appropriate information. Providing this type of notice to EPA and the State permitting authorities imposes little burden on the exempt units and has important benefits. First, owners of the units are more likely to consider carefully the basis for the exemption and the continuing requirements under the exemption if each owners' representative must sign and submit such a form. Second, submission of the form will ensure that EPA and State permitting authorities can keep track of which units are exempt and will not treat such units as affected units.

Under the proposal, a new units exemption is effective on January 1 of the first full calendar year for which the unit meets the criteria for an exemption.

[1] This is consistent with EPA's efforts to encourage use, rather than flaring, of such gas. *See* section V of this preamble.

[2] With the elimination of the fuel testing requirements in the current rule, the testing methodologies specified in the current § 72.7 and incorporated by reference in the current § 72.13 are unnecessary, and EPA therefore proposes to remove them. The provisions of § 72.13 are renumbered to reflect this change.

[3] Because the proposed new units exemption and, as discussed below, the proposed retired units exemption, are automatic and written exemptions for these units are no longer issued, the references in the current part 72 to written exemptions under §§ 72.7 and 72.8 are revised. The revisions to these references also reflect, in some cases, the establishment of exemptions for industrial units under proposed § 72.14, which is discussed below. For example, the criteria for State acid rain programs in § 72.72(b) are changed to remove the reference to §§ 72.7 and 72.8 written exemptions and to refer instead to § 72.14 exemptions. By further example, the reference in § 72.9(c)(6) to §§ 72.7 and 72.8 written exemptions is changed to refer to exemptions under §§ 72.7, 72.8, and 72.14. The same change—and the only change proposed to part 74—is proposed in § 74.2.

This reflects the annual nature of the Acid Rain Program. As provided in the current rule, the exemption terminates automatically when the unit involved no longer satisfies the criteria for an exemption. Consistent with the approach taken with other exclusions of units from the Acid Rain Program, a unit that had an automatic exemption that terminates is an affected unit and cannot requalify for the exemption. *See* 40 CFR 72.6(a)(3)(ii) through (vii). As in the current rule, exemption termination subjects the unit to the permitting, allowance, and monitoring requirements of the Acid Rain Program. The unit will have to have a designated representative, who must submit a complete permit application before the later of January 1, 1998 or 60 days after the exemption terminates. The unit will have to comply with the monitoring requirements within 90 days after the termination.

Under the current rule, exempt units are still included in the definition of ''affected unit.'' As a result, they must generally be included in title V operating permits issued by State permitting authorities under part 70 and are not eligible to become opt-in units under part 74. Part 70 requires sources with affected units to have operating permits reflecting Acid Rain Program requirements and any other Clean Air Act requirements to which the sources are subject. If a unit is subject to other Clean Air Act requirements, the unit must continue to comply with such non-title IV provisions, and this will be reflected in the title V operating permit.[4] However, if a unit is not subject to any other Clean Air Act requirements and the unit is exempt from Acid Rain permitting, allowance, and monitoring requirements, question has been raised as to whether the current rule can be read to require the unit to obtain a title V operating permit. In such circumstances, it makes little sense to require a title V operating permit; after all, the only requirements put in the permit will be those for maintaining an exemption and a major purpose of the exemption is to relieve the unit and the permitting authority of permitting burdens. Although the Agency maintains that a title V operating permit is not required for such a unit, the proposal modifies § 72.6(b) to make this explicit by stating that any exempt new unit is an unaffected unit. Further, because the purpose of the exemption is to relieve clean, new units of permitting and other Acid Rain requirements, EPA continues to believe that exempt units should be excluded from applying to re-enter the Acid Rain Program as opt-in sources and the proposal contains such an exclusion.

Finally, as discussed above, EPA has already approved a number of written exemptions for new units under the current rule. Since the proposal provides more flexible requirements for qualifying for and maintaining the exemption (e.g., more flexible sulfur content requirements and no renewal requirement), the units with written exemptions also qualify for the automatic exemption under today's proposal. The proposal makes this clear by including, as one category of units that qualify for the automatic exemption, those new units that have already been granted written exemptions. EPA sees no reason for denying already exempt units the flexibility and streamlining benefits of the proposal and also sees no purpose to retaining permanently two different types of new units exemptions. Consequently, the proposal provides that already exempt units must meet the requirements for maintaining an automatic exemption, in lieu of the requirements contained in the current rule.

However, while the current rule requires exempt units to surrender any allowances allocated to the units under § 73.10 for years for which the units are exempt, the written exemptions already granted did not extend beyond 5 years. The already exempt units have not yet surrendered Phase II allowances and, under the current rule, will have to do so when the exemption is renewed. In extending automatically these exemptions and removing the need for renewal, the proposal requires those exempt units with allocated allowances to surrender such allowances and the proceeds from EPA's auctioning of such allowances.

3. Retired Units Exemption

While retaining the basic criteria in the current rule for qualifying for the retired units exemption, EPA proposes to streamline the procedures for obtaining and maintaining the exemption. In addition, EPA proposes to clarify what Acid Rain requirements are covered by the exemption.

The current rule requires largely the same procedures for the retired units exemption as for the new units exemption: submission of a petition, issuance of a written exemption subject to public notice and comment, and submission of a renewal petition every 5 years. EPA has approved about 155 retired units exemptions under these procedures without receiving any public comments on them. Since the purpose of the exemption is to reduce the burden on the owners and operators of retired units and the permitting authorities, EPA believes that, as in the case of new units exemptions, the procedures for retired units exemptions can be made less burdensome.

The proposal takes essentially the same approach in setting revised procedures for both new units and retired units exemptions. The proposed retired units exemption is automatic so long as the unit meets the criteria for the exemption: i.e., that the unit is permanently retired and does not emit any SO_2 or NO_X starting on the effective date of the exemption. Units that retire are not, of course, necessarily small and, since they probably have been participating in the Acid Rain Program until retirement, probably have designated representatives. Under the proposal, the designated representative of each exempt unit must submit to EPA and the State permitting authority a statement that the unit meets, and will continue to meet, the exemption requirements. EPA anticipates providing a standard form for the designated representative of an exempt unit to submit the appropriate information. Units already granted retired units exemptions also qualify for the automatic exemption and will make no additional submissions. As under the current rule, exempt retired units retain their allocated allowances since, even without the exemption, they would have no SO_2 emissions and would not use any allowances. An exempt unit's Allowance Tracking System account is subject to the requirements for general accounts under part 73. The owners and operators of the unit must retain at the source records demonstrating that the unit qualifies for the exemption. The exemption terminates automatically if the unit resumes operation and emits any SO_2 or NO_X.

EPA is also proposing to modify the current rule to clarify what Acid Rain requirements are covered by the exemption. Currently § 72.8 of the regulations exempts retired units only from the requirements of part 72. Section 75.67(a) currently provides that units that retire before January 1, 1995 and for which a petition for a retired units exemption is submitted prior to monitor certification deadlines may also obtain an exemption from the monitoring requirements of part 75. The Agency maintains that any unit that retires should be automatically exempt, starting in the first full year of

[4] In order to ensure that owners and operators understand this, today's proposal states this expressly. The proposed rule also provides that a permitting authority may use the administrative amendment procedures under § 72.83 to add to the permit an exemption under § 72.7, 72.8, or 72.14.

retirement, from both the Phase II permitting requirements of part 72 and the monitoring requirements of part 75 so long as the unit remains retired. If the unit has no emissions, there is nothing to monitor. The proposal removes § 75.67(a) and adds the monitoring exemption to § 72.8.

However, as noted above, retired units may still receive allowance allocations. Such units must remain subject to subpart B of part 73, which governs allowance allocations. Reflecting these considerations, the proposal exempts retired units from all Acid Rain Program requirements except for the provisions of §§ 72.2 through 72.6, § 72.8, §§ 72.10 through 72.13, and subpart B of part 73. Moreover, retired units that, but for the exemption under § 72.7, would be Phase I units, must still comply with the requirements concerning Phase I Acid Rain permits and reduced utilization of such units during Phase I.[5] The purpose of the retired units exemption is to exempt the units from Phase II permitting, not to allow them to avoid requirements implementing statutory permitting and reduced utilization provisions. In fact, the retired unit exemptions issued by EPA under the current § 72.8 state expressly that they apply to Phase II (as distinguished from Phase I) permitting requirements. In order to clarify that reduced utilization requirements apply to units with retired unit exemptions, the proposal states that the units must submit annual compliance certification reports that include the accounting for reduced utilization and are subject to end-of-year allowance deduction procedures for Phase I years.

For the same reasons as under the proposed new units exemption, EPA proposes that units under the retired units exemption be unaffected units and that they be excluded from becoming opt-in sources. Similarly, retired units already granted written exemptions will be covered by the automatic exemption and must comply with the requirements for maintaining such an exemption.

4. Industrial Units Exemption

The purpose of title IV is to reduce the adverse impacts of acid deposition through reductions of SO_2 and NO_x emissions. Congress addressed SO_2 emissions of both ''utility units'' and ''industrial sources.'' While ''utility units'' are generally required (starting in Phase I, if the unit is listed in Table A of section 404 or is otherwise a Phase I unit, or Phase II) to meet SO_2 emissions limitations and to hold allowances to cover their SO_2 emissions, ''industrial sources'' are not specifically required to limit emissions or hold allowances. Instead, section 406 of the Clean Air Act Amendments of 1990 required the Administrator to prepare and submit to Congress a report that inventories national annual SO_2 emissions from industrial sources. Whenever the inventory indicates that such emissions ''may reasonably be expected to exceed 5.6 million tons per year,'' the Administrator must ''take such actions under the Clean Air Act as may be appropriate to ensure that such emissions do not exceed'' the 5.6 million ton cap. 42 U.S.C. 7656. These actions may include promulgation of standards of performance for new or existing sources.

The statutory definitions of ''utility unit'' and ''industrial source'' draw the line between facilities (utility units) that are subject to the requirement to hold allowances by no later than January 1, 2000 and industrial sources that are not, but could be, made subject to unspecified requirements if the industrial source cap is exceeded. However, ''utility unit'' is broadly defined in section 402 of the Act to encompass units owned by companies that are generally not treated as full-fledged public utilities by State and federal utility regulatory authorities.

Generally, for purposes of State utility regulation, a public utility is an entity that owns or operates facilities whose product or service is dedicated to public use. Typically, the company must devote its facilities to serve the general public or a portion of the general public, not simply selected contract customers.[6] In contrast, under section 201(e) of the Federal Power Act, any persons that sell electricity that is in turn resold are ''public utilities'' and are subject to regulation of their sales rates and other matters by the Federal Energy Regulatory Commission (FERC). While holding that industrial companies that sell utilities incidental amounts of electricity from non-cogeneration units are themselves public utilities, FERC has imposed less burdensome regulatory requirements on such industrial sellers. For example, rate schedules for sales by these industrial sellers must be filed with FERC but the rates are not required to meet traditional cost-of-service standards, under which a rate must be based on the seller's costs (including return on capital) of providing the electricity. *See, e.g., Ford Motor Co. and Rouge Steel Co.,* 50 FERC para. 61,426 (1990), *modified on reh'g,* 50 FERC para. 61,025; *Cliffs Electric Service Co.,* 32 FERC para. 61,372 at 61,833 (1985); *Orange & Rockland Utilities,* 42 FERC para. 61,012 (1988); *St. Joe Minerals Corp.,* 21 FERC para. 61,323 (1982), *modified on rehg.,* 22 FERC 61,211 (1983).

Under section 402 of the Clean Air Act, a utility unit is ''a unit that serves a generator in any State that produces electricity for sale,'' regardless of the amount of the sale relative to total generation by the unit or generator or whether the sale is to the general public or to a public utility for resale to the public. 42 U.S.C. 7651a(17)(A). Consequently, entities (such as independent power producers, small power producers, and cogenerators) that sell electricity to a public utility are affected units unless they qualify for an exemption under other provisions of title IV. Section 402(17)(C) establishes an exemption for units cogenerating steam and electricity: a cogeneration unit is not a ''utility unit'' unless

> the unit is constructed for the purpose of supplying, or commences construction after [November 15, 1990] and supplies, more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. 42 U.S.C. 7651a(17)(C).

In addition, section 405(g)(6) establishes an exemption for ''qualifing small power production facilities'', ''qualifying cogeneration facilities'', and ''new independent power producers''. 42 U.S.C. 7651d(g)(6). Such entities (which are defined in sections 405(g)(6) and 416(a)(2)) that had a committment—through a power sales agreement, a order of a State regulatory authority, a letter of intent, or selection as a winning bidder in a competitive bid

[5] The definition of ''Phase I unit'' in § 72.2 is revised to make it clear that units that, but for a retired units exemption, would be subject to an Acid Rain emission reduction requirement or limitation continue to be treated as Phase I units.

[6] *See, e.g., Arkansas-Louisiana Electric Cooperative* v. *Arkansas Public Service Comm'n,* 194 S.W.2d 673, 678 (S.Ct. Arka. 1946); *Richfield Oil* v. *Public Utilities Comm'n of California,* 354 P.2d 4, 10–11 and 16 (S.Ct. Cal. 1960); Colorado Utilities v. *Public Service Comm'n,* 61 P.2d 849, 854–55 (S.Ct. Colo. 1936); *Mississippi River Fuel* v. *Illinois Commerce Comm'n,* 116 N.E.2d 394, 399 (S.Ct. Ill. 1953); *City of Saint Louis* v. *Mississippi River Fuel,* 97 F.2d 726, 729–30 (8th Cir. 1938); *Llano* v. *Southern Union Gas,* 399 P.2d 646, 653 (S. Ct. N.Mex. 1964); *Ambridge* v. *Public Sevice Comm'n of Pennsylvania,* 165 A. 47, 49 (S. Ct. Penn. 1933); *Humble Oil and Refining* v. *Railroad Comm'n of Texas,* 128 S.W.2d 9, 13 (S.Ct. Tex. 1939); *Valcour* v. *Morrisville,* 184 A. 881, 885 (S. Ct. Ver. 1936); *Inland Empire Rural Electrification* v. *Dept. of Public Service of Washington,* 92 P.2d 258, 262–63 (S.Ct. Wash. 1939); *Wilhite* v. *Public Utilities Comm'n of West Virginia,* 149 S.E.2d 273, 281 (S.Ct W. Wir. 1966); and *Union Falls Power* v. *Oconto Falls,* 265 N.W. 722, 723 (S.Ct. Wisc. 1936) (cases holding that company that serve public, not just selected customers, is public utility). *But see Southern Oklahoma Power* v. *Corporation Comm'n,* 220 P. 370, 371 (S.Ct. Okla. 1923) (holding that generating company the only customer of which is a public utility is itself a public utility).

solilcitation—as of November 15, 1990 to sell power are not affected units. There are no such exceptions for industrial units that do not fall within the exempt categories of units under these sections.

As a result, the requirements of title IV cover non-cogeneration industrial units serving generators that produce electricity almost exclusively for use by an industrial company and only incidentally for sale to a public utility. In one such case, three units and three generators (with a total nameplate capacity of about 190 MWe) are owned and operated solely by the industrial company. Under the interconnection agreement with a public utility and a related power purchase agreement, the public utility provides additional electricity, through backup and emergency service, for use by the industrial company. The industrial company is in turn obligated to sell some electricity on a backup and emergency basis to the public utility and, starting in 1984, has made such sales, which have been less than 10 percent of total annual generation. The industrial company obtains backup for its capacity, and the public utility avoids constructing some additional capacity. Because these industrial units make limited electricity sales only to the public utility, the company is apparently not regulated by the State utility regulatory authority and is subject to relatively light-handed FERC regulation. EPA has received public comment suggesting that the units be exempt from the Acid Rain Program.

In order to determine the scope of the issue, EPA attempted to estimate the number of units that might be covered by such an exemption for industrial units. About 3,400 industrial combustion sources are included in the 1990 Interim Inventory (a database based on the 1985 NAPAP inventory with emissions projections for 1995). EPA removed, from this group of possibly affected industrial units, those industrial units thought to be: self-generators consuming rather than selling their generation; cogenerators exempt under section 402(17)(C); or units exempt under section 402(b) because they were serving only generators with a nameplate capacity of 25 MWe or less. EPA estimated that about 140 remaining industrial units possibly may be affected units under title IV. Based on discussions with industry representatives and on review of the electric rate schedules filed at FERC for electricity sellers that are not traditional utilities, EPA concludes that most of these remaining industrial units are not selling any electricity and that there are about 15 industrial units that sell some electricity and so are affected units under the current Acid Rain rules. *See Report to Docket: Industrial Units.*

Even if electricity sales to a public utility make up a very small portion of the total amount of electricity produced by an industrial unit and associated generator, the Acid Rain Program imposes allowance requirements relating to all SO_2 emissions from the unit. In such a case, no distinction is made between emissions associated with the small amount of electricity sales and emissions associated with the vast majority of electricity used by the industrial company itself. An affected industrial unit must hold allowances, as of the allowance transfer deadline, that cover all of the unit's SO_2 emissions during the year. 40 CFR 72.9(c)(1)(i). Similarly, any NO_x emission limitation applicable to the industrial unit covers all NO_x emissions from the unit. *See, e.g.*, 40 CFR 76.5, 76.6, and 76.7.

The cost to some industrial companies of holding sufficient allowances may be exacerbated by the fact that, even though certain existing industrial units could have qualified for allowance allocations for Phase II under section 405 of the Act, none were allocated any allowances. *See* 40 U.S.C. 73.10 (Tables 2 and 3, which do not include any such units). Information on such units was not included in the National Allowance Data Base (NADB), which was used to develop allowance allocations. However, based on information compiled by the Department of Energy on electric generators owned by nonutility electric power producers, EPA developed and published the Adjunct Data File, which listed units owned by ''nontraditional'' utilities. 57 FR 30034, 30040 (July 7, 1992). EPA noted that the listed facilities potentially could be affected units, but that it did not have sufficient information to make an applicabililty determination or to allocate allowances to those that were affected units. Consequently, in publishing the file, EPA requested owners or operators of units that were then or might, in the future, become affected units to provide EPA the data elements necessary for allocating allowances. In addition, EPA gave notice that if the data was not provided by September 8, 1992, the units involved would not be allocated any allowances and, to the extent allowances were needed, would have to obtain them on the open market. *Id.* A number of industrial companies submitted comments on the Adjunct Data File, each arguing that their units were not affected units.

On March 23, 1993, EPA issued a notice stating that (with a few exceptions not relevant here) that it ''believes'' that none of the units in the Adjunct Data File were affected units. 58 FR 15720, 15727 (March 23, 1993). No allowances were allocated to industrial units in the Adjunct Data File (including some units identified in *Report to Docket: Industrial Units* as potentially covered by the proposed industrial unit exemption) or to any other industrial units. However, EPA stressed that the omission of a unit from the tables indicating allowance allocations does not mean that the unit is an unaffected unit: ''[a]pplicability will be determined under the (Acid Rain) rules in 40 CFR 72.6.'' *Id.*

In addition to being required to hold allowances covering all SO_2 emissions and to meet any applicable NO_x emission limitation, an affected industrial unit, like all affected units, must install, operate, and maintain continuous emission monitoring systems for all SO_2, NO_x, and CO_2 emissions and for opacity. After EPA approves certification of the systems, they must be tested periodically to ensure that the monitoring data is accurate. Further, monitoring data (including hourly emissions data) must be reported to EPA on a quarterly basis. The average cost per unit of acquisition, installation, operation, and maintenance of a continuous emission monitoring system (including data handling hardware) is estimated to be about $90,600 (in 1993 dollars). *Economic Analysis of the Title IV Requirements of the 1990 Clean Air Act Amendments* at 34 (ICF Resources Inc. 1995) (estimating total annualized emission monitoring costs under title IV of $200 million for 2,096 units during the period 1997–2010).

The costs of the Acid Rain Program are more likely to be a problem for industrial companies than for public utilities, which in general have greater ability to pass through to customers the costs of acquiring allowances. First, public utilities generally are subject to cost of service ratemaking and charge rates covering their costs of service. Second, virtually all fossil fuel-fired utility generation is covered by the Acid Rain Program. In contrast, the prices charged by industrial companies for their industrial products are generally limited by competitive market prices and relatively few industrial units are covered by the program. Particularly if one industrial company, but not its competitors, must meet the costs of the Acid Rain Program as applied to its units, market prices will not necessarily cover all such costs. EPA notes that in

section 405(g)(6)(A) cogeneration units that, as of November 15, 1990, had already contracted or otherwise committed to sell electricity to a public utility were exempted from the Acid Rain Program because of their limited ability to pass through allowance costs to customers. 58 FR 15634, 15638 (March 23, 1993); *see also* Cong. Rec. S3027–28 (March 22, 1990).

In short, as a result of a very small portion of its operations (i.e., incidental electricity sales to public utilities under existing interconnection and power purchase agreements), a non-cogeneration industrial unit may be subject to allowance and monitoring requirements affecting all of its electric generation activities and imposing significant costs.[7] Further, once the industrial unit has begun making any such incidental electricity sales, the unit becomes an affected utility unit permanently subject to all the requirements of the Acid Rain Program. In the absence of an exemption, such a unit is an affected utility unit if, during 1985, it served a generator that produced electricity sold to a public utility or if, at any time thereafter, the unit serves such a generator. *See* 42 U.S.C. 7651a(17)(A). The unit remains an affected utility unit even if the industrial company subsequently terminates its interconnection agreement with and stops selling electricity to the public utility.

EPA is concerned that, because of an incidental portion of the operations of a non-cogeneration industrial unit, an industrial company will be burdened with significant regulatory requirements and resulting costs that were unanticipated when the incidental electricity sales were made and that are unavoidable in that they remain even if the incidental sales are now terminated. However, this concern applies only where (1) the industrial units are not cogeneration units; (2) these units serve generators that were contractually obligated to make incidental sales under an interconnection agreement (and any related power purchase agreement) and have made only incidential electricity sales; and (3) this contractual obligation was effective on or before March 23, 1993. This new exemption is not necessary for cogeneration units since Congress already provided an exemption for cogeneration units based on the amount of utility sales. Moreover, non-cogeneration industrial units making more than incidental electricity sales should be affected units since, in title IV, Congress generally applied the Acid Rain Program to units serving generators that sell electricity.

The basis for limiting the exemption to units under a contractual obligation as of March 23, 1993 is related to the Agency's handling of allowance allocations for industrial units. After November 15, 1990, industrial units' owners were on constructive notice that if they contractually obligated themselves to sell electricity, they would be subject to title IV requirements. However, as noted above, on March 23, 1993 EPA issued a notice stating that it believed that the industrial units listed in the Adjunct Data File (a list of units owned by ''nontraditional utilities'') were unaffected units. 58 FR 15727. The notice did not explain the basis for this ''belief'', which appears to have been erroneous with regard to at least some of the listed noncogeneration industrial units. As a result, EPA did not add the industrial units to the allowance allocation tables and did not allocate any allowances to these units. *Id*. Also on March 23, 1993, EPA issued a final list of the Phase II allowance allocations under section 403(a) of the Act.[8] 58 FR 15634 (March 23, 1993). As discussed below, EPA is today correcting certain Agency errors in the March 23, 1993 allocations. However, except for these limited corrections, EPA will not allocate allowances to units that were not listed as receiving allowance allocations in the March 23, 1993 notice and that become affected units after that date. 58 FR 15641. Consequently, if, after March 23, 1993, a non-cogeneration industrial unit becomes contractually obligated to sell electricity to a utility and, by making the sales, becomes an affected unit, the unit will not be allocated allowances. Non-generation industrial units that were contractually obligated on or before March 23, 1993 and were affected units probably should have been, but were not, allocated allowances. Therefore, EPA proposes to apply the new exemption to non-cogeneration industrial units that were contractually obligated as of March 23, 1993.

Under this approach, the non-cogeneration industrial units that meet the exemption criteria and are issued an exemption may continue to serve generators making incidential, contractually required electricity sales and remain exempt. However, if the units serve generators that make sales after the contractual obligation is no longer in effect or to make sales beyond the contractual obligation, the units will become affected units under the Acid Rain Program.

Exempting non-cogeneration industrial units will exempt their SO_2 emissions from the requirement to hold allowances and thus from the 8.95 million ton cap in Phase II for utility units. The total estimated annual SO_2 emissions from exempt industrial units are relatively small: about 47,000 tons. *Report to Docket: Industrial Units.* The environmental impact of removing these units from the utility unit cap is mitigated by the fact that emissions from the exempt industrial units are still subject to the 5.6 million ton cap for industrial sources. As discussed above, the Administrator is required to take action under section 406 of the Clean Air Act Amendments of 1990 to ensure that the industrial source cap is not exceeded.

The industrial units exemption will also exempt these units from Acid Rain NO_X emissions limitations to the extent that the units have coal-fired boilers of the types covered in Phase II. Again, the total estimated annual NO_X emissions from exempt units is relatively small: about 19,000 tons. *Id*. In April 1995 EPA promulgated NO_X emission limitations for dry bottom wall-fired or tangentially fired boilers. 60 FR 18751, 18763 (April 13, 1995). In January 1996, EPA proposed to revise these limitations and establish new limitations for most other types of existing coal-fired boilers. 61 FR 1442, 1480 (January 19, 1996).

For these reasons, EPA proposes to establish a narrow exemption for non-cogeneration industrial units, i.e., non-cogeneration units that have no owner or operator of which the principal business is electricity sale, transmission, or distribution or that is a public utility subject to State or local utility regulation. In determining whether this requirement is met, any affiliate or subsidiary or parent company of an owner or operator will be considered so that the requirement cannot be circumvented through the position of the owner or operator in a corporate structure. The exemption will apply where there is a showing that, on or before March 23, 1993, the owners or operators of the unit entered into an interconnection agreement (and any related power purchase agreement) with a public utility requiring that generators served by the unit produce electricity for sale only for incidental sales of electricity to a public utility. There also must be a showing that the unit served generators that, in 1985 and any year thereafter, actually produced electricity

[7] The Acid Rain Program also requires the owners and operators of affected industrial units to select a designated representative and obtain an Acid Rain permit covering the units. While these requirements impose some costs, the costs are relatively small.

[8] Section 403(a) required the final list of allowance allocations to be published by December 31, 1992, but the final list was issued late.

for sale only for incidental electricity sales to a public utility as required under that interconnection agreement and any related power purchase agreement. If any of the requirements of the exemption are not met, the exemption terminates automatically.

Two aspects of the proposed exemption ensure that it is limited to situations involving only incidental electricity sales. First, the sales must be required under an interconnection agreement (and any related power purchase agreement) between the owners or operators of the industrial unit and the public utility to which the electricity sales are made. The fact that the sales are made in connection with the agreement through which the industrial company obtains electricity for its own use from the public utility indicates that the sales are incidental to the industrial company's business. Second, the sales to the public utility must not exceed, in any calendar year, the lesser of 10 percent of the generating output capacity of the generator served by the unit (which is the nameplate capacity of the generator times the number of hours (8,760) in a year) for that year or 10 percent of the actual annual electric output of the generator. EPA believes that these limits on the amount of annual sales are reasonable and will help ensure that the unit's electricity sales are truly incidental. Applying these limits to a hypothetical industrial unit serving a generator with nameplate capacity of 75 MWe, the generator output capacity is 657,000 MWe-hr. Assuming that the generator's actual annual electrical output is 300,000 MWe-hr, this unit can sell up to 30,000 MWe-hr and qualify for an industrial unit exemption under this proposal.

Because of EPA's lack of experience with this proposed exemption and because applying the exemption criteria to specific cases may require analysis and exercise of administrative judgment and may benefit from public comment, EPA proposes to require submission of an application for an exemption and provide for public notice and comment before approving or disapproving the exemption for any industrial unit. The designated representative of an industrial unit must submit an application that provides the information necessary to rule on the exemption. Using the procedures applicable to permit issuance, the permitting authority will issue a draft exemption or denial of exemption for public comment and then issue or deny a final exemption (or proposed exemption if a State is the permitting authority). An industrial unit with an approved exemption will become an unaffected unit and will be exempt from the provisions of the Acid Rain Program, except for the provisions of § 72.14 (the new section providing for and setting conditions on the exemption), §§ 72.2 through 72.6, §§ 72.10 through 72.13. Like other exempt units, an exempt industrial unit cannot become an opt-in source. The exemption need not be renewed and is effective so long as the unit meets the requirements, discussed above, for maintaining the exemption.

EPA requests comment on all aspects of the proposed industrial unit exemption.

II. Part 72: Interaction of Acid Rain Permitting and Title V

Section 408 of the Act requires that title IV be implemented by ''permits issued to units subject to this title (and enforced) in accordance with the provisions of title V, as modified by (title IV) . . . No permit shall be issued that is inconsistent with the requirements of (title IV), and title V as applicable.'' 42 U.S.C. 7651g(a).

Title V, in turn, sets forth requirements for permit programs to be implemented by State and local air pollution control agencies. Under title V, it is unlawful to operate an affected source in the Acid Rain Program or other specified sources ''except in compliance with a permit issued by a permitting authority under (title V).'' 42 U.S.C. 7652b(a). The permit must include enforceable emission limitations and standards and other conditions ''as are necessary to ensure compliance with applicable requirements of (the Act).'' 42 U.S.C. 7652d(a). Title V states that its provisions ''apply to permits implementing the requirements of title IV except as modified by that title.'' 42 U.S.C. 7652f(b).

EPA proposes to revise the current regulations governing the interaction of titles IV and V with regard to several matters: the provisions explaining the relationship between the Acid Rain rules and rules implementing title V (i.e., parts 70 and 71); establishment of State authority to administer and enforce Acid Rain permits; and the required elements of a State Acid Rain program.

A. Relationship Between Acid Rain Rules and Parts 70 and 71

The current part 72 states that parts 72 and 78 take precedence over part 70 (which governs title V permitting) to the extent that any requirements of parts 72 and 78 are ''inconsistent with'' part 70. 40 CFR 72.70(b). The current rules also state that part 72 governs Acid Rain permitting by the Administrator but do not specifically address the rules (i.e., part 71) for permitting by the Administrator under title V since part 71 had not been issued when the current part 72 was issued. *See* 40 CFR 72.60(a). As noted above, both titles IV and V establish the precedence of the Acid Rain regulations over title V regulations for purposes of administering Acid Rain permits. Since the issuance of the current part 72 in January 1993, additional Acid Rain regulations relating to permit administration (i.e., part 74 for opt-in sources and part 76 for NO_x emissions) have been promulgated. In addition, part 71, setting forth permitting procedures for the Administrator under title V, has been proposed and then issued as a final rule. 61 FR 34202 (July 1, 1996).

EPA proposes today to revise the current provisions addressing the relationship between Acid Rain and title V rules to reflect the additional rulemaking activity. The revisions also clarify what constitutes an ''inconsistency'' between the two sets of regulations and the circumstances under which the Acid Rain rules take precedence. With regard to State permitting activities, the proposal states in § 72.70(b) that parts 72, 74, 76, and 78 take precedence to the extent that such parts ''contain provisions not included in, or expressly eliminate or replace provisions of, part 70 concerning the acid rain permit application and the Acid Rain portion of an operating permit.'' [9]

An analogous provision is proposed in § 72.60(a) with regard to permitting by the Administrator. In addition, the proposal explains that the Acid Rain requirements concerning permit applications, compliance plans, permit content and permit shield, permit processing and issuance, permit revision, and administrative appeals replace the provisions in part 71 with regard to Acid Rain permit applications and permits. The provision also states that the part 71 provisions concerning Indian tribes, delegation of a part 71 program, affected State review of draft permits, and public petitions to reopen a permit for cause are not eliminated or replaced by the Acid Rain provisions and so apply to the Acid Rain Program.

[9] Language in the current § 72.70(b) concerning petitions for exemption and draft, proposed, and final written exemptions is removed because it is redundant. The requirements for exemptions are already included in part 72.

B. State Authority To Administer and Enforce Acid Rain Permits

The current rule provides that if a State or local agency receives full, interim, or partial approval of an operating permits program under title V by July 1, 1996, that agency becomes the permitting authority for the issuance of Phase II Acid Rain permits.*See* 40 CFR 72.73(a). (Under the Acid Rain Program, the term ''State'' is defined to include the 48 continguous States, the District of Columbia, and local authorities; henceforth in this preamble, ''State'' will be used with that meaning.)[10] The State permitting authority must issue Phase II Acid Rain permits by December 31, 1997. If the State operating permits program is not approved by July 1, 1996, the Administrator is the permitting authority for Phase II Acid Rain permits and must issue them by January 1, 1998. After a State operating permits program is approved, the Administrator will suspend issuance of Acid Rain permits. *See* 40 CFR 72.74.

EPA has found that this approach should be modified. Some States have submitted, and EPA has granted interim or full approval of, operating permits programs that do not include all necessary Acid Rain provisions. State permitting authorities that have approval but lack a full Acid Rain program are not in a position to process, issue, and otherwise administer properly Acid Rain permits. Further, some States have indicated that they want to adopt some portions of the Acid Rain Program (e.g., the permitting requirements for sources with Phase I and Phase II units)[11] but not other portions of the program (e.g., permitting requirements for opt-in sources).

Consequently, EPA proposes to revise the current rule to reflect the variety of circumstances concerning State adoption of Acid Rain programs. Under the proposal, a State becomes responsible for administering and enforcing Acid Rain permits for affected sources if it has both an operating permits program approved under part 70 *and* Acid Rain regulations that are accepted by the Administrator through a notice in the Federal Register that cover the sources. (The term ''administer'' includes all aspects of processing a permit, e.g., issuance, renewal, and revision.) Until these requirements are met, the Administrator will be the permitting authority for purposes of issuing Acid Rain permits (or the Acid Rain portion of operating permits) for the sources.

Section 408(d) of the Act requires that Phase II Acid Rain permits be issued for sources with Phase I and Phase II units by December 31, 1997 if a State is the permitting authority. In order to allow sufficient time for a State to meet this statutory deadline, the proposal states that a State must have an approved operating permits program (whether full or interim approval) and accepted Acid Rain regulations by January 1, 1997 or such later date as the Administrator may set (rather than a fixed date of July 1, 1996, as in the current rule) if the State is to be the permitting authority for the initial Phase II Acid Rain permits. Otherwise, the Administrator will be responsible for issuing such permits. EPA has already issued notices identifying the status of State permitting authorities' acid rain regulations. *See, e.g.*, 60 FR 16127 (March 29, 1995); 60 FR 52911 (October 11, 1995); and 60 FR 62846 (December 7, 1995).

If EPA is issuing permits and, after January 1, 1997, the State meets the requirements to become the permitting authority for Acid Rain permits, the Administrator will cease issuing Phase II Acid Rain permits to sources in that State. However, the Administrator will continue to administer and enforce those Acid Rain permits that he or she has already issued until the permits are replaced by State-issued Acid Rain permits. The State may issue replacement permits on or before the expiration date of the EPA-issued permits. Further, the Administrator may retain jurisdiction over the EPA-issued permits until any administrative or judicial appeals of them are completed.

The proposal also provides flexibility where a State has proposed a partial Acid Rain program, e.g., where the proposed program covers permitting of Phase I and Phase II units but not opt-in sources. In that circumstance, the Administrator may accept the State Acid Rain regulations, issue a notice stating that the State is the permitting authority for Phase I and Phase II units, and retain the authority to issue permits for opt-in sources.

If a State has become the Acid Rain permitting authority but the Administrator determines that the State is not adequately administering or enforcing the State Acid Rain program, the proposal sets forth a procedure for withdrawal of that program and for administration and enforcement by the Administrator. The procedure is modeled after, but not identical to, the analogous procedures under parts 70 and 71. Because the Acid Rain Program relies on a nationwide, market-based system of allowances to achieve cost-effective SO2 emissions reductions, it is particularly important that Acid Rain requirements be implemented in a uniform manner by permitting authorities throughout the U.S. In order to provide the Administrator the flexibility to respond in a timely fashion where Acid Rain requirements are not being properly implemented, the proposal does not fix the time frames by which a State must address deficiencies in its program or by which EPA becomes the permitting authority. The proposal leaves it to the Administrator to set these time frames based on the specific circumstances.

The proposal also includes a provision under which the Administrator may delegate to a State all or part of his or her responsibility to administer and enforce Phase II Acid Rain permits. If a State does not meet the requirements for acting as the Acid Rain permitting authority (e.g., does not yet have Acid Rain regulations accepted by EPA), the Administrator may delegate to the State the administration and enforcement of Phase II Acid Rain permits using regulations established by the Administrator. This approach is analogous to the approach in part 71.[12]

Further, the current rule does not expressly address the question of whether the provisions of Phase I or Phase II Acid Rain permits issued by the Administrator constitute ''applicable requirements'' under part 70. It may be argued that under title V the provisions of federally issued Acid Rain permits are ''applicable requirements'' under part 70 and therefore must be included in State-issued operating permits. In

[10] In the proposal, EPA is expanding the definition of ''State'' to include eligible Indian tribes in order to be consistent with the treatment of Indian tribes that has been proposed for parts 70 and 71. *See* 59 FR 43956 (August 25, 1994) (proposed regulations implementing section 301(d) of the Act), 60 FR 45530 (August 31, 1995) (proposed revisions to part 70), 60 FR 20804 (April 27, 1995) (proposed part 71), and 61 FR 34213–4 (final part 71). To ensure that the approach taken to Indian tribes under part 72 is consistent with the approach that is ultimately adopted under parts 70 and 71, today's proposal provides that ''eligible Indian tribe'' be defined as in part 71. EPA's proposals concerning the treatment of Indian Tribes were issued subject to public comment and may be modified before they are issued in final form. EPA may need to make conforming changes to today's proposal to reflect any relevant revisions made to those proposals.

[11] Phase I units are subject to Acid Rain emissions reduction requirements or emissions limitations starting in Phase I. Phase II units are subject starting in Phase II. While only Phase I units must have Acid Rain permits for Phase I, both Phase I and Phase II units must have permits for Phase II. Section 72.31 is revised to clarify that Phase II permit applications must cover all affected units at the source.

[12] The definition of ''permitting authority'' in § 72.2 is revised to include a State permitting authority to which authority to administer and enforce Acid Rain permits is delegated.

that case, a State would have to formally incorporate, in each operating permit for an affected source, any federally issued Acid Rain permit.

However, title IV, which supersedes title V in Acid Rain matters, requires all Phase I Acid Rain permits to be issued by the Administrator. There is little purpose in requiring States to duplicate Phase I permits in their operating permits. Moreover, any revisions of federal Phase I permits would have to be repeated for any State operating permits that included Phase I provisions. With regard to federally issued Phase II Acid Rain permits, the proposal explicitly requires that States replace the federal permit with a State-issued Acid Rain permit by the end of the five-year effective period of the federal permit. It is unnecessarily burdensome to require State incorporation of the federal permit in the operating permit prior to the federal permit's expiration. To incorporate the federal permit, the State must essentially repeat the notice and comment process that was used to issue the federal permit in the first place. Consequently, the proposal states that the provisions of federally issued Phase I or Phase II Acid Rain permits shall not be ''applicable requirements'' for purposes of part 70.

Finally, the current § 72.73(b)(2) requires State permitting authorities to reopen Phase II Acid Rain permits by January 1, 1999 ''to add'' Acid Rain NO_X requirements. It is unclear whether this language requires the reopening process to be completed or simply to begin by that date. Under part 76, Phase II NO_X compliance plans must be submitted to permitting authorities by January 1, 1998. It seems desirable to have a deadline (prior to Phase II) by which Acid Rain permits will include Phase II NO_X requirements. However, EPA is also concerned that State permitting authorities have sufficient time to process the permits. EPA therefore proposes to clarify in § 72.73(b)(2) that the reopening process and the addition of NO_X requirements must be completed by July 1, 1999.[13]

C. Required Elements for State Acid Rain Program

The current rule sets forth the criteria for approval of the Acid-Rain-related provisions of State operating permit programs. The basic approach is that the State Acid Rain program is required to comply with part 70 requirements and the additional Acid-Rain-specific requirements listed in § 72.72(b). Where the listed requirements are inconsistent with part 70 requirements, the listed requirements must be met in lieu of such part 70 requirements.

EPA has carefully re-examined the listed Acid-Rain-specific requirements with an eye to minimizing the differences between State Acid Rain permit procedures and other State operating permit procedures. EPA recognizes that the Acid Rain permits make up a relatively small portion of a full State operating permit program. Minimizing the number of unique Acid Rain requirements and reducing the number of different procedures that must be followed will reduce the burden on States and affected-source owners and operators. In addition, removal of Acid Rain requirements that duplicate provisions already in part 70 will streamline § 72.72 and reduce the potential for confusion as to whether something other than the part 70 provisions is required.

Upon re-examination of the listed requirements in § 72.72(b), EPA believes that the following requirements are unnecessary or redundant and proposes to eliminate or revise them in order to allow States to streamline their Acid Rain programs and permit administration:

1. The requirement that the State permitting authority submit to EPA any written notice of the completeness of a permit application and a copy of each draft permit imposes an unnecessary burden. Therefore, EPA proposes to remove the requirement. The permitting authority already must provide EPA copies of the application and the proposed permit under part 70, and that seems sufficient.

2. The requirement that the permitting authority include a statement of basis in the draft permit is redundant since that is already required under part 70. EPA therefore proposes to remove the provision.

3. The requirement that the permitting authority provide for public notice of the opportunity to comment and request a hearing is proposed to be revised to be less burdensome. First, based on its experience in processing Phase I Acid Rain permits, EPA maintains that, where a unit is required in a draft permit simply to comply with the standard SO_2 emissions limitation (i.e., the requirement to hold allowances covering emissions), there is little in the portion of the draft permit on which to comment. EPA believes that this is also the case to the extent a draft permit for a unit subject to Acid Rain NO_X requirements imposes only the standard NO_X emissions limitations under §§ 76.5, 76.6, or 76.7, a NO_X averaging plan, or a NO_X early election plan. There is little to comment on because the requirements for compliance in these circumstances are set forth in detail in the rule and there is little discretion involved in adopting such permit provisions. In contrast, other compliance options, such as Phase II repowering plans or NO_X alternative emission limitations, have more general requirements that must be crafted to fit the unique circumstances of the unit involved. Few, if any, comments were received on draft Phase I permits for units that were simply adopting the standard SO_2 or NO_X emissions limitations or NO_X averaging plans. The Agency also found that providing notice in a newspaper local to each source is a time consuming and expensive process. Consequently, if a draft permit or permit revision only requires units to meet the standard SO_2 or NO_X emissions limitations or a NO_X averaging plan, EPA proposes to give permitting authorities the discretion to give notice by serving a notice on the appropriate list of persons and omitting publication in a local newspaper or State publication.[14]

Second, the proposal explicitly provides that a State permitting authority may, in its discretion, use the so-called ''direct final'' procedure in order to meet the requirements for issuing draft permits, providing notice and comment, and issuing proposed permits. Under the ''direct final'' procedure (which has been used by EPA in rulemakings and other actions under the Clean Air Act)[15] the State permitting authority may issue, as a single document, a draft Acid Rain permit and a proposed Acid Rain permit and provide notice of the opportunity for public comment on the draft Acid Rain permit. In the notice the State permitting authority states that, if no significant, adverse comment on the draft Acid Rain permit is timely submitted, the proposed Acid Rain permit will be deemed to be issued on a specified date without further notice. The notice also states that, if such significant, adverse comment is timely submitted, a proposed Acid Rain permit or denial of a proposed Acid Rain permit will be issued and the comments addressed. This procedure streamlines the permitting process in cases where no adverse comment is anticipated. While EPA believes that the current rule

[13] A similar revision is proposed, in § 72.74(c)(2), where the Administrator is the permitting authority, except that reopening must be completed within 6 months of submission of a complete NO_X compliance plan.

[14] In addition, the specific references in the current rule to part 70 provisions stating what persons must be served notice are superfluous and so are eliminated.

[15] *See, e.g.,* 60 FR 18462 and 18472 (April 11, 1995).

does not bar using this streamlined procedure, the proposed rule makes explicit the option to use the procedure.[16]

4. The requirements that the permitting authority submit a copy of the proposed permit for review by the Administrator and affected States and incorporate changes resolving objections to the proposed permit are redundant since part 70 already imposes these requirements. These provisions in § 72.72(b) are unique only to the extent that they specifically refer to issuance or denial of Acid Rain permits. EPA believes that such reference is unnecessary because the authority to deny a permit where basic requirements (e.g., meeting the applicability criteria for the Acid Rain Program) are not met is obvious. EPA does not see any reason for addressing the possibility of permit denials differently in part 72 than in part 70 and part 71.

5. The requirement that invalidation of the Acid Rain portion of the operating permit not affect the remaining provisions of the permit and vice versa is redundant. Part 70 already requires that invalidation of any operating permit provision not affect any other operating permit provisions.

6. The limitation on the filing of State administrative or judicial appeals of an Acid Rain permit to no more than 90 days from the issuance of the permit to be appealed makes appeals of Acid Rain provisions different from appeals of any other aspect of an operating permit. Under part 70, the availability of and procedures for administrative appeals are left entirely to the States; there are no mandated time limitations on filing such appeals. With regard to judicial appeals, part 70 provides that appeals may be filed after a fixed period (which may not exceed 90 days) if the appeal is based solely on grounds arising after the deadline. EPA has proposed to lengthen the maximum period under part 70 from 90 to 125 days. 59 FR 44460, 44516 (August 29, 1994). EPA sees no reason for treating appeals of Acid Rain provisions differently than appeals of other permit provisions and is concerned that the different appeal periods may engender confusion. Having different appeal periods could result in different parts of the same operating permit having different deadlines for filing appeals. The proposal eliminates the limitation on Acid Rain appeals.

7. The requirement that a permitting authority give the Administrator notice of administrative or judicial orders relating to an Acid Rain permit is retained. The proposal removes language indicating that, after issuance of such an order, the Administrator will review and may veto the Acid Rain permit under the procedures for reviewing proposed permits under § 70.8. The language was intended to provide for EPA review where, for example, an Acid Rain permit that had already undergone EPA review under § 70.8 was then significantly altered on appeal. Upon reconsideration, EPA concludes that this approach in the current § 72.72 is confusing since it may put into question whether an ostensibly final permit becomes a proposed permit when there is a State determination (e.g., a State court order) modifying the permit. This approach is also unnecessary since the Administrator already has the authority to reopen permits for cause, which authority is available in the event of such a State determination or interpretation.[17]

8. The requirement that State administrative appeals not result in the stay of any provisions that could not be stayed under part 78 is proposed to be removed for several reasons. First, as discussed below (in section VII of this preamble), the provision on stays in part 78 is eliminated because, under current case law, a permit appealed under part 78 is not a final agency action, and cannot be implemented, pending the administrative appeal. Further, in reviewing State operating permit programs, EPA has found that States have a variety of administrative appeals processes. In many States the administrative appeal precedes the issuance of a final permit and so the stay provision in the current part 72 is meaningless. In addition, the provision bars stays of requirements in the permit (i.e., allowance allocations, the standard Acid Rain requirements, monitoring and reporting requirements, and the certificate of representation) that are imposed, under part 72 and other Acid Rain rules, independently from the permit. Even if a source has no permit, the source must meet these requirements. In short, the stay provision has little practical effect.

9. The requirements that State permitting authorities ''coordinate'' with utility regulatory authorities and evaluate the sufficiency of fees supporting the State acid rain program are proposed to be removed as unnecessary. The relationship between State agencies is best left to the States, and part 70 fully addresses issues concerning fees.

In reconsidering the requirements for State operating permit programs, EPA has become aware of another issue concerning State programs. The current rule requires that a permitting authority issue, for each affected source, only one Acid Rain permit covering all affected units at that source. EPA received comment that, in a few cases, States have historically issued separate permits to units that are at the same source but that were constructed at different times. The States plan to continue separate permitting of the units under their operating permits programs. Rather than requiring State permitting authorities to restructure their permitting of such sources, EPA proposes to give permitting authorities the discretion to allow separate Acid Rain permit applications for, and thus to issue separate Acid Rain permits to, the units at the source. However, this provision does not change the designated-representative requirements for the units: all units at the source must still have the same designated representative and, if applicable, the same alternate designated representative.

A large number of State permitting authorities have already adopted Acid Rain regulations consistent with the current provisions of part 72. The most efficient and most frequently used method of State adoption of Acid Rain regulations has been incorporation of part 72 by reference. The part 72 rule changes proposed today are primarily aimed at streamlining Acid Rain permitting (whether EPA or the State is the permitting authority). EPA therefore anticipates that State permitting authorities will want to adopt the final revisions relatively soon after promulgation. However, EPA recognizes that revising State regulations, even when accomplished through incorporation by reference of the revised part 72, can be a time consuming process. Moreover, State permitting authorities are required to issue initial Phase II Acid Rain permits by December 31, 1997. None of today's proposed revisions are so fundamental that a State permitting authority with Acid Rain regulations consistent with the current part 72 should not start or even complete the process of issuing the Phase II permits before revising its Acid Rain regulations to conform to today's revisions. In order to ensure that States have both sufficient authority to issue Phase II permits and sufficient time to revise their Acid Rain regulations, EPA will continue to accept State Acid Rain

[16] For the same reasons, the proposed rule includes an analogous provision in subpart F, which sets forth the Acid Rain permit issuance procedures when the Administrator is the permitting authority.

[17] For the same reasons, an analogous provision in § 72.80(e) is also removed.

rules that conform with the current part 72 until 2 years after the date on which the final revisions are promulgated. Starting on the date 2 years after the promulgation of the final revisions, EPA expects all State Acid Rain regulations to incorporate the revisions.

EPA notes that many States have not added to their Acid Rain rules the provisions of part 74 (opt-in program) and part 76 (NOx compliance plans and emissions limitations), which were issued relatively recently in April 1995. Further, EPA has proposed additional part 76 provisions setting Phase II NOx emissions limitations and expects to issue final provisions by January 1, 1997. States may want to consider coordinating adoption of the final revisions based on today's proposal with adoption of the provisions of parts 74 and 76.

III. Part 72: Miscellaneous Permitting Matters

In addition to the revisions discussed above, EPA proposes a number of revisions of sections of part 72 concerning matters such as designated representatives, compliance plans, federal procedures for permit issuance and revision, and confirmation reports on verified savings from energy conservation and increased unit efficiency measures. The primary purpose of these proposed changes is to streamline the Acid Rain rules and reduce the administrative burden on owners and operators of affected units.

A. Definitions

In addition to the definition revisions discussed elsewhere in this notice, the Agency proposes the following revisions.

The definition of ''Acid Rain emissions limitation,'' for purposes of sulfur dioxide emissions, is revised to make complete the list of statutory provisions under which affected units may be allocated allowances. Section 404(h), which is inadvertantly left out of the current definition, is added. The definition of the term, for purposes of nitrogen oxides emissions, is revised to remove references to regulations implementing section 407 of the Act. The NO_x Acid Rain regulations in part 76 became final on May 23, 1995 and so the definition is revised simply to cite part 76. Analogous changes are made elsewhere in part 72 to replace general references to regulations under section 407 by specific references to part 76 or sections of part 76.

The definition of ''coal-fired'' is revised to exclude the superfluous reference to part 73 and to correct the reference to the regulations implementing section 407 of the Act (i.e., part 76) to reflect the fact that part 76 includes its own definition of ''coal-fired.''

The definition of ''dispatch system'' is eliminated. In light of the detailed provisions concerning dispatch system in section 72.33, the definition is superfluous and potentially confusing.

The definition of ''permitting authority'' is revised to omit some superfluous language and to reference part 70, rather than refering generally to the regulations promulgated under title V. Such general references in other provisions of part 72 are also changed to specific references to parts 70 and 71 as appropriate.

The definition of ''submit or serve'' is revised in order to allow documents, information, or correspondence to be provided to the Administrator or any State permitting authority using any service of the U.S. Postal Service or any equivalent means of dispatch and delivery. The requirement in the current rule that such delivery be accomplished using only certified mail or an equivalent service is eliminated. Based on its experience in operating the Acid Rain Program, EPA has found that the certified-mail requirement is not necessary and may be burdensome on private parties.

B. Designated Representative

The current rule requires the selection of one designated representative for each affected source and allows the selection of one alternate designated representative per source. EPA has received comment requesting that under certain limited circumstances a second alternate designated representative be allowed. According to the commenter, in general, the current rules give operating companies the flexibility of having a designated representative at the upper management level and an alternate who is closer to the plant operations level in the company. Allegedly, this flexibility is in effect denied to operating companies that are part of a holding company if the holding company plans to use a NOx averaging plan under part 76 to comply with the applicable Acid Rain NOx emission limitation.

Under § 76.11, units that are subject to the standard NOx emission limitations (in §§ 76.5, 76.6, or 76.7), are under the control of the same owner or operator, and have the same designated representative may average their NO_x emissions through a compliance plan approved by the permitting authority. The detailed requirements for determining whether units are in compliance with the plan are set forth in § 76.11. The commenter states that it is one of several operating companies in a holding company and that all of the operating companies intend to participate in a holding-company-wide NO_x averaging plan, which under § 76.11 requires the selection of a single designated representative for the entire holding company. According to the commenter, that designated representative must, as a practical matter, be someone at the holding-company management level. Since each operating company can select only one alternate, each operating company will be unable to have a designated representative or alternate at both the management and the operations levels of the operating company. Allegedly, this is important because each operating company operates relatively independently, reflecting the fact that each is in a different State and is subject to regulation by a different utility regulatory authority.

In order to accomodate this limited circumstance where additional flexibility may be needed, EPA proposes to allow the selection of a second alternate designated representative in this circumstance. The Agency requests comment on the need for this flexibility in this case.

The current rule also establishes procedures for the selection of a designated representative and an alternate. Using these procedures, all Phase I units and many Phase II units have selected designated representatives. In addition, alternates were originally selected or were added later in some cases, and some units have changed their representatives. Based on this experience with the prescribed procedures, EPA proposes to simplify the procedures and reduce the burden they impose on owners and operators. The Agency maintains that this can be done without negatively impacting the rights of minority or other owners.

In particular, §§ 72.20(c) and 72.24(a)(5) require that whenever a designated representative or alternate is originally selected or changed, notice must be provided daily for one week in a newspaper of general circulation where the source is located or in a State publication. The Agency has learned that this provision of newspaper notice is often expensive and can be particularly cumbersome where a single designated representative or alternate is selected or changed for a group of units spread over a relatively wide geographic area (e.g., a State) or where local newpapers are weekly rather than daily. While some notice of designated-representative selection seems desirable, EPA believes that the current rule is

unduly burdensome. EPA proposes to revise the rules to require only one notice in the newspaper (i.e., notice for one day), rather than daily notices for a week. Further, since the designated representative is the primary person representing the owners and operators and is responsible for all actions by any alternate, it seems unnecessary to require notice of selection or change of an alternate.

EPA also proposes a minor correction of § 72.25. That section currently provides that the Administrator will rely on a certificate of representation until a superseding one is ''submitted.'' 40 CFR 72.25(a). However, the Administrator will be unaware of any superseding certificate until he or she receives it. Further, § 72.20(b) states that a certificate of representation is binding upon receipt of the complete certificate by the Administrator. Section 72.25 is therefore revised to provide that a certificate is relied on until ''receipt'' of a superseding certificate.

C. Compliance Plans

l. Submission of Substitution and Reduced Utilization Plans

Sections 72.41 and 72.42 currently state that a new substitution plan or reduced utilization plan may be submitted not later than 90 days before the allowance transfer deadline. A submission must be made by both the Phase I unit and its prospective substitution or compensating unit so that the plan will be reflected in their Acid Rain permits. However, there are other provisions of the rules that affect when such plans may be approved and take effect and that must be considered in deciding when to submit a plan. An affected unit must, as of the allowance transfer deadline, hold sufficient allowances to cover its emissions for the prior year. Consequently, the status of a unit as an affected unit for a given year (e.g., in Phase I, its status as a substitution unit or a compensating unit) must be determined as of the allowance transfer deadline. A new compliance plan designating a new substitution or compensating unit for a Phase I unit must be approved and active by the allowance transfer deadline in order to be effective for the year to which the allowance transfer deadline applies.

A new plan may include both a Phase I unit and a prospective substitution or compensating unit at a source that has no Phase I units and so lacks a Phase I permit. Since each unit must have a Phase I permit that includes the plan, the plan must be added to the Phase I unit's existing permit and included in a new Phase I permit for the source with the substitution or compensating unit. Because the Agency has up to 6 months to act on a new permit, the Phase I unit's plan and the source's new permit application that includes the plan should be submitted at least 6 months before the allowance transfer deadline. Later submission will not ensure approval of the plan in time for use for the year to which that allowance transfer deadline applies.

If all the units in a new plan are at sources that already have Phase I permits, then the plan can be added to both the Phase I unit's permit and the prospective substitution or compensating unit's permit through a permit revision. If the permit modification procedures are used, the Agency still has up to 6 months to act. However, if the fast-track amendment procedures are used, the Agency has 60 days from the start of the public comment period to act. In the latter case, the submission deadline of 90 days prior to the allowance transfer deadline provides sufficient time for approval of the plan.[18]

In order to ensure that designated representatives consider the procedures and timing that must be followed in submitting new plans, EPA proposes to revise §§ 72.41(b)(3) and (c)(4). The revisions state that new plans must be submitted no later than 6 months prior to the allowance transfer deadline but that, if the fast-track amendment procedures are available, submission must be no later than 90 days before the allowance transfer deadline.

2. Repowering Extension Plans

The current § 72.44 includes provisions concerning failed repowering projects. The regulation requires that, if efforts to complete and test the project are terminated prior to construction or start-up testing, the designated representative must demonstrate to the satisfaction of the Administrator that the efforts were in good faith. Similarly, if the project is properly constructed and tested but is unable to achieve emission reductions specified in the repowering extension plan, a demonstration must be provided. Under the current § 72.81(a), determinations concerning failed projects must be processed as permit modifications. However, the interaction between the demonstration requirements in the current § 72.44(g) and the procedures in § 72.81 is unclear, particularly when the State permitting authority issued the permit containing the repowering extension plan and is therefore handling the permit modifications.

EPA proposes to revise § 72.44(g) to clarify the interaction of the substantive and procedural requirements concerning failed projects. Under the revisions, the designated representative submits to the permitting authority a permit modification in which he or she makes the necessary demonstrations. The Administrator determines whether the demonstrations have been made. Where the State is the permitting authority, the State acts on the permit modification consistent with the Administrator's determination.

D. Federal Permit Issuance

1. The current § 72.60(b) requires that the Administrator issue or deny an Acid Rain permit within 6 months of receipt of a complete permit application. However, § 72.74(b) provides that initial Phase II permits, for which applications are due by January 1, 1996, must be issued by the statutory deadline of January 1, 1998 if they are issued by the Administrator. EPA proposes to revise § 72.60(b) to provide that deadline in § 72.74(b) applies, rather than the 6-month deadline, to any initial Phase II permits issued by the Administrator.

2. The current § 72.61 provides that a permit application is deemed complete after 30 days in the absence of notification by the Administrator that it is incomplete. When additional information is requested by the Administrator, the designated representative has at least 30 days to respond. EPA proposes to revise this section to make it consistent with the currently different completeness provisions of part 71 (and part 70) in order to avoid having two types of completeness procedures. Under the revisions, automatic completeness occurs after 60 days from receipt and additional information must be submitted within a reasonable period specified by the Administrator. In addition, language in parts 70 and 71 is added to this section requiring designated representatives to provide supplementary information when they become aware that relevant information was not submitted or incorrect information was submitted.[19]

3. As discussed above, EPA is proposing to revise the provisions for Acid Rain permitting by States in order to allow, for certain types of draft permits, service of notice on a list of persons and foregoing of newspaper

[18] Section 72.30(b)(3) references the deadlines in subpart D of part 72 and part 76 for applying for compliance plans. The provision is redundant and is therefore removed.

[19] This language in parts 70 and 71 is also added to § 72.80 with regard to permit revisions.

notice. For the same reasons, EPA proposes a similar type of revision for federal Acid Rain permitting. The Administrator may provide Federal Register notice and notice for a list of persons and omit newspaper notice where the only Acid Rain emissions limitations in the draft permit are the requirements to hold sufficient allowances for SO_2 or to comply with NO_X emission limitations under §§ 76.5, 76.6, 76.7, or 76.11.

Moreover, the list of persons required to be served notice of draft and final permits under the current rule is different than the list of persons required to be served under parts 70 and 71. This difference complicates the notice process without any significant benefit. EPA proposes to revise the list of persons for required service of federally-processed draft and final permits to be consistent with parts 70 and 71.[20] For example, parts 70 and 71 do not require service on the State or local utility regulatory authorities with jurisdiction over the unit involved or the owners of the unit. No utility regulatory authorities commented on any of the Acid Rain permits or permit revisions that have been issued by EPA for Phase I. The proposal therefore eliminates such authorities from automatically-required service.[21] Any utility regulatory authorities that want to receive notice of draft and final permits will still have the option of requesting to be treated as an interested person and thereby receiving notice.

E. Permit Revision

1. EPA proposes to make minor revisions to remove specific reference to part 70 procedures from, and to add specific references to § 72.80 in, § 72.81 concerning permit modifications.

2. EPA proposes to lengthen the deadline by which a State permitting authority must act on a fast-track modification. Under the current rule, the Administrator or State permitting authority must act within 30 days of the close of the 30-day comment period. State permitting authorities must handle many more permits covering a broader range of types of sources and emission limitations than EPA's Acid Rain Division, which handles only Acid Rain permits for the Administrator. EPA is concerned that the 30-day deadline for States to act on a fast-track modification may be unrealistic in light of their other, significant responsibilities. To put the 30-day deadline in perspective, States under title V can take up to 18 months to issue permits or make significant permit modifications. Under today's proposal, the 30-day deadline will continue to apply to the Administrator but a 90-day deadline from the end of the comment period will apply to State permitting authorities.

3. EPA proposes to remove and replace certain confusing language at the end of the fast-track modification provisions concerning review by the Administrator and affected States. The current language makes fast-track modifications subject to the same review as significant permit amendments. The proposal states this more directly. Such review is appropriate since fast-track modifications can involve important changes to a permit.

4. The current rule concerning administrative permit amendments relies heavily on, and cites, the part 70 administrative permit amendment procedures. These part 70 procedures are currently the subject of an on-going rulemaking in which extensive revisions have been proposed. *See* 59 FR 44475–79. EPA proposes to remove the citations to part 70 and to set forth in § 72.83 itself the procedures for administrative amendments to Acid Rain permits. EPA believes that the administrative amendment procedures currently applicable to Acid Rain permits are simple and, except as discussed below, should not be substantively changed.

While the proposal continues to require action by the permitting authority within 60 days of receipt, the period for acting on one potentially very complicated administrative amendment, i.e., the addition of an alternative emissions limitation demonstration period for NO_X, is lengthened to 90 days. Before implementing the addition of an alternative emissions limitation demonstration period, a permitting authority must determine whether the requirements of § 76.10 have been met. The designated representative must provide extensive information, e.g., showing that the unit has a properly installed and operated NO_X emission control system designed to meet the standard NO_X emission limitation (under §§ 76.5, 76.6, or 76.7), describing why the unit cannot meet the standard emission limitation, and outlining the testing and procedures to be undertaken to determine the maximum emission reduction that can be achieved with the installed system. EPA maintains that 60 days will likely be insufficient time, particularly for State permitting authorities, to evaluate this information and, if the requirements of § 76.10 are met, grant a requested alternative emissions limitation demonstration period and that 90 days is a more reasonable deadline.

The proposal also adds a provision explicitly allowing the permitting authority to make administrative permit amendments (other than the addition of an alternative emission limitation demonstration period) on its own motion. This procedure may be used to correct minor errors in a permit that come to the attention of the permitting authority.

Also added to § 72.83 are provisions in the current part 70 that allow immediate implementation of administrative permit amendments that meet applicable requirements and that eliminate review of such amendments by the Administrator or affected States. This adds directly to part 72 provisions that the current § 72.83 makes applicable by reference to part 70.

5. The current rule concerning permit reopenings relies heavily on, and cites, part 70 reopening procedures. EPA proposes to eliminate the references and set forth in § 72.85 the full procedures. Consistent with the current part 70 provisions, the proposal states that reopening for cause may occur when: Additional Acid Rain requirements become applicable; there is a material mistake in the permit; inaccurate statements were made in establishing a permit term or condition; or a permit revision is necessary to assure compliance with the Acid Rain Program.

F. Reduced Utilization Accounting

Under the current rule, Phase I units must account for any underutilization. A few revisions are proposed with regard to this accounting.

1. The current rule allows a designated representative to submit an identification of dispatch system in order to change a unit's dispatch system from what is listed in the NADB, which indicates the operator of each unit. A dispatch-system identification must be submitted by January 30 of the first year for which the new dispatch system is to take effect. Traditionally, there have been relatively few changes in the operator and the dispatching of utility

[20] The same change is proposed for the list of persons on which requested fast-track amendments submitted to the Administrator must be served under § 72.82. Where requested fast-track amendments are submitted to the State as the permitting authority, the proposal provides that the list of persons is the same persons on which the State permitting authority must serve notice of draft permits under the State operating permits program. Further, since parts 70 and 71 require service of notice on ''affected States'' and include a definition of that term, today's proposal includes a new definition that adopts the ''affected State'' definition in part 71.

[21] The proposal therefore also eliminates the requirement to identify such authorities in submissions to EPA (e.g., in a source's certificate of representation).

units. However, in light of increased competition in the electric industry and the potential of future restructuring of the industry, the Agency is concerned that changes in owners and operators and in dispatching of units may occur more frequently and at times that make it impossible to meet the January 30 deadline. EPA therefore proposes to give the Administrator the discretion to grant exemptions from that deadline in order to allow late submissions.

2. The current rule sets forth procedures for claiming kilowatt hour savings from energy conservation measures or heat rate reductions from improved unit efficiency measures and using the resulting heat input reductions to reduce the surrender of allowances to account for reduced utilization of Phase I units. In the annual compliance certification reports submitted by March 1, a designated representative may include estimated savings from energy conservation or estimated heat rate reductions from improved unit efficiency measures for the prior year. If any such estimates are included in the annual compliance certification report, the designated representative must submit a confirmation report by July 1 that provides and supports the verified amounts.

The current language in § 72.91(b)(1)(iii) concerning the methods for supporting the verified amounts of kilowatt hour savings, heat rate improvement, and resulting heat input reductions needs some clarification.[22] The purpose of the provision is to provide two alternative approaches to verification: documentation that may follow the EPA Conservation Verification Protocol; or certification by the appropriate State utility regulatory authority. The current provision could be read to require that only one of these approaches be used for all estimated savings and heat input reductions so that, for example, if certification is to be used, it must be used for all the estimates. EPA proposes to revise the provision to make it clear that there is flexibility to use documentation with regard to improved unit efficiency measures or some energy conservation measures and to use certification for other measures.

3. The current regulatory provisions concerning heat input reductions due to measures that reduce a unit's heat rate need clarification and revision. A measure that reduces a unit's heat rate may be treated as a supply-side energy conservation measure by another unit or as an improved unit efficiency measure by the unit at which the measure is implemented. Over a given period of time, a number of specific measures may be implemented at a unit to reduce its heat rate. However, these measures may be offset by reductions in generation efficiency at the same unit resulting from other factors, e.g., from the aging or changed operations of the unit. In that case, even though each measure may, in itself, reduce the heat rate of the unit below what the heat rate would otherwise have been, the net effect of all the measures on the unit's heat rate will be less than the sum of the reductions attributed to each measure.

It is the net effect of these measures on the unit's heat rate that should be treated as accounting for reduced utilization. Consequently, EPA proposes to add a provision that puts a ceiling on the total heat input reductions that may be claimed for all measures that reduce a given unit's heat rate, whether the measures are treated as energy conservation or improved unit efficiency measures. Under the proposal, the total verified heat input reductions attributed to such measures may not exceed the difference between the kilowatt hour generation attributed to the unit for the calendar year times the difference between the unit's heat rate for 1987 and its heat rate for the calendar year. This ensures that heat input reductions cannot exceed the heat input reductions attributable to net heat rate improvement since the end of the base period (i.e., 1985–1987). Heat rate improvements made up through 1987 are already reflected in the baseline utilization and so cannot be used to account for underutilization of a unit since the base period. *See* 58 FR 60950, 60961 (November 18, 1993).

In light of this ceiling on heat input reductions claimed for energy conservation measures improving generation efficiency (as well as for improved unit efficiency measures), EPA sees no need to burden State utility regulatory authorities with the verification of claimed reductions from this limited category of energy conservation measures. EPA will instead review the verification presented by designated representatives and will compare the claimed heat input reductions to the ceiling. Consequently, EPA proposes to remove the option of verification by State utility regulatory authorities of claimed reductions from energy conservation measures improving generation efficiency.

4. The current rule provides that, if the total verified amount of heat input reductions in the confirmation report differs from the total estimated amount in the annual compliance certification report, the confirmation report must calculate the number of allowances, if any, to be surrendered or returned as a result. EPA maintains that the provision concerning calculation of allowances to be returned needs clarification and revision.

a. Under the current rule, if the total verified heat input reductions exceed the total estimated heat input reductions, returned allowances are to be calculated using a specified formula in § 72.91(b)(4) based on the difference between the verified and estimated amounts. Section 72.91(a)(7) sets a limit on the total amount of ''plan reductions'' (i.e., offsets to underutilization that are attributed to energy conservation, improved unit efficiency, sulfur-free generation, and compensating units). A Phase I unit's plan reductions minus any compensating generation that it provides as a compensating unit cannot exceed the Phase I unit's baseline minus its actual utilization. The purpose of this limitation is ''to prevent plan reductions from one Phase I unit from being used to offset the underutilization of another Phase I unit that has no reduced utilization plan.'' 58 FR 60962. This purpose applies equally whether the plan reductions involved reflect *estimated* offsets from conservation and improved unit efficiency or *verified* offsets. The confirmation process simply replaces estimated with verified offset amounts and corrects for any differences; it is not intended to allow greater offsets than if the verified offset amounts had been available when the annual compliance certification report was submitted.

The simplest way to ensure that designated representatives understand that this limitation applies is to limit the number of allowances that are to be returned to the total number of allowances that were deducted from the unit's Allowance Tracking System account for underutilization based on the annual compliance certification report. EPA proposes to add language (in § 72.91(b)(4)(iv)) setting forth this limitation. To the extent allowances were deducted based on the annual certification report, then those allowances represented underutilization of the unit (i.e., a positive difference between the unit's baseline and its actual utilization after accounting for all offsets). If allowances in excess of the amount of that allowance deduction were returned, then verified offsets from

[22] The verification process, found in § 72.91(b), is incorrectly cross-referenced in § 72.43(b)(2)(iii)(B) of the current rule. Today's proposal corrects the reference. In addition, certain typographical errors in § 72.91(b) (e.g., incomplete reference to ''improved unit efficiency measures'') are corrected.

conservation or improved unit efficiency would be used, in effect, to offset some other unit's underutilization.

b. Under the current rule, if the total verified offsets are less than the total estimated offsets, surrendered allowances are to be calculated using the absolute value of the formula specified for returning allowances in § 72.91(b)(4). EPA has found that this provision concerning the allowances to be surrendered is not correct in all cases and should be revised.

Under §§ 72.91 and 72.92, allowance surrender is determined initially on a dispatch-system-wide basis so that underutilization of one Phase I unit in the dispatch system may be offset by overutilization of another Phase I unit in that dispatch system. Once it is determined that allowances must be surrendered for the dispatch system, each Phase I unit's share of the surrender is calculated. The approach in the current rule is accurate if the Phase I unit had to surrender allowances based on the annual compliance certification report. In that case, the unit's underutilization was not offset completely by other Phase I units and any overstatement of offsets in the estimates used in the annual compliance certification report must result in additional surrender of allowances by the unit.

In contrast, if the Phase I unit did not have to surrender allowances based on the annual compliance certification report, the overstatement of offsets in the estimates could be offset by overutilization of other Phase I units. The provisions of the current § 72.91(b)(5) do not take account of that possibility.

EPA proposes to revise § 72.91(b)(5) to correct this problem and ensure that the confirmation process does not result in the surrender of more allowances than if the verified amounts for conservation or improved unit efficiency offsets had been available when the annual compliance certification report was submitted. The revision provides that each Phase I unit that used estimated conservation or improved unit efficiency offsets must recalculate its adjusted utilization using the verified amounts and then that the allowance surrender formula in § 72.92(c) must be reapplied using the recalculated adjusted utilizations. To the extent this results in greater allowance surrender than the surrender based on the annual compliance certification report, the difference must be surrendered.

c. Under the current rule, the designated representative must include in the confirmation report calculations of any change in the excess emissions that were previously determined based on the annual compliance certification report. EPA has decided that this is an unnecessary burden to impose on the designated representative. The current rule does not require the designated representative to calculate in the annual compliance certification report the amount of any excess emissions. Moreover, under the revisions of part 77 discussed below, the offset plan submitted by the designated representative of a unit with excess emissions will also not be required to state the amount of excess emissions.

Consistent with this approach, EPA proposes to eliminate the requirement that the confirmation report calculate the impact of the verified offsets on excess emissions. Instead, § 72.91(b)(6) and (7) are revised to require the Administrator to determine the amount of excess emissions (if any) that would have resulted if the verified, rather than estimated, offsets had been used to make deductions from the allowances in the unit's compliance subaccount as of the allowance transfer deadline. Further, if the resulting excess emissions differ from the amount determined based on the estimated offsets, the Administrator must determine whether additional offset allowances must be deducted and penalty payments must be made or whether allowances and penalty payments must be returned.

5. The current § 72.95 sets forth the formula for making allowance deductions for each year that a unit is subject to the Acid Rain emissions limitations for SO_2. Although the formula does not specifically refer to allowance deductions with respect to substitution or compensating units, §§ 72.41(d)(3) and (e)(1)(iii)(B) and 72.43(d)(2) expressly require such deductions under certain circumstances. In order to make the formula consistent with those express deduction provisions, EPA proposes to revise the formula to include those deductions, which are required in any event.

IV. Part 73: Allowances

A. Revision of Table 2 Allowances

EPA proposes to revise the allowances of certain units on Table 2 of § 73.10(b).

l. Allowance Determinations Remanded to EPA

Section 405(c) of the Act establishes allowances in Phase II for smaller units (under 75 MWe nameplate capacity) with higher emissions (over 1.2 lb/mmBtu). Paragraph (c)(1) of the section specifies the formula for calculating basic allowances for units owned by larger operating companies (with capacity of at least 250 MWe). Paragraph (c)(2) specifies the formula for basic allowances for such units owned by smaller operating companies (with capacity of less than 250 MWe). Paragraph (c)(3) provides special basic allowances for such units that are owned by larger operating companies (with capacity greater than 250 MWe and less than 450 MWe) that serve fewer than 78,000 customers. Paragraph (c)(4) provides bonus allowances for units under paragraph (c)(1) for the period 2000 through 2009. Paragraph (c)(5) provides special basic allowances to units under paragraph (c)(1) in utility systems that have units with high costs for retrofitting flue gas desulfurization devices.

The language in section 405(c) raises questions of how to measure utility capacity or size for purposes of applying the various paragraphs in the section. Paragraphs (c)(1) and (2) state that they apply to units of a ''utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is'' of specified magnitudes. 42 U.S.C. 7651d(c)(1) and (2). In contrast, paragraph (c)(3) states that it applies to units of ''a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity'' within a specified range of megawatts and with fewer than 78,000 electrical customers.

EPA proposed and finalized Phase II allowances allocations based on its interpretation that, despite the language differences among these statutory phrases, all of the phrases incorporate the same approach for defining a utility operating company's capacity. In applying all the provisions of section 405(c), EPA summed the nameplate capacity of the generators operated by the unit's operating utility to determine that utility's capacity. *See* 57 FR 29940, 29953–54 (July 7, 1992); and 58 FR 15662 and 15697.

Two utilities challenged EPA's allowance allocations to their units under section 405(c). Madison Gas & Electric Co. (Madison Gas) challenged EPA's position that only the nameplate capacities of the units *operated* by a given utility should be considered in determining utility capacity, rather than instead considering the nameplate capacity of the units *owned* in whole or in part by the utility. The City of Springfield, Illinois, City Water, Light and Power (City of Springfield) challenged EPA's use of nameplate capacity, rather than summer net dependable capability, as the measure of generating capacity under section

405(c)(3). Madison Gas and City of Springfield petitioned for judicial review of their allowance allocations. On May 27, 1994, the U.S. Court of Appeals for the Seventh Circuit remanded to EPA the allowance allocations for these utilities in order for the Agency to reconsider these two issues concerning utility capacity. *Madison Gas & Electric* v. *U.S. EPA*, 4 F.3d 529 (7th Cir. 1994).

Madison Gas argued, in its comments on EPA's original allowance allocations, that the language of section 405(c)(1) and (2) compel EPA to measure utility capacity based on the utility's ownership of capacity in any unit, including partially owned units. Sections 405(c)(1) and (2) apply to units owned by a utility ''whose aggregate nameplate fossil fuel steam-electric capacity'' is of a specified magnitude. 42 U.S.C. 7651d(c)(1) and (2). According to Madison Gas, the use of the word ''whose'' in this context means that the capacity must be owned by the utility. In contrast, EPA read the word ''whose'' to mean that the capacity must be operated by the utility.

EPA now believes that this language in section 405(c)(1) and (2) can support either interpretation. Further, EPA has identified at least two other utilities whose allocations would be affected by the adoption of Madison Gas's interpretation. EPA is concerned that adopting Madison Gas's interpretation and reducing, at this late date, the number of allowances allocated to these other utilities would disrupt the compliance planning already undertaken for these units. Therefore, on reconsideration, EPA believes that a fair and appropriate approach is to read the language in section 405(c)(1) and (2) to mean either aggregate nameplate capacity owned by a utility operating company or aggregate nameplate capacity operated by a utility operating company and to apply the most favorable reading to the utility involved. EPA believes that permitting the alternative interpretations is acceptable in light of the ambiguity of the statutory language. Moreover, this gives the three utilities affected by this issue the opportunity to claim and receive the most favorable allowance allocation available under these provisions, with little practical effect on other utilities.

From data submitted by Madison Gas in its comments on the original allowance allocations, Madison Gas, as of 1989, owned more than 250 MWe of capacity. Madison Gas recognized that the interpretation of section 405(c) (1) and (2) that it favors results in it receiving more allowances each year during 2000 through 2009 but fewer allowances each year thereafter and fewer total allowances. EPA therefore proposes to apply Madison Gas' interpretation of the provisions and to provide allowances to Madison Gas' Blount Street plant in Wisconsin as follows: unit 7, 116 unadjusted basic allowances each year in perpetuity under section 405(c)(1) and 1374 bonus allowances each year during 2000–2009 under section 405(c)(4); unit 8, 473 unadjusted basic allowances and 716 bonus allowances; and unit 9, 633 unadjusted basic allowances and 629 bonus allowances. These will be in lieu of the allowances for the units in the current Table 2.

Two other utilities are potentially affected by the interpretation of the utility-size language in section 405(c) (1) and (2). If the language is interpreted to refer to total owned capacity, Potomac Edison Company's R P Smith unit 9 in Maryland will be provided 320 unadjusted basic allowances under section 405(c)(1) and 354 bonus allowances under section 405(c)(4). Interpreting section 405 as referring to operated capacity, the unit receives 386 unadjusted basic allowances under section 405(c)(2) and no bonus allowances. City of Henderson's Henderson unit in Kentucky would have a lower allowance allocation when total owned capacity, rather than total operated capacity, is considered. EPA proposes to change the allowances for the R P Smith unit and leave unchanged the allowances for the Henderson unit. Comments are requested on this proposed resolution and from any utility with a unit that may be affected by the proposed interpretation of utility capacity.

City of Springfield argued, in its comments on the original allowance allocations, that EPA should not use nameplate capacity for determining utility capacity under section 405(c)(3). While section 405(c) (1) and (2) refer to a utility's ''aggregate nameplate fossil fuel steam-electric capacity, section 405(c)(3) refers to a utility's ''total fossil fuel steam-electric generating capacity.'' Data available from the Energy Information Administration (EIA) of the Department of Energy includes three different ''capacity'' terms: nameplate capacity, summer net dependable capability, and winter net dependable capability. Nameplate capacity is the gross maximum capacity (in MWe) that a generator is designed to deliver, whereas capability refers to the highest number of MWe actually delivered during a given season. City of Springfield recommended summing, for a utility, the summer net dependable capability of each of its units in applying section 405(c)(3).

Under EPA's original allowance allocations, City of Springfield's Lakeside units 7 and 8 received basic allowances under section 405(c)(1) because City of Springfield operated units with a total of 463 MWe of nameplate capacity. Since the total summer net dependable capability of these units was 443 MWe, City of Springfield's interpretation will result in Lakeside units 7 and 8 instead receiving unadjusted basic allowances under section 405(c)(3).

EPA now agrees that the utility-capacity language in section 405(c)(3) is ambiguous, particularly in light of the specific references in section 405(c) (1) and (2) to nameplate capacity. The legislative history does not directly address the use of different utility-capacity language in these provisions of section 405. Further, differences in statutory language are generally interpreted as differences in meaning. Section 405(c)(3), unlike section 405(c) (1) and (2), does not specify nameplate capacity. Under these circumstances, EPA agrees that it is reasonable to conclude that some other capacity measure was intended to be used. Most utilities in the United States are summer peaking utilities and have larger summer net dependable capability than winter net dependable capability. Consequently, given the capacity measures in available EIA data, summer net dependable capability is the most logical alternative to nameplate capacity. EPA has not identified any units, other than the City of Springfield's units in Illinois, whose allocations are affected by this change in interpretation of section 405(c)(3).

Therefore, EPA proposes, for the purposes of section 405(c)(3) only, to interpret utility capacity as the aggregate summer net dependable capability. This allows City of Springfield's Lakeside unit 7 to receive 2,919 unadjusted basic allowances for 2000 through 2009 and 722 unadjusted basic allowances for 2010 and thereafter. Lakeside unit 8 will receive 1,652 unadjusted basic allowances for 2000 through 2009 and 371 for 2010 and thereafter. These allowances will be in lieu of the basic allowances provided to the units in the current Table 2. Comments are requested on this approach.

EPA proposes another revision related to the application of section 405(c)(3). As noted above, eligibility for section 405(c)(3) allocations is contingent on a unit being owned by an electric generating company with fewer than 78,000 customers as of November 15, 1990. The current rule defines

''customer'' as ''a purchaser of electricity not for purposes of transmission or resale.'' 40 CFR 72.2. EPA understands that generating rural electrical cooperatives under the Rural Electrification Act (7 U.S.C. 901, *et seq.*) are required to serve distributing cooperatives, which in turn serve the retail customers. Generating rural electrical cooperatives therefore do not have ''customers,'' as the term is currently defined. In order to address the unique circumstances of such cooperatives, EPA is proposing to revise the definition of ''customer'' to provide that customers of a generating rural electrical cooperative's distributing cooperative are considered customers of the generating cooperative.

The effect of this change is to make Southern Illinois Power Cooperative's Marion plant in Illinois eligible for allowances under section 405(c)(3). For years 2000 through 2009, Marion units 1, 2, and 3 will be provided 2,376, 2,434, and 2,640 unadjusted basic allowances respectively, rather than their current allowances for those years of 534, 547, and 593.

EPA proposes to implement, in this rulemaking, the above discussed revisions in the unadjusted allowances for the Madison Gas, Potomac Edison, City of Springfield, and Southern Illinois Power units in Table 2. However, EPA proposes that in this proceeding it will not insert in the table the adjusted allowance figures (i.e., the allowance allocations, which take account of the 8.9 million ton nationwide cap on SO_2 emissions and are referred to as the ''total annual phase II'' allowances in Tables 2 and 3) for these units and will not revise the allowance allocations of the other units on the tables to take account of the allowance impact of the revised Madison Gas, Potomac Edison, City of Springfield, and Southern Illinois Power unadjusted allowances. Instead, all of these changes will be made in a future rulemaking.

With few exceptions, sections 403(a) and 405(a)(3) prohibit total annual allowance allocations in Phase II for all affected units from exceeding 8.95 million. In this way, annual, nationwide SO_2 emissions are essentially capped at 8.95 million tons. When total unadjusted annual basic allowances calculated under section 405 exceed the 8.95 million ceiling, each unit's basic allowances must be adjusted (i.e., ''racheted'' down proportionately) to prevent the ceiling from being exceeded. Because the current Tables 2 and 3 already reflect a ratcheting down of each unit's allowances, any net increase or decrease in the unadjusted annual basic allowances in Phase II for any affected units probably changes the amount of ratcheting and thus probably requires a change in the allowance allocations shown on Table 2 or 3 for every other unit. Only if the increases in unadjusted basic allowances proposed today were essentially equal to the proposed decreases would the allowance allocations of the other units remain unchanged. In point of fact, the net effect of the revisions proposed today (including the allowance revisions discussed above and the corrections of Agency errors and addition of units to and deletion of units from the tables discussed below) is a relatively small net reduction in the total number of unadjusted basic allowances. This will result in a small reduction in the level of ratcheting necessary to implement the 8.95 million allowance ceiling. Reduced ratcheting may result in a relatively small number of additional allowances being allocated for Phase II to many units that are not otherwise affected by today's proposal.

Adjusting all the allocation entries on Tables 2 and 3 is administratively burdensome and expensive. Moreover, under section 403 of the Act, the allocations in the tables will have to be adjusted, and the tables republished, in June 1998 in any event. Section 403(a) required the Administrator to publish a final list of allowances allocations by December 31, 1992, reflecting estimated allowances to be allocated to units that apply for and receive repowering extensions in the future under section 409. Section 403(a) also requires the Administrator to publish a revised final list by June 1, 1998, reflecting, *inter alia*, allowances allocated to units for which repowering extensions are actually approved.

EPA believes that no one will be prejudiced in any significant way by EPA's deferring allowance adjustments until the 1998 publication of the final list of allowance allocations. The owners of units whose unadjusted allowances are increased if today's proposal is finalized can trade the allowance increase in anticipation of the actual allocation in 1998. *See* 42 U.S.C. 7651b(b). As noted above, the change in the ratchet and the difference between the amount of the unadjusted allowances for these units and the amount allocated to them after adjustment due to ratcheting will be relatively small. Similarly, the amount of the ratcheting adjustment in 1998 of the allowances of other units otherwise not affected by today's proposal will be small. The owners of units that, under the proposal, are on Table 2 or 3 can trade their current allocations and base trading decisions on the existing ratchet for Phase II (about 10%).

Consistent with its authority under section 403(b) to establish allowance system regulations, EPA proposes to revise the unadjusted allowances for the Madison Gas, Potomac Edison, City of Springfield, and Southern Illinois Power units in Table 2. The proposal includes a provision stating that the unadjusted allowances in Table 2 (or Table 3, as appropriate) for these (and certain other) units are superseded and setting forth the new number of unadjusted allowances for such units. However, EPA proposes not to change, in this rulemaking, the ratchet used to adjust all allowances on the tables. Rather than recalculating the ratchet and applying it to all units in the tables, EPA will leave in place the current allowance allocations for the Madison Gas, Potomac Edison, City of Springfield, and Southern Illinois Power units and the other units remaining in the tables. When EPA develops the June 1998 revised list of allowance allocations required under section 403, EPA will calculate a new ratchet and apply it to the unadjusted basic allowances of all units remaining on Tables 2 and 3. The resulting allowance allocations will then be reflected in the units' Allowance Tracking System accounts.

2. Correction of Agency Errors

EPA developed the NADB in order to calculate Phase II allowance allocations for all affected units. In July 1991, EPA released for comment version 2.0 of the NADB. 56 FR 33278 (July 19, 1991). Section 402(4)(C) of the Act required the Administrator, by December 31, 1991, to ''supplement data needed in support of [title IV] and correct any factual errors in data from which affected Phase II units' baselines or actual 1985 emission rates have been calculated * * * for purposes of issuing allowances under the title.'' 42 U.S.C. 7651a(4)(C). EPA stated in the July 1991 notice that it would not accept comments on the data base after September 3, 1991 (the close of the comment period) except if the data sought was not available by that date. EPA added that it would not change any data after December 31, 1991, when it expected to issue the final data base. 56 FR 33279 and 33283.

In July 1992, EPA released version 2.1 of the NADB, believing that version to be the final, and proposed Phase I and Phase II allowance allocations. 57 FR 30034. After correcting errors made by the Agency in version 2.1, EPA released version 2.11 of the NADB in March 1993, along with the final Phase II allowance allocations. 58 FR 15720 (NADB); and 58 FR 15634 (allocations).

The corrections to the NADB were made ''only in response to comments, verified by EPA, that either changes were made to the data which, based on the data in the possession of EPA at the time, were known to be incorrect or the Agency failed to make a correction requested by a commenter that was true and properly documented at the time.'' 58 FR 15720. At that time, EPA believed it had corrected all of these errors.

However, several utilities subsequently informed EPA that the NADB still contained errors that were of the type that EPA had intended to correct. In the following cases, EPA agrees that the error in the current NADB results from the Agency's own actions. This is because the NADB data issues had been identified to EPA by a commenter by December 31, 1991 and the commenter submitted to EPA, before EPA's issuance of NADB version 2.1 on July 7, 1992, sufficient documentation to support the correction of the data. Because in the March 1993 notices EPA had intended to correct such problems, EPA proposes today to correct them by revising the units' unadjusted allowances to reflect the correct data. Consistent with the approach taken in the March 1993 notices, EPA will not address any errors that were not identified by December 31, 1991 or not sufficiently documented by July 7, 1992 and will not consider new requests for data changes, new data submissions, or new requests for outage adjustments.[23]

a. In the case of Manitowoc unit 8 in Wisconsin, the shared heat input at 60 percent capacity (HT60SHR) is not accurate. While EPA developed a methodology for sharing heat input at 60 percent capacity (HEAT60) that was accurate for most situations, the methodology was inaccurate for Manitowoc's unique circumstances, i.e., where only one boiler in a multiheader configuration was on-line as of December 31, 1987. The owner of Manitowoc timely commented on the inaccuracy on August 30, 1991. However, EPA failed in March 1993 to correct the methodology in a way that would account for Manitowoc's situation. EPA has reviewed the methodology for splitting HEAT60 and developed a method that is appropriate for multi-header configurations where one or more, but not all, units came on-line after the baseline period. EPA is proposing to use the proportional share of design heat input. For example, if boiler 1 had a 100 mmBtu/hr design heat input, boiler 2 had 200 mmBtu/hr and boiler 3 had 300 mmBtu/hr, boiler 1 would be allotted ⅙ of the generator's HEAT60, boiler 2 would be allotted ⅓, and boiler 3 would be allotted ½. For Manitowoc unit 8, this approach will result in 271 unadjusted basic allowances, as opposed to 27 listed in the current Table 2.

b. In the case of the Reedy Creek Improvement District's (Reedy Creek) Combined Cycle 1, unit 32432 (formerly unit 11*STG) in Florida, EPA erroneously failed to include the unit in Table 2, believing the unit was a simple combustion turbine and so was not an affected unit. Reedy Creek's timely comments, submitted on August 30, 1991, provided sufficient information to properly characterize the unit as a combined cycle turbine with auxiliary firing and thus as an affected unit and to determine its allowance allocation. EPA proposes to include the unit in Table 2 with 69 unadjusted basic allowances under section 405(g)(1).

c. In the case of Central Louisiana Electric Company's (Central Louisiana) Rodemacher unit 2, EPA failed to correctly characterize the outage request for the unit. Central Louisiana submitted the outage request for the unit on March 21, 1991 and supplemented the request with additional information on February 10, 1992. On July 7, 1992, as part of the notice of the NADB (57 FR 30034), EPA proposed a classification scheme for outage requests received by EPA prior to finalization of the NADB. EPA proposed, at that time, and later finalized allowing baseline adjustments for discontinuous but related outages totalling four months or greater (''Category II''). *See* 58 FR 15724. However, EPA mischaracterized Rodemacher unit 2's outage as less than four months. EPA now recognizes that Central Louisiana's earlier submissions provided timely notice and sufficient documentation of a discontinuous outage at Rodemacher of over four months. Unfortunately, the February 10, 1992 supplemental submission documenting the requested outage was received by EPA but was not directed to the docket or the Acid Rain Division to be considered with other outage requests. The outage at Rodemacher clearly fits the Category II classification and would have been so classified in 1992 if Central Louisiana's supplemental submission had been docketed. EPA stresses that it is not reconsidering or changing the criteria for evaluating outage requests but rather is correcting its mistake in applying the existing criteria. Therefore, EPA proposes to allow 2,312 additional unadjusted basic allowances for Rodemacher unit 2, bringing its total to 20,774.

d. For the reasons discussed above in section IV(A)(1) of this preamble, EPA is proposing today changes to the unadjusted allowances for the Manitiwoc and Rodemacher units and adding the Combined Cycle 1 unit and its unadjusted allowances to Table 2, as addressed in this section, but is not proposing to change or add the resulting allowance allocations in this rulemaking. The units' allowance allocations reflecting the new figures for unadjusted allowances will be put in Table 2 when the revised Tables 2 and 3 are issued in June 1998. At that time, any resulting revisions of the allowance allocations for the other units on the tables will also be made.

B. Deletion of Units From Table 2

EPA proposes to delete certain units from Table 2 of § 73.10(b), which set forth the Phase II allowance allocations for existing units. Because of data errors, these units were erroneously treated as affected units and included in the table. As discussed above, EPA generally will consider correcting NADB data errors and, as a result, changing an affected unit's allowances *only* where a data problem was identified to EPA by a commenter by December 31, 1991 and was sufficiently documented by July 7, 1992. Because the March 1993 notices were intended to correct such errors, EPA now considers the errors to be Agency errors and, as noted above, proposes to correct them. Other NADB data errors relating to allocations of affected units will not be corrected. However, EPA is taking a different approach to data errors (whether or not the data is in the NADB) that result in units being improperly categorized as affected units when they actually are unaffected units.

In the latter cases, EPA will delete the units from Table 2 (or Table 3, as appropriate) regardless of whether the data errors result from the Agency's own actions. Any allowances allocated to such units must be offset by return of the same number of allowances with the same or an earlier compliance use date as those allocated. Further, the proceeds from EPA's auctioning of any allowances allocated to such units must be returned to EPA. Data errors, regardless of their cause, cannot expand

[23] As discussed below in sections IV(B) and (C) of this preamble, there are two exceptions to this approach toward data errors. First, where data errors result in unaffected facilities being improperly categorized as affected units, EPA proposes to adopt the proper categorization of the units regardless of when the data errors are corrected. Second, where projections, rather than actual data, are involved (i.e., projected dates for commencement of commercial operation), EPA will correct the projected dates if EPA is made aware of the actual dates within a reasonable time after commercial operation is commenced and all other necessary data had been provided by December 31, 1991.

the applicability of the Acid Rain Program as set forth in title IV of the Act.[24] The deletion of units from Table 2 is discussed below.

1. Following publication of the March 1993 notices, EPA was notified by owners or operators of Grand Avenue, Kettle Falls, Maddox, Mobile, R S Nelson, and South Meadow that these units are not affected units under § 72.6 (the applicability provisions of the Acid Rain Program) and so should not have been listed in Table 2. All of the units were allocated allowances.

EPA agrees that Grand Avenue units 7 and 9 in Missouri are cogeneration facilities excluded from the Acid Rain Program under section 402(17)(C) of the Act and § 72.6(b)(4)(i). The Grand Avenue units commenced operation prior to 1990. The NADB does not include data on the operations of cogeneration units. The units were designed and operated to produce municipal steam heat and electricity and are still operated in that manner. They each supplied less than 219,000 MWe-hr per year in 1985–1987 and in every year since 1990. EPA proposes to remove the units from Table 2.

EPA agrees that Kettle Falls in Washington also should be deleted from Table 2 and excluded from the Acid Rain Program as a solid waste incinerator under § 72.6(b)(7). This unit commenced commercial operation in 1983 burning ''hog'' fuel (waste from the logging and lumber industry). The NADB erroneously labeled Kettle Falls as an oil and gas-fired unit. In 1991 during development of the NADB, EPA had data demonstrating Kettle Falls' use of non-fossil fuel and qualification under § 72.6(b)(7). EPA proposes to delete the unit from Table 2.

Maddox unit **3 in New Mexico is a simple combustion turbine (as defined in § 72.2) that originally commenced commercial operation in 1963. The turbine was moved from one site in New Mexico, where it was called ''Roswell,'' to its present site in 1989. Section 402(8) of the Act and § 72.6(b)(1) exclude from the Acid Rain Program simple combustion turbines that commenced commercial operation prior to November 15, 1990. Because Maddox **3 meets these criteria, EPA agrees that it should be removed from Table 2.

EPA agrees that Mobile unit **2 in South Dakota is not an affected unit under the Acid Rain Program. Only units at stationary sources are affected units. 60 FR 17100, 17108 (April 4, 1995). Mobile **2 is a mobile source, not a stationary source, and thus, should not be included on Table 2 as an affected unit in the Acid Rain Program.

The operator of R S Nelson units 1 and 2 in Lousiana requested on July 17, 1992 that the units be removed from Table 2 because they are a qualifying facility excluded from the Acid Rain Program under § 72.6(b)(5). EPA failed to act on the request before finalization of the allocations in March 1993 but now agrees with the request. The units are a ''qualifying facility'' (Federal Energy Regulatory Commission Docket No. QF86–512) and are subject to a qualifying power purchase commitment, as defined in § 72.2. The installed capacity of the units is 227.2 MWe (measured in gross), which does not exceed 130% of the planned net output capacity of 201 MWe (measured in net). EPA proposes to remove the units from Table 2.

EPA agrees that South Meadow units 11, 12, and 13 (now called ''Mid-CT RRF'') in Connecticut should be deleted from Table 2 because they are solid waste incinerators excluded from the Acid Rain Program under § 72.6(b)(7). The NADB erroneously failed to reflect that, while these units were originally coal-fired utility units, they were shut down in 1969 and were substantially modified and resumed operation as solid waste incinerators in 1988. EPA proposes to delete them from Table 2.

2. EPA believes the following additional units, presently listed in Table 2, are not affected units under § 72.6:

State	Plant	Units	ORIS
CO	Valmont	11,12,13,22,23	0477
KS	Ripley	**2,**3	1244
MI	Delray	11	1728
MS	Wright	W4	2063
NY	Rochester 3	1,2,4	2640
PA	Richmond	63,64	3168
PA	Southwark	11,12,21,22	3170
TX	Concho	2,4,5,6	3518
TX	Deepwater	DWP1–DWP6	3461

The units were not in operation during the baseline period (1985- 1987) and were designated by the Energy Information Administration (EIA) of the U.S. Department of Energy as having retired before November 15, 1990. In the preamble of the March 1993 notice of final allowance allocations (58 FR 15636), EPA discussed the treatment of retired units. At that time, EPA attempted to identify all units that were not in operation during the baseline period and that had retired prior to November 15, 1990; such units were considered to be unaffected units and were deleted from Table 2. Because the units listed above also meet these criteria, EPA proposes to delete them from Table 2. Most of these units were not allocated allowances.

EPA requests notification during the comment period by the owners or operators of any other unit listed on Table 2 that was not in operation during 1985–1987 and that is designated by EIA as having retired before November 15, 1990. If the unit will not be returned to service, EPA may delete such units from Table 2.

3. EPA believes that several other facilities listed in Table 2 are unaffected units because they are not fossil fuel-fired combustion devices. El Centro 2 in California, Lauderdale PFL4 and PFL5 in Florida, and Chesterfield **8B in Virginia are heat recovery boilers that use exhaust gases from combustion turbines to produce steam in the boilers and do not use any fossil fuel, e.g., through auxiliary firing. NA 2—7246 **1 in Arkansas is planned to be a hydroelectric generation facility and thus will not use any fossil fuel. These facilities were allocated allowances in Table 2. EPA proposes to remove these facilities from Table 2.

4. EPA reviewed the status of all units listed in Table 2 using the Department of Energy's ''Inventory of Power Plants 1993'' (published in December 1994)

[24] While the July 1991 notice established a December 31, 1991 cut-off for changing NADB data, the notice did not suggest that units that are unaffected units and ineligible for any allowances would continue to be allocated allowances. EPA explained that ''[u]nits eligible for allowances will be allocated allowances based on the data contained in the final database.'' 56 FR 33283.

and ''Inventory of Power Plants 1994'' (published in October 1995). Based on that review, EPA proposes to delete units from Table 2 that have been canceled or postponed indefinitely and therefore are not affected units at this time. None of these units were allocated allowances in Table 2. EPA requests comment from the owners or operators of the following units concerning deletion of the units from Table 2:

State	Plant	Unit	ORIS
AL	Future Fossil	**1	7064
	McIntosh CAES	**2	7063
	McWilliams	**CT1 **CT2 **CT3	0553
IL	Lakeside	GT2	0964
IN	Na1—7221	**2	7221
	Na1—7228	**4,**5	7228
KY	J K Smith	1	0054
MN	Future Base	**1	7240
MO	Combustion Turbine 1 (''CT Plant 1'')	**NA7	7160
MO	Empire Energy Ctr	**4 **NA2 **NA3	6223
NE	NA1—7019	**NA2	7019
NJ	Butler	**4	7152
NJ	NA5—7217	**2	7217
	NA6—7218	**2	7218
NM	Escalante	**2	0087
ND	Dakotas	**1	7081
OK	Inola	**1	0798
	GT98	**1, **2	7243
	GT99	**1–**3	7225
	NA1–7216	**1, **2	7216
	San Miguel	**2	6183
	TNP One	**3, **4	7030
WI	Manitowoc	9	4125
	Na–7222	**1	7222

EPA also requests comment from owners or operators of other units in Table 2 that will not be built or that actually are not affected units under § 72.6. EPA notes that if the owners and operators of any unit listed in Table 2 believe that their unit is not an affected unit, a certifying official for owners or operators of the unit may submit a petition under § 72.6(c) to have the Administrator determine if the Acid Rain Program rules apply to the unit.[25] Units that are not affected units or will not be built may be deleted from Table 2.

5. EPA proposes to implement, in today's rulemaking, the above-discussed deletions from Table 2 and the other deletions from or additions to Tables 2 and 3 addressed in this proposal. However, for the reasons previously discussed, EPA proposes that, in this rulemaking, it will not change the allowance allocations of units remaining on the tables or show the allowance allocations of units added to the tables. These changes will be made in a future rulemaking in June 1998.

Specifically, with regard to units proposed for deletion from Table 2 or 3, EPA proposes, in this rulemaking, to remove from the table each such unit and the information concerning its allowances. Further, EPA proposes to require the designated representative of each unit that is proposed for deletion as an unaffected unit and has been allocated allowances, pursuant to the tables, to surrender to EPA, for each such allowance, an allowance of the same or earlier compliance use date. The Agency will deduct such allowances from the unit's Allowance Tracking System account. The designated representative of each such unit must also return to EPA the allowance proceeds that were distributed for any allowances withheld from such unit for the EPA allowance auction under subpart E of part 73. If, as proposed today, these units are not affected units, they were not eligible for any allowance allocations, and any allowances or allowance proceeds that they received must be returned. The allowances and proceeds must be returned within 60 days of the effective date of the final rule resulting from today's proposal. In the future, EPA will redistribute the returned allowance proceeds among the units that are properly allocated allowances and from which allowances are properly withheld for the auction. At that time, EPA will explain the procedure used for making the redistribution.

With regard to units proposed for addition to a table, EPA proposes to add to the appropriate table the units proposed for addition and their unadjusted basic allowances. EPA proposes not to change, in this rulemaking, the ratchet used to adjust all allowances on the tables. Rather than recalculating the ratchet and applying it to units added to or remaining in the tables, EPA will not calculate the allowance allocations (''total annual phase II allowances'' in the tables) for the added units but will show these allocations as ''NA'' (not available). Allowances will not be placed in the Allowance Tracking System accounts of the added units at this time. Further, EPA will not change the allowance allocations (and the allowances actually reflected in the Allowance Tracking System accounts) for the units remaining in the tables. When EPA develops the June 1998 revised list of allowance allocations required under section 403, EPA will calculate a new ratchet and apply it to the unadjusted basic allowances of all units on Tables 2 and 3 at that time. The resulting allowance allocations (including those for the added units) will then be reflected in the units' Allowance Tracking System accounts.

[25] The applicability of the Acid Rain Program is described in the guidance document, ''Do the Acid Rain SO_2 Regulations Apply to You?'', which is available from the Acid Rain Hotline at (202) 233–9620.

C. Additions of Units to and Deletions of Units From Table 3

The current Table 3 of § 73.10 lists units that were expected to be eligible for allowances under section 405(g)(4) of the Act. Units were considered eligible if EPA was informed (as reflected in the EPA's Supplemental Data File finalized on March 23, 1993) that they had commenced construction prior to December 31, 1990 and (as reflected in the NADB) that they were planning to commence commercial operation from January 1, 1993 through December 31, 1995. EPA required that owners and operators of units on Table 3 submit documentation to EPA by December 31, 1995 of the commencement of construction. 58 FR 15722. For units commencing construction before December 31, 1990, eligibility under section 405(g)(4) ultimately depends on them being affected units that actually commenced commercial operation by what was a future date (December 31, 1995) at the time the data underlying Table 3 was gathered. While some data about a unit (e.g., its generating capacity or allowable emissions rate) is known before construction is completed or operation begins, other information (in this case, the commencement date for commercial operation) can only be a projection that, not surprisingly, may turn out to be wrong.

As discussed above, EPA's general approach to correcting data errors that lead to allowance revisions has been to require that the owners or operators have informed EPA by December 31, 1991 and sufficiently documented the correction by July 7, 1992. However, as of either of those dates, owners or operators of units in Table 3 that ultimately commenced commercial operation in 1993–1995 had only projections of commercial operation commencement dates, not *actual* data. Because such owners or operators could not have informed EPA by December 31, 1991 that the projected dates were erroneous, EPA is taking a different approach with regard to errors in the projected dates. EPA proposes to correct errors in a unit's projected commercial operation dates and to make the resulting allowance revisions if the Agency was made aware of the error within a reasonable time after the actual commencement of commercial operation. In addition, EPA is continuing to take the approach of correcting data errors (e.g., as discussed below, errors concerning completion of construction of units or status of units as fossil fuel-fired combustion devices), regardless of when EPA became aware of the corrected information, to the extent necessary to ensure that unaffected units are not erroneously treated as affected units. As a result, EPA proposes several additions of units to and deletions of units from Table 3.

a. EPA has reviewed various documents regarding planned utility units and understands that many units presently listed on Table 3 are not likely ever to be built. In some cases, EPA's information in the Supplemental Data File on construction commencement was erroneous, and, in other cases, construction was commenced but not completed. Obviously, such units are not affected units and should not be included in any table as affected units. From the Department of Energy's ''Inventory of Power Plants 1993'' and ''Inventory of Power Plants 1994'', EPA believes the following units will not be built and proposes to delete them from Table 3:

State	Plant	Units	ORIS
FL	G W Ivey	**2	0665
IL	Lakeside	GT1	0964
IA	Na1—7230	**1	7230
MO	Empire Energy Ctr	**3	6223
	Lake Road	**8	2098
NJ	Butler	**3	7152
OH	Dover	**7	2914
PA	Trenton Cogen Proj	**1	9902
SC	NA2—7107	**GT2	7107
	NA3—7108	**GT3	7108
SD	Ct	**5	7236
UT	Bonanza	**2	7790
WI	Combustion Turbine	**1	7157
	Na2	**1	7250

Table 3 also currently includes other units that are not affected units. Harbor Gen Station **10 in California, Martin **3ST and **4ST in Florida, and Clark **9 and **10 in Nevada on Table 3 are heat recovery boilers served by existing simple turbines. As discussed above, this type of unit is not a fossil fuel-fired combustion device. Therefore, these are not affected units and should not be listed in any of the tables. EPA today proposes to delete them from Table 3.

In addition, EPA proposes to delete the following units from Table 3 and include them on Table 2 with zero allowances. NA1–7228 **1, **2, and **3 in Indiana did not submit the required documentation of the date for commencement of construction. Harry Allen **GT1 and **GT2 in Nevada did not commence construction before January 1, 1990. The remaining units did not commence commercial operation before December 31, 1995.

State	Plant name	Units	ORIS code
AL	McWilliams	**4	0533
AZ	Springerville	3	8223
IN	NA1–7228	**1, **2, **3	7228
KS	Wamego	**NA1	1328
MD	Easton 2	**25	4257
	Perryman	**51	1556
MS	Moselle	**4, **5	2070
MO	Combustion Turbine 1	**1	7160
MO	Combustion Turbine 2	**2	7161

State	Plant name	Units	ORIS code
NE	Na1–7019	**NA1	7019
NV	Harry Allen	**GT1, **GT2	7082
NJ	Butler	**1	7152
NJ	Na1–7139	**1	7139
NJ	Na2–7140	**1	7140
OH	Woodsdale	**GT7	7158
SC	NA1- 7106	**GT1	7106
VA	East Chandler	**2	7186

Finally, Twin Oak 2 in Texas is eligible for allowances under section 405(g)(2) and was listed in Table 3 as also eligible for allowances under section 405(g)(4). This unit did not actually commence commercial operation by December 31, 1995 and therefore is not eligible under section 405(g)(4). EPA proposes that Twin Oak 2 be removed from Table 3 and listed in Table 2 with 1,760 unadjusted basic allowances under section 405(g)(2).

b. EPA understands that Angus Anson unit 3 in Minnesota (listed in Table 2 as ''NA1–7237, **2''), Cope unit 1 in South Carolina (listed in Table 2 as ''NA4–7210, **ST1'') and Fond Du Lac CT3 in Wisconsin (listed in Table 2 as ''Na1–7203'') actually commenced construction prior to December 31, 1990 and commercial operation in 1995 and are not listed in Table 3. In 1991, EPA had received documentation of their pre-1991 commencement of construction but did not list the units in Table 3 because they were not projected to commence commercial operation until 1996. EPA was informed, within a reasonable time after actual commencement of commercial operation, that the projections were wrong. EPA proposes to include these units in Table 3 with the following unadjusted basic allowances under section 405(g)(4) of the Act: Angus Anson unit 3, 1,166 allowances; Cope unit 1, 2,989 allowances; and Fond Du Lac CT3, 44 allowances.

In addition, EPA believes that it erred by not including West Marinette unit 33 in Wisconsin in Table 3. On August 28, 1991, the owner of West Marinette informed EPA that the unit had commenced construction before December 31, 1990 and was projected to commence commercial operation before 1996. EPA erroneously recorded the date for commencement of construction as being after 1990 and therefore failed to include the unit in the table. Because the owner timely informed EPA of the data error and because the unit actually commenced commercial operation in 1995, EPA considers this an Agency error and is correcting the error and adding the unit to Table 3. West Marinette unit 33 is eligible for 874 unadjusted basic allowances.

EPA proposes to include these three units in Table 3 with the proper unadjusted basic allowances.

c. EPA is proposing to make, in this rulemaking, the deletions and additions of units and the changes to the unadjusted allowances discussed in this section. These changes will be implemented in the manner described, and for the reasons discussed, in section IV(B) of this preamble. The units' allowance allocations will be revised to reflect the new figures for unadjusted allowances when the revised Tables 2 and 3 are issued in June 1998.

D. 1998 Revision of Allowance Allocations

As noted above, section 403(a)(1) of the Act requires EPA to publish a revised statement of allowance allocations no later than June 1, 1998. That revision must account for units eligible for allowances under section 405(g)(4) (units commencing operation from 1992 through 1995), units eligible for allowances under section 405(i)(2) (units that reduce their emissions rates), and section 409 (units with approved repowering extensions). Rules for the revision of allowance allocations were published on March 23, 1993. 58 FR 15634.

EPA is presently planning the procedures for revising allowance allocations in 1998. EPA has determined that the current regulations should be revised to facilitate the 1998 allowance allocation revision.

The current rule requires each unit eligible under section 405(i)(2) to submit a copy of the Form EIA–767 (showing the actual SO_2 emissions rate) for the unit for 1997 no later than March 1, 1998. Because EPA must provide a comment period on the revision to allocations and because of the administrative requirements for issuance of rules, there is insufficient time for EPA to issue a final rule in June 1998 using data submitted to EPA in March 1998. EPA is therefore proposing to use instead 1996 actual SO_2 emissions rate data as reported by the unit's continuous emissions monitors under part 75. That data will be available in the spring of 1997, allowing EPA time to complete the revisions by the statutory deadline. Submission of the 1997 Form EIA–767 will no longer be required.

The revisions to the allowance allocations are also dependent upon a reasonably accurate calculation of the number of allowances allocated for units with repowering extensions. EPA finalized the allowance allocations in 1993 based on its estimate of the number of allowances that could be allocated for units projected to apply for and be granted repowering extensions. The current part 72 allows for approval of a conditional repowering extension plan that does not go into effect until the plan is activated, which may occur as late as December 31, 1997. Thus, until January 1998, EPA will not know the number of repowering extension plans in effect and the resulting number of allowances to be allocated for units with repowering extensions. This date is too late for EPA to complete allowance allocation revisions by June 1998.

Therefore, EPA proposes to require activation of repowering extension plans by June 1, 1997. That is the same date as the deadline for submission to EPA of petitions for approval of repowering technology under § 72.44(d). Under § 72.44, a repowering extension can be approved only if the Administrator determines that the technology proposed to be used for repowering is a qualified repowering technology, consistent with the definition of ''repowering'' in section 402(12) of the Act. EPA believes that, as a practical matter, the June 1, 1997 deadline will provide sufficient flexibility for a utility to decide whether to commit to repowering a unit, particularly since the utility will still have until December 31, 1999 to terminate a repowering extension plan. Although the June 1998 revision will reflect repowering plans that the utility retains the right to terminate, EPA maintains that approved plans provide a sounder basis for the June 1998

allocations than conditional plans that may not even be activated.

E. Revisions to Small Diesel Refinery Provisions

Section 410(h) of the Act provides a total of 35,000 allowances for small diesel refineries that desulfurize diesel fuel from October 1, 1993 through December 31, 1999. Small diesel refineries are not affected units under the Acid Rain Program and do not need allowances to comply with any provision of the Act but may sell their allowances. Regulations for the allocation of allowances to small diesel refineries are contained in subpart G of part 73.

After finalization of subpart G, EPA was informed that the equation in § 73.90(c), for calculating allowances in instances where the allowances requested by small refineries exceed the 35,000 limit under section 410(h), is in error. EPA agrees. The factor for prorating allowances to the 35,000 level was inverted. Today, EPA proposes to correct the equation and eliminate some redundant language.

Also, after finalizing the rule, EPA realized that the list of items (in § 73.90(a)) to be submitted to support a certification that the refinery is a small diesel refinery eligible for allowances is insufficient, as compared to the definition of small diesel refinery in § 72.2. That definition requires data on crude oil throughput for 1988 through 1990 but the current rule requires submission of EIA–810 forms only for 1990. EPA has had to routinely request applicants to supplement their initial submissions with copies of the 1988 and 1989 EIA–810 forms. It is less burdensome for the applicant and EPA to have properly stated submission requirements in the first instance. Today, EPA proposes to revise the rule to correct this error.

V. Part 75: Monitoring Requirements for Units Burning Digester and Landfill Gas

EPA has received questions regarding treatment, under part 75, of utility units that burn digester or landfill gas in addition to natural gas. The definition of ''natural gas'' clearly excludes digester and landfill gas. The present definition of ''gas-fired'' includes natural gas and other gaseous fuels, but, for the purposes of monitoring requirements under part 75, excludes gaseous fuels that contain more sulfur than natural gas. In general, digester and landfill gas contain significantly more sulfur than natural gas, although still much less than coal. The monitoring rules of part 75 treat units that burn digester or landfill gas as ''other'' units, subject to the same requirements as coal-fired units to use continuous emissions monitoring systems to monitor SO_2, NO_X, carbon dioxide, and opacity.

Use of digester or landfill gas for generation of electricity is encouraged by the Agency in order to decrease the emission of greenhouse gases and to efficiently use this waste product. However, the Agency has limited information concerning the range of the sulfur content of digester or landfill gas and methods, other than continuous emissions monitoring, for determining the amount of SO_2 emissions from units combusting such gas. On one hand, EPA does not wish to discourage electricity production from digester and landfill gases by having overly burdensome monitoring requirements. In fact, use of such gases for electric generation can reduce methane and other emissions while reducing the financial burden on municipal landfills and other emitters of such gases. 61 FR 9905,9909–10 (March 12, 1996). On the other hand, accurate monitoring of SO_2 emissions from affected units is essential to the integrity and effectiveness of the Acid Rain Program.

Under these circumstances, EPA is not proposing any changes to part 75 concerning monitoring of emissions from units combusting digester or landfill gas. Instead, the Agency requests information on: the sulfur content of such gas and the variability of sulfur content over time; the available methods, in addition to continuous emissions monitoring, for determining SO_2 and NO_X emissions from units combusting such gas; and the cost and accuracy of such methods. Other than the change in § 75.67(a), discussed above, concerning exemptions from monitoring requirements for retired units, EPA is not proposing any changes to part 75 and will not accept comments on any other provisions of part 75 in this rulemaking.[26]

VI. Part 77: Excess Emissions

A. Immediate Deduction of Allowances to Offset Excess Emissions

Under the current rule, the designated representative of a unit that has excess emissions for a calendar year must submit an offset plan showing when allowances offsetting the excess emissions should be deducted. In the plan, the designated representative must state the amount of the excess emissions and of the resulting offset allowances and may state that the allowances should be deducted either immediately or on a future specified date. A plan providing for immediate deduction of all offset allowances will generally be approved without any further proceedings. A plan specifying a future date for deduction must be processed using notice and comment procedures analogous to the Agency's Acid Rain permit issuance procedures. If the future deduction date is in a year after the year in which the plan is submitted, there must be a showing that a deduction during the year of submittal will interfere with electric reliability.

This approach provides the options of, *inter alia,* submitting an offset plan for immediate deduction of allowances, which is automatically approved, or an offset plan providing for deduction later in the year in which the plan is submitted, which must go through notice and comment. However, since offset plans are submitted by March 1 and deductions will not actually be made until after completion of Agency review of emission data for the calendar year of the excess emissions, there is relatively small timing difference between an immediate deduction and one that takes place by the end of the same year. It seems doubtful that a designated representative would find that the timing difference warrants the burden of the notice and comment procedures applicable to plans not providing for immediate deductions. Further, it is less administratively burdensome for EPA to make deductions when it is already examining a unit's Allowance Tracking System acccount to determine if the allowances cover the unit's emissions than to defer the deductions to a later date in the same year. From a public policy standpoint, immediate deductions will also have the advantage of a more timely closing of compliance activities for the unit for the year of the excess emissions.

For these reasons, EPA proposes to modify the current rule to require the offset plan to provide either for immediate deduction or deduction on a specified date in a subsequent year. Immediate deduction offset plans will continue to be subject to automatic approval while any other plans will have to include a showing of the impact of an immediate deduction on electric reliability and will be subject to notice and comment.[27]

[26] Under § 75.50, information required under part 75 must be retained for at least 3 years from the date of each record. The general recordkeeping provision in § 72.9(f)(1), which requires record retention for at least 5 years, is revised to incorporate specifically the 3-year period for part 75 records.

[27] Revisions concerning the notice and comment procedure for offset plans are also proposed. The

Continued

In addition, under the proposal, it will be optional to specify in the offset plan the number of offset allowances to be deducted. Excess emissions and the offset requirement are determined by allowance account data, monitoring data, and other data (e.g., for Phase I, reduced utilization data) submitted to and reviewed by the Administrator. There is no purpose in requiring the designated representative to state in the plan the amount of excess emissions and of resulting offset allowances. This is consistent with the approach taken in the requirements for the annual compliance certification report, which does not require the designated representative to certify the amount of annual emissions or of allowances held as of the allowance transfer deadline. *See* 40 CFR 72.90.

B. Deadline for Payment of Excess Emissions Penalties

Under the current rule, the owners and operators of a unit must pay any excess emissions penalties ($2,000, adjusted for inflation, per excess ton) by 60 days after the end of the year (i.e., by March 1) in which the excess emissions occur. Penalty payments for additional excess emissions resulting from the process of confirming kilowatt hour savings or heat rate improvement from energy conservation or improved unit efficiency measures under § 72.91(b) must be paid by July 1.

The difficulty with this approach is that the Agency's review of the emissions for that year may not have been completed by the date that the payment is due. With regard to Phase I, the information concerning reduced utilization and allowance surrender, which also affect the excess emissions determination, will be submitted around the same time (i.e., no later than March 1) and will not have yet been reviewed. Moreover, reduced utilization information submitted by March 1 by Phase I units with reduced utilization plans relying on energy conservation or improved unit efficiency measures will reflect only estimates of the kilowatt hour savings or heat rate improvement from conservation or improved efficiency. Verified figures will not be submitted until July 1, and the Administrator has the discretion to extend the July 1 submission date for good cause. Agency review of emissions data and reduced utilization information may result in a change in the determination of excess emissions and the penalty payment that is due.

Consequently, while section 411(a) of the Act expressly requires automatic payment of excess emissions penalties without demand by the Agency, the requirement to submit such payments by March 1 seems premature. Further, if Agency review results in a reduction in the amount calculated as excess emissions, there will have to be a refund of overpayment of penalties.

For these reasons, EPA proposes to change the current rule to provide that excess emissions penalties are automatically due 30 days after the Administrator serves the designated representative of the unit involved a notice, stating that the Agency has completed the end-of-year recordation process set forth in the current § 73.34(a), but, in any event, no later than July 1 of the year after the year in which the excess emissions occur. That end-or-year recordation process entails: deduction of allowances, from the balance in the unit's compliance subaccount as of the allowance transfer deadline, for SO_2 emissions during the prior calendar year; deduction of allowances pursuant to any other rule provisions (e.g., for reduced utilitization) from such balance; and transfer into the compliance subaccount of allowances allocated for the new calendar year. EPA anticipates that the notice will also provide information on the final balance in the account after all deductions are made. EPA notes that under the current § 73.50(b)(2) the unit's compliance subaccount is frozen, so that no transfers can be made in or out of the account, until the recordation process in § 73.34(a) is completed.

If the penalty is not paid within 30 days after the notice is sent, EPA proposes that a second notice will be sent by the Administrator, i.e., a demand notice stating that the excess emissions penalty and interest charges are due. Interest will accrue from the date on which the second notice is mailed. This is consistent with the requirements of the Debt Collection Act (31 U.S.C. 3717).

With regard to additional excess emissions that may stem from the process of confirming the results of energy conservation or improved unit efficiency measures, EPA proposes to make the payment due 30 days after the Administrator serves the designated representative a notice stating that the process set forth in § 72.92(b) is completed. Under § 72.92(b), the Administrator must review the confirmation report and determine whether additional excess emissions have resulted and whether any penalty (or refund of a penalty) is owed.

C. Excess NO_X Emissions Under NO_X Averaging Plans

The current § 77.6 states that owners and operators of each unit with excess emissions of NO_X during a year must pay a penalty of $2,000 (adjusted by the Consumer Price Index) per ton of excess emissions of NO_X. In part 76, § 76.13 states how to calculate the amount of excess emissions of NO_X. In particular, § 76.13(b) addresses the calculation where a unit is in an approved NO_X averaging plan under § 76.11.

Each unit in a NO_X averaging plan has an individual NO_X emission limitation (in lbs of NO_X/mmBtu of heat input) and an individual heat input limit. However, if a group showing of compliance by the units in the plan can be made (i.e., if the Btu-weighted average emission rate for the units is less than or equal to the Btu-weighted average emission rate had the units operated in compliance with the standard emission limitations applicable to the units in the absence of the NO_X averaging plan), the units are deemed to be in compliance with their individual emission limitations and heat input limits. *See* 40 CFR 76.11(d)(1)(ii) (A) and (C). Under § 76.13(b), if at least one unit in a NO_X averaging plan fails to meet its individual emission limitation or heat input limit and the units in the plan fail to make a group showing of compliance, excess emissions for NO_X equal the difference between actual total NO_X emissions for the group of units for the year and total NO_X emissions for the group for the year if each unit had met the standard emission limitations otherwise applicable to the unit.

Applying the current § 77.6(b), each unit that is in the NO_X averaging plan and that has excess emissions of NO_X must pay $2,000 (adjusted for inflation) per ton for the total amount of excess emissions under the plan as set forth in § 76.13(b). If more than one unit violates its individual emission limitation or heat input limit, this could result in multiple $2,000 penalty payments on the same ton of excess emissions. EPA proposes to change part 77 to prevent such a result. The proposal states that where a NO_X averaging plan covers one or more units that fail to meet their individual emission limitations or heat

provisions setting the time period for submission of supplemental information requested by the Administrator and establishing the list of persons on which the Administrator must serve notice of a draft offset plan are revised for the same reasons as the analogous revisions (discussed above) of the notice and comment procedure for Acid Rain permits. Further, the proposal requires service of automatic approvals of immediate-deduction offset plans only on the designated representative of the unit involved and no longer requires service on other persons. This seems appropriate since with the completion of the immediate deduction, the designated representative has fully completed his or her offset obligation and the approval of the offset plan will still be noticed in the Federal Register.

input limits for the year and a group showing of compliance cannot be made, excess emissions occur at all such units in the plan and the total amount of excess emissions for such units for the year will equal the amount of excess emissions calculated in accordance with § 76.13(b). The owners and operators of these units are responsible for paying the resulting excess emissions penalty under § 77.6(b). Which of the owners and operators actually make the payments is left to the owners and operators to determine so long as the correct total amount of penalties is paid.

VII. Part 78: Administrative Appeals

In a proposal promulgated on September 24, 1993, EPA proposed to add language to part 78 to clarify that, where a person contests a decision of the Administrator under the Acid Rain Program, exhaustion of the administrative appeals under part 78 is a prerequisite to judicial review. 58 FR 50088, 50104 (September 24, 1993). The proposal did not change the language in § 78.7 providing that decisions on administrative appeal will be effective pending such appeal unless a stay is granted by the Environmental Appeals Board or the Presiding Officer.

The Agency received comments on the proposed language. The commenters argued that the current part 78 is not ambiguous and should be interpreted not to require exhaustion of administrative remedies prior to judicial review. The commenters cite *Darby* v. *Cisneros*, 509 U.S. 137, 154 (1993), in which the Supreme Court held that exhaustion of administrative appeals is ''a prerequisite to judicial review *only* when expressly required by statute or when an agency rule requires appeal before review and the administrative action is made inoperative pending that review.'' According to the Supreme Court, the requirement for exhaustion of administrative remedies must be ''clearly'' imposed by statute or rule. *Id.* at 146. Moreover, the commenters allege that because part 78 does not include a complete list of the specific decisions of the Administrator that are appealable under part 78, a requirement for exhaustion of administrative remedies would not be sufficiently clear. Finally, the commenters state that since the September 24, 1994 proposal would make the Administrator's decisions inoperative pending administrative appeal, this may have a disruptive effect and the Agency should solicit additional comment on the effect of the September 24, 1993 proposal.

EPA proposes to modify the language in part 78 to state clearly that exhaustion of administrative appeals is a prerequisite for judicial review of any decision appealable under part 78, i.e., any final decision of the Administrator under the Acid Rain Program (excluding the matters listed in § 78.3(d)). In addition to the changes in the September 24, 1993 proposal, changes are proposed to make it clear that if a petition for review under part 78 is not filed for a decision appealable under that part, the exhaustion prerequisite for judicial review is not met and to provide that if such a petition is filed, the decision is inoperative pending completion of the administrative appeal procedures. One such change is the elimination of § 78.7 limiting the granting of stays of decisions during administrative appeal. Another change is the removal of the current provision in § 78.3(d)(1) barring appeal of matters for which a claim of error could have been, but was not, submitted.[28] This latter change will ensure that Agency decisions on such matters are reviewed by a superior agency authority (i.e., the Environmental Appeals Board) before judicial review can be sought.

These revisions in part 78 require a few conforming changes in part 72, which are included in today's proposal. Section 72.32 is revised to state that an affected unit is governed by its complete permit application until its Acid Rain permit is issued or denied. If an administrative appeal of a permit is filed under part 78, the permit is not in effect during the appeal and the application continues to govern until there is final agency action subject to judicial review. If an administrative appeal is filed under State appeal procedures, the State procedures will determine when the permit is ''issued'' and thus in effect. Further, since the revised provisions of this section and of sections in part 78 address in detail when an Acid Rain permit is final, the references to administrative appeals in the definition of ''Acid Rain permit'' in § 72.2 are superfluous and are removed.

EPA maintains that the approach proposed here for administrative appeals is consistent with *Darby* and provides an opportunity for the Agency to correct decisions that persons allege are erroneous. Because § 78.1 provides, in paragraph (a), a clear, general description of the decisions that are appealable under part 78 and, in paragraph (b), a list of the many (but not necessarily all) of the specific types of decisions that are appealable, EPA believes that the mandate to exhaust administative remedies prior to judicial appeal is clear and meets the requirements of *Darby*.

A few additional changes to part 78 are proposed. The provisions setting time periods for filings by parties (e.g., the 30-day time periods within which motions to intervene in part 78 appeal proceedings may be filed and within which parties may file objections to a proposed decision of a Presiding Officer) are changed. In order to provide more flexibility, the changes allow the Administrator, Environmental Appeals Board, or Presiding Officer (as appropriate) to set reasonable time periods that are shorter or longer time than the usually applicable time periods in the rule. Since a decision appealed under part 78 is inoperative pending completion of the administrative appeal, the Agency needs to have the ability to accelerate the appeals proceeding where delay due to the pending appeal will have significant, adverse consequences. In addition, the usually applicable time period within which the Environmental Appeals Board may decide *sua sponte* to review a Presiding Officer's proposed decision is lengthened to 45 days so that, before the Board must decide whether to undertake review, the Board will know whether any party has requested such review. Further, requirements for service of notices of petitions for administrative review are changed to be consistent with the changes proposed above for service requirements, under part 72, for notices of draft Acid Rain permits.

VIII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Administrator must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees,

[28] In addition, since the right to administrative appeal is no longer conditioned on taking the opportunity to file a claim of error, references in several sections in part 78 to such opportunity are replaced by references to actual submissions of, or Agency responses to, such claims.

or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

As discussed in detail in this preamble, the proposal has the net effect of reducing the burden of parts 72, 77, and 78 of the Acid Rain regulations on regulated entities (including both investor-owned and municipal utilities) and on State permitting authorities (which may include State, local, and tribal governments). For example, the proposal reduces the burden of obtaining or providing new units and retired units exemptions from the Acid Rain Program and of issuing Acid Rain permits.

The proposed revisions to part 73 also do not have a significant, adverse effect on regulated entities (including small entities) and have no effect on State permitting authorities. The proposal increases the annual unadjusted basic allowances for certain units and reduces the annual unadjusted basic allowances of other units, for a net reduction in total basic allowances of about 27,000 during 2000–2009 and 24,000 in 2010 and thereafter. Since sections 403(a) and 405(a)(3) of the Act set a nationwide cap on annual allowance allocations, the net reduction of allowances under this proposal will result in a small increase in the annual allocations of each of the other units that already receive allowances; the total increase will equal the amount of the above-discussed reductions. In addition, the proposal increases the annual bonus allowances by a total of about 3,000 during 2000–2009; these end in 2009 and are not subject to the cap.

In most cases where a unit's allowance allocation is reduced, the entire allocation is eliminated because EPA proposes to find that the unit is an unaffected unit and therefore to remove the unit from Table 2 or 3. These tables list affected units, which are expected to comply with all Acid Rain Program requirements. The loss of allowances is more than offset by the removal of any obligation of such a unit to meet the emission limitations and permitting, monitoring, and recording and recordkeeping requirements of the program. The only units that have reduced allowance allocations and that remain affected units are units that were conditionally granted allowances under section 405(g)(4) of the Act and therefore were listed on Table 3 of § 73.10(c). The allowances were conditioned on the owners and operators documenting that the units commenced construction before December 31, 1990 and commenced commercial operation by December 31, 1995. Because these conditions were not met by certain units, the units are not eligible for the allowances. See 58 FR 15641. Today's rule revisions simply reflect this ineligibility and propose to delete the units from Table 3 and add them to Table 2 with zero allowances. EPA maintains that the rule, therefore, does not have a significant, adverse impact on regulated entities, including entities that are owners or operators of the units removed from Table 3.

As part of the process of developing this proposal, EPA discussed with some State air regulators, the proposed revisions to part 72 affecting State permitting authorities. These air regulators expressed general support for the approach of reducing the need for States to review and approve new unit or retired unit exemptions. They also generally supported the approach of streamlining notice and comment procedures for issuance of Acid Rain permits and spelling out more clearly or reduce the differences between the Acid Rain and title V permitting procedures. The approach of allowing States not to adopt opt-in regulations and providing that the Administrator issue opt-in permits under part 74 for sources in such States was also generally supported.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1633.10) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460 or by calling (202) 260–2740.

The only additional information required by this collection of information is data concerning industrial units that exercise the option of applying for an exemption from most requirements of the Acid Rain Program, e.g., allowance, monitoring, and annual compliance requirements. This is a new industrial units exemption that EPA proposes, in today's rule, to establish. The requirements from which qualified industrial units will be exempt are significantly more burdensome than the information collection requirements for obtaining the exemption.[29] In order to

[29] Because the information collection burden on non-cogeneration industrial units in the absence of this new exemption was not included in the ICR for the current rule, the effect of removing such burden through the new exemption is not included in the ICR for today's proposal. Consequently, the ICR for today's proposal shows an increase in burden even though exempt industrial units will actually experience a significant net reduction in the burden imposed on them by the Acid Rain Program. In addition, as discussed in detail in this preamble, today's proposal includes other revisions that will reduce somewhat the burden of the program on

obtain the exemption, an industrial unit must meet the information collection requirements, which involve submission of information that is necessary, and will be used, for determining whether the units qualify and will continue to qualify for the exemption.

The additional information collection increases the estimated burden, as compared to the burden under the current regulations, by an average of 24 hours per response for about 15 responses. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to: the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., S.W., Washington, DC 20460; and the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 27, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by January 27, 1997. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, et seq., requires federal agencies to consider potential impacts of its regulations on small entities. Under 5 U.S.C. 604(a), an agency issuing a notice of proposed rulemaking must prepare and make available for public comment an initial regulatory flexibility analysis. Such an analysis is not required if the head of an agency determines, under 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities.

In the preamble of the January 11, 1993 rule, the Administrator certified that the rule, including the provisions revised by today's proposal, would not have a significant, adverse impact on small entities. 58 FR 3649. The proposed revisions are not significant enough to change the overall economic impact addressed in the January 11, 1993 preamble. Moreover, as discussed in detail in this preamble, the proposal has the net effect of reducing the burden of the Acid Rain regulations on regulated entities, including small entities. For example, the proposal makes it less burdensome to obtain new units and retired units exemptions from the Acid Rain Program. Further, as discussed in section VIII(B) of this preamble, while the proposal reduces and, in some cases, increases the allowance allocations for individual units, these changes in allocations will not have a significant, adverse effect on the owners or operators of the units. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the revised rule will not have a significant, adverse impact on a substantial number of small entities.

E. Miscellaneous

In accordance with section 117 of the Act, issuance of this rule was preceded by consultation with any appropriate advisory committees, independent experts, and federal departments and agencies.

List of Subjects in 40 CFR Parts 72, 73, 74, 75, 77, and 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Compliance plans, Continuous emissions monitors, Electric utilities, Intergovernmental relations, Nitrogen oxides, Penalties, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 21, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 72—[AMENDED]

1. The authority citation for part 72 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 72.1 [Amended]

2. Section 72.1 is amended by removing from paragraph (b) the words ''part 70'' and adding, in their place, the words ''parts 70 and 71''.

3. Section 72.2 is amended by: Removing the definition for ''Dispatch system''; adding in alphabetical order the definitions for ''Affected States'' and ''Eligible Indian tribe''; and revising paragraphs (1)(i) and (2) of the definition for ''Acid Rain emissions limitation'', the definition for ''Acid Rain permit or permit'', paragraph (2) of the definition of ''Coal-fired'', the definitions for ''Customer'' and ''Permitting authority'' and ''Phase I unit'', paragraph (3) of the definition of ''Power purchase commitment'', and the definitions for ''Submit or serve'' and ''State'' and ''State operating permits program'' to read as follows:

§ 72.2 Definitions.

* * * * *

Acid Rain emissions limitation means:

(1) * * *

(i) The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under section 404(a)(1), (a)(3), and (h) of the Act, or the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year, or the allowances authorized to be allocated to an opt-in source under section 410 of the Act for use in a calendar year;

* * * * *

(2) For purposes of nitrogen oxides emissions, the applicable limitation under part 76 of this chapter.

* * * * *

Acid Rain permit or permit means the legally binding written document or portion of such document, including any permit revisions, that is issued by a permitting authority under this part and specifies the Acid Rain Program requirements applicable to an affected source and to the owners and operators and the designated representative of the affected source or the affected unit.

* * * * *

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units that are not exempt. Because the burden reduction for non-exempt units is small relative to the total burden of the Acid Rain Program, the reduction is not reflected in the ICR for today's proposal.

Affected States means any affected State as defined in part 71 of this chapter.

* * * * *

Coal-fired means * * *

(2) For all other purposes under the Acid Rain Program, except for purposes of applying part 76 of this chapter, a unit is ''coal-fired'' if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); *provided* that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field ''PRIMEFUEL''.

* * * * *

Customer means a purchaser of electricity not for the purposes of retransmission or resale. For generating rural electrical cooperatives, the customers of the distribution cooperatives served by the generating cooperative will be considered customers of the generating cooperative.

* * * * *

Eligible Indian tribe means any eligible Indian tribe as defined in part 71 of this chapter.

* * * * *

Permitting authority means either:

(1) When the Administrator is responsible for administering Acid Rain permits under subpart G of this part, the Administrator or a delegatee agency authorized by the Administrator; or

(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to administer Acid Rain permits under subpart G of this part and part 70 of this chapter.

* * * * *

Phase I unit means any affected unit, except an affected unit under part 74 of this chapter, that is subject to an Acid Rain emissions reduction requirement or Acid Rain emissions limitation beginning in Phase I; or any unit exempted under § 72.8 that, but for such exemption, would be subject to an Acid Rain emissions reduction requirement or Acid Rain emissions limitation beginning in Phase I.

* * * * *

Power purchase commitment means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

* * * * *

(3) A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source is executed within the time frame established by the terms of the letter of intent but no later than November 15, 1993 or, where the letter of intent does not specify a time frame, a power sale agreement applicable to the source is executed on or before November 15, 1993; or

* * * * *

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other equivalent means of dispatch, or transmission, and delivery. Compliance with any ''submission'', ''service'', or ''mailing'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

* * * * *

State means one of the 48 contiguous States and the District of Columbia, any non-federal authorities in or including such States or the District of Columbia (including local agencies, interstate assocations, and State-wide agencies), and any eligible Indian tribe in an area in such State or the District of Columbia. The term ''State'' shall have its conventional meaning when used in the phrase ''the 48 contiguous States.''

State operating permit program means an operating permit program that the Administrator has approved under part 70 of this chapter.

* * * * *

4. Section 72.6 is amended by adding paragraphs (b)(9) and revising paragraph (c) (1) and (2) to read as follows:

§ 72.6 Applicability.

* * * * *

(b) * * *

(9) A unit for which an exemption under § 72.7, § 72.8, or § 72.14 is in effect. Although such a unit is not an affected unit, the unit shall be subject to the requirements of § 72.7, § 72.8, or § 72.14, as applicable to the exemption.

(c) A certifying official of an owner or operator of any unit may petition the Administrator for a determination of applicability under this section.

(1) Petition Content. The petition shall be in writing and include identification of the unit and relevant facts about the unit. In the petition, the certifying official shall certify, by his or her signature, the statement set forth at § 72.21(b)(2). Within 10 business days of receipt of any written determination by the Administrator covering the unit, the certifying official shall provide each owner or operator of the unit, facility, or source with a copy of the petition and a copy of the Administrator's response.

(2) *Timing.* The petition may be submitted to the Administrator at any time but, if possible, should be submitted prior to the issuance (including renewal) of a Phase II Acid Rain permit for the unit.

* * * * *

5. Section 72.7 is revised to read as follows:

§ 72.7 New units exemption.

(a) *Applicability.* This section applies to any new utility unit that has not previously lost an exemption under paragraph (e)(4) of this section and that, in each year starting with the first year for which the unit is to be exempt under this section,

(1) serves one or more generators with total nameplate capacity of 25 MWe or less,

(2) burns fuel that does not include any coal or coal-derived fuel (except coal-derived gaseous fuel with a sulfur content no greater than natural gas) and

(3) burns gaseous fuel with an annual average sulfur content of 0.05 percent or less by weight (as determined under paragraph (c)(3) of this section) and nongaseous fuel with an annual average sulfur content of 0.05 percent or less by weight (as determined under paragraph (c)(3) of this section).

(b)(1) Any new utility unit that meets the requirements of paragraph (a) of this section and that is not allocated any allowances on Table 2 or 3 of § 73.10 of this chapter shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13.

(2) The exemption under paragraph (b)(1) of this section shall be effective on January 1 of the first full calendar year for which the unit will meet the requirements of paragraph (a) of this section. By December 31 of the first year for which the unit is to be exempt under this section, a statement signed by the designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit shall be submitted to permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator. The statement, which shall be in a format prescribed by the Administrator, shall identify the unit, state the nameplate capacity of each generator served by the unit and the fuels currently burned or expected to be burned by the unit and their sulfur content by weight, and state that the

owners and operators of the unit will comply with paragraph (e) of this section.

(c)(1) Any new utility unit that meets the requirements of paragraph (a) of this section and that is allocated one or more allowances in Table 2 or 3 of § 73.10 of this chapter shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13, if each of the following requirements are met:

(i) The designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit submits to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit a statement (in a format prescribed by the Administrator) that

(A) identifies the unit and states the nameplate capacity of each generator served by the unit and the fuels currently burned or expected to be burned by the unit and their sulfur content by weight,

(B) states that the owners and operators of the unit will comply with paragraph (e) of this section,

(C) surrenders allowances equal in number to, and with the same or earlier compliance use date as, all of those allocated to the unit under subpart B of part 73 of this chapter for the first year that the unit is to be exempt under this section and for each subsequent year, and

(D) surrenders any proceeds for allowances under paragraph (c)(1)(i)(C) withheld from the unit under § 73.10 of this chapter. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator.

(ii) The Administrator deducts from the unit's Allowance Tracking System account allowances under paragraph (c)(1)(i)(C) of this section and receives proceeds under paragraph (c)(1)(i)(D) of this chapter. Upon completion of such deductions and receipt of such proceeds, the Administrator will close the unit's Allowance Tracking System account and notify the designated representative (or certifying official) and, if the Administrator is not the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit, the permitting authority.

(2) The exemption under paragraph (c)(1) of this section shall be effective on January 1 of the first full calendar year for which the requirements of paragraphs (a) and (c)(1) of this section are met.

(3) Compliance with the requirement that fuel burned during the year have an annual average sulfur content of 0.05 percent by weight or less shall be determined as follows:

(i) For gaseous fuel burned during the year, if natural gas is the only gaseous fuel burned, the requirement is assumed to be met;

(ii) For gaseous fuel burned during the year where other gas in addition to or besides natural gas is burned, the requirement is met if the annual average sulfur content is equal to or less than 0.05 percent by weight. The annual average sulfur content, as a percentage by weight, for the gaseous fuel burned shall be calculated as follows:

$$\%S_{annual} = \frac{\sum_{n=1}^{last} \%S_n V_n d_n}{\sum_{n=1}^{last} V_n d_n}$$

Where:

$\%S_{annual}$ = annual average sulfur content of the fuel burned during the year, as a percentage by weight;

$\%S_n$ = sulfur content of the nth sample of the fuel delivered during the year to the unit, as a percentage by weight;

V_n = volume of the fuel in a delivery during the year to the unit of which the nth sample is taken, in standard cubic feet; or, for fuel delivered during the year to the unit continuously by pipeline, volume of the fuel delivered starting from when the nth sample of such fuel is taken until the next sample of such fuel is taken, in standard cubic feet;

d_n = density of the nth sample of the fuel delivered during the year to the unit, in lb per standard cubic foot; and

n = each sample taken of the fuel delivered during the year to the unit, taken at least once for each delivery; or, for fuel that is delivered during the year to the unit continuously by pipeline, at least once each quarter during which the fuel is delivered.

(iii) For nongaseous fuel burned during the year, the requirement is met if the annual average sulfur content is equal to or less than 0.05 percent by weight. The annual average sulfur content, as a percentage by weight, shall be calculated using the equation in paragraph (c)(3)(ii) of this section. In lieu of the factor, volume times density (V_n d_n), in the equation, the factor, mass (M_n), may be used, where M_n is: mass of the nongaseous fuel in a delivery during the year to the unit of which the nth sample is taken, in lb; or, for fuel delivered during the year to the unit continuously by pipeline, mass of the nongaseous fuel delivered starting from when the nth sample of such fuel is taken until the next sample of such fuel is taken, in lb.

(d)(1) A utility unit that was issued a written exemption under this section and that meets the requirements of paragraph (a) of this section shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13 and shall be subject to the requirements of paragraphs (d)(2) and (e) of this section in lieu of the requirements set forth in the written exemption.

(2) If a utility unit under paragraph (d)(1) of this section is allocated one or more allowances in Table 2 or 3 of § 73.10 of this chapter, the designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit shall submit to the permitting authority that issued the written exemption a statement (in a format prescribed by the Administrator) meeting the requirements of paragraph (c)(1)(i)(C) and (D) of this section. The statement shall be submitted by December 31, 1997 and, if the Administrator is not the permitting authority, a copy shall be submitted to the Administrator.

(e) *Special Provisions.* (1) The owners and operators and, to the extent applicable, the designated representative of a unit exempted under this section shall comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(2) For any period for which a unit is exempt under this section, the unit is not an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the requirements of paragraph (a) of this section are met. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority.

(i) Such records shall include, for each delivery of fuel to the unit, the type of fuel and the sulfur content or, for fuel delivered to the unit

continuously by pipeline, the type of fuel and the sulfur content of each sample taken.

(ii) The owners and operators bear the burden of proof that the requirements of paragraph (a) of this section are met.

(4) *Loss of exemption.* (i) On the earliest of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption and become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter:

(A) The date on which the unit first serves one or more generators with total nameplate capacity in excess of 25Mwe;

(B) The date on which the unit burns any coal or coal-derived fuel except for coal-derived gaseous fuel with the sulfur content no greater than natural gas; or

(C) January 1 of the year following the year in which the annual average sulfur content for gaseous fuel burned at the unit exceeds 0.05 percent by weight (as determined under paragraph (c)(3) of this section) or for nongaseous fuel burned at the unit exceeds 0.05 percent by weight (as determined under paragraph (c)(3) of this section).

(ii) Notwithstanding § 72.30(b) and (c), the designated representative for a unit that loses its exemption under this section shall submit a complete Acid Rain permit application on the later of January 1, 1998 or 60 days after the date on which the unit is no longer exempt.

(iii) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the date on which the unit is no longer exempt.

6. Section 72.8 is revised to read as follows:

§ 72.8 Retired units exemption.

(a) This section applies to any affected unit that is permanently retired.

(b)(1) Any affected unit that is permanently retired shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, §§ 72.10 through 72.13, and subpart B of part 73 of this chapter.

(2) The exemption under paragraph (b)(1) of this section shall become effective on January 1 of the first full calendar year during which that the unit will be permanently retired. By December 31 of the first year that the unit is to be exempt under this section, the designated representative (authorized in accordance with subpart B of this section) of the unit shall submit a statement to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the Administrator) that the unit is permanently retired and will comply with the requirements of paragraph (d) of this section.

(c) A utility unit that was issued a written exemption under this section and that is permanently retired shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, §§ 72.10 through 72.13, and subpart B of part 73 of this chapter, and shall be subject to the requirements of paragraph (d) of this section in lieu of the requirements set forth in the written exemption.

(d) *Special Provisions.* (1) A unit exempt under this section shall not emit any sulfur dioxide and nitrogen oxides starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart B of part 73 of this chapter. If the unit is a Phase I unit, for each calendar year in Phase I, the designated representative of the unit shall submit a Phase I permit application in accordance with subparts C and D of this part 72 and an annual certification report in accordance with §§ 72.90 through 72.92 and is subject to §§ 72.95 and 72.96.

(2) A unit exempt under this section shall not resume operation unless the designated representative of the source that includes the unit submits a complete Acid Rain permit application under § 72.31 for the unit not less than 24 months prior to the later of January 1, 2000 or the date the unit is to resume operation.

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempted under this section shall comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) For any period for which a unit is exempt under this section, the unit is not an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(5) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority. The owners and operators bear the burden of proof that the unit is permanently retired.

(6) *Loss of exemption.* (i) On the earlier of the following dates, a unit exempt under this section shall lose its exemption and become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter:

(A) The date on which the designated representative submits an Acid Rain permit application under paragraph (d)(2) of this section; or

(B) The date on which the designated representative is required under paragraph (d)(2) of this section to submit an Acid Rain permit application.

(ii) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the date on which the unit resumes operation.

§ 72.9 [Amended]

7. Section 72.9 is amended by:

a. removing from paragraphs (b)(1) and (2) the words ''and section 407 of the Act and regulations implementing section 407 of the Act'';

b. removing from paragraph (b)(3) the words ''and regulations implementing section 407 of the Act'';

c. removing from paragraph (c)(6) the words ''the written exemption under §§ 72.7 and 72.8'' and adding in their place, the words ''an exemption under §§ 72.7, 72.8, or 72.14'';

d. removing from paragraph (f)(1)(ii) the punctuation ''.'' and adding in its place the words ''; *provided* that a 3-year period (rather than a 5-year period) for recordkeeping under part 75 shall apply.'' ;

e. removing from paragraph (g)(1) the words ''a written exemption under § 72.7 or § 72.8'' and adding, in their place, the words ''an exemption under §§ 72.7, 72.8, or 72.14'';

f. removing from paragraph (g)(6) the words ''part 76 of this chapter'' and adding, in their place, the words ''§ 76.11 of this chapter; and

g. removing from paragraph (h) introductory text the words ''a written exemption under §§ 72.7 or 72.8'' and adding, in their place, the words ''an exemption under §§ 72.7, 72.8, or 72.14''.

§ 72.13 [Amended]

8. Section 72.13 is amended by:

a. removing paragraphs (a)(1), (a)(5), (a)(6), (a)(7), (a)(9), and (a)(10);

b. redesignating paragraph (a)(2) as paragraph (a)(1);

c. redesignating paragraph (a)(3) as paragraph (a)(2);

d. redesignating paragraph (a)(4) as paragraph (a)(3), and

e. redesignating paragraph (a)(8) as paragraph (a)(4).

9. Section 72.14 is added to read as follows:

§ 72.14 Industrial units exemption.

(a) *Applicability.* This section applies to any non-cogeneration, utility unit that has not previously lost an exemption under paragraph (d)(4) of this section and that meets the following criteria:

(1) Starting on the date of the signing of the interconnection agreement under paragraph (a)(2) of this section and thereafter, there has been no owner or operator of the unit, subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority;

(2) On or before March 23, 1993, the owners or operators of the unit entered into an interconnection agreement and any related power purchase agreement with a person whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority, requiring the generator or generators served by the unit to produce electricity for sale only for incidental electricity sales to such person;

(3) The unit served or serves one or more generators that, in 1985 or any year thereafter, actually produced electricity for sale only for incidental electricity sales required under the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section; and

(4) Incidental electricity sales, under this section, are total annual sales of electricity produced by a generator that do not exceed 10 percent of the nameplate capacity of that generator times 8,760 hours per year and do not exceed 10 percent of the actual annual electric output of that generator.

(b) *Petition for exemption.* The designated representative (authorized in accordance with subpart B of this part) of a unit under paragraph (a) of this section may submit to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit a complete petition for an exemption for the unit from certain requirements of the Acid Rain Program. If the Administrator is not the permitting authority, a copy of the petition shall be submitted to the Administrator. A complete petition shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the unit;

(2) A statement that the unit is not a cogeneration unit;

(3) A list of the current owners and operators of the unit and any other owners and operators of the unit, starting on the date of the signing of the interconnection agreement under paragraph (a)(2) of this section, and a statement that, starting on that date, there has been no owner or operator of the unit, subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority;

(4) A summary of the terms of the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section, including the date on which the agreement was signed, the amount of electricity that may be required to be produced for sale by the generator served by the unit, and the provisions for expiration or termination of the agreement;

(5) A copy of the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section;

(6) The nameplate capacity of each generator served by the unit;

(7) For each year starting in 1985, the actual annual electrical output of each generator served by the unit, the total amount of electricity produced for sales to any customer by each generator, and the total amount of electricity produced and sold as required by the interconnection agreement and any related power purchase agreement under paragragh (a)(2) of this section;

(8) A statement that the generator or generators served by the unit actually produced electricity for sale only for incidental electricity sales (in accordance with paragraph (a)(4) of this section) required under the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section; and

(9) The special provisions of paragraph (d) of this section.

(c) *Permitting Authority's Action.*

(1) (i) For any unit meeting the requirements of paragraphs (a) and (b) of this section, the permitting authority shall issue an exemption from the requirements of the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6 and §§ 72.10 through 72.13.

(ii) If a petition for exemption is submitted for a unit but the designated representative fails to demonstrate that the requirements of paragraph (a) are met, the permitting authority shall deny an exemption under this section.

(2) In issuing or denying an exemption under paragraph (c)(1) of this section, the permitting authority shall treat the petition for exemption as a permit application and apply the procedures used for issuing or denying draft, proposed (if the Administrator is not the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit), and final Acid Rain permits.

(3) An exemption issued under paragraph (c)(1)(i) of this section shall become effective on January 1 of the first full year the unit meets the requirements of paragraph (a) of this section.

(4) An exemption issued under paragraph (c)(1)(i) of this section shall be effective until the date on which the unit loses the exemption under paragraph (d)(4) of this section.

(d) *Special Provisions.* (1) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(2) For any period for which a unit is exempt under this section, the unit is not an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the requirements of paragraph (a) of this section are met. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority. Such records shall include the following information:

(i) A copy of the interconnection agreement and any related power

purchase agreement under paragraph (a)(2) of this section;

(ii) The nameplate capacity of each generator served by the unit; and

(iii) For each year starting in 1985, the actual annual electrical output of each generator served by the unit, the total amount of electricity produced for sales to any customer by each generator, and the total amount of electricity produced and sold as required by the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section.

(4) *Loss of exemption.* (i) On the earliest of the following dates, a unit exempt under this section shall lose its exemption and become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter:

(A) The first date on which there is an owner or operator of the unit, subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof, whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority.

(B) If any generator served by the unit actually produces any electricity for sale other than for sale to the person specified as the purchaser in the interconnection agreement or any related power purchase agreement under paragraph (a)(2) of this section, then the day after the date on which such electricity is sold.

(C) If any generator served by the unit actually produces any electricity for sale to the person specified as the purchaser in the interconnection agreement or any related power purchase agreement under paragraph (a)(2) of this section where such sale is not required under that interconnection agreement or related power purchase agreement or where such sale will result in total sales for a calendar year exceeding 10 percent of the nameplate capacity of that generator times 8,769 hours per year, then the day after the date on which such sale is made.

(D) If any generator served by the unit actually produces any electricity for sale to the person specified as the purchaser in the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section where such sale results in total sales for a calendar year exceeding 10 percent of the actual electric output of the generator for that year, then January 1 of the year after such year.

(E) If the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section expires or is terminated and any generator served by the unit actually produces any electricity for sale, then the day after the date on which such electricity is sold.

(ii) Notwithstanding § 72.30 (b) and (c), the designated representative for a unit that loses its exemption under this section shall submit a complete Acid Rain permit application on the later of January 1, 1998 or 60 days after the date on which the unit is no longer exempted.

(iii) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the date on which the unit is no longer exempted.

10. Section 72.22 is amended by adding paragraph (e) to read as follows:

§ 72.22 Alternate designated representative.

* * * * *

(e)(1) Notwithstanding paragraph (a) of this section, the certification of representation may designate two alternate designated representatives for a unit if:

(i) the unit's utility system is a subsidiary of a holding company with two or more subsidiaries that are utility systems in two or more of the contiguous 48 States or the District of Columbia; and

(ii) a single designated representative is designated for all the units in the utility-system subsidiaries of the holding company under paragraph (e)(1)(i) of this section and submits a NO_x averaging plan under § 76.11 of this chapter that covers all such units subject to part 76 of this chapter, is approved by the permitting authority, and continues to be in effect.

(2) Except in this paragraph (e), whenever the term ''alternate designated representative'' is used under the Acid Rain Program, the term shall be construed to include either of the alternate designated representatives authorized under this paragraph (e). Except in this section, § 72.23, and § 72.24, whenever the term ''designated representative'' is used under the Acid Rain Program, the term shall be construed to include either of the alternate designated representatives authorized under this paragraph (e).

11. Section 72.24 is amended by revising paragraphs (a) (3), (5), (10), and (11) to read as follows:

§ 72.24 Certificate of representation.

(a) * * *

(3) A list of the owners and operators of the affected source and of each affected unit at the source.

* * * * *

(5) The following statement: ''I certify that I have given notice of the agreement, selecting me as the 'designated representative' for the affected source and each affected unit at the source identified in this certificate of representation, in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice.''

* * * * *

(10) If an alternate designated representative is authorized in the certificate of representation, the following statement: ''The agreement by which I was selected as the alternate designated representative includes a procedure for the owners and operators of the source and affected units at the source to authorize the alternate designated representative to act in lieu of the designated representative.''

(11) The signature of the designated representative and any alternate designated representative who is authorized in the certificate of representation and the date signed.

* * * * *

12. Section 72.25 is amended by removing from paragraph (a) the words ''submitted to'' and adding, in their place, the words ''received by''.

13. Section 72.30 is amended by removing paragraph (b)(3) and adding paragraph (e) to read as follows:

§ 72.30 Requirement to apply.

* * * * *

(e) Where two or more affected units are located at a source, the permitting authority may, in its sole discretion, allow the designated representative of the source to submit, under paragraph (a) or (c) of this section, two or more Acid Rain permit applications covering the units at the source, *provided* that each affected unit is covered by one and only one such application.

14. Section 72.31 is amended by removing from paragraph (b) the words ''Phase II unit'' and adding in their place the words ''affected unit (except as provided under part 74 of this chapter)''.

15. Section 72.32 is amended by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 72.32 Permit application shield and binding effect of permit application.

* * * * *

(b) Prior to the date on which an Acid Rain permit is issued or denied, an affected unit governed by and operated

in accordance with the terms and requirements of a timely and complete Acid Rain permit application shall be deemed to be operating in compliance with the Acid Rain Program.

(c) A complete Acid Rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an Acid Rain permit from the date of submission of the permit application until the issuance or denial of an Acid Rain permit covering the units.

(d) If agency action concerning a permit is appealed under part 78 of this chapter, issuance or denial of the permit shall occur when the Administrator takes final agency action subject to judicial review.

16. Section 72.33 is amended by adding a sentence to the end of paragraph (b)(3) to read as follows:

§ 72.33 Identification of dispatch system.

* * * * *

(b) * * *

(3) * * * A designated representative may request, and the Administrator may grant at his or her discretion, an exemption allowing the submission of an identification of dispatch system after the otherwise applicable deadline for such submission.

* * * * *

17. Section 72.40 is amended by:

a. removing from paragraph (a)(2) the words ''applicable emission limitation established by regulations implementing section 407 of the Act'' and adding, in their place, the words ''applicable emission limitation under §§ 76.5, 76.6, and 76.7 of this chapter'';

b. removing from paragraph (a)(2) the words ''in accordance with section 407 and the regulations implementing section 407'' and adding, in their place, the words ''part 76 of this chapter'';

c. removing from paragraph (b)(1) the words ''an NO_X averaging plan contained in part 76 of this chapter'' and adding, in their place, the words ''a NO_X averaging plan under § 76.11 of this chapter''; and

d. removing from paragraphs (c) introductory text, (c)(1), and (d)(1) the words ''regulations implementing section 407 of the Act'' and adding, in their place, the words ''part 76 of this chapter''.

§ 72.41 [Amended]

18. Section 72.41 is amended by: removing from paragraph (b)(3) the words ''90 days'' and adding, in their place, the words ''6 months (or 90 days if submitted in accordance with § 72.82)''; and removing from paragraph (e)(1)(ii) the words ''section 407 of the Act and regulations implementing section 407 of the Act'' and adding, in their place, the words ''part 76 of this chapter''.

§ 72.43 [Amended]

19. Section 72.43 is amended by: removing from paragraph (b)(2)(iii)(B) the words ''under § 72.92'' and adding, in their place, the words ''under § 72.91(b)''; removing from paragraph (b)(4) the words ''90 days'' and adding, in their place, the words ''6 months (or 90 days if submitted in accordance with § 72.82 or § 72.83)''; and removing from paragraph (f)(1)(i) the words ''section 407 of the Act and regulations implementing section 407 of the Act'' and adding, in their place, the words ''part 76 of this chapter''.

§ 72.44 [Amended]

20. Section 72.44 is amended by:

a. removing from paragraph (c)(3) the words ''December 31'' and adding, in their place, the words ''June 1'';

b. removing from paragraphs (g) (1)(i) and (2) the words ''proposed permit revision'' and adding, in their place, the words ''requested permit modification'';

c. adding between the first and second sentences of paragraphs (g) (1)(i) and (2), introductory text, the words ''If the Administrator is not the permitting authority, a copy of the requested permit modification shall be submitted to the Administrator.'';

d. removing from paragraph (g)(2)(iii) the words ''December 21'' and adding, in their place, the words ''December 31''; and

e. removing from paragraph (h)(1)(ii) the words ''section 407 of the Act and regulations implementing section 407 of the Act'' and adding, in their place, the words ''part 76 of this chapter''.

§ 72.51 [Amended]

21. Section 72.51 is amended by: removing the words ''parts 73, 75, 77, and 78 of this chapter, and regulations implementing section 407 of the Act'' and adding, in their place, the words ''parts 73, 74, 75, 76, 77, and 78 of this chapter''; and removing the words ''of this part''.

22. Section 72.60 is revised to read as follows:

§ 72.60 General.

(a) *Scope.* This subpart and parts 74, 76, and 78 of this chapter contain the procedures for federal issuance of Acid Rain permits for Phase I of the Acid Rain Program and Phase II for sources for which the Administrator is the permitting authority under § 72.74. This part and parts 74, 76, and 78 of this chapter supersede part 71 of this chapter to the extent that they contain provisions that are not included in, or that expressly eliminate or replace provisions of, part 71 of this chapter.

(1) The provisions of subparts C, D, E, F, and H of this part and of parts 74, 76, and 78 of this chapter replace the provisions of part 71 of this chapter concerning, for Acid Rain permit applications and permits: submission, content, and effect of permit applications; content and requirements of compliance plans and compliance options; content of permits and permit shield; procedures for determining completeness of permit applications; issuance of draft permits; public notice and comment and public hearings on draft permits; response to comments on draft permits; issuance of permits; permit revisions; and administrative appeal procedures. The provisions of part 71 of this chapter concerning Indian tribes, delegation of a part 71 program, affected State review of draft permits, and public petitions to reopen a permit for cause are not eliminated or replaced by this part or part 74, 76, or 78 of this chapter.

(2) The procedures in this subpart do not apply to the issuance of Acid Rain permits by State permitting authorities with operating permit programs approved under part 70 of this chapter, except as expressly provided in subpart G of this part.

(b) *Permit Decision Deadlines.* Except as provided in § 72.74(c)(1)(i), the Administrator will issue or deny an Acid Rain permit under § 72.69(a) within 6 months of receipt of a complete Acid Rain permit application submitted for a unit, in accordance with § 72.21, at the U.S. EPA Regional Office for the Region in which the source is located.

(c) *Use of Direct Final Procedures.* The Administrator may, in his or her discretion, issue, as single document, a draft Acid Rain permit in accordance with § 72.62 and an Acid Rain permit in final form and may provide public notice of the opportunity for public comment on the draft Acid Rain permit in accordance with § 72.65. The Administrator may provide that, if no significant, adverse comment on the draft Acid Rain permit is timely submitted, the Acid Rain permit will be deemed to be issued on a specified date without further notice and, if such significant, adverse comment is timely submitted, an Acid Rain permit or denial of an Acid Rain permit will be issued in accordance with § 72.69. Any notice provided under this paragraph (c) will include a description of the procedure in the prior sentence.

23. Section 72.61 is amended by revising paragraphs (a) and (b)(2)(i) and adding paragraph (b)(3) to read as follows:

§ 72.61 Completeness.

(a) *Determination of Completeness.* The Administrator will determine whether the Acid Rain permit application is complete within 60 days of receipt by the U.S. EPA Regional Office for the region in which the source is located. The permit application shall be deemed to be complete if the Administrator fails to notify the designated representative to the contrary within 60 days of receipt.

(b) * * *

(2)(i) Within a reasonable period determined by the Administrator, the designated representative shall submit the information required under paragraph (b)(1) of this section.

* * * * *

(3) Any designated representative who fails to submit any relevant information or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary information or corrected information to the Administrator.

24. Section 72.65 is amended by revising paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(2) to read as follows:

§ 72.65 Public notice of opportunities for public comment.

* * * * *

(b) * * *

(1) * * *

(ii) The air pollution control agencies of affected States; and

(iii) Any interested person.

(2) Giving notice by publication in the Federal Register and in a newspaper of general circulation in the area where the source covered by the Acid Rain permit application is located or in a State publication designed to give general public notice. Notwithstanding the prior sentence, if a draft permit requires the affected units at a source to comply with § 72.9(c)(1) and to meet any applicable emission limitation for NO_X under §§ 76.5, 76.6, 76.7, 76.8, or 76.11 of this chapter and does not include for any unit a compliance option under § 72.44, part 74 of this chapter, or § 76.10 of this chapter, the Administrator may, in his or her discretion, provide notice of the draft permit by Federal Register publication and may omit notice by newspaper or State publication.

* * * * *

25. Section 72.69 is amending by revising paragraph (a) to read as follows:

§ 72.69 Issuance and effective date of Acid Rain permits.

(a) After the close of the public comment period, the Administrator will issue or deny an Acid Rain permit. The Administrator will serve a copy of any Acid Rain permit and the response to comments on the designated representative for the source covered by the issuance or denial and serve written notice of the issuance or denial on any persons who are entitled to written notice under § 72.65(b)(1) (ii) or (iii) or who submitted written or oral comments on the issuance or denial of the draft Acid Rain permit. The Administrator will also give notice in the Federal Register.

* * * * *

26. Section 72.70 is revised to read as follows:

§ 72.70 Relationship to title V operating permit program.

(a) *Scope.* This subpart sets forth criteria for acceptance of State acid rain programs, the procedure for including State acid rain programs in a title V operating permit program, and the requirements with which State permitting authorities with accepted programs shall comply, and with which the Administrator will comply in the absence of an accepted State program, to issue Phase II Acid Rain permits.

(b) *Relationship to operating permit program.* Each State permitting authority with an affected source shall act in accordance with this part and parts 70, 74, 76, and 78 of this chapter for the purpose of incorporating Acid Rain Program requirements into each affected source's operating permit or for issuing exemptions under § 72.14. To the extent that this part or parts 74, 76, or 78 of this chapter contain provisions that are not included in, or that expressly eliminate or replace provisions of, part 70 of this chapter, this part and parts 74, 76, and 78 of this chapter shall take precedence.

27. Section 72.71 is revised to read as follows:

§ 72.71 Acceptance of State Acid Rain programs—general.

(a) Each State shall submit, to the Administrator for review and acceptance, a State Acid Rain program meeting the requirements of §§ 72.72 and 72.73.

(b) The Administrator will review each State Acid Rain program or portion of a State Acid Rain program and accept, by notice in the Federal Register, all or a portion of such program to the extent that it meets the requirements of §§ 72.72 and 72.73. At his or her discretion, the Administrator may accept, with conditions and by notice in the Federal Register, all or a portion of such program despite the failure to meet requirements of §§ 72.72 and 72.73. On the later of the date of publication of such notice in the Federal Register or the date on which the State operating permit program is approved under part 70 of this chapter, the State Acid Rain program accepted by the Administrator will become a portion of the approved State operating permit program.

(c)(1) Except as provided in paragraph (c)(2) of this section, the Administrator will issue all Acid Rain permits for Phase I. The Administrator reserves the right to delegate the remaining administration and enforcement of Acid Rain permits for Phase I to approved State operating permit programs.

(2) The State permitting authority will issue an opt-in permit for a combustion or process source subject to its jurisdiction if, on the date on which the combustion or process source submits an opt-in permit application, the State permitting authority has opt-in regulations accepted under paragraph (b) of this section and an approved operating permits program under part 70 of this chapter.

28. Section 72.72 is amended by:

a. removing paragraphs (b)(1)(i)(C), (b)(1)(vii), (b)(1)(viii), (b)(1)(xi), (b)(1)(xiii), (b)(5)(vii), (b)(7), and (b)(8);

b. removing the last sentence of paragraph (b)(5)(v);

c. redesignating paragraphs (ix) and (x) as paragraphs (vii) and (viii) respectively;

d. redesignating paragraph (xii) as paragraph (ix);

e. redesignating paragraph (xiv) as paragraph (x);

f. removing and reserving paragraph (b)(5)(ii); and

g. revising the heading, the introductory text, and paragraphs (b) introductory text, (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), (b)(1)(v), (b)(1)(vi), the first sentence of (b)(5)(i), (b)(5)(vi), and (b)(6) to read as follows:

§ 72.72 Criteria for State operating permit program.

A State operating permit program (including a State Acid Rain program) shall meet the following criteria. Any aspect of a State operating permits program or any implementation of a State operating permit program that fails to meet these criteria shall be grounds for withdrawal of all or part of the Acid Rain portion of an approved State operating permit program by the Administrator or for disapproval or withdrawal of approval of the State

operating permit program by the Administrator.

* * * * * *

(b) The State operating permit program shall require the following provisions, which are adopted to the extent that this paragraph (b) is incorporated by reference or is otherwise included in the State operating permit program.

(1) * * *

(ii) *Draft Permit.* (A) The State permitting authority shall prepare the draft Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter, or deny a draft Acid Rain permit.

(B) Prior to issuance of a draft permit for a combustion or process source, the State permitting authority shall provide the designated representative of a combustion or process source an opportunity to confirm its intention to opt-in, in accordance with § 74.14 of this chapter.

(iii) *Public Notice and Comment Period.* Public notice of the issuance or denial of the draft Acid Rain permit and the opportunity to comment and request a public hearing shall be given by publication in a newpaper of general circulation in the area where the source is located or in a State publication designed to give general public notice. Notwithstanding the prior sentence, if a draft permit requires the affected units at a source to comply with § 72.9(c)(1) and to meet any applicable emission limitation for NO_X under §§ 76.5, 76.6, 76.7, 76.8, or 76.11 of this chapter and does not include for any unit a compliance option under § 72.44, part 74 of this chapter, or § 76.10 of this chapter, the State permitting authority may, in its discretion, provide notice by serving notice on persons entitled to receive a written notice and may omit notice by newspaper or State publication.

(iv) *Proposed permit.* Following the public notice and comment period on a draft Acid Rain permit, the State permitting authority shall incorporate all changes necessary and issue a proposed Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter, or deny a proposed Acid Rain permit.

(v) *Direct final procedures.* The State permitting authority may, in its discretion, issue, as a single document, a draft Acid Rain permit in accordance with paragraph (b)(1)(ii) of this section and a proposed Acid Rain permit and may provide public notice of the opportunity for public comment on the draft Acid Rain permit in accordance with paragraph (b)(1)(iii) of this section. The State permitting authority may provide that, if no significant, adverse comment on the draft Acid Rain permit is timely submitted, the proposed Acid Rain permit will be deemed to be issued on a specified date without further notice and, if such significant, adverse comment is timely submitted, a proposed Acid Rain permit or denial of a proposed Acid Rain permit will be issued in accordance with paragraph (b)(1)(iv) of this paragraph. Any notice provided under this paragraph (b)(1)(v) shall include a description of the procedure in the prior sentence.

(vi) *Acid Rain Permit Issuance.* Following the Administrator's review of the proposed Acid Rain permit, the State permitting authority shall or, under part 70 of this chapter, the Administrator will, incorporate any required changes and issue or deny the Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter.

(5) * * * (i) Appeals of the Acid Rain portion of an operating permit issued by the State permitting authority that do not challenge or involve decisions or actions of the Administrator under this part or part 73, 74, 75, 76, 77, or 78 of this chapter shall be conducted according to procedures established by the State in accordance with part 70 of this chapter. * * *

(vi) A failure of the State permitting authority to issue an Acid Rain permit in accordance with § 72.73(b)(1) or, with regard to combustion or process sources, § 74.14(c)(6) of this chapter shall be ground for filing an appeal.

(6) *Industrial Units Exemption.* The State permitting authority shall act in accordance with § 72.14 on any petition for exemption from requirements of the Acid Rain Program

29. Section 72.73 is revised to read as follows:

§ 72.73 State issuance of Phase II permits.

(a) *State Permit Issuance.* (1) A State that is authorized to administer and enforce an operating permit program under part 70 of this chapter and that has a State Acid Rain program accepted by the Administrator under § 72.71 shall be responsible for administering and enforcing Acid Rain permits effective in Phase II for all affected sources:

(i) That are located in the geographic area covered by the operating permits program; and

(ii) To the extent that the accepted State Acid Rain program is applicable.

(2) In administering and enforcing Acid Rain permits, the State permitting authority shall comply with the procedures for issuance, revision, renewal, and appeal of Acid Rain permits under this subpart.

(b) *Permit Issuance Deadline.* (1) On or before December 31, 1997, a State that is responsible under paragraph (a) of this section as of January 1, 1997 or such later date as the Administrator may establish, for administering and enforcing Acid Rain permits shall issue an Acid Rain permit for Phase II covering the affected units (other than opt-in sources) at each source in the geographic area for which the program is approved; *provided* that the designated representative of the source submitted a timely and complete Acid Rain permit application in accordance with § 72.21 and meets the requirements of this subpart and part 70 of this chapter.

(2) Each Acid Rain permit issued in accordance with this section shall have a term of 5 years commencing on its effective date; *provided* that, at the discretion of the permitting authority, the first Acid Rain permit for Phase II issued to a source may have a term of less than 5 years where necessary to coordinate the term of such permit with the term of an operating permit to be issued to the source under a State operating permit program. Each Acid Rain permit issued in accordance with paragraph (b)(1) of this section shall take effect by the later of January 1, 2000, or, where the permit governs a unit under § 72.6(a)(3) of this part, the deadline for monitor certification under part 75 of this chapter.

(3) *Nitrogen Oxides.* Within the period required under the approved State operating permit program but not later than July 1, 1999, the State permitting authority shall reopen the Acid Rain permit and add the Acid Rain Program nitrogen oxides requirements; *provided* that the designated representative of the affected source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with § 72.21.

30. Section 72.74 is revised to read as follows:

§ 72.74 Federal issuance of Phase II permits.

(a)(1) The Administrator will be responsible for administering and enforcing Acid Rain permits for Phase II for any affected sources in a geographic area that is not under the jurisdiction of a State permitting authority responsible, as of January 1, 1997 or such later date

as the Administrator may establish, for administering and enforcing Acid Rain permits for such sources under § 72.73(a).

(2) After the State permitting authority becomes responsible for administering and enforcing Acid Rain permits under § 72.73(a), the Administrator will suspend federal administration of Acid Rain permits for Phase II for sources and units subject to the accepted State Acid Rain program, except as provided in paragraph (b)(4) of this section.

(b)(1) The Administrator will administer and enforce Acid Rain permits effective in Phase II for sources and units during any period that the Administrator is administering and enforcing an operating permit program under part 71 of this chapter for the geographic area in which the sources and units are located.

(2) The Administrator will administer and enforce Acid Rain permits effective in Phase II for sources and units otherwise subject to a State Acid Rain program under § 72.73(a) if:

(i) The Administrator determines that the State permitting authority is not adequately administering or enforcing all or a portion of the State Acid Rain program, notifies the State permitting authority of such determination and the reasons therefore, and publishes such notice in the Federal Register;

(ii) The State permitting authority fails either to correct the deficiencies within a reasonable period (established by the Administrator in the notice under paragraph (b)(3)(i) of this section) after issuance of the notice or to take significant action to assure adequate administration and enforcement of the program within a reasonable period (established by the Administrator in the notice) after issuance of the notice; and

(iii) The Administrator publishes in the Federal Register a notice that he or she will administer and enforce Acid Rain permits effective in Phase II for sources and units subject to the State Acid Rain program or a portion of the program. The effective date of such notice shall be a reasonable period (established by the Administrator in the notice) after the issuance of the notice.

(3) When the Administrator administers and enforces Acid Rain permits under paragraph (b)(1) or (b)(2) of this section, the Administrator will administer and enforce each Acid Rain permit issued under the State Acid Rain program or portion of the program until the permit is replaced by a permit issued under this section. After the later of the date for publication of a notice in the Federal Register that the State operating permit program is currently approved by the Administrator or that the State Acid Rain program or portion of the program is currently accepted by the Administrator, the Administrator will suspend federal administration of Acid Rain permits effective in Phase II for sources and units subject to the State Acid Rain program or portion of the program, except as provided in paragraph (b)(4) of this section.

(4) After the State permitting authority becomes responsible for administering and enforcing Acid Rain permits effective in Phase II under § 72.73(a), the Administrator will continue to administer and enforce each Acid Rain permit issued under paragraph (a)(1), (b)(1), or (b)(2) of this section until the permit is replaced by a permit issued under the State Acid Rain program. The State permitting authority may replace an Acid Rain permit issued under paragraph (a)(1), (b)(1), or (b)(2) of this section by issuing a permit under the State Acid Rain program by the expiration of the permit under paragraph (a)(1), (b)(1), or (b)(2) of this section. The Administrator may retain jurisdiction over the Acid Rain permits issued under paragraph (a)(1), (b)(1), or (b)(2) of this section for which the administrative or judicial review process is not complete and will address such retention of jurisdiction in a notice in the Federal Register.

(c) *Permit Issuance Deadline.* (1)(i) On or before January 1, 1998, the Administrator will issue an Acid Rain permit for Phase II setting forth the Acid Rain Program sulfur dioxide requirements for each affected unit (other than opt-in sources) at a source not under the jurisdiction of a State permitting authority that is responsible, as of January 1, 1997 or such later date as the Administrator may establish, under § 72.73(a) of this section for administering and enforcing Acid Rain permits; *provided* that the designated representative for the source submitted a timely and complete Acid Rain permit application in accordance with § 72.21. The failure by the Administrator to issue a permit in accordance with this paragraph shall be grounds for the filing of an appeal under part 78 of this chapter.

(ii) Each Acid Rain permit issued in accordance with this section shall have a term of 5 years commencing on its effective date. Each Acid Rain permit issued in accordance with paragraph (c)(1)(i) of this section shall take effect by the later of January 1, 2000 or, where a permit governs a unit under § 72.6(a)(3), the deadline for monitor certification under part 75 of this chapter.

(2) *Nitrogen Oxides.* Not later than 6 months following submission by the designated representative of an Acid Rain permit application for nitrogen oxides, the Administrator will reopen the Acid Rain permit for Phase II and add the Acid Rain Program nitrogen oxides requirements for each affected source not under the jurisdiction of a State permitting authority that is responsible, as of January 1, 1997 or such later date as the Administrator may establish, under § 72.73(a) for issuing Acid Rain permits with such requirements; *provided* that the designated representative for the source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with § 72.21.

(d) *Permit Issuance.* (1) The Administrator may utilize any or all of the provisions of subparts E and F of this part to administer Acid Rain permits as authorized under this section or may adopt by rulemaking portions of a State Acid Rain program in substitution of or in addition to provisions of subparts E and F of this part to administer such permits. The provisions of Acid Rain permits for Phase I or Phase II issued by the Administrator shall not be applicable requirements under part 70 of this chapter.

(2) The Administrator may delegate all or part of his or her responsibility, under this section, for administering and enforcing Phase II Acid Rain permits or opt-in permits to a State. Such delegation will be made consistent with the requirements of this part and the provisions governing delegation of a part 71 program under part 71 of this chapter.

31. Section 72.80 is amended by revising paragraphs (a), (b), (d), (e), (f), and (g) to read as follows:

§ 72.80 General.

(a) The subpart shall govern revisions to any Acid Rain permit issued by the Administrator and to the Acid Rain portion of any operating permit issued by a State permitting authority.

(b) The provisions of this subpart shall supersede the operating permit revision procedures specified in parts 70 and 71 of this chapter with regard to revision of any Acid Rain Program permit provision.

* * * * *

(d) The terms of the Acid Rain permit shall apply while the permit revision is pending, except as provided in § 72.83 for administrative permit amendments.

(e) The standard requirements of § 72.9 shall not be modified or voided by a permit revision.

(f) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under subpart D of this part and parts 74 and 76 of this chapter.

(g) Any designated representative who fails to submit any relevant information or who has submitted incorrect information in a permit revision shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary information or corrected information to the permitting authority.

* * * * *

32. Section 72.81 is amended by: removing from paragraph (c)(1)(ii) the words ''and under § 70.7(e)(4)(ii) of this chapter''; and revising paragraph (c)(2) to read as follows:

§ 72.81 Permit modifications.

* * * * *

(c) * * *

(2) For purposes of applying paragraph (c)(1) of this section, a requested permit modification shall be treated as a permit application, to the extent consistent with § 72.80 (c) and (d).

33. Section 72.82 is amended by revising paragraphs (a) and (d) to read as follows:

§ 72.82 Fast-track modifications.

* * * * *

(a) If the Administrator is the permitting authority, the designated representative shall serve a copy of the fast-track modification on the Administrator and any person entitled to a written notice under § 72.65(b)(1)(ii) and (iii). If a State is the permitting authority, the designated representative shall serve such a copy on the Administrator, the permitting authority, and any person entitled to receive a written notice of a draft permit under the approved State operating permit program. Within 5 business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice.

* * * * *

(d) Within 30 days of the close of the public comment period if the Administrator is the permitting authority or within 90 days of the close of the public comment period if a State is the permitting authority, the permitting authority shall consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. A fast-track modification shall be subject to the same provisions for review by the Administrator and affected States as are applicable to a permit modification under § 72.81.

34. Section 72.83 is amended by: removing from paragraph (a)(10) the words ''regulations implementing section 407 of the Act'' and adding, in their place, the words ''part 76 of this chapter''; and revising paragraphs (a)(12) and (b) and adding paragraphs (a)(13), (a)(14), (c), and (d) to read as follows:

§ 72.83 Administrative permit amendment.

(a) * * *

(12) The addition of a NO_X early election plan under § 76.8 of this chapter that was approved by the Administrator;

(13) The addition of an exemption for which the requirements have been met under § 72.7, 72.8, or 72.14; and

(14) Incorporation of changes that the Administrator has determined to be similar to those in paragraphs (a) (1) through (13).

(b)(1) The permitting authority will take final action on an administrative permit amendment within 60 days, or, for the addition of an alternative emissions limitation demonstration period, within 90 days, of receipt of the requested amendment and may take such action without providing prior public notice. The source may implement any changes in the administrative permit amendment immediately upon submission of the requested amendment, provided that the requirements of paragraph (a) of this section are met.

(2) The permitting authority may, on its own motion, make an administrative permit amendment without providing prior public notice.

(c) The permitting authority will designate the permit revision under paragraph (b) of this section as having been made as an administrative permit amendment and will notify the designated representative after making such revision. Where a State is the permitting authority, the permitting authority shall submit the revised portion of the permit to the Administrator.

(d) An administrative amendment shall not be subject to the provisions for review by the Administrator and affected States applicable to a permit modification under § 72.81.

35. Section 72.85 is amended by revising paragraphs (a) and (c) to read as follows:

§ 72.85 Permit reopenings.

(a) The permitting authority shall reopen an Acid Rain permit for cause whenever:

(1) Any additional requirement under the Acid Rain Program becomes applicable to any affected unit governed by the permit;

(2) The permitting authority determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or

(3) The permitting authority determines that the permit must be revised or revoked to assure compliance with Acid Rain Program requirements.

* * * * *

(c) As provided in §§ 72.73(b)(3) and 72.74(c)(2), the permitting authority shall reopen an Acid Rain permit to incorporate nitrogen oxides requirements, consistent with part 76 of this chapter.

* * * * *

36. Section 72.91 is amended by:

a. removing from paragraph (b)(1)(i) the words ''improved unit measures'' and adding, in their place, the words ''improved unit efficiency measures'';

b. removing from paragraph (b)(1)(iii), introductory text, the words ''all figures'' and adding, in their place, the words ''each figure'';

c. removing from paragraph (b)(1)(iii)(B) the words ''measures, and'' and adding, in their place, the words ''measures, or'';

d. removing from paragraph (b)(1)(iii)(C) the words ''measures.'' and adding, in their place, the words ''measures, except measures relating to generation efficiency.'';

e. removing from the formula in paragraph (b)(4) the word ''hear'' and adding, in its place, the word ''heat'';

f. removing from paragraph (b)(4)(i) the word ''units''' and adding, in its place, the word ''unit's''; revising paragraphs (b)(5), (b)(6), and (b)(7); and

g. adding paragraphs (b)(1)(iv) and (b)(4)(iv) to read as follows:

§ 72.91 Phase I unit adjusted utilization.

* * * * *

(b) * * *

(1) * * *

(iv) The sum of the verified reductions in a unit's heat input from all measures implemented at the unit to reduce the unit's heat rate (whether the measures are treated as supply-side measures or improved unit efficiency measures) shall not exceed the

generation (in kwh) attributed to the unit for the calendar year times the difference between the unit's heat rate for 1987 and the unit's heat rate for the calendar year.

* * * * *

(4) * * *

(iv) The allowances credited shall not exceed the total number of allowances deducted from the unit's compliance subaccount for the calendar year in accordance with §§ 72.92 (a) and (c) and 73.35(b) of this chapter.

(5) If the total, included in the confirmation report, of the amount of verified reduction in the unit's heat input for energy conservation and improved unit efficiency measures is less than the total estimated in the unit's annual compliance certification report for such measures for the calendar year, then the designated representative shall include in the confirmation report the number of allowances to be deducted from the unit's compliance subaccount calculated in accordance with this paragraph (b)(5).

(i) If any allowances were deducted from the unit's compliance subaccount for the calendar year in accordance with §§ 72.92 (a) and (c) and 73.35(b) of this chapter, then the number of allowances to be deducted under this paragraph (b)(5) equals the absolute value of the result of the formula for allowances credited under paragraph (b)(4) of this section (excluding paragraph (b)(4)(iv) of this section).

(ii) If no allowances were deducted from the unit's compliance subaccount for the calendar year in accordance with §§ 72.92 (a) and (c) and 73.35(b) of this chapter:

(A) The designated representative shall recalculate the unit's adjusted utilization in accordance with paragraph (a) of this section, replacing the amounts for reduction from energy conservation and reduction from improved unit efficiency by the amount for verified heat input reduction. ''Verified heat input reduction'' is the total of the amounts of verified reduction in the unit's heat input (in mmBtu) from energy conservation and improved unit efficiency measures included in the confirmation report.

(B) After recalculating the adjusted utilization under paragraph (b)(5)(ii)(A) of this section for all Phase I units that are in the unit's dispatch system and to which paragraph (b)(5) of this section is applicable, the designated representative shall calculate the number of allowances to be surrendered in accordance with § 72.92(c)(2) using the recalculated adjusted utilizations of such Phase I units.

(C) The allowances to be deducted under this paragraph (b)(5) shall equal the amount under paragraph (b)(5)(ii)(B) of this section minus the amount for allowances deducted from the unit's compliance subaccount for the calendar year in accordance with §§ 72.92(a) and (c) and 73.35(b) of this chapter; *provided* that if the amount calculated under this paragraph (b)(5)(ii)(C) is equal to or less than zero, then the amount of allowances to be deducted is zero.

(6) The Administrator will determine the amount of allowances that would have been included in the unit's compliance subaccount and the amount of excess emissions of sulfur dioxide that would have resulted if the deductions made under § 73.35(b) of this chapter had been based on the verified, rather than the estimated, reduction in the unit's heat input from energy conservation and improved unit efficiency measures.

(7) The Administrator will determine whether the amount of excess emissions of sulfur dioxide under paragraph (b)(6) of this paragraph differs from the amount of excess emissions determined under § 73.35(b) of this chapter based on the annual compliance certification report. If the amounts differ, the Administrator will determine: the number of allowances that should be deducted to offset any increase in excess emissions or returned to account for any decrease in excess emissions; and the amount of excess emissions penalty (excluding interest) that should be paid or returned to account for the change in excess emissions. The Administrator will deduct immediately from the unit's compliance subaccount the amount of allowances that he or she determines is necessary to offset any increase in excess emissions or will return immediately to the unit's compliance subaccount the amount of allowances that he or she determines is necessary to account for any decrease in excess emissions. The designated representative may identify the serial numbers of the allowances to be deducted or returned. In the absence of such identification, the deduction will be on a first-in, first-out basis under § 73.35(b)(2) of this chapter and the return will be at the Administrator's discretion.

* * * * *

37. Section 72.95 is amended by revising the formula in the introductory text and adding paragraph (d) to read as follows:

§ 72.95 Allowance deduction formula

* * * *

Total allowances deducted=Tons emitted+Allowances surrendered for underutilization+Allowances deducted for Phase I extensions+Allowances deducted for substitution or compensating units

Where:

* * * *

(d) ''Allowances deducted for substitution or compensating units'' is the total number of allowances calculated in accordance with the surrender requirements specified under § 72.41(d)(3) or (e)(1)(iii)(B) or § 72.43(d)(2).

PART 73—[AMENDED]

38. The authority citation for part 73 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

39. Section 73.10 is amended by revising the heading and adding paragraphs (b)(3), (b)(4), (b)(5), and (c)(3) to read as follows:

§ 73.10 Initial allocations for Phase I and Phase II.

* * * * *

(b) * * *

(3) Notwithstanding the amounts in Table 2 of this section, the unadjusted basic allowances for years 2000–2009 and for years 2010 and thereafter for the following boilers are: Illinois, Lakeside, 7, 2,919 unadjusted basic for 2000–2009 and 722 unadjusted basic for 2010 and thereafter; Illinois, Lakeside, 8, 1,652 unadjusted basic for 2000–2009 and 371 unadjusted basic for 2010 and thereafter; Illinois, Marion, 1, 2,376 unadjusted basic for 2000–2009 and for 2010 and thereafter; Illinois, Marion, 2, 2,434 unadjusted basic for 2000–2009 and for 2010 and thereafter; Illinois, Marion, 3, 2,640 unadjusted basic for 2000–2009 and for 2010 and thereafter; Louisiana, Rodemacher, 2, 20,774 unadjusted basic for 2000–2009 and for 2010 and thereafter; and Wisconsin, Manitowoc, 8, 271 unadjusted basic for 2000–2009 and for 2010 and thereafter.

(4) Notwithstanding the amounts in Table 2 of this section, the unadjusted basic allowances and total bonus allowances for years 2000–2009 and for years 2010 and thereafter for the following boilers are: Maryland, R P Smith, 9,320 unadjusted basic and 354 total bonus for 2000–2009 and 320 unadjusted basic for 2010 and thereafter; Wisconsin, Blount Street, 7, 116 unadjusted basic and 1,374 total bonus for 2000–2009 and 116 unadjusted basic for 2010 and thereafter; Wisconsin, Blount Street, 8,473 unadjusted basic and 716 total

bonus for 2000–2009 and 473 unadjusted basic for 2010 and thereafter; and Wisconsin, Blount Street, 9,633 unadjusted basic and 629 total bonus for 2000–2009 and 633 unadjusted basic for 2010 and thereafter.

(5) If a unit was allocated allowances in Table 2 of this section as of March 23, 1993 is subsequently removed from Table 2, the owners of the unit shall surrender, for each allowance allocated to the unit in such table, an allowance of the same or earlier compliance use date as the allowance allocated and shall return to the Administrator any proceeds received for allowances withheld from the unit under § 73.10 of this chapter. The allowances shall be surrendered and the proceeds shall be returned within 60 days after the effective date of this paragraph (b)(5).

(c) * * *

(3) If a unit was allocated allowances in Table 3 of this section as of March 23, 1993 is subsequently removed from Table 3, the owners of the unit shall surrender, for each allowance allocated to the unit in such table, an allowance of the same or earlier compliance use date as the allowance allocated and shall return to the Administrator any proceeds received for allowances withheld from the unit under § 73.10 of this chapter. The allowances shall be surrendered and the proceeds shall be returned within 60 days after the effective date of this paragraph (c)(3).

* * * * *

§ 73.10 [Amended]

40. Section 73.10, paragraph (b)(2), Table 2, is amended by:

a. removing the entries for Alabama, Future Fossil, **1; Alabama, McIntosh CAES, **2; Alabama, McWilliams, **CT1; Alabama, McWilliams, **CT2; Alabama, McWilliams, **CT3; Arkansas, NA2—7246, **1; California, El Centro, 2; Colorado, Valmont, 11; Colorado, Valmont, 12; Colorado, Valmont, 13; Colorado, Valmont, 22; Colorado, Valmont, 23; Connecticut, South Meadow, 11; Connecticut, South Meadow, 12; Connecticut, South Meadow, 13; Florida, Lauderdale, PFL4; Florida, Lauderdale, PFL5; Illinois, Lakeside, GT2; Indiana Na1—7221, **2; Indiana, Na1—7228, **4; Indiana, Na1—7228, **5; Kansas, Ripley, **2; Kansas, Ripley, **3; Kentucky, J K Smith, 1; Louisiana, R S Nelson, 1; Louisiana, R S Nelson, 2; Michigan, Delray, 11; Minnesota, Future Base, **1; Minnesota, NA1–7237, **2; Mississippi, Wright, W4; Missouri, Combustion Turbine 1, **NA7; Missouri, Empire Energy Ctr, **4; Missouri, Empire Energy Ctr, **NA2; Missouri, Empire Energy Ctr, **NA3; Missouri, Grand Avenue, **7; Missouri, Grand Avenue, **9; Nebraska, NA1—7019, **NA2; New Jersey, Butler, **4; New Jersey, NA5—7217, **2; New Jersey, NA6—7218, **2; New Mexico, Escalante, **2; New Mexico, Maddox, **3; New York, Rochester 3, 1; New York, Rochester 3, 2; New York, Rochester 3, 4; North Dakota, Dakotas, **1; Oklahoma, Inola, **1; Pennsylvania, Richmond, 63; Pennsylvania, Richmond, 64; Pennsylvania, Southwark, 11; Pennsylvania, Southwark 12; Pennslyvania, Southwark, 21; Pennsylvania, Southwark, 22; South Carolina, Na4—7210, **ST1; South Dakota, Mobile, **2; Texas, Concho, 2; Texas, Concho, 4; Texas, Concho, 5; Texas, Concho, 6; Texas, Deepwater, DWP1; Texas, Deepwater, DWP2; Texas, Deepwater, DWP3; Texas, Deepwater, DWP3; Texas, Deepwater, DWP4; Texas, Deepwater, DWP5; Texas, Deepwater, DWP6; Texas, GT98, **1; Texas, GT98, **2; Texas, GT99, **1; Texas, GT99, **2; Texas, GT99, **3; Texas, NA1—7216, **1; Texas, NA1—7216, **2; Texas, San Miguel, **2; Texas, TNP One, **3; Texas, TNP One, **4; Virginia, Chesterfield, **8B; Washington, Kettle Falls, 1; Wisconsin, Manitowoc, 9; Wisconsin, Na1—7203, **CT3; and Wisconsin, Na—7222, unit **1; and

b. by adding in alphabetical order the entries ''Alabama'' ''McWilliams'', ''**4'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''Arizona'', ''Springerville'', ''3'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''Florida'', ''Reedy Creek Combined Cycle'', ''32432'', ''69'', ''0'', ''0'', ''0'', ''NA'', ''18'', ''0'', ''0'', and ''NA''; ''Indiana'', ''NA1—7228'', ''**1'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''Indiana'', ''NA1—7228'', ''**2'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'' and ''0''; ''Indiana'', ''NA1—7228'', ''**3'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'' and ''0''; ''Kansas'', ''Wamego'', ''**NA1'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'' and ''0''; ''Maryland'', ''Easton 2'', ''**25'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''Maryland'', ''Perryman'', ''**51'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''Mississippi'', ''Moselle'', ''**4'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'' and ''0''; ''Mississippi'', ''Moselle'', ''**5'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''Missouri'', ''Combustion Turbine 1'', ''**1'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''Missouri'', ''Combustion Turbine 2'', ''**2'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''Nebraska'', ''Na1—7019'', ''**NA1'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''Nevada'',''Harry Allen'', ''**GT1'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''Nevada'',''Harry Allen'', ''**GT2'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''New Jersey'', ''Butler'', ''**1'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''New Jersey'', ''Na1—7139'', ''**1'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''New Jersey'', ''Na2—7140'', ''**1'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''Ohio'', ''Woodsdale'', ''**GT7'', 2 ''South Carolina'', ''NA1—7106'', ''GT1'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', and ''0''; ''Texas'', ''Twin Oak'', ''2'', ''1,760'', ''0'', ''0'', ''0'', ''NA'', ''1,760'', ''0'', ''0'', and ''NA''; and ''Virginia'', ''East Chandler'', ''**2'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'', ''0'' and ''0''.

41. Section 73.10, paragraph (c)(2), Table 3 is amended by:

a. removing the entries for Alabama, McWilliams, **4; Arizona, Springerville, 3; California, Harbor, **10; Florida, G W Ivey, **22; Florida, Martin, **3ST; Florida, Martin, **4ST; Illinois, Lakeside, GT1; Indiana, NA1—7228, **1; Indiana, NA1—7228, **2; Indiana, NA1—7228, **3; Iowa, Na1—7230, **1; Kansas, Wamego, **NA1; Maryland, Easton 2, **25; Maryland, Perryman, **51; Mississippi, Moselle, **4; Mississippi, Moselle, **5; Missouri, Combustion Turbine 1, **1; Missouri, Combustion Turbine 2, **2; Missouri, Empire Energy Center, **3; Missouri, Lake Road, **8; Nebraska, NA1—7019, **NA1; Nevada, Clark, **9; Nevada, Clark, **10; Nevada, Harry Allen, **GT1; Nevada, Harry Allen, **GT2; New Jersey, Butler, **1; New Jersey, Butler, **3; New Jersey, Na1—7139; New Jersey, Na2—7140, **1; Ohio, Dover, **7; Ohio, Woodsdale, **GT7; Pennsylvania, Trenton Cogen Proj, **1; South Carolina, NA1—7106, **GT1; South Carolina, NA2—7107, **GT2; South Carolina, Na3—7108, **GT3; South Dakota, CT, **5; Texas, Twin Oak, 2; Utah, Bonanza, **2; Virginia, East Chandler, **2; Wisconsin, Combustion Turbine, **1; and Wisconsin, Na2, **1; and b. adding in alphabetical order the entries ''Minnesota'', ''Angus Anson'', ''3'', ''1,166'', ''0'', ''0'', ''0'', ''NA'', ''1,166'', ''0'', ''0'', and ''NA''; ''South Carolina'', ''Cope'', ''1'', ''2,989'', ''0'', ''0'', ''0'', ''NA'', ''2,989'', ''0'', ''0'', and ''NA''; ''Wisconsin'', ''Fond du Lac'', ''**CT3'', ''44'', ''0'', ''0'', ''0'', ''NA'', ''44'', ''0'', ''0'', and ''NA''; and ''Wisconsin'', ''West Martinette'', ''33'', ''874'', ''0'', ''0'', ''0'', ''NA'', ''874'', ''0'', ''0'', and ''NA''.

42. Section 73.19 is amended by removing and reserving paragraph (b)

and revising paragraph (a)(5) to read as follows:

§ 73.19 Certain units with declining SO_2 rates.

(a) * * *

(5) Its 1996 annual SO_2 emission rate (determined in accordance with part 75 of this chapter) is less than 1.2 lb/mmBtu;

* * * * *

43. Section 73.90 is amended by: removing from the formula in paragraph (c)(3) the words ''Total Allowances Requested'' and adding, in their place, the words ''35,000''; removing from the formula in paragraph (c)(3) the words ''35,000'' and adding, in their place, the words ''Total Allowances Requested''; and revising paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 73.90 Allowance allocations for small diesel refineries.

(a) * * *

(1) Photocopies of Form EIA–810 for each month of calendar years 1988 through 1990 for the refinery;

(2) Photocopies of Form EIA–810 for each month of calendar years 1988 through 1990 for each refinery owned or controlled by the refiner that owns or controls the refinery seeking certification; and

(3) A letter certified by the certifying official that the submitted photocopies are exact duplicates of those forms filed with the Department of Energy for 1988 through 1990.

* * * * *

PART 74—[AMENDED]

44. The authority citation for part 74 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

§ 74.2 [Amended]

45. Section 74.2 is amended by removing the words ''a written exemption under § 72.7 or § 72.8 of this chapter'' and adding, in their place, the words ''an exemption under § 72.7, § 72.8 or § 72.14 of this chapter''.

PART 75—[AMENDED]

46. The authority citation for part 75 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

§ 75.67 [Amended]

47. Section 75.67 is amended by removing and reserving paragraph (a).

PART 77—[AMENDED]

48. The authority citation is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651j.

49. Section 77.3 is amended by revising paragraphs (d)(3),(5), and (6) to read as follows:

§ 77.3 Offset plans for excess emissions of sufur dioxide.

* * * * *

(d) * * *

(3) At the designated representative's option, the number of allowances to be deducted from the unit's Allowance Tracking System account to offset the excess emissions for the year for which the plan is submitted.

* * * * *

(5) A statement either that allowances to offset the excess emissions are to be deducted immediately from the unit's compliance subaccount or that they are to be deducted on a specified date in a subsequent year.

(6) If the proposed offset plan does not propose an immediate deduction of allowances under paragraph (d)(5) of this section, a demonstration that such a deduction will interfere with electric reliability.

50. Section 77.4 is amended by revising paragraphs (b)(1), (c)(2)(i), (f)(2)(i), (g)(2)(i)(B), (g)(2)(i)(C), the last two sentences of (k)(1), and (k)(2) to read as follows:

§ 77.4 Administrator's action on proposed offset plans.

* * * * *

(b) *Review of proposed offset plans.* (1) If the designated representative submits a complete proposed offset plan for immediate deduction, from the unit's compliance subaccount, of allowances required to offset excess emissions of sulfur dioxide, the Administrator will approve the proposed offset plan without further review and will serve written notice of any approval on the designated representative. The Administrator will also give notice of any approval in the Federal Register. The plans will be incorporated in the unit's Acid Rain permit in accordance with § 72.84 of this chapter (automatic permit amendment) and will not be subject to the requirements of paragraphs (d) and (k) of this section.

* * * * *

(c) * * *

(2)(i) The designated representative shall submit the information required under paragraph (c)(1) of this section within a reasonable period determined by the Administrator.

* * * * *

(f) * * *

(2) * * *

(i) The reasons, and supporting authority, for approval or disapproval of any proposed offset plan that does not require immediate deduction of allowances, including references to applicable statutory or regulatory provisions and to the administrative record; and

* * * * *

(g) * * *

(2) * * *

(i) * * *

(B) The air pollution control agencies of affected States; and

(C) Any interested person.

* * * * *

(k) * * *

(1) * * * The Administrator will serve a copy of any approved offset plan and the response to comments on the designated representative for the affected unit involved and serve written notice of the approval or disapproval of the offset plan on any persons who are entitled to written notice under paragraphs (g)(2)(i)(B) and (C) of this section or who submitted written or oral comments on the approval or disapproval of the draft offset plan. The Administrator will also give notice in the Federal Register.

(2) The Administrator will approve an offset plan requiring immediate deduction from the unit's compliance subaccount of all allowances necessary to offset the excess emissions except to the extent the designated representative of the unit demonstrates that such a deduction will interfere with electric reliability.

* * * * *

51. Section 77.6 is amended by revising paragraph (a) to read as follows:

§ 77.6 Penalties for excess emissions of sulfur dioxide and nitrogen oxides.

(a)(1) If excess emissions of sulfur dioxide or nitrogen oxide occur at an affected unit during any year, the owners and operators of the affected unit shall pay, without demand, an excess emissions penalty, as calculated under paragraph (b) of this section.

(2) If one or more affected units governed by an approved NO_X averaging plan under § 76.11 of this chapter fail (after applying § 76.11(d)(1)(ii)(C) of this chapter) to meet their respective alternative contemporaneous emission limitations or annual heat input limits, then excess emissions of nitrogen oxides occur during the year at each such unit. The sum of the excess emissions of nitrogen oxides of such units shall equal the amount determined under § 76.13(b) of this chapter. The owners and operators of such units shall pay an excess emissions penalty, as calculated under paragraph (b) of this section using the sum of the excess emissions of nitrogen oxides of such units.

(3) Except as otherwise provided in this paragraph (a)(3), payment under paragraphs (a) (1) or (2) of this section shall be submitted to the Administrator by 30 days after the date on which the Administrator serves the designated representative a notice that the process of recordation set forth in § 73.34(a) of this chapter is completed or by July 1 of the year after the year in which the excess emissions occurred, whichever date is earlier. Payment under paragraph (a)(1) of this section for any increase in excess emissions of sulfur dioxide determined after adjustments made under § 72.91(b) of this chapter shall be submitted to the Administrator by 30 days after the date on which the Administrator serves the designated representative a notice that process set forth in § 72.91(b) of this chapter is completed.

* * * * *

PART 78—[AMENDED]

52. The authority citation for part 78 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

53. Section 78.1 is amended by revising paragraphs (a) and (b)(1)(v) to read as follows:

§ 78.1 Purpose and scope.

(a)(1) This part shall govern appeals of any final decision of the Administrator under parts 72, 73, 74, 75, 76, and 77 of this chapter; *provided* that matters listed § 78.3(d) and preliminary, procedural, or intermediate decisions, such as draft Acid Rain permits, may not be appealed.

(2) Filing an appeal, and exhausting administrative remedies, under this part shall be a prerequisite to seeking judicial review. For purposes of judicial review, final agency action occurs only when a decision appealable under this part is issued and the procedures under this part for appealing the decision are exhausted.

(b) * * *

(1) * * *

(v) The issuance or denial of an exemption under § 72.14 of this chapter;

* * * * *

§ 78.31 [Amended]

54. Section 78.3 is amended by:

a. removing from paragraph (b)(1) the words ''60 days'' and adding, in their place, the words ''60 days (or other reasonable period established by the Administrator in such decision)'';

b. removing from paragraph (b)(1) the words ''action.'' and adding, in their place, the words ''action and shall not meet the prerequisite for judicial review under § 72.1(a)(2).'';

c. removing from paragraph (b)(3)(ii) the words ''the persons entitled to written notice under § 72.65(b)(1) (ii), (iii), and (iv) of this chapter.'' and adding, in their place, the words ''the air pollution control agencies of affected States and any interested person.'';

d. adding at the end of paragraph (c)(6) the word ''and''; removing from paragraph (c)(7) the words ''; and'' and adding, in their place, the word ''.'';

e. removing paragraph (c)(8);

f. removing paragraph (d)(1); and

g. redesignating paragraphs (d)(2), (d)(3), and (d)(4) as paragraphs (d)(1), (d)(2), and (d)(3) respectively.

55. Section 78.4 is amended by: removing from paragraph (c)(1) the words ''7 days'' and adding, in its place, the words ''7 days (or other reasonable period established by the Environmental Appeals Board or Presiding Officer),''; and removing from paragraph (c)(1) the words ''it, unless the Environmental Appeals Board or Presiding Officer authorizes a longer time based on good cause.'' and adding, in their place, the words ''it.''.

§ 78.5 [Amended]

56. Section 78.5 is amended by removing from paragraph (a) the words ''to submit a claim of error notification'' and adding, in their place, the words ''a claim of error notification was submitted''.

§ 78.7 [Removed]

57. Section 78.7 is removed and reserved.

58. Section 78.11 is amended by removing from paragraph (a) the words ''30 days'' and adding, in their place, the words ''30 days (or other reasonable period established by the Administrator when giving notice)''.

§ 78.12 [Amended]

59. Section 78.12 is amended by removing from paragraph (a)(2) the words ''a written exemption under §§ 72.7 or 72.8'' and adding, in their place, the words ''an exemption under § 72.14''.

§ 78.14 [Amended]

60. Section 78.14 is amended by; removing from paragraph (a), introductory text, the word ''theses'' and adding, in its place, the word ''these''; removing from paragraph (a)(10) the words ''15 days'' and adding, in their place, the words ''15 days (or other reasonable period established by the Presiding Officer)''; and removing from paragraph (c)(1) the words ''Rule 408 of''.

§ 78.15 [Amended]

61. Section 78.15 is amended by: removing from paragraph (c) the words ''10 days'' and adding, in their place, the words ''10 days (or other reasonable period established by the Presiding Officer)''; and removing the last sentence from paragraph (c).

§ 78.16 [Amended]

62. Section 78.16 is amended by removing from paragraphs (d)(1) and (d)(2) the words ''7 days'' and adding, in their place, the words ''7 days (or other reasonable period established by the Presiding Officer)''.

§ 78.17 [Amended]

63. Section 78.17 is amended by: removing the words ''45 days'' and adding, in their place, the words ''45 days (or other reasonable period established by the Presiding Officer)''; and removing the words '', for good cause shown, may shorten or extend the time for filing and''.

§ 78.18 [Amended]

64. Section 78.18 is amended by removing from paragraph (b), introductory text, the words ''30 days after service unless within that time:'' and adding, in their place, the word ''unless:''.

§ 78.20 [Amended]

65. Section 78.20 is amended by: removing from paragraph (a), introductory text, the words ''30 days'' and adding, in their place, the words ''30 days (or other reasonable period established by the Environmental Appeals Board)''; and removing from paragraph (b) the words ''30 days'' and adding, in their place, the words ''45 days (or other reasonable period established by the Environmental Appeals Board)''.

[FR Doc. 96–31968 Filed 12–26–96; 8:45 am]

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Friday
December 27, 1996

Federal Register

Part III

Environmental Protection Agency

40 CFR Part 63

Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5667–8]

RIN 2060–AD06

Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating regulations implementing certain provisions in section 112(g) of the Clean Air Act as amended in 1990 (1990 Amendments). Section 112(g) applies to the owner or operator of a constructed, reconstructed, or modified major source of hazardous air pollutants (HAP). After the effective date of this rule, all owners or operators of major sources that are constructed or reconstructed will be required to install maximum achievable control technology (MACT) (unless specifically exempted), provided they are located in a State with an approved title V permit program. This rule establishes requirements and procedures for the owners or operators to follow to comply with section 112(g). This rule also contains guidance for permitting authorities in implementing section 112(g). When no applicable Federal emission limitation has been promulgated, the Clean Air Act (Act) requires the permitting authority (generally a State or local agency responsible for the program) to determine a MACT emission limitation on a case-by-case basis. This rule assures that effective pollution controls will be required for new major sources of air toxics during the period before EPA can establish a national MACT standard for a particular industry. This rule establishes procedures for making such determinations. This rule does not require new source MACT for modifications to existing sources.

EFFECTIVE DATE: The rule announced herein takes effect on January 27, 1997.

ADDRESSES: Supporting information used in developing the proposed and final rules are contained in Docket No. A–91–64. The docket is available for public inspection and copying from 8:00 to 4:00 p.m., Monday through Friday, except legal holidays, at the EPA's Air Docket Section, Waterside Mall, Room M1500, U.S. Environmental Protection Agency, 401 M Street, South West, Washington, DC 20460. A reasonable fee may be charged for copying. This rule is also available on the Office of Air Quality Planning and Standards (OAQPS) electronic bulletin board, the Technology Transfer Network (TTN), under Clean Air Act, Title III, Recently Signed Rules. For information on how to access the TTN, please call (919) 541–5384 between the hours of 1:00 and 5:00 p.m. eastern standard time. This rule is also listed on the EPA web site address, ''http:// www.epa.gov/oar''.

FOR FURTHER INFORMATION CONTACT: Dr. Gerri Pomerantz, telephone (919) 541–2317, Mr. Andy Smith, telephone (919) 541–5398, or Ms. Kathy Kaufman, telephone (919) 541–0102, Information Transfer and Program Integration Division (MD–12), OAQPS, US EPA, Research Triangle Park, NC, 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

This preamble provides an overview of the requirements of the regulation being promulgated and a detailed discussion of the changes made from both the proposed and draft final regulations.

Section I of the preamble provides an overview of the requirements of the regulations being promulgated.

Section II provides background on section 112(g) in the context of the 1990 Amendments.

Section III provides a detailed discussion of the requirements of this rule, including significant comments as well as significant changes made since the proposal and/or draft final rule.

Section IV of the preamble discusses the relationship between the requirements of this rule and other important Act implementation activities.

Section V demonstrates that this rule is consistent with a number of Federal administrative requirements.

This preamble makes use of the term ''State,'' usually meaning the State air pollution control agency which would be the permitting authority implementing title V of the Act (i.e., 40 CFR Part 70) and the section 112(g) program. The reader should assume that use of the term ''State'' also applies, as defined in section 302(d) of the Act, to the District of Columbia and territories of the United States, and may also include reference to a local air pollution control agency. In some cases, the term ''permitting authority'' is used and can refer to both State agencies and to local agencies (when the local agency directly makes the determinations or assists the State in making the determinations). The term ''permitting authority'' may also apply to the EPA, where the EPA is responsible for the program.

I. Purpose and Summary of Final Rule

A. Purpose of This Rule

The 1990 Amendments require the EPA to issue emissions standards for all major sources of 188 listed HAP (also known as air toxics). These pollutants are known or suspected of causing cancer, nervous system damage, birth defects or other serious health effects. On July 16, 1992, the EPA published an initial list of source categories for which air toxics emission standards are to be promulgated. By November 2000, EPA must develop for all these categories rules that require the maximum achievable reduction in emissions, considering cost and other factors. These rules are generally known as ''maximum achievable control technology'' (MACT) standards.

In developing the 1990 Amendments, Congress recognized that the EPA could not immediately issue MACT standards for all industries, and that as a result there was a potential for significant new sources of toxic air emissions to remain uncontrolled for some time. Congress also recognized that, in general, it is most cost-effective to design and add new air pollution controls at the time

when facilities are being built or significantly rebuilt.

As a result, section 112(g) of the Act requires MACT-level control of air toxics when a new major source of HAP is constructed or reconstructed. The permitting authority must determine MACT for the facility on a case-by-case basis when EPA has not yet issued a relevant MACT standard. This gap-filling program assures Americans in every State that effective pollution controls will be required for new major sources of air toxics during the period before EPA can establish a national MACT standard for a particular industry.

Section 112(g) also requires MACT-level control when major sources are modified. For reasons explained later in this preamble, this rule does not implement the modifications provision of section 112(g).

B. Summary of This Rule

1. What Sources Must Comply With 112(g)?

This rule implements section 112(g)(2)(B) of the Act by adding new regulatory sections to 40 CFR Part 63, subpart B. The new sections appear as §§ 63.40 through 63.44 of subpart B. These sections impose new control requirements on ''constructed'' and ''reconstructed'' major sources of HAP. (The definition of ''major source'' can be found in section 112(a) of the Act and 40 CFR Part 63 subpart A).

This rule does not apply to any source already covered by a MACT standard under section 112(d) of the Act. Therefore, sources already covered by a MACT standard under section 112(d) will not be required to undergo a review process under section 112(g). (Any section 112(g) review process already underway when a section 112(d) MACT standard is promulgated should be terminated.) This change was made to the final rule in response to comments that indicated that section 112(g) review would be inappropriate once a MACT standard was promulgated. For those sources not yet subject to section 112(d), section 112(g) applies to either (i) a major source constructed on a greenfield site, or to (ii) a new or reconstructed ''process or production unit'' at an existing plant site, provided that the ''process or production unit'' emits hazardous air pollutants in amounts that exceed the major source threshold. A new process or production unit at an existing major source must itself be inherently major-emitting; the EPA does not intend that a new process or production unit causing increased emissions at another unit downstream be covered by this rule. The definitions of ''construct a major source,'' ''reconstruct a major source,'' and ''process or production unit'' are set forth in section 63.41 of this rule and discussed in detail in section III.B. below.

2. What Must a Source Do To Comply With Section 112(g)?

If equipment additions or overhauls meet the definition of ''construct a major source'' or ''reconstruct a major source,'' then the owner or operator must demonstrate to the permitting authority that emissions will be controlled to a level consistent with the ''new source MACT'' definition in section 112(d)(3) of the Act. A MACT determination under section 112(g) is referred to as ''case-by-case'' MACT. The requirements and procedures for case-by-case MACT determinations are contained in section 63.43 of this rule.

If an owner or operator wishes to construct or reconstruct a major source, then prior to construction or reconstruction, the owner or operator must apply to the state or local title V permitting authority for a case-by-case MACT determination under section 112(g). The application can take different administrative forms, at the permitting authority's discretion, but must contain basic information about the source and its potential emissions. The application must also specify the emission controls that will ensure that new source MACT will be met. The permitting authority must review and approve (or disapprove) the application, and provide an opportunity for public comment on the determination.

3. When Will Section 112(g) Be Effective?

Section 112(g) will be effective in a State or local jurisdiction on the date that the permitting authority, under title V of the Act, places its implementing program for section 112(g) into effect. Permitting authorities have up to 18 months from the date of publication of this rule in the Federal Register to initiate implementing programs. After the 18-month transition period, if a State or local permitting authority is unable to initiate a section 112(g) program to implement this rule, there are two options for obtaining a MACT approval: either (1) the EPA will issue section 112(g) determinations for up to 1 year; or (2) the permitting authority will make section 112(g) determinations according to procedures specified in section 63.43 of this rule, and issue a Notice of MACT Approval that will become final and legally enforceable after the EPA concurs in writing with the permitting authority's determination. Requirements for permitting authorities are contained in section 63.42 of this rule.

To place its implementing program into effect, the chief executive officer of the State or local jurisdiction must certify to the EPA that its program meets all the requirements set forth in this rule, and publish a notice stating that the program has been adopted and specifying its effective date. The program need not be officially reviewed or approved by the EPA.

4. Do Section 112(g)-regulated Sources Have To Comply With Subsequent MACT Standards?

Once a section 112(d) MACT standard is issued for a source category, the source must comply with it by the designated deadline. A major source regulated under section 112(g) may be granted up to 8 years extra time to comply with a subsequently-promulgated MACT standard under section 112(d). The EPA may specify, in the MACT standard, the length of the extension. If the EPA does not so specify, then the permitting authority may grant such extensions on a case-by-case basis. The EPA believes that in many cases the section 112(g) determination will be equivalent to MACT under section 112(d) or section 112(j), but that this determination should be made on a case-by-case basis under section 112(d) or section (j).

Regulated entities. Entities potentially regulated by this action are those which are major sources of HAP under section 112 of the 1990 Amendments. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Industries that use or manufacture chemicals listed under section 112.
Federal Government	Federal agencies which handle chemicals listed under section 112.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria of this rule. If you have questions regarding the applicability of this action to a

particular entity, contact your state or local air permitting authority.

II. Background

A. The 1990 Amendments: Section 112 and Section 307

The 1990 Amendments [Pub. L. 101–549] contain major changes to section 112 of the Act, pertaining to the control of HAP emissions. Section 112(b) includes a HAP list that is composed of 189 chemicals, including 172 specific chemicals and 17 compound classes. Section 112(c) requires publication of a list of source categories of major sources emitting these HAP, and of area sources that warrant regulation. Section 112(d) requires promulgation of emission standards for each listed source category according to a schedule set forth in section 112(e).

Under section 307(b)(1) of the Clean Air Act, judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication of this rule in the Federal Register. Under section 307(b)(2) of the Act, the provisions which are the subject of today's rule will not be subject to judicial review in any civil or criminal proceedings for enforcement.

B. The 1990 Amendments. Provisions for Constructed, Reconstructed and Modified Major Sources of HAP

The amendments to section 112 include a new section 112(g). This section is entitled ''Modifications,'' but it contains control technology requirements for constructed and reconstructed major sources as well as major source modifications. For reasons discussed below, this rule addresses only requirements for constructed and reconstructed major sources.

1. Statutory Requirements for Constructed and Reconstructed Major Sources

Section 112(g)(2)(B) contains requirements for constructed and reconstructed major sources, as follows:

> After the effective date of a permit program under title V in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

This section mandates a more stringent minimum level of control for ''constructed'' and ''reconstructed'' major sources than for ''modified'' sources. In addition, this section mandates the setting of a case-by-case emission limitation based on a technology determination for major sources that are constructed or reconstructed after the effective date of a title V permit program.

C. Streamlined Nature of This Rule

Section 112(g) is primarily a transitional program designed to operate until MACT standards issued under section 112(d) are in effect for all categories of major sources of HAP. To date, the EPA has issued 21 MACT standards covering 46 categories of major sources of HAP emissions, and has proposed five additional MACT standards covering five source categories. The EPA is currently developing all of the MACT standards that are due to be completed in 1997, as well as several of the standards due to be completed in 2000.

Because of the transitional nature of section 112(g), the EPA has concluded that the greatest benefits to be derived from section 112(g) would be from the control of major source construction and reconstruction in the period before MACT standards go into effect. Therefore, the EPA has determined that this rule will implement only that portion of section 112(g) which requires new source MACT determinations for constructed and reconstructed major sources, and will not implement that portion which requires existing source MACT determinations for modifications of existing sources.

The EPA's decision to implement only the construction and reconstruction provisions of section 112(g) is premised in part on the Agency's ability to issue the remaining MACT standards under section 112(d) in a timely way, and also in part on the assumption that where there are existing State air toxics programs that address modifications, they will continue to operate as they do currently. If there were substantial delays in issuance of MACT standards, or radical changes to existing State programs, increased exposure to emissions from unregulated sources of HAP could occur and threaten public health and the environment. If such delays were to occur, the EPA would reconsider whether to issue a regulation to cover modifications under section 112(g).

III. Summary and Rationale for Subsection 63.40 Through 63.44 of This Rule

This section of the preamble provides a detailed discussion of the provisions of this rule. It is organized by each topic area in subsection 63.40 through 63.44 of subpart B, and contains a detailed discussion of the principal regulatory issues and changes made in the final rule, particularly in response to public comments. It also discusses some comments that did not result in regulatory changes.

A. Section 63.40 Applicability

Section 63.40 describes the timing of the requirements of this rule and the sources to which section 112(g) applies.

1. Section 63.40(a) Subpart B Applicability

Section 63.40(a) of this rule indicates that the intent of the rule is to implement section 112(g)(2)(B) of the Act.

2. Section 63.40(b) Overall Requirements

Section 63.40(b) of this rule indicates the overall applicability of section 112(g) to the owner or operator who constructs or reconstructs a major source of HAP after the ''effective date of section 112(g)(2)(b) and the effective date of a title V program'' in each State. This rule contains an exemption for sources specifically exempted by promulgated standards in other subparts of 40 CFR 63. The EPA believes that this exemption is consistent with ''MACT'' because a MACT evaluation was made in establishing the exemption.

In addition, there will be instances in which a ''presumptive MACT'' determination has been made for a source category. A presumptive MACT determination is a preliminary MACT determination made by the EPA, in consultation with States and other stakeholders, after data on a source category's emissions and controls have been collected and analyzed, but before a final MACT standard has been promulgated. The ''presumptive MACT'' determination is intended as preliminary guidance for States and sources. The EPA believes that the presumptive MACT determination would thus serve as the best information available on the eventual MACT standard. Therefore the EPA recommends to sources and States that applications for section 112(g) determinations use as guidance any presumptive MACT determinations. Presumptive MACT determinations can be found on the TTN (referenced above) under Clean Air Act, Title III, Policy and Guidance or at the EPA web site address ''http://www.epa.gov/oar''.

It should be noted that there may be source categories which have not yet been listed on the source category list for standards. The language of section 112(g)(2)(B) of the Act reads: ''no person

may construct or reconstruct any major source of hazardous air pollutants'' without a case-by-case MACT determination, and makes no mention of whether or not the source is in a listed category. (In fact, the EPA is required to list these categories as it becomes aware of them.) Therefore, the EPA believes that section 112(g) does apply to any major source which is not yet in a listed category.

(a) Effective date. Many commenters noted inconsistencies in the provisions of the draft final rule pertaining to the effective date of section 112(g), which in different sections referred both to the adoption of a section 112(g) program in a State or local jurisdiction by the responsible permitting authority and to the effective date of a title V permit program in a State. The EPA agrees with the commenters that these provisions were confusing and inconsistent. Sections 63.41 and 63.42(a) of this rule make it clear that section 112(g)(2)(B) will take effect in a State or local jurisdiction only after the permitting authority has been afforded an opportunity to adopt a program to implement this provision. The effective date of section 112(g)(2)(B) in a given State or local jurisdiction will be the date on which the permitting authority places its implementing program into effect or the date which is 18 months after the date of publication of this rule in the Federal Register, whichever is earlier. This affords those permitting authorities which are prepared to implement section 112(g)(2)(B) quickly an opportunity to do so, but also recognizes that some State permitting authorities will need additional time to take the necessary steps to plan for and adopt a satisfactory program.

The meaning of ''effective date of a title V permit program'' is indicated in the final regulations for implementation of title V of the Act, which are contained in 40 CFR Parts 70 and 71, and which were published on July 21, 1992 (57 FR 32250) and July 1, 1996 (61 FR 34202), respectively. Under these regulations, States were required to submit a permit program for review by the EPA on or before November 15, 1993. The EPA was required to approve or disapprove the permit program within 1 year after receiving the submittal. The EPA's title V program approval date is termed the ''effective date.''

The effective date of title V permit programs is defined in section 502(h) of the Act, which says:

> The effective date of a permit program, or partial or interim program, approved under . . . [title V] . . . shall be the effective date of approval by the Administrator. The effective date of a permit program, promulgated by the Administrator shall be the date of promulgation.

This definition is incorporated into the operating permit regulations as 40 CFR 70.4(g).

If a project does not receive its air quality construction permits before the effective date of section 112(g), then this rule will be applicable. The EPA requested comment on other alternatives, such as grandfathering projects for which a complete application has been submitted to the permitting authority, or grandfathering projects from the date of ''onsite fabrication, erection, or installation.'' Some commenters agreed with the EPA's current approach; however, many commenters supported grandfathering projects that had applied for, but not yet received, a permit. The EPA believes the chosen approach reflects the best option for ensuring adequate controls on sources seeking to add new equipment, while grandfathering sources which have already made significant investments in equipment. This approach assures that if prior to the permit issuance, new approaches to control HAP emissions are considered appropriate, the source will apply the latest control technology. This approach is also most consistent with current Federal policy in the prevention of significant deterioration program (PSD), in which sources with an approved permit are grandfathered when the attainment status of the region changes. In the new source review (NSR) program as well, while sources with a complete application which might otherwise be considered major modifications are grandfathered, these modifications do not escape review; they are treated as minor modifications instead.

(b) Major Source. Section 112(g) applies only to major sources as defined in section 112(a)(1) of the Act. This definition, from 40 CFR 63, subpart A, (the general provisions of part 63), is as follows:

> The term 'major source' means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

The definition also allows the EPA to establish a lesser quantity than 10 or 25 tons to define ''major source'' with respect to particular HAP where warranted on the basis of potency, persistence, and other factors. To date, no such lesser quantities have been established.

As a result of this definition, the section 112(g) requirements do not apply if the total emissions from an entire ''contiguous area under common control'' (in general, the entire plant site) do not exceed the major source level.

An important element of the major source definition is the term ''potential to emit.'' ''Potential to emit'' is based on the source's capability to emit HAP considering enforceable limitations. Such limitations include restrictions on capacity, restrictions on the types of materials used, emission limitations, and other types of restrictions. A definition of ''potential to emit'' is contained in 40 CFR 63, subpart A (General Provisions), as well as in further guidance provided by the EPA available on the Technology Transfer Network (referenced above), under Clean Air Act, Title III, Policy and Guidance, as well as on the EPA web site address (also reference above).

3. Section 63.40(c) Exclusion for Steam Generating Units

Section 63.40(c) of this rule clarifies that electric utility steam generating units are not yet subject to the requirements of section 112(g).

Section 112(n)(1) requires the EPA to perform a study of the hazards to public health associated with HAP emissions from electric utility steam generating units. This paragraph states that:

> The Administrator shall regulate electric utility steam generating units *under this section,* if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this paragraph. (emphasis added)

The EPA reads the phrase ''under this section'' as a broad exemption from regulation under section 112, including section 112(g), pending the results of the utility health hazards study.

4. Section 63.40(d) Relationship to State and Local Requirements

Most state and local regulatory agencies maintain regulatory programs that involve toxic air pollutant reviews for constructed and reconstructed sources. Section 63.40(d) clarifies that the requirements of section 112(g) do not supersede any requirements of these programs that are more stringent than this rule. Any such State requirements which are more stringent than the requirements of this rule would not be federally enforceable under section 112(g).

5. Section 63.40(e) Source Categories Deleted

This rule provides an exclusion for sources in source categories which have

been deleted by the EPA from the source category list for standards [57 FR 31576, July 16, 1992]. These sources are excluded because for any such category the EPA will have determined, in lieu of making a MACT determination, that MACT should not apply.

6. Section 63.40(f)—Research and Development Facilities

This rule also provides an exclusion for research and development facilities that meet the specific definition in section 63.41. The proposed rule requested comment on whether to provide this exclusion, and the EPA received significant comment in favor of providing it, based on the potential resource burden of reviewing operations which by design change frequently and do not produce a product for commercial use. The title V operating permit program has issued a policy memorandum aimed at reducing the permit requirements for such facilities. In the interest of consistency with previous exclusions for research and development activities and its anticipated use in the title V program, this rule adopts the definition of research and development facilities provided in section 112(c)(7) of the Act.

B. Section 63.41 Definitions

1. Terms Defined in the General Provisions

A number of terms used in the rule have already been defined for all of 40 CFR Part 63 by the General Provisions contained in subpart A. Readers interested in the definitions and rationale for those terms should refer to subpart A. Relevant terms defined in the General Provisions include:

—Act
—Approved permit program
—Capital expenditure
—Federally enforceable
—Hazardous air pollutant
—Major source
—Permit program
—Potential to emit
—Relevant standard
—Title V permit

In the definition of Construct a Major Source, the threshold level for a major source is a source which emits or has the potential to emit (PTE) 10 tons/year of any HAP or 25 tons/year of any combination of HAP. The PTE means the maximum capacity of a source to emit any air pollutant under its physical and operation design. A source's PTE may also take into account enforceable requirements for air pollution control equipment, and enforceable restrictions on operation such as maximum hours of operation or types of materials consumed.[1]

This means that if a source keeps its emissions below the threshold limits for a major source through enforceable limits, it will not meet the definition of ''Construct a Major Source'' under section 112(g), and thus will not have to apply new source MACT. For example, if a plant to be constructed will have uncontrolled emissions of a HAP of 40 tons/year, it would normally be subject to new source MACT under section 112(g). The owners are, however, able to install emission controls achieving a 75 percent reduction in emissions of the HAP in question. By imposing on themselves this control system and making their emissions limit and operating conditions enforceable, as a practical matter they can keep their PTE below the major source threshold of 10 tons/year. Such a source would not be subject to section 112(g), even if the 75 percent emissions reduction did not achieve a ''new source MACT'' level of control.

2. Terms Related to Construction and Reconstruction

The following terms are included in section 63.41:

—Construct A Major Source
—Reconstruct A Major Source
— Greenfield Site

The definition of ''construct a major source'' in this rule refers to two types of sources. The first is any ''major-emitting'' construction at a greenfield site (i.e., construction which emits or has the potential to emit HAP in amounts that would make it a major source). The other is any construction of a new ''process or production unit'' at an existing site where the process or production unit is itself major-emitting. (The definition of ''process or production unit'' is discussed below in this section.)

It should be noted that a major source ''construction'' or ''reconstruction'' project may require more than one MACT determination. As outlined in paragraph (3) of the definition, the EPA believes that MACT determinations consistent with section 112(d) of the Act may not include combinations of emission points involving more than one category on a published list of source categories (57 FR 31576). For example, most types of combustion sources appear as individually listed categories. As a result, a ''construction'' or ''reconstruction'' involving boilers and other process equipment must make a separate MACT determination for the boilers.

In response to EPA's request for comments on the exclusion from section 112(g) for major sources that use existing emission controls, several issues were raised. Most industry commenters supported the exclusion, but favored broadening it and wanted the rule to state clearly that the decision for what constitutes the best control technology is left to the discretion of the permitting authority. Industry supported replacing the phrase ''control equipment'' with ''control technology'' to cover pollution prevention approaches. Environmental groups and several States opposed this exclusion. They felt the use of the phrase ''one of the best control technologies'' was too open to interpretation and could be abused. These commenters cited the following concerns: the statute requires MACT or its equivalent, the technology determination should be based on recent standards (not standards used when the controls were originally constructed), all significant HAP should be controlled by the existing controls, and public review and comment should be required of the permitting authority's decision. Several States indicated that review of applications for this exclusion would be too resource intensive for their staffs.

The EPA agrees with the comment that the phrase ''one of the best control technologies'' is too ambiguous and open to varied interpretation. Nevertheless, the EPA recognizes that many sources will have previously

[1] Currently, there is a requirement in the general provisions to part 63 that PTE limits must be federally enforceable in order to be credited. In a 1995 court case (*National Mining* v. *EPA*, 59 F. 3d 1351, D.C. Cir. 1995), the court required EPA to reconsider this requirement. The EPA is currently developing rulemaking amendments that will address the concerns raised by the court. It is expected that these rulemaking amendments will be finalized in mid-1998.

The EPA believes that virtually all of the new constructed or reconstructed sources with a possibility of triggering section 112(g) requirements, and requiring emission limitations in order to avoid section 112(g), will need to obtain a preconstruction minor NSR permit from a State and local air quality agency. Because those minor NSR permits are federally enforceable, the practical implications of the above-mentioned PTE rulemaking may not be as pronounced for section 112(g) as for other requirements of part 63.

There may be a few situations where a source seeks to attain ''synthetic area'' status for section 112(g) for a new greenfield site, or seeks PTE limits to ensure that a newly constructed source avoids becoming a 10-ton ''affected source'' under section 112(g), and the limitation issued by a State program is not federally enforceable. For example, a State's air toxics preconstruction permitting program that creates limits for non-VOC HAP's such as methylene chloride may not in some circumstances yield federally enforceable limits. For any such circumstances that arise before EPA issues its rulemaking amendments addressing the *National Mining* decision, the EPA will accept, for purposes of section 112(g), limitations that are practicably enforceable by a State and local air pollution control agency.

installed controls at the plant site, and that such controls may be sufficient for case-by-case MACT when new process or production units are added to them. It is our intent to provide flexibility to the permitting authority in making case-by-case MACT determinations, but believe we are obligated to provide guidance as to how those determinations are evaluated. Consequently, the final rule clarifies the criteria that must be met for a new major process or production unit to qualify for this exemption from section 112(g) review.

The definition of ''construct a major source'' excludes such process or production units, provided the controls meet six specific criteria.

One criterion is that all HAP that would otherwise be controlled by a case-by-case MACT determination are controlled by the existing technology. For example, if a source has previously installed controls designed for total volatile organic compounds (which may also be HAP), those controls must achieve a MACT level of control for all of the HAP in the emission stream that would normally be expected to be controlled by a MACT determination. (For example, a MACT standard might reasonably be expected to address all the HAP emitted in a stream except for those emitted in trace amounts.) In addition, the control efficiency of the equipment for HAP prior to addition of the new process or production unit must be maintained after addition of the new equipment.

The definition also requires either that the previously installed control technology has been reviewed and approved within the last 5 years under another air quality program that requires best available control technology (BACT), lowest achievable emission rate (LAER), or State-level toxics BACT (T–BACT) or MACT. Alternatively, the permitting authority may determine that the previously installed control technology is equivalent to what would be currently required by another similar air quality program. Use of the exclusion must be documented in the title V permit at the time of permit issuance or renewal. These requirements provide a safeguard that the new process or production unit will be adequately controlled, even if it does not undergo section 112(g) review.

In addition, an opportunity is required for public review of the permitting authority's decision to allow use of this exclusion. If any commenter questions the permitting authority's view that previously installed controls are adequate for section 112(g) purposes, then the permitting authority must explain its decision in response to those comments. In general, the EPA believes that controls that were constructed in accordance with an earlier determination could be adequate; however, such previously installed controls may not be adequate if that same determination, made currently, would be significantly different. For example, a BACT determination made in 1992 could be significantly different from a determination made in 1997 on similar equipment if advances in control technology have occurred during that time.

Finally, the EPA generally does not view this ''good controls'' exclusion under section 112(g) as satisfying MACT for new sources under section 112(d) or section (j). As such, sources subject to later MACT determinations pursuant to section 112(d) or section 112(j) may have additional compliance requirements placed upon them.

3. Terms Related to MACT

Definitions for the following terms related to levels of control technology are included in section 63.41 of this rule:

—Available information
—MACT
—Control Technology
—MACT Emission Limitation for New Sources

The basis for the MACT definitions is statutory language contained in section 112(d) of the Act. The term ''MACT'' appears only in section 112(g) of the Act, and does not appear elsewhere in section 112. There is, however, considerable legislative history indicating that this term refers to the level of control required by section 112(d) emission standards. The term ''MACT'' was used in this context in the House Bill, H. R. 3030. For purposes of the definitions in this rule, the EPA assumes that MACT is a reference to the ''maximum degree of reduction in emissions'' language contained in section 112(d)(3).

The term ''available information'' is used to define the extent of review for permitting authorities and applicants for case-by-case MACT determinations. This rule defines ''available information'' to include information made available by the EPA in the process of setting emission standards, including but not limited to MACT standards. The EPA intends that information made publicly available in background or other documents in the process of developing a ''presumptive MACT'' for a source category should be considered ''available information.'' In this rule, information is considered to be ''available'' if it is available as of the permitting authority's final determination, i.e., the date the permitting authority makes the final determination after receiving all comments. Some commenters argued that information should only be considered ''available'' if it has been available as of the date of application for a MACT determination. The EPA believes, however, that new information presented during a public comment period should be considered in the MACT determination. The issue of ''available information'' is discussed in more detail in section III.D.3. below.

4. Terms Affecting Extent of Coverage by MACT

The following terms are used to describe equipment subject to a MACT determination:

—Affected source
—List of source categories
—Process or production unit

As explained above, the EPA believes that Congress did not intend section 112(g)(2)(B) to be so limited in scope that it would apply only to construction or reconstruction of entire facilities, and that this section was also intended to apply to construction of new process or production units and reconstruction of existing process or production units at existing facilities. Accordingly, it is necessary for EPA to decide what types of new equipment constitute the unit to be controlled under section 112(g).

A number of commenters expressed concerns regarding the exclusion for an ''integral component of a process or production unit,'' in the draft final rule, which required that the component be an ''essential part'' of a larger process or production unit. The nature of the comments made it clear that this definition was subject to greatly differing interpretations. Many commenters stated that the definition was too narrow, while some argued that it could be construed so broadly that no new equipment would qualify. Several commenters who believed the proposed definition of ''integral component'' to be too narrow suggested that EPA use alternative criteria such as ''functions as a part of'' or ''integrated with'' a larger process or production unit instead. The EPA believes the concept of a functional relationship to be a useful one, but by itself this concept is susceptible to an unduly broad interpretation.

The EPA is concerned about the varying interpretations given to this term by the commenters. Therefore, instead of defining the equipment which should be excluded from section 112(g), the EPA has chosen to define the

equipment to which section 112(g) should apply controls. This rule applies section 112(g) to equipment which meets the definition of a ''process or production unit.''

The definition of ''process or production unit'' requires that the unit to which section 112(g) applies should be ''any collection of structures and/or equipment that processes, assembles, applies, or otherwise uses material inputs to produce an intermediate or final product,'' and notes that the process or production unit may be a part of a facility which contains several such units. By requiring that the unit produce a product, the EPA intends section 112(g) to apply to units which are discrete, not units which are just one essential part of a larger function. The EPA also intends that the requirement that the unit produce a product be read to include those units whose product is energy, such as boilers.

At the same time, some commenters suggested that an entire plant site should generally be considered the unit to which section 112(g) applies, an interpretation which the EPA does not share. Therefore, by specifying that the process or production unit may be a part of a facility, the EPA intends that the definition be interpreted to cover a process line or production operation within a facility.

The draft final rule contained separate definitions of ''process'' and ''production unit.'' Under the draft language, storage tanks would have been considered processes or production units in some situations. Because the final rule consolidates the two definitions, the EPA has changed the definition of process or production unit to include the storage of materials, where storage is the primary function of the facility (e.g., tank farms), as a process or production unit. These issues are discussed and illustrated further in section III.D. below.

5. Electric Utility Steam Generating Unit

The definition of electric utility steam generating unit in the proposed rule is taken directly from section 112(a) of the Act.

C. Section 63.42 Program Requirements Governing Construction or Reconstruction of Major Sources

Several commenters expressed concerns regarding the provision in the draft final rule under which section 112(g) would have taken effect immediately upon promulgation of this rule in those States which have already developed section 112(g) programs. Some of these commenters noted that it is illogical to assume that a program adopted by a State in advance of issuance of this rule will meet its requirements, and that States should be required to evaluate their programs for conformity to this rule before they take effect. The EPA agrees with this comment, and has therefore required that each permitting authority certify that its implementing program is in conformity with the provisions of this rule as part of its adoption of a program.

Some commenters requested that EPA provide a fuller description of the steps by which a permitting authority can adopt a section 112(g) program. Other commenters argued that a program should not take effect without some sort of notice to affected facilities. The EPA agrees with these comments and has therefore also required that a permitting authority establish in advance an effective date for its program, and publish notice of the adoption of the program prior to that effective date.

One commenter argued that section 112(g) programs adopted by a State permitting authority cannot take effect unless they are expressly approved by EPA, either as part of a title V program or as a delegation of authority to the State under section 112(l). The commenter argued that EPA must also afford an opportunity for public comment prior to any such approval. The EPA does not agree with the position expressed by this commenter.

The EPA interprets section 112(g) as assigning to the permitting authority for each State, whether it be the State or the EPA Regional Office acting on behalf of the Administrator, the responsibility for making section 112(g) determinations. This construction of section 112(g) is implicit in the language which makes the applicability of the prohibitions in section 112(g)(2)(B) contingent on the effective date of a title V permit program in each State. Moreover, the EPA has previously taken steps to effectuate this construction of the Act. Each State which received approval to operate a title V permit program was required to state that it had the requisite authority to implement section 112(g). While an individual State (or the EPA Regional Office if it is the permitting authority under title V) is not in a position to adopt a section 112(g) program which satisfies Federal requirements for such programs until after EPA has issued its general guidance concerning the nature of these requirements, there is no indication in the language of section 112(g) that EPA must then ''delegate'' to each State the authority already assigned it by the statute itself.

The EPA believes that it would be permissible for EPA to require that State section 112(g) programs be approved by the EPA before they could take effect, but does not intend to do so. The EPA acknowledges that the difficulties it has encountered in devising guidance on implementation of section 112(g) which is both effective and practicable have resulted in unfortunate delays in implementation, and that EPA must necessarily afford State permitting authorities some additional time after issuance of this rule to plan for and adopt their implementing programs. However, inclusion of additional EPA comment and review procedures which are not mandatory would only serve to further delay implementation of this provision, thereby undermining the congressional intent.

Section 63.42(c) says that no person may ''begin actual construction or reconstruction'' of a major source unless a case-by-case MACT determination has been made. The EPA intends that the phrase ''begin actual construction or reconstruction'' have the same meaning as the phrase ''begin actual construction'' in 40 CFR 51 and 52 [the NSR and PSD programs], i.e. initiation of physical onsite construction activities as set forth in those programs.

If a facility which wishes to undertake construction or reconstruction of a major source after the effective date of section 112(g)(2)(B) in a State or local jurisdiction is unable to obtain the case-by-case MACT determination required by that provision, this could prevent the facility from proceeding with construction or reconstruction. Although the potential for constraints on construction or reconstruction when no section 112(g) program is in place is inherent in the structure of the statute itself, the EPA has included in the final rule two provisions which are intended to avert such a result in the event that a State permitting authority is unable to adopt a section 112(g) program in a timely manner.

First, in those instances where a State has not adopted a section 112(g) program within 18 months but concludes that it can still make the required case-by-case MACT determinations, the State may elect to make such determinations subject to written concurrence by the EPA Regional Office. Upon written concurrence by the EPA, the MACT determination will become final and federally enforceable. Second, in those instances where a State has not adopted a section 112(g) program within 18 months and concludes that it is unable to make case-by-case MACT determinations in the absence of such a program, the State may request that the EPA Regional Office implement a transitional section 112(g) program for a

period not to exceed 1 year. Although it is clear that failure to adopt a section 112(g) program would constitute a material deficiency in a State's title V permitting program, the EPA would prefer to afford those States who have encountered practical difficulties in timely adoption of a section 112(g) program additional time rather than immediately applying the sanctions and remedies set forth in section 502(i).

Industry commenters have expressed concern that individual States might use adoption of a section 112(g) program to ''federalize'' elements of existing State air toxics programs which are not required to implement section 112(g) with respect to construction or reconstruction of major sources. Conversely, some States have expressed concern that adoption of a section 112(g) program might operate to preempt other existing provisions in State air toxics programs which are not required to implement section 112(g). The EPA does not intend or support either of these results. The program adopted by each State to implement section 112(g) will be intrinsically less extensive in its scope than many existing State air toxics programs. When this is the case, the section 112(g) program should not be treated as either subsuming or superseding extraneous State program elements. Accordingly, the EPA has included in the final rule explicit language making it clear that nothing in the section 112(g) rule can be construed to require compliance with State program elements not intended to implement section 112(g) with respect to construction or reconstruction of major sources, and nothing in the rule can be construed to preclude enforcement of such State program elements under any other provision of applicable law. State permitting authorities may examine their existing State air toxics programs to determine if they contain the requirements of this rule. If so, a permitting authority may use its existing air toxics program as a vehicle for implementing section 112(g) requirements.

D. Section 63.43 MACT Determinations for Constructed and Reconstructed Major Sources

Section 63.43 (in combination with a number of definitions contained in section 63.41) contains the requirements for constructed and reconstructed major sources described in section 112(g)(2)(B) of the Act. Equipment affected by this section must comply with a ''new source MACT'' level of control.

Applicability

1. ''Greenfield'' Facilities. The most straightforward case for section 112(g) is for a new plant site emitting (or having the PTE) more than major amounts of HAP (that is, 10 tons/yr of one HAP, 25 tons/yr of multiple HAP, or amounts that exceed any lesser quantity cutoffs that may be established under subpart C of part 63). The EPA believes that the statute clearly requires such a new plant site to be treated as a ''constructed major source'' subject to a ''new source MACT'' level of control.

2. Addition of Equipment at an Existing Plant Site. This rule treats addition of a new ''process or production unit'' as construction, as discussed above, and requires application of new source MACT to that process or production unit. This ensures that new major-emitting process or production units (that is, those emitting more than 10 tons/year of a HAP, or 25 tons/year from all HAP, or amounts exceeding a lesser quantity cutoff), which generally would represent sizeable investments, will be built with state-of-the art control technology. It is generally recognized that it is more straightforward to build such a level of control technology into the original design, and that it is difficult or sometimes even impossible to retrofit such controls at a later date. A fundamental goal of many EPA programs, such as the new source performance standards program under section 111 of the Act and the effluent guidelines program under the Clean Water Act, is to achieve long-term reductions in emissions by requiring ''best'' controls as old production operations are replaced with new operations. In addition, this requirement prevents inequities in the implementation of the 112(g) program, because a new process or production unit at an existing plant would be subject to the same standard as a ''greenfield'' plant site with identical equipment. If this rule only covered greenfield sites, as some commenters suggested, then that same new process or production unit would not be controlled at all under section 112(g).

The guidance in this preamble is designed to help the permitting authority determine whether a new major addition constitutes a process or production unit. The EPA is providing the following examples to illustrate its intent for applicability of section 112(g). The rationale for each case is explained based on the definition of a process or production unit.

Because this rule is generic to all industries, the definition of ''process or production unit'' and the use of the terms ''intermediate or final product'' in this rule are necessarily generic. As a result, in applying this definition to individual plant sites, permitting authorities will need to exercise their reasonable judgment in determining the ''collection of structures and/or equipment that * * * produce(s) an intermediate or final product.'' The following discussion and examples provide guidance on factors and considerations that EPA believes are appropriate in making this judgment. None of the factors or considerations by itself should be considered absolute in determining applicability, but these should be weighed by the permitting authority in reaching a decision.

In applying the definition of ''process or production unit'' to a facility, a key question is: What are the intermediate or final products? There is no intention for this rule to impart any regulatory significance to informal uses of the term ''intermediate.'' The examples below illustrate EPA's intent for a variety of industries.

A second question is: Do the new equipment and/or structures constitute a collection of equipment and/or structures that produces such a product? The EPA believes that an appropriate factor for the permitting authority to consider is the extent to which the new equipment and structures are discrete—in other words, whether as a technical matter the new equipment and structures can produce an intermediate or final product independently, in substantial degree, from the existing equipment or structures. If so, this would tend to support a judgment by the permitting authority that the new equipment and structures constitute a process or production unit. If not, this would support the opposite conclusion. The EPA notes that in making this judgment concerning ''discreteness,'' one relevant consideration is whether the types of new equipment and structures in question are reasonably controlled independently.

In many cases it will be easy to discern whether changes at a plant site will constitute construction or reconstruction of a ''process or production unit.'' For example, if a new unit is added to an existing plant site, and that type of unit is often built alone at a greenfield site, the logical conclusion is that the new unit is a process or production unit. Also, if minor changes are being made to existing equipment, it should be clear that no process or production unit is being constructed or reconstructed. Of course, there is no need to define the ''process or production unit'' at all

unless the structures and/or equipment being constructed at an existing plant site have the potential to emit major amounts of HAP.

The following sample applicability determinations provide further guidance in judging when a source is subject to section 112(g) requirements:

Example 1. At a plant which manufactures fiberglass reinforced plastic boats, the owners wish to add more spray guns to an existing fabrication line to supplement the existing spray guns in laminating a particular model of boat hulls. The new spray guns will have a PTE greater than 10 tons/year of a HAP.

In this example, EPA views the fiberglass hull of a boat as an intermediate product in the manufacture of the final product (i.e., the boat with deck, trim, paint, engine, etc.) The collection of structures and/or equipment needed to manufacture the intermediate product, in this case, includes the existing spray guns and other operations in the building (e.g., the lamination operation and other supporting equipment) that typically are found in the production of boats. Because the newly added spray guns in and of themselves do not produce the intermediate product, the EPA does not view the additional spray guns for lamination as a process or production unit that is subject to review under section 112(g).

Example 2. Using Example 1, assume that the owner adds more spray guns to laminate a second model of boat hulls. The room is large enough to accommodate two lamination processes at the same time. The new spray guns have a PTE greater than 10 TPY.

The same rationale used in Example 1 applies here. The collection of equipment needed to produce the boat hull includes the lamination process as well as the gel coat process. Because the addition of the second lamination process does not produce an intermediate product, if no additional laminating or other essential equipment were added, it would not be subject to review under section 112(g).

Example 3. Using Example 2, a gel coat spray booth and supporting equipment needed to manufacture the boat hulls are added in addition to the spray guns.

The process or production unit in this example is the set of equipment that consists of the gel coat spray booths, the spray gun, and the supporting equipment. This new set of equipment can reasonably operate alone and produce an intermediate product. Consequently, all sources of HAP in this set of equipment, which includes the gel coat spray booth and the spray guns in the laminating room, are subject to review under section 112(g).

Example 4. An aluminum reduction plant has several potlines which manufacture aluminum. Each potline consists of between 100 and 200 electrolytic reduction cells or ''pots'' that are connected together in series electrically to complete a circuit. Each pot produces molten aluminum. The company wishes to add more pots on each line. The additional pots will result in a major increase in emissions.

Although each individual pot contributes to the production of the aluminum, the separate pots are not considered to be discrete process or production units in that they cannot operate independently. In addition, it does not make sense from an engineering standpoint to apply new source MACT only to the additional pots. The best time to apply new source MACT is when constructing an entirely new potline. The EPA does not view each separate pot as a process or production unit and thus the individual pots are not subject to review under section 112(g). The EPA sees the pots within the potline as being both functionally and physically interconnected and unable to function alone. Thus, EPA does not consider the pots as discrete process or production units.

Example 5. Using Example 4, assume the aluminum production facility adds a new potline which is a major source of HAP.

The EPA considers the entire potline as the collection of structures and equipment that produces an intermediate product (i.e., molten aluminum). Since it fits within the definition of a process or production unit, the potline is subject to review under 112(g). Also, note that the potline is an example of a process or production unit that is part of a larger production unit, the aluminum production plant.

Example 6. At an automobile assembly paint shop, three coating steps, primer, surfacer, and top coat, are used to paint the automobile body. Another parallel topcoat step is added to the existing topcoat step. Both top coat steps then feed back into a bake oven. The new top coat step will be a major source of HAP.

The new parallel topcoat step is not subject to review under section 112(g). The intermediate product in this case is the painted automobile body. The top coating step cannot take place without the preceding primer and surfacer steps and the supporting infrastructure. Additionally, the intermediate product cannot be completed without the bake oven step. Consequently, the topcoat by itself is not a discrete process as it is only one step in a series of steps necessary to produce an intermediate or final product. (Although unlikely, if an existing automobile assembly plant were to build a second paint shop, this should be reviewed under section 112(g).)

3. Reconstruction. Section 112(g) continues the concept of ''reconstruction'' contained in past regulatory programs. The concept of reconstruction is intended to prevent the circumvention of ''new source'' requirements by completely overhauling existing equipment. Current air pollutant emission standards under previous requirements of the Act treat replacement of components as a reconstruction if the replacement represents more than 50 percent of the capital cost of the new unit.

For section 112(g), the requirements apply to the reconstruction of a ''major source,'' and this rule defines ''reconstruct a major source'' as the replacement of components at a major source such that the replacement exceeds 50 percent of the capital cost of either an entirely new major source, or of a comparable process or production unit where the process or production unit, if newly constructed, would have been considered a constructed major source under this rule. (For the sake of clarity, the EPA has deleted that portion of the reconstruction definition in the draft rule that referred to a ''group of process or production units'' being reconstructed, so that the definitions of both construction and reconstruction would refer to the same units).

MACT Determinations

Section 63.43 reflects the statutory requirement that an owner or operator who proposes to ''construct or reconstruct'' a major source must obtain a determination from the ''permitting authority'' that the ''MACT emission limitation for new sources'' will be met. The ''permitting authority'' is defined as the agency responsible for the title V permit program. Further discussion of this issue, and of other issues related to implementation of section 112(g), is contained in section IV of this preamble.

This section of the preamble discusses the procedures for making these MACT determinations. These procedures include technical review procedures needed to establish a MACT emission limitation and a corresponding MACT control technology, and, (where appropriate), administrative procedures for submitting and reviewing applications for MACT determinations. In this rule, the overall process for MACT determinations is outlined in § 63.43.

1. Overall Process for MACT Determinations. Where no MACT standard under section 112(d) has been promulgated, section 112(g) requires a case-by-case determination of the MACT emission limitation. This ''determination'' can take any of three

forms, as described below and in § 63.43(c) of this rule. Under any approach, the process for review is conceptually similar.

The process begins with a MACT analysis by the owner and operator. This MACT analysis must be consistent with general principles described in § 63.43(d). The owner or operator provides an application for a MACT determination to the permitting authority. Requirements for the contents of this application are listed in § 63.43(e). Commenters indicated that the source cannot certify that the control technology meets MACT because the permitting authority has not yet made the MACT determination. The EPA agrees with these commenters and has therefore eliminated the requirement from § 63.43(e)(2) of the draft final rule for a responsible official to certify that the control technology meets the requirements of section 112(g) of the Act. (The EPA wishes to clarify that the requirement in § 63.43(e)(2)(vi) to list emission rates is intended as background information to enable the permitting authority to identify the pollutants requiring MACT controls. The EPA recognizes that there is often a significant effort required to obtain precise estimates of HAP emission rates and speciations. The EPA does not intend in this paragraph to require a greater level of detail than is necessary for evaluating applicability and emission control issues.)

This application for a MACT determination is then reviewed by the permitting authority according to one of the following procedures (at the permitting authority's discretion): (1) the permitting authority's own review procedures (so long as they provide for public participation in the determination), (2) the administrative procedures outlined in 40 CFR part 70 or part 71, or (3) the administrative procedures described in § 63.43, paragraphs (f), (g), and (h). If approvable, the permitting authority will then either: (1) issue approval under its own procedures, (2) revise the part 70 or part 71 permit, or (3) issue a Notice of MACT Approval. Regardless of which review procedure is used, the provisions of section 63.43, paragraphs (j), (k), (l), and (m) apply.

Section 63.43(c)(3) of this rule provides that a source may seek approval of case-by-case MACT determinations for new alternate operating scenarios (that were not incorporated in a State permit) when obtaining its title V permit. As a result, the source would have met the requirements of section 112(g) at the time of permit approval, and thus would be free to activate any such alternative operating scenario in the future without having to undergo any further section 112(g) review.

Where EPA determines that the MACT determination made by the permitting authority fails to meet any of the requirements of § 63.43, EPA may take one of two actions to address the deficient MACT determination. (a) Where the MACT determination is made part of a source's part 70 permit, EPA may veto issuance of the permit in accordance with the provisions of 40 CFR 70.8(c). The EPA may also use the veto process outlined in 40 CFR 70.8(c) where the State has ''enhanced'' its section 112(g) process to incorporate the part 70 procedures.

(b) Where the MACT determination is made before the source obtains or revises its part 70 permit, either through a Notice of MACT Approval or the permitting authority's own procedures, EPA may exercise its authority under section 113(a)(5) of the Act to prohibit construction, issue an administrative penalty order, or bring a civil action against the source upon finding that the State has not acted in compliance with any requirement or prohibition relating to the construction or reconstruction of new sources.

Many commenters have expressed opposition to the provision in the draft final rule which provides that an owner or operator shall be deemed to be in compliance with section 112(g)(2)(B) only to the extent that the constructed or reconstructed major source is in compliance with the terms and conditions of the MACT determination. The commenters contend that this provision would operate to treat sources that are temporarily in violation of the terms of a MACT determination the same as sources who completely ignore section 112(g)(2)(B) and proceed to construct or reconstruct without obtaining a MACT determination. One commenter even argues expansively that this proposed provision would operate to subject the violator to penalties for the entire period since the original construction or reconstruction, rather than only for the period of the violation itself.

It was not the intent of EPA, nor would it be appropriate, to transform prior compliance into a violation based on the occurrence of subsequent violations. The EPA has clarified the language of the provision to assure that any violation of the terms and conditions in a MACT determination will be construed as a violation of section 112(g)(2)(B) only for that period that the owner or operator is actually in violation of such terms or conditions.

In general, the commenters assume that the MACT determinations made by a State will themselves be automatically federally enforceable, regardless of whether they have been incorporated in a title V operating permit for the facility. One commenter expressly invoked the language of section 113 by referring to a MACT determination as a ''permit,'' while another argued to the contrary that Federal enforceability is not mandatory for MACT determinations under section 112(g). The EPA agrees that MACT determinations made pursuant to the authority conferred on a State by section 112(g) should be construed as federally enforceable actions, regardless of whether their terms have been incorporated into a title V operating permit. The EPA notes that a significant period may elapse between the time a facility first obtains a MACT determination and the subsequent issuance of a title V operating permit for that facility. The MACT determinations in this interim period are federally enforceable.

Congress clearly intended that the EPA should be able to enforce the requirement for sources to apply MACT prior to construction or reconstruction of a major source. If a facility obtains a MACT determination but does not adhere to its terms and conditions, then that facility should not be shielded from Federal enforcement. The provision in the final rule which makes failure to adhere to the requirements in the MACT determination a violation of section 112(g)(2)(B) itself, but only for the period that the facility is actually violating those requirements, is reasonable. It provides additional assurance that no facility will be able to avoid Federal enforcement based on a contention that the MACT determination has not yet been incorporated into a title V operating permit and should not be deemed directly enforceable.

2. Requirement for Preconstruction Determination. Section 63.43 requires the MACT determination before construction or reconstruction of the major source. The requirement is based upon the language in section 112(g)(2)(B) requiring that the Administrator (or the State) determine that MACT ''will be met.'' The EPA believes that the future tense suggests an up-front determination.

In addition, the EPA believes that there are substantial implementation disadvantages for any program that would allow equipment to be constructed before a determination is made. The EPA's past experience in enforcing air quality regulations suggests strongly that it would be very

difficult to require substantial changes in the design of equipment once it is in place. The EPA feels that fairness or equity arguments, based on investments already made and the costs of retrofit and shutdown, could be made by a source seeking to begin operation under these circumstances.

3. General Principles for MACT Determinations. Section 63.43(d) reviews a number of general principles that govern MACT determinations under this rule. As required by section 112(g)(2)(B), this rule requires a case-by-case determination by the permitting authority that the technology selected by the owner or operator is consistent with what would have been required under section 112(d) of the Act. For constructed and reconstructed major sources, the minimum requirement for a case-by-case MACT determination, consistent with section 112(d), is the level of control that is achieved in practice by the best controlled similar source. The definition of MACT for new source MACT in this rule does not require consideration of sources outside the U.S. However, sources and permitting authorities are expected to consider controls on sources across the U.S., as opposed to considering just those controls used on sources in a particular State.

In determining the appropriate level of control, this rule requires consideration of ''available information.'' In some instances, such information sources are readily apparent. For example, if a Federal MACT standard has been proposed, but not yet promulgated, the EPA expects that a MACT determination will strongly consider that proposal. (Other information may be available in some cases, for example, based upon public comment on the MACT proposal, but such data would need to be adequate to refute the finding in the proposal). In other cases, the EPA will have generated background documents summarizing MACT findings which should be readily available.

In some cases, during the course of developing the MACT standard the EPA will decide upon and make publicly available a ''presumptive MACT'' emission limitation that anticipates what the ultimate MACT determination will be. The EPA may do this before a proposed MACT standard has been published in the Federal Register for a source category. If so, sources and States should use such a ''presumptive MACT'' emission limitation as guidance in making case-by-case MACT determinations, because these determinations would be the best available information on the eventual MACT emission limitation.

The most recent performance standards for existing control technologies must be met. These include standards for BACT, LAER, or State T–BACT established within the last 5 years. The EPA plans to develop guidance for performance standards for 10-year MACT categories. Any relevant performance standards established in this guidance should be used once it is available. Determinations by the permitting authority on the adequacy of equivalent controls should be evaluated by the most recent performance standards available at the time of construction. As indicated in the draft final rule, the resulting level of control must at least meet that provided by the control technology prior to the inclusion of additional sources.

In addition, the EPA currently maintains a number of data bases that may be useful as a resource for information on available control technologies. The EPA has also designed a data management system that will support case-by-case MACT determinations. This data base is called the MACT data base. The EPA is developing guidance documents on how to use the MACT data base. Section 63.43(m) requires States to report all case-by-case MACT determinations to the MACT data base.

Finally, it should be noted that the final rule changes the term ''control equipment'' to ''controls'' to include any pollution prevention strategy that effectively limits emissions and is federally enforceable.

4. General Issues with Regard to MACT Determinations. For constructed and reconstructed major sources, section 112(g) of the Act requires an emission limitation consistent with a ''new source MACT'' level of control. The Act states:

> The maximum degree of reduction that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as defined by the Administrator.

For the purposes of section 112(g), two criteria should be used to determine if a source is similar: (1) whether the two sources have similar emission types, and (2) whether the sources can be controlled with the same type of control technology. The EPA can classify the emission source as one of five different types. They are as follows:

Process vent or stack discharges—the direct or indirect discharge of an organic liquid, gas, fume, or particulate by mechanical or process-related means. Examples would be emission discharges from columns and receiving tanks from distillation, fractionation, thin-film evaporation, solvent condensers, incinerators, flares, and closed-looped biological treatment units.

Equipment leaks—fugitive emissions from the following types of equipment: valves, pumps, compressors, pressure valves and lines, flanges, agitators, sampling connection systems, and valve connectors.

Evaporation and breathing losses—emissions from storage or accumulation of product or waste material; for example: stationary and mobile tanks, containers, landfills, and surface impoundments, and pilings of material or waste.

Transfer losses—emission of an organic liquid, gas, fume, vapor or particulate resulting from the agitation of material during transfer or the material from one unit to another. Examples of such activities are filling of mobile tanks, dumping of coke into coke quench cars, transfer of coal from bunker into larry car, emptying of baghouse hoppers, and sludge transfer.

Operational losses—emissions resulting from the process operation which would result in fugitive emissions if uncontrolled by hoods or vacuum vent, or other vent systems. Examples of operation losses are emission resulting from spray coating booths, dip-coating tanks, quenching towers, lubricating stations, flash-off areas, or grinding and crushing operations.

These five types of emission sources can serve as a general guide in identifying available control options while also considering the concentration and the type of constituents of a gas stream. However, while two pieces of apparatus can be classified within the same emission source type, this does not automatically mean that the emission points can be controlled using the same type of control technology. For instance, storage tanks and landfills are both listed in the evaporation and breathing losses classification, but it is unlikely that a storage tank and landfill would be controlled with the same technology.

The EPA believes that because the Act specifically indicates that existing source MACT should be determined from within the source category and does not make this distinction for new source MACT, that Congress intends for transfer technologies to be considered when establishing the minimum criteria for new sources. EPA believes that the use of the word ''similar'' provides support for this interpretation. The EPA believes that Congress could have

explicitly restricted the minimum level of control for new sources, but did not. The use of the term ''best controlled similar source'' rather than ''best controlled source within the source category'' suggests that the intent is to consider transfer technologies when appropriate.

Some commenters expressed concern that the EPA's definition of ''similar source'' could be interpreted too broadly. The EPA believes that the practical use and effectiveness of any transfer technology should be generally comparable across emission units. While the particular pollutants emitted need not be the same, the following factors may be considered: the volume and concentration of emissions, the type of emissions, the similarity of emission points, and the cost and effectiveness of controls for one source category relative to the cost and effectiveness of those controls for the other source category, as well as other operating conditions. The uninstalled cost of controls should not be a factor in determining similarity across emission units. What should be a factor is the uninstalled cost of controls *plus* the costs associated with installation and operation of those controls. Therefore, whenever costs are quantified, such costs should include the purchase price of controls plus the costs associated with installation and operation of those controls for the source in question. In addition, the EPA recognizes that control efficiencies across similar sources may be different. The permitting authority is expected to use its judgement in determining when operating conditions are comparable across emission units.

Another general problem that must be addressed in determining the MACT, is the identification of the universe of equipment that must be considered for control. When the notice of initial list of categories of sources under section 112(c)(1) of the Act was published (57 FR 31576), the EPA listed broad categories of major and area sources rather than narrowly defined categories. The EPA chose to establish broad source categories at the time the source category list was developed because there was too little information to identify technically distinct groupings within these broad categories. During the standard-setting process, EPA may find it appropriate to further subcategorize to distinguish among classes, types and sizes of sources.

In making case-by-case MACT determinations, the EPA believes that permitting authorities may find it necessary to subcategorize particular source categories into technically distinct groupings. This rule allows permitting authorities to subcategorize, at their discretion, on a case-by-case basis, giving permitting authorities the greatest flexibility in case-by-case MACT determinations. In their comments, some permitting authorities indicated that reviewing agencies may not have the resources to address this subcategorization issue. The EPA recognizes that allowing permitting authorities discretion to subcategorize or not subcategorize may lead to some national inconsistency in implementation for source categories for which the EPA has not yet established a presumptive MACT, or has not yet collected enough information on the source category to establish subcategories. To limit inconsistencies, the EPA strongly encourages those States which have collected information on particular source categories to share that information with other States through the MACT data base.

In the proposed rule, EPA also sought comment on the criteria for which subcategorization would be allowed. Possible criteria can include technically distinct processes or operations (including differences between batch and continuous operation), fundamental differences in emission characteristics or control device applicability, differences in safety considerations, and the appropriate consideration of opportunities for pollution prevention. Most commenters supported allowing sources and/or States the discretion to subcategorize on a case-by-case basis. The EPA has not subcategorized source categories in this rule because it is most feasible to do so on a case-by-case basis.

5. Application for a MACT Determination. Section 63.43(e) of this rule describes the information the owner or operator is required to provide with an application for a MACT determination or in a title V permit application for which a MACT determination is requested. These information requirements are designed to identify the equipment to be controlled, and to demonstrate that the selected control technology for those units is consistent with or exceeds the requirements of the statute.

6. Review Process. Analysis of the relationship of section 112(g) to the operating permits program. This rule, in section 63.43, paragraphs (f), (g), (h), and (i), establishes an administrative process for reviewing a request by an owner or operator for a MACT determination. As discussed previously, the EPA believes that section 112(g) of the Act requires such a determination to be made before constructing or reconstructing a major source.

There will be cases when the title V permit process will be used for section 112(g) reviews, and there will be cases when it will not be used and MACT determinations will be incorporated into the permit after commencement of operation. Section 63.43(c) of this rule states that when the title V procedures are used, this process would be sufficient. When the title V process does not occur until after construction or reconstruction of a major source requiring a case-by-case MACT determination, this rule requires that the owner or operator follow either of the other two administrative review processes described in § 63.43. Where the change that is subject to section 112(g) review is addressed or prohibited by an existing title V permit, the change would of course need to be processed as a revision to the title V operating permit prior to commencing operation.

Regardless of the timing for incorporation of section 112(g) determinations into the operating permit, there are certain 40 CFR Part 70 requirements that apply. The title V permit must be revised or issued according to procedures set forth in part 70, and must incorporate the compliance provisions of part 70. If, during the EPA's review of the section 112(g) determination, it becomes apparent that the determination is not in compliance with the Act, then EPA must object to the issuance or revision of that permit.

These requirements are obviously satisfied either if part 70 requires revision to an existing title V permit prior to operation, or if the permitting authority otherwise requires incorporation into a title V permit as a step in the section 112(g) determination process. However, even where there is no formal incorporation into a title V permit prior to operation, subsequent title V review may effectively be avoided if the State's section 112(g) process is ''enhanced'' to include the required title V procedures, thereby allowing for later incorporation into the title V permit by administrative amendment.

7. Streamlined Administrative Process. Section 63.43, paragraphs (f), (g), and (h) of this rule establish an administrative review process for case-by-case MACT determinations for permitting authorities to use at their discretion. The process begins with a 45-day completeness determination. (In this rule the EPA suggests a completeness determination of 45 days, and a public review period of 30 days, in order to be consistent with the time periods set forth in part 70 for a permit application, so that a permitting

authority can easily combine these processes). Once a complete application is received, approval or an intent to disapprove the application is required. If an intent to disapprove is issued, the owner or operator is given the opportunity to provide further information. The proposed decision to either approve or disapprove the application is then subject to public review. This rule provides for public review through issuance of a notice containing all the relevant background information about the application and allows 30 days for the public to comment on whether the application should or should not be granted. To expedite approval of noncontroversial case-by-case MACT determinations, this rule allows such determinations to become final following the close of the comment period if no adverse comments have been received. If adverse comments are received, a final notice addressing the comments must be published either approving or disapproving the application.

8. Notice of MACT Approval or similar document. The end result of the administrative review process is a determination set forth in a State permit or other document issued by the permitting authority. Necessary elements of this document are set forth in section 63.43(g) of this rule. This document should contain the emission limitations, notification, operating and maintenance, performance testing, monitoring, reporting, record keeping and any other requirements needed to ensure that the case-by-case MACT emission limitation will be met.

The Notice of MACT Approval or other document serves to provide a mechanism for Federal enforceability of these conditions in the interim time period between initial operation of the constructed or reconstructed major source and the time the conditions are added to the title V permit. The EPA has added a provision under which a Notice of MACT Approval would expire if construction does not begin within 18 months from the issuance of the notice. Such an 18-month expiration period is included in criteria pollutant preconstruction review programs.

9. Compliance. Section 63.43(k) requires the permitting authority to establish compliance dates for MACT. For constructed and reconstructed major sources subject to a ''new source MACT'' level of control, compliance upon startup is required. Some commenters requested that compliance be required by the date 180 days after startup to allow for a ''shakedown'' period for controls. However, sources subject to this rule are also subject to the relevant requirements of subpart A of this part (the general provisions for part 63), including compliance requirements. Since subpart A does not require the first performance test until 180 days after startup, the EPA believes that a ''shakedown'' period for controls is already accounted for through subpart A.

To ensure Federal enforceability, section 63.43(l) of this rule requires that the Notice of MACT Approval or other such document contain, at a minimum, monitoring, record keeping and reporting requirements sufficient to document the source's compliance. Because major sources obtaining MACT determinations will incorporate that determination into a title V permit, this rule includes a requirement that the monitoring, record keeping, and reporting requirements required for a case-by-case MACT determination be consistent with the compliance requirements contained in part 70.

In addition to part 70 compliance requirements, additional requirements may need to be considered at the time of the MACT determination. Under section 114(a)(3) of the Act, EPA regulations for major sources must assure that owners or operators are accountable for their emissions and compliance status on a continuous basis. In this way, the EPA is assured that the emissions reductions intended by regulations are in fact achieved. Some commenters noted that monitoring requirements were not consistent with the requirements being developed for the Compliance Assurance Monitoring (CAM) rulemaking. However, the CAM rule does not apply to new standards promulgated currently under section 112. A new program, such as section 112(g), should apply monitoring as directed by section 114(a)(3) of the Act.

It is important to distinguish between continuous compliance and continuous monitoring. Under section 112 of the Act, to demonstrate continuous compliance, a source may not be required to record emissions data on a continuous, instantaneous basis such as with a continuous emission monitor. Depending on the type of standard, regular parameter monitoring, equipment inspections, and/or maintenance of raw material records, etc., may be sufficient to demonstrate continuous compliance. For all standards, monitoring frequency must be based on the averaging time of the applicable limitation or standard, and the likely variability of potential emissions from a particular emissions unit. If the potential variability is high, monitoring must be done frequently. If the potential variability is low, monitoring may be conducted less frequently at regular intervals.

Where the Notice of MACT Approval or other such document fails to meet any requirement of section 63.43, EPA may exercise its authority under section 113(a)(5) of the 1990 Amendments to prohibit construction or reconstruction, issue an administrative penalty order or bring a civil action against the source upon finding that the State has not acted in compliance with any requirement or prohibition relating to the construction or reconstruction of new sources.

10. Reporting to National Data Base. Section 63.43(m) requires permitting authorities to provide EPA with information on all case-by-case MACT determinations issued under this subpart. The intent of this paragraph is to use EPA's MACT data base to store data on well-controlled sources and on previous MACT determinations to help facilitate the MACT determination process.

E. Section 63.44 Requirements for Process or Production Units Subject to a Subsequently Promulgated MACT Standard or MACT Requirement

The EPA anticipates that new source MACT requirements adopted with respect to construction or reconstruction of a particular source under section 112(g)(2)(B) will normally be at least as stringent as any subsequent requirements for existing sources adopted as part of a MACT standard issued under section 112(d). However, should a subsequently promulgated MACT standard impose more stringent requirements, the EPA believes that it may be appropriate in some instances for the EPA to establish a later compliance date for those sources which have acted in reliance on a prior case-by-case MACT determination. This rule expressly provides that the EPA may establish separate compliance dates for facilities which have notified EPA of such determinations in a timely manner. Specifically, the EPA may establish, in the MACT standard, a later compliance date for those sources which have received a final and legally effective MACT determination pursuant to section 112(g), and have provided the EPA with data on their section 112(g) control determination by the end of the public comment period on the subsequent Federal standard.

In those instances where the subsequent MACT standard does not establish a compliance date for sources subject to a prior case-by-case MACT determination, this rule authorizes the permitting authority to grant up to 8 years of additional time for the affected

source to comply with the subsequent MACT standard. The EPA has previously explained that the structure of section 112 as a whole supports such a construction of section 112(g), and a source may also be afforded up to 8 years to comply with a MACT standard in instances where a prior emission limitation has been established by permit under section 112(j).

This provision is a modified form of the provision that appeared in the original proposed rule. The original provision has been modified in two respects. First, commenters indicated that inequities might result from the fact that the original provision stated that the revised compliance date should not be more than 8 years after a standard promulgated under section 112(d), or 8 years after the date by which the source must comply with the MACT determination under section 112(g), whichever is earlier. For example, if a standard under section 112(d) is promulgated 7 years after a source's compliance date under section 112(g), the source might only have one year to comply with the standard under section 112(d). Therefore the EPA has removed this condition, and allowed the extension to be counted from the section 112(d) compliance date in all cases.

Second, commenters noted that the EPA had required, in § 63.44(a), that a source must comply with a relevant section 112(d) standard if it has not yet obtained a ''final and legally effective MACT determination'' under section 112(g) before promulgation of the relevant section 112(d) standard. However, the EPA had required, in § 63.44(b), that the source must have ''commenced construction'' in order to be eligible for a compliance extension under section 112(d). In order to eliminate this inconsistency, the EPA has changed section 63.44(b) to require that the source must have obtained a ''final and legally effective MACT determination'' in order to be eligible for a compliance extension under section 112(d).

Several industry commenters felt that section 112(g) compliance should constitute compliance with subsequent MACT standards. The EPA is currently evaluating this issue in the context of setting policy for section 112(d) and section 112(j) standards. The EPA believes that in most cases the section 112(g) determination will be equivalent to MACT, but that this decision should be made on a case-by-case basis in the context of a determination under section 112(d) or section 112(j).

Several commenters requested EPA to clarify whether a source which met a new source section 112(g) MACT determination would be considered to be a new or existing source under a subsequent section 112(d) standard. According to section 112(a)(4) of the Act, if the source begins construction before the section 112(d) standard is proposed, then it is considered an existing source under a section 112(d) MACT standard. Sources constructed after a section 112(d) standard is proposed are treated as new sources under section 112(d). This applies as well to sources that have met new source MACT under section 112(g).

IV. Discussion of the Relationship of the Requirements of This Rule to Other Requirements of the Act

The previous sections of this preamble discuss the requirements of this rule in defining the requirements of section 112(g) of the Act as it relates to constructed or reconstructed major sources of HAP. In addition, there are a number of issues concerning the relationship between the requirements of section 112(g) and other requirements of the Act that are relevant to the implementation of the requirements of this rule. These issues are important in defining the overall responsibilities of States and the EPA in carrying out the requirements of section 112(g), and in understanding how section 112(g) requirements relate to other important requirements of the Act. The purpose of this section of the preamble is to present a number of regulatory and statutory interpretations related to these implementation issues.

A. Relationship of Section 112(g) Implementation to Title V Program Approval

Title V of the Act and the part 70 regulations provide that a State seeking to obtain or retain approval of a title V program must have authority to assure compliance with all applicable requirements through the title V permit (section 502(b)(5)(A); 40 CFR 70.4(b)(3)(i)). The preamble to the operating permits rule explains that, in the context of section 112, the permitting authority must have authority to develop and enforce case-by-case MACT determinations under section 112(g).

This rule and preamble language represent what EPA considers to be the most natural reading of section 112(g). The EPA reads the reference in section 112(g)(2) to case-by-case determinations made by ''the Administrator (or the State)'' to mean that these determinations must be made by the title V permitting authority. This reading is consistent with the reference in section 112(g)(2) to the effective date of the title V program as the date on which the requirements of section 112(g) become applicable, and with the title V requirement that major sources of HAP submit applications for title V permits regardless of whether they are subject to a MACT standard. It is also consistent with the reference in section 112(j) to ''the Administrator (or the State)'' as the entity that must make case-by-case determinations of MACT and issue permits incorporating these determinations.

B. Relationship to the Section 112(l) Delegation Process

Under section 112(l) of the Act, States have the option of developing and submitting to the Administrator a program for implementing the requirements of section 112. The EPA promulgated a rule for the implementation of section 112(l) on November 26, 1993 (58 FR 62262). This rulemaking added sections 63.90 through 63.96 to 40 CFR 63.

During the mid to late 1980's, most States adopted regulations or procedures to review toxic air pollutant emissions from new (and modified) sources. In some cases, these programs already regulate all of the equipment covered by section 112(g). It is the EPA's view that the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g). A State need simply certify that their State program meets the requirements of section 112(g), and notify the EPA to that effect. (For further discussion of this issue see section III.C., above.)

C. Section 112(i)(5) Early Reductions Program

Section 112(i)(5) allows owners and operators, that provide early reductions in HAP emissions, to be granted a 6-year extension of any compliance date for emission standards issued under section 112(d). In order to participate in the section 112(i)(5) program, the owner or operator defines a ''source'' at a plant-site for which a 90 or 95 percent reduction in emissions can be accomplished before the proposal date of the emission standard. There are a few items of clarification on the relationship between the section 112(i)(5) requirements and section 112(g).

First, the extension granted by section 112(i)(5) applies only to that equipment incorporated within the ''source'' for

which the 90 or 95 percent reduction was accomplished. Other equipment at a plant-site not included within that ''source'' definition are subject to section 112(g) requirements if they make changes that would be considered to be construction or reconstruction of a major source under this rule.

On the other hand, equipment within the ''source'' definition for which there is an approved early reductions submittal are not subject to further control technology requirements under section 112(g). Section 112(g) requires case-by-case MACT where no ''applicable emission limitation'' exist. The ''alternative emission limitation'' under section 112(i)(5) should be considered an ''applicable emissions limitation'' for purposes of section 112(g), such that compliance with such alternative emissions limitation shields a source from having to comply with section 112(g).

D. Subpart A ''General Provisions''

The EPA has promulgated ''general provisions'' to the MACT program as subpart A to 40 CFR 63. These general provisions contain a number of definitions and provisions that generally affect the subparts of part 63 that follow, including subpart B discussed here. In general, the relevant requirements of subpart A apply to sources subject to case-by-case MACT determinations under this rule. For example, requirements for monitoring, record keeping, and reporting established in subpart A apply to a section 112(g) source which uses the control equipment at which such requirements are directed. It should be noted, however, that specific preconstruction review requirements in subpart A apply only to standards promulgated under section 112(d), section 112(f), or section 112(h) of the Act—not to section 112(g), which establishes its own requirements. This is set out in section 112(i) of the Act, from which subpart A draws its authority to require preconstruction review.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Although this rule will not have an annual effect on the economy of $100 million or more, and therefore is not economically significant, EPA has determined that this rule is a ''significant regulatory action'' because it contains novel policy issues. This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866. Any written comments from OMB and any EPA response to OMB comments are in the public docket.

B. Regulatory Flexibility

The EPA considered the impact of this rule on small entities. In general, the EPA believes that very few small entities will actually be affected by the rule. Estimating the number of small entities that may be affected, however, is difficult due to the large number of industries potentially affected, and the need to predict the frequency of what is generally a fairly uncommon event, a small entity making an expansion which is itself a major source. In examining the potential impact on small entities, the EPA took into account the factors listed in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, for conducting a final regulatory flexibility analysis.

The approach chosen in this final rule is a less burdensome option for small entities than the approach contained in the proposed rule. The proposed rule to implement section 112(g) contained requirements for modifications, as noted above. These requirements would have required control on many smaller equipment changes at industrial facilities. The EPA has chosen instead only to implement section 112(g)(2)(B) at this time (and not all of section 112(g)). By doing so, this rule eliminates much of the complexity inherent in the portion of section 112(g) which covers modifications to existing sources. It should be noted that some commenters requested that the EPA restrict section 112(g) requirements even further, to just covering construction of new ''greenfield'' facilities or reconstruction of entire plantsites. The EPA rejected this approach because the EPA believes it makes sense to control major sources at the time of construction when they are most cost-effective to control, whether or not they are constructed at existing plantsites.

C. Paperwork Reduction Act

The information collection requirements in this proposal have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An information collection request (ICR) document has been prepared by the EPA (ICR No. 1658.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M Street, South West, Washington, DC 20460, or by calling (202) 260–2740.

The EPA prepared estimates of the average annual burden hours needed to collect and prepare information required under section 112(g). The burden estimates presented below are an accumulation of the estimated annual burden hours that would be experienced by industry respondents, State and local agencies, and EPA under the various regulatory scenarios. The approximate annual burden-hours that would be required would peak in 1999 at 167,134 hours, and reduce to 23,218 by 2003.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may

significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This determination was made based on the analyses conducted for the proposal RIA.

E. 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).

The statutory authority for this rule is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended; 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 13, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Requirements for Control Technology

Determinations for Major Sources In Accordance with Clean Air Act Sections, Section 112(g) and 112(j).

2. Part 63 is amended by adding new §§ 63.40 through 63.44 to subpart B to read as follows:

§ 63.40 Applicability of §§ 63.40 through 63.44

(a) *Applicability.* The requirements of §§ 63.40 through 63.44 of this subpart carry out section 112(g)(2)(B) of the 1990 Amendments.

(b) *Overall requirements.* The requirements of §§ 63.40 through 63.44 of this subpart apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after the effective date of section 112(g)(2)(B) (as defined in § 63.41) and the effective date of a title V permit program in the State or local jurisdiction in which the major source is (or would be) located unless the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to section 112(d), section 112(h), or section 112(j) and incorporated in another subpart of part 63, or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before the effective date of section 112(g)(2)(B).

(c) *Exclusion for electric utility steam generating units.* The requirements of this subpart do not apply to electric utility steam generating units unless and until such time as these units are added to the source category list pursuant to section 112(c)(5) of the Act.

(d) *Relationship to State and local requirements.* Nothing in this subpart shall prevent a State or local agency from imposing more stringent requirements than those contained in this subpart.

(e) *Exclusion for stationary sources in deleted source categories.* The requirements of this subpart do not apply to stationary sources that are within a source category that has been deleted from the source category list pursuant to section 112(c)(9) of the Act.

(f) *Exclusion for research and development activities.* The requirements of this subpart do not apply to research and development activities, as defined in § 63.41.

§ 63.41 Definitions.

Terms used in this subpart that are not defined in this section have the meaning given to them in the Act and in subpart A.

Affected source means the stationary source or group of stationary sources which, when fabricated (on site), erected, or installed meets the definition of ''construct a major source'' or the definition of ''reconstruct a major source'' contained in this section.

Affected States are all States:

(1) Whose air quality may be affected and that are contiguous to the State in which a MACT determination is made in accordance with this subpart; or

(2) Whose air quality may be affected and that are within 50 miles of the major source for which a MACT determination is made in accordance with this subpart.

Available information means, for purposes of identifying control technology options for the affected source, information contained in the following information sources as of the date of approval of the MACT determination by the permitting authority:

(1) A relevant proposed regulation, including all supporting information;

(2) Background information documents for a draft or proposed regulation;

(3) Data and information available for the Control Technology Center developed pursuant to section 113 of the Act;

(4) Data and information contained in the Aerometric Informational Retrieval System including information in the MACT data base;

(5) Any additional information that can be expeditiously provided by the Administrator; and

(6) For the purpose of determinations by the permitting authority, any additional information provided by the applicant or others, and any additional information considered available by the permitting authority.

Construct a major source means:

(1) To fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAP's or 25 tons per year of any combination of HAP, or

(2) To fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, unless the process or production unit satisfies criteria in paragraphs (2) (i) through (vi) of this definition.

(i) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of this subpart will be controlled by

emission control equipment which was previously installed at the same site as the process or production unit;

(ii) (A) The permitting authority has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR part 51 or 52, toxics—best available control technology (T–BACT), or MACT based on State air toxic rules for the category of pollutants which includes those HAP's to be emitted by the process or production unit; or

(B) The permitting authority determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T–BACT, or State air toxic rule MACT determination);

(iii) The permitting authority determines that the percent control efficiency for emissions of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(iv) The permitting authority has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (2)(i), (2)(ii), and (2)(iii) of this definition apply and concerning the continued adequacy of any prior LAER, BATC, T–BACT, or State air toxic rule MACT determination;

(v) If any commenter has asserted that a prior LAER, BACT, T–BACT, or State air toxic rule MACT determination is no longer adequate, the permitting authority has determined that the level of control required by that prior determination remains adequate; and

(vi) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the permitting authority are applicable requirements under section 504(a) and either have been incorporated into any existing title V permit for the affected facility or will be incorporated into such permit upon issuance.

Control technology means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants through process changes, substitution of materials or other modifications;

(1) Reduce the quantity of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;

(2) Enclose systems or processes to eliminate emissions;

(3) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

(4) Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 U.S.C. 7412(h); or

(5) Are a combination of paragraphs (1) through (4) of this definition.

Effective date of section 112(g)(2)(B) in a State or local jurisdiction means the effective date specified by the permitting authority at the time the permitting authority adopts a program to implement section 112(g) with respect to construction or reconstruction or major sources of HAP, or June 29, 1998 whichever is earlier.

Electric utility steam generating unit means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

Greenfield suite means a contiguous area under common control that is an undeveloped site.

List of Source Categories means the Source Category List required by section 112(c) of the Act.

Maximum achievable control technology (MACT) emission limitation for new sources means the emission limitation which is not less stringent that the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of deduction in emissions that the permitting authority, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

Notice of MACT Approval means a document issued by a permitting authority containing all federally enforceable conditions necessary to enforce the application and operation of MACT or other control technologies such that the MACT emission limitation is met.

Permitting authority means the permitting authority as defined in part 70 or 71 of this chapter.

Process or production unit means any collection of structures and/or equipment, that processes assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

Reconstruct a major source means the replacement of components at an existing process or production unit that in and of itself emits or has that potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and

(2) It is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under this subpart.

Research and development activities means activities conducted at a research or laboratory facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a *de minimis* manner.

Similar source means a stationary source or process that has comparable emissions and is structurally similar in design and capacity to a constructed or reconstructed major source such that the source could be controlled using the same control technology.

§ 63.42 Program requirements governing construction or reconstruction of major sources.

(a) *Adoption of program.* Each permitting authority shall review its existing programs, procedures, and criteria for preconstruction review for conformity to the requirements established by §§ 63.40 through 63.44, shall make any additions and revisions to its existing programs, procedures, and criteria that the permitting authority deems necessary to properly effectuate §§ 63.40 through 63.44, and shall adopt a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP. As part of the adoption by the permitting authority of a program to implement section 112(g) with respect to construction or reconstruction of

major sources of HAP, the chief executive officer of the permitting authority shall certify that the program satisfies all applicable requirements established by §§ 63.40 through 63.44, and shall specify an effective date for that program which is not later than June 29, 1998. Prior to the specified effective date, the permitting authority shall publish a notice stating that the permitting authority has adopted a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP and stating the effective date, and shall provide a written description of the program to the Administrator through the appropriate EPA Regional Office. Nothing in this section shall be construed either:

(1) To require that any owner or operator of a stationary source comply with any requirement adopted by the permitting authority which is not intended to implement section 112(g) with respect to construction or reconstruction of major sources of HAP; or

(2) To preclude the permitting authority from enforcing any requirements not intended to implement section 112(g) with respect to construction or reconstruction of major sources of HAP under any other provision of applicable law.

(b) *Failure to adopt program.* In the event that the permitting authority fails to adopt a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP with an effective date on or before June 29, 1998, and the permitting authority concludes that it is able to make case-by-case MACT determinations which conform to the provisions of § 63.43 in the absence of such a program, the permitting authority may elect to make such determinations. However, in those instances where the permitting authority elects to make case-by-case MACT determinations in the absence of a program to implement section 112(g) with respects to construction or reconstruction of major sources of HAP, no such case-by-case MACT determinations shall take effect until after it has been submitted by the permitting authority in writing to the appropriate EPA Regional Office and the EPA Regional Office has concurred in writing that the case-by-case MACT determination by the permitting authority is in conformity with all requirements established by §§ 63.40 through 63.44. In the event that the permitting authority fails to adopt a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP with an effective date on or before June 29, 1998, and the permitting authority concludes that it is unable to make case-by-case MACT determinations in the absence of such a program, the permitting authority may request that the EPA Regional Office adopt and implement a transitional program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP in the affected State of local jurisdiction while the permitting authority completes development and adoption of a section 112(g) program. Any such transitional section 112(g) program adopted by the EPA Regional Office shall conform to all requirements established by §§ 63.40 through 63.44, and shall remain in effect for no more than 1 year. Continued failure by the permitting authority to adopt a program to implement section 112(g) with respect to construction or reconstruction of major sources of HAP shall be construed as a failure by the permitting authority to adequately administer and enforce its title V permitting program and shall constitute cause by EPA to apply the sanctions and remedies set forth in the Clean Air Act section 502(I).

(c) *Prohibition.* After the effective date of section 112(g)(2)(B) (as defined in § 63.41) in a State or local jurisdiction and the effective date of the title V permit program applicable to that State or local jurisdiction, no person may begin actual construction or reconstruction of a major source of HAP in such State or local jurisdiction unless:

(1) The major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to section 112(d), section 112(h) or section 112(j) in part 63, and the owner and operator has fully complied with all procedures and requirements for preconstruction review established by that standard, including any applicable requirements set forth in subpart A of this part 63; or

(2) The permitting authority has made a final and effective case-by-case determination pursuant to the provisions of § 63.43 such that emissions from the constructed or reconstructed major source will be controlled to a level no less stringent than the maximum achievable control technology emission limitation for new sources.

§ 63.43 Maximum achievable control technology (MACT) determinations for constructed and reconstructed major sources.

(a) *Applicability.* The requirements of this section apply to an owner or operator who constructs or reconstructs a major source of HAP subject to a case-by-case determination of maximum achievable control technology pursuant to § 63.42(c).

(b) *Requirements for constructed and reconstructed major sources.* When a case-by-case determination of MACT is required by § 63.42(c), the owner and operator shall obtain from the permitting authority an approved MACT determination according to one of the review options contained in paragraph (c) of this section.

(c) *Review options.* (1) When the permitting authority requires the owner or operator to obtain, or revise, a permit issued pursuant to title V of the Act before construction or reconstruction of the major source, or when the permitting authority allows the owner or operator at its discretion to obtain or revise such a permit before construction or reconstruction, and the owner or operator elects that option, the owner or operator shall follow the administrative procedures in the program approved under title V of the Act (or in other regulations issued pursuant to title V of the Act, where applicable).

(2) When an owner or operator is not required to obtain or revise a title V permit (or other permit issued pursuant to title V of the Act) before construction or reconstruction, the owner or operator (unless the owner or operator voluntarily follows the process to obtain a title V permit) shall either, at the discretion of the permitting authority:

(i) Apply for and obtain a Notice of MACT Approval according to the procedures outlined in paragraphs (f) through (h) of this section; or

(ii) Apply for a MACT determination under any other administrative procedures for preconstruction review and approval established by the permitting authority for a State or local jurisdiction which provide for public participation in the determination, and ensure that no person may begin actual construction or reconstruction of a major source in that State or local jurisdiction unless the permitting authority determines that the MACT emission limitation for new sources will be met.

(3) When applying for a permit pursuant to title V of the Act, an owner or operator may request approval of case-by-case MACT determinations for alternative operating scenarios. Approval of such determinations satisfies the requirements of section 112(g) of each such scenario.

(4) Regardless of the review process, the MACT emission limitation and requirements established shall be effective as required by paragraph (j) of

this section, consistent with the principles established in paragraph (d) of this section, and supported by the information listed in paragraph (e) of this section. The owner or operator shall comply with the requirements in paragraphs (k) and (l) of this section, and with all applicable requirements in subpart A of this part.

(d) *Principles of MACT determinations.* The following general principles shall govern preparation by the owner or operator of each permit application or other application requiring a case-by-case MACT determination concerning construction or reconstruction of a major source, and all subsequent review of and actions taken concerning such an application by the permitting authority:

(1) The MACT emission limitation or MACT requirements recommended by the applicant and approved by the permitting authority shall not be less stringent than the emission control which is achieved in practice by the best controlled similar source, as determined by the permitting authority.

(2) Based upon available information, as defined in this subpart, the MACT emission limitation and control technology (including any requirements under paragraph (d)(3) of this section) recommended by the applicant and approved by the permitting authority shall achieve the maximum degree of reduction in emissions of HAP which can be achieved by utilizing those control technologies that can be identified from the available information, taking into consideration the costs of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements associated with the emission reduction.

(3) The applicant may recommend a specific design, equipment, work practice, or operational standard, or a combination thereof, and the permitting authority may approve such a standard if the permitting authority specifically determines that it is not feasible to prescribe or enforce an emission limitation under the criteria set forth in section 112(h)(2) of the Act.

(4) If the Administrator has either proposed a relevant emission standard pursuant to section 112(d) or section 112(h) of the Act or adopted a presumptive MACT determination for the source category which includes the constructed or reconstructed major source, then the MACT requirements applied to the constructed or reconstructed major source shall have considered those MACT emission limitations and requirements of the proposed standard or presumptive MACT determination.

(e) *Application requirements for a case-by-case MACT determination.* (1) An application for a MACT determination (whether a permit application under title V of the Act, an application for a Notice of MACT Approval, or other document specified by the permitting authority under paragraph (c)(2)(ii) of this section) shall specify a control technology selected by the owner or operator that, if properly operated and maintained, will meet the MACT emission limitation or standard as determined according to the principles set forth in paragraph (d) of this section.

(2) In each instance where a constructed or reconstructed major source would require additional control technology or a change in control technology, the application for a MACT determination shall contain the following information:

(i) The name and address (physical location) of the major source to be constructed or reconstructed;

(ii) A brief description of the major source to be constructed or reconstructed and identification of any listed source category or categories in which it is included;

(iii) The expected commencement date for the construction or reconstruction of the major source;

(iv) The expected completion date for construction or reconstruction of the major source;

(v) the anticipated date of start-up for the constructed or reconstructed major source;

(vi) The HAP emitted by the constructed or reconstructed major source, and the estimated emission rate for each such HAP, to the extent this information is needed by the permitting authority to determine MACT;

(vii) Any federally enforceable emission limitations applicable to the constructed or reconstructed major source;

(viii) The maximum and expected utilization of capacity of the constructed or reconstructed major source, and the associated uncontrolled emission rates for that source, to the extent this information is needed by the permitting authority to determine MACT;

(ix) The controlled emissions for the constructed or reconstructed major source in tons/yr at expected and maximum utilization of capacity, to the extent this information is needed by the permitting authority to determine MACT;

(x) A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in paragraph (d) of this section;

(xi) The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer's name, address, telephone number, and relevant specifications and drawings, if requested by the permitting authority);

(xii) Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health environmental impacts or energy requirements for the selected control technology; and

(xiii) Any other relevant information required pursuant to subpart A.

(3) In each instance where the owner or operator contends that a constructed or reconstructed major source will be in compliance, upon startup, with case-by-case MACT under this subpart without a change in control technology, the application for a MACT determination shall contain the following information:

(i) The information described in paragraphs (e)(2)(i) through (e)(2)(x) of this section; and

(ii) Documentation of the control technology in place.

(f) *Administrative procedures for review of the Notice of MACT Approval.* (1) The permitting authority will notify the owner or operator in writing, within 45 days from the date the application is first received, as to whether the application for a MACT determination is complete or whether additional information is required.

(2) The permitting authority will initially approve the recommended MACT emission limitation and other terms set forth in the application, or the permitting authority will notify the owner or operator in writing of its intent to disapprove the application, within 30 calendar days after the owner or operator is notified in writing that the application is complete.

(3) The owner or operator may present, in writing, within 60 calendar days after receipt of notice of the permitting authority's intent to disapprove the application, additional information or arguments pertaining to, or amendments to, the application for consideration by the permitting authority before it decides whether to finally disapprove the application.

(4) The permitting authority will either initially approve or issue a final disapproval of the application within 90 days after it notifies the owner or operator of an intent to disapprove or

within 30 days after the date additional information is received from the owner or operator; whichever is earlier.

(5) A final determination by the permitting authority to disapprove any application will be in writing and will specify the grounds on which the disapproval is based. If any application is finally disapproved, the owner or operator may submit a subsequent application concerning construction or reconstruction of the same major source, provided that the subsequent application has been amended in response to the stated grounds for the prior disapproval.

(6) An initial decision to approve an application for a MACT determination will be set forth in the Notice of MACT Approval as described in paragraph (g) of this section.

(g) *Notice of MACT Approval.* (1) The Notice of MACT Approval will contain a MACT emission limitation (or a MACT work practice standard if the permitting authority determines it is not feasible to prescribe or enforce an emission standard) to control the emissions of HAP. The MACT emission limitation or standard will be determined by the permitting authority and will conform to the principles set forth in paragraph (d) of this section.

(2) The Notice of MACT Approval will specify any notification, operation and maintenance, performance testing, monitoring, reporting and record keeping requirements. The Notice of MACT Approval shall include:

(i) In addition to the MACT emission limitation or MACT work practice standard established under this subpart, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure Federal enforceability of the MACT emission limitation;

(ii) Compliance certifications, testing, monitoring, reporting and record keeping requirements that are consistent with the requirements of § 70.6(c) of this chapter;

(iii) In accordance with section 114(a)(3) of the Act, monitoring shall be capable of demonstrating continuous compliance during the applicable reporting period. Such monitoring data shall be of sufficient quality to be used as a basis for enforcing all applicable requirements established under this subpart, including emission limitations;

(iv) A statement requiring the owner or operator to comply with all applicable requirements contained in subpart A of this part;

(3) All provisions contained in the Notice of MACT Approval shall be federally enforceable upon the effective date of issuance of such notice, as provided by paragraph (j) of this section.

(4) The Notice of MACT Approval shall expire if construction or reconstruction has not commenced within 18 months of issuance, unless the permitting authority has granted an extension which shall not exceed an additional 12 months.

(h) *Opportunity for public comment on the Notice of MACT Approval.* (1) The permitting authority will provide opportunity for public comment on the Notice of MACT Approval, including, at a minimum:

(i) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the permitting authority's initial decision to approve the application;

(ii) A 30-day period for submittal of public comment; and

(iii) A notice by prominent advertisement in the area affected of the location of the source information and initial decision specified in paragraph (h)(1)(i) of this section.

(2) At the discretion of the permitting authority, the Notice of MACT Approval setting forth the initial decision to approve the application may become final automatically at the end of the comment period if no adverse comments are received. If adverse comments are received, the permitting authority shall have 30 days after the end of the comment period to make any necessary revisions in its analysis and decide whether to finally approve the application.

(i) *EPA notification.* The permitting authority shall send a copy of the final Notice of MACT Approval, notice of approval of a title V permit application incorporating a MACT determination (in those instances where the owner or operator either is required or elects to obtain such a permit before construction or reconstruction), or other notice of approval issued pursuant to paragraph (c)(2)(ii) of this section to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in affected States.

(j) *Effective date.* The effective date of a MACT determination shall be the date the Notice of MACT Approval becomes final, the date of issuance of a title V permit incorporating a MACT determination (in those instances where the owner or operator either is required or elects to obtain such a permit before construction or reconstruction), or the date any other notice of approval issued pursuant to paragraph (c)(2)(ii) of this section becomes final.

(k) *Compliance date.* On and after the date of start-up, a constructed or reconstructed major source which is subject to the requirements of this subpart shall be in compliance with all applicable requirements specified in the MACT determination.

(l) *Compliance with MACT determinations.* (1) An owner or operator of a constructed or reconstructed major source that is subject to a MACT determination shall comply with all requirements in the final Notice of MACT Approval, the title V permit (in those instances where the owner or operator either is required or elects to obtain such a permit before construction or reconstruction), or any other final notice of approval issued pursuant to paragraph (c)(2)(ii) of this section, including but not limited to any MACT emission limitation or MACT work practice standard, and any notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements.

(2) An owner or operator of a constructed or reconstructed major source which has obtained a MACT determination shall be deemed to be in compliance with section 112(g)(2)(B) of the Act only to the extent that the constructed or reconstructed major source is in compliance with all requirements set forth in the final Notice of MACT Approval, the title V permit (in those instances where the owner or operator either is required or elects to obtain such a permit before construction or reconstruction), or any other final notice of approval issued pursuant to paragraph (c)(2)(ii) of this section. Any violation of such requirements by the owner or operator shall be deemed by the permitting authority and by EPA to be a violation of the prohibition on construction or reconstruction in section 112(g)(2)(B) for whatever period the owner or operator is determined to be in violation of such requirements, and shall subject the owner or operator to appropriate enforcement action under the Act.

(m) *Reporting to the Administrator.* Within 60 days of the issuance of a final Notice of MACT Approval, a title V permit incorporating a MACT determination (in those instances where the owner or operator either is required or elects to obtain such a permit before construction or reconstruction), or any other final notice of approval issued pursuant to paragraph (c)(2)(ii) of this section, the permitting authority shall provide a copy of such notice to the Administrator, and shall provide a summary in a compatible electronic

format for inclusion in the MACT data base.

§ 63.44 Requirements for constructed or reconstructed major sources subject to a subsequently promulgated MACT standard or MACT requirement.

(a) if the Administrator promulgates an emission standard under section 112(d) or section 112(h) of the Act or the permitting authority issues a determination under section 112(j) of the Act that is applicable to a stationary source or group of sources which would be deemed to be a constructed or reconstructed major source under this subpart before the date that the owner or operator has obtained a final and legally effective MACT determination under any of the review options available pursuant to § 63.43, the owner or operator of the source(s) shall comply with the promulgated standard or determination rather than any MACT determination under section 112(g) by the permitting authority, and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates an emission standard under section 112(d) or section 112(h) of the Act or the permitting authority makes a determination under section 112(j) of the Act that is applicable to a stationary source or group of sources which was deemed to be a constructed or reconstructed major source under this subpart and has been subject to a prior case-by-case MACT determination pursuant to § 63.43, and the owner and operator obtained a final and legally effective case-by-case MACT determination prior to the promulgation date of such emission standard, then the permitting authority shall (if the initial title V permit has not yet been issued) issue an initial operating permit which incorporates the emission standard or determination, or shall (if the initial title V permit has been issued) revise the operating permit according to the reopening procedures in 40 CFR part 70 or part 71, whichever is relevant, to incorporate the emission standard or determination.

(1) The EPA may include in the emission standard established under section 112(d) or section 112(h) of the Act a specific compliance date for those sources which have obtained a final and legally effective MACT determination under this subpart and which have submitted the information required by § 63.43 to the EPA before the close of the public comment period for the standard established under section 112(d) of the Act. Such date shall assure that the owner or operator shall comply with the promulgated standard as expeditiously as practicable, but not longer than 8 years after such standard is promulgated. In that event, the permitting authority shall incorporate the applicable compliance date in the title V operating permit.

(2) If no compliance date has been established in the promulgated 112(d) or 112(h) standard or section 112(j) determination, for those sources which have obtained a final and legally effective MACT determination under this subpart, then the permitting authority shall establish a compliance date in the permit that assures that the owner or operator shall comply with the promulgated standard or determination as expeditiously as practicable, but not longer than 8 years after such standard is promulgated or a section 112(j) determination is made.

(c) Notwithstanding the requirements of paragraphs (a) and (b) of this section, if the Administrator promulgates an emission standard under section 112(d) or section 112(h) of the Act or the permitting authority issues a determination under section 112(j) of the Act that is applicable to a stationary source or group of sources which was deemed to be a constructed or reconstructed major source under this subpart and which is the subject of a prior case-by-case MACT determination pursuant to § 63.43, and the level of control required by the emission standard issued under section 112(d) or section 112(h) or the determination issued under section 112(j) is less stringent than the level of control required by any emission limitation or standard in the prior MACT determination, the permitting authority is not required to incorporate any less stringent terms of the promulgated standard in the title V operating permit applicable to such source(s) and may in its discretion consider any more stringent provisions of the prior MACT determination to be applicable legal requirements when issuing or revising such an operating permit.

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Federal Register

Friday
December 27, 1996

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5664–8]

RIN 2060–AE–86

National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This proposed rule would reduce emissions of hazardous air pollutants (HAP) from existing and new facilities that manufacture flexible polyurethane foam. In the production of flexible polyurethane foam a variety of HAP are used as reactants or process solvents. The HAP emitted by the facilities covered by this proposed rule include methylene chloride, toluene diisocyanate, methyl chloroform, methylene diphenyl diisocyanate, propylene oxide, diethanolamine, methyl ethyl ketone, methanol, and toluene. Methylene chloride comprises over 98 percent of the total HAP emissions from this industry. This proposed rule is estimated to reduce emissions of these pollutants by over 12,500 Megagrams per year (Mg/yr), with over 99 percent of this total expected to be methylene chloride emission reductions. The emission reductions achieved by these standards, when combined with the emission reductions achieved by other similar standards, will achieve the primary goal of the Clean Air Act, which is to ''enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.''

This proposed rule implements section 112(d) of the Clean Air Act of 1990 (CAAA), which requires the Administrator to regulate emissions of HAP listed in section 112(b) of the CAAA. The intent of this rule is to protect the public by requiring the maximum degree of reduction in emissions of HAP from new and existing major sources, taking into consideration the cost of achieving such emission reduction, and any nonair quality, health and environmental impacts, and energy requirements.

DATES: *Comments.* Comments must be received on or before February 25, 1997.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by January 17, 1997, a public hearing will be held on January 27, 1997 beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Marguerite Thweatt at (919) 541–5607 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the EPA by January 17, 1997 by contacting Ms. Marguerite Thweatt, Organic Chemicals Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE–131), Attention: Docket No. A–95–48, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. The public hearing, if required, will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

The docket is located at the above address in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday; telephone number (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning this proposed rule, contact Mr. David Svendsgaard at (919) 541–2380, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities regulated by this action, upon promulgation, are flexible polyurethane foam production facilities. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers of slabstock, molded, and rebond flexible polyurethane foam.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this proposed action, you should carefully examine the applicability criteria in section 63.1290 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

In addition to its inclusion in this Federal Register notice, the regulatory text is available in Docket No. A–95–48, or from the EPA contact person designated in this notice. The proposed regulatory language is also available on the Technology Transfer Network (TTN) on the EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 bps modem. For further information, contact the TTN HELP line at (919) 541–5348, from 1:00 p.m. to 5:00 p.m. Monday through Friday, or access the TTN web site at: http://ttnwww.rtpnc.epa.gov.

The Basis and Purpose Document which contains the rationale for the various components of the standard, is available in the docket and on the TTN. This document is entitled Hazardous Air Pollutant Emissions from the Production of Flexible Polyurethane Foam—Basis and Purpose Document for Proposed Standards, September 1996, and has been assigned document number EPA–453/D–96–008a.

Other materials related to this rulemaking are available for review in the docket. Some of the technical memoranda have been compiled into a single document, the Supplementary Information Document (SID), to allow interested parties more convenient access to the information. The SID is available in the docket (Docket No. A–95–48 Category III–B), and, in limited supply, from the EPA Library by calling (919) 541–2777. The document is entitled Hazardous Air Pollutant Emissions from the Production of Flexible Polyurethane Foam—Supplementary Information Document for Proposed Standards, October 1996, and has been assigned document number EPA–453/D–96–009a.

A record has been established for this rulemaking under docket number A–95–48 (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 included as CBI, is available for inspection from 8:00 a.m. to 5:30 p.m. Monday–Friday, excluding legal holidays. The public record is located in the Air & Radiation Docket & Information Center, Room M1500, 401 M Street S.W., Washington, D.C. 20460. Electronic comments can be

sent directly to EPA at: a-and-r-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–95–48. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

The official record for this rulemaking, as well as the public version, as described above, will be kept in paper form. Accordingly, the EPA will transfer all comments received 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 the **ADDRESSES** section of this document.

The information presented in this preamble is organized as follows:

I. List of Source Categories

Section 112 of the CAAA requires that the EPA evaluate and control emissions of HAP. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) and work practice and equipment standards under section 112(h) for categories of sources that emit HAP. On July 16, 1992, the EPA published an initial list of major and area source categories to be regulated, as required under section 112(c) of the CAAA. Included on that list were major sources emitting HAP from the production of flexible polyurethane foam.

The EPA chose to subcategorize the flexible polyurethane foam source category into molded flexible polyurethane foam production, slabstock flexible polyurethane foam production, and rebond foam production. Subcategorization was necessary to reflect major variations in production methods, and/or HAP emissions that affect the applicability of controls. All technical analyses were conducted on a subcategory basis to determine the appropriate level of the standard. In addition, on June 4, 1996 the EPA added to the source category list a separate source category for flexible polyurethane foam fabrication (61 FR 28197). These operations are occasionally co-located with slabstock foam production facilities, but occur other places as well. A future standard will address flexible polyurethane foam fabrication operations.

The EPA identified 78 facilities in the U.S. that produce slabstock foam. It is believed that this represents the entire slabstock foam industry. The identification of the U.S. molded foam facility population has been more difficult to estimate. This difficulty is due to the many small companies serving specialty markets, the production of molded foam at facilities that also produce other molded plastic products, and the lack of a trade association for molded foam. The EPA identified 46 molded foam facilities in the information gathering phase of the project, but industry estimates that there may be several hundred molded foam facilities nationwide. The nationwide molded foam facility population was estimated to be 228, based primarily on information found in suppliers guides. In this notice the EPA is requesting comments on this molded foam facility population estimate. If commenters dispute this estimate, the EPA would request supporting documentation for such an assertion, along with a list of molded foam facility names and locations.

The EPA identified 21 rebond foam production facilities that are co-located with slabstock or molded foam production facilities. It is estimated that this represents about one-half of the total U.S. rebond foam facility population.

This proposed rule would apply to all major sources that produce flexible polyurethane foam. Area sources would not be subject to this proposed rule. All of the slabstock foam facilities considered in the analysis supporting the proposed rule are believed to be major sources according to the CAAA criterion of having the potential to emit 10 tons per year of any one HAP or 25 tons per year of any combination of HAP.

In this proposed rule, an affected source includes all flexible polyurethane foam and rebond processes located at a contiguous plant site, where a process consists of raw material storage; production equipment and piping, ductwork, and other associated equipment; and curing and storage areas.

II. A Summary of Considerations Made in Developing This Rule

The Clean Air Act was created in part ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population'' (CAAA, section 101(b)(1)). Section 112(d) of the Act establishes a control technology-based program to reduce stationary source emissions of HAP. The goal of the proposed rule is to apply such control technology to reduce emissions and thereby reduce the impacts of HAP emitted from stationary sources.

Available emission data, collected during the development of these proposed National Emission Standards for Hazardous Air Pollutants (NESHAP), show that the greatest volume of HAP emitted during the production of flexible polyurethane foam is the emission of methylene chloride. The proposed emission limits are projected to reduce methylene chloride emissions by 70 percent. Following is a summary of the potential health effects associated with exposure to methylene chloride that would be reduced by the standard.

The acute (short-term) effects of methylene chloride inhalation in humans consist mainly of nervous system symptoms such as decreased visual and auditory functions. These effects are reversible once exposure ceases. Short-term exposure to high concentrations of methylene chloride also irritates the nose and throat. The effects of chronic (long-term) exposure to methylene chloride involve the central nervous system, and include headaches, dizziness, nausea, and memory loss. Animal studies indicate

that inhalation of methylene chloride affects the liver, kidney, and cardiovascular system. Developmental or reproductive effects of methylene chloride have not been reported in humans, but limited animal studies have reported lowered fetal body weights in rats exposed to inhalation.

Human data are considered inadequate to prove cancer caused by exposure to methylene chloride; animal studies have shown increases in liver and lung cancer and benign mammary gland tumors following the inhalation of methylene chloride. Methylene chloride is classified as Group B2, probable human carcinogen of relatively low carcinogenic potency.

As noted earlier, there are other HAP emitted by flexible polyurethane foam production facilities. While the magnitude of emissions of these pollutants is dwarfed by those of methylene chloride, it is important to note that the EPA has not undertaken a risk assessment of these facilities. Therefore, it is possible that other HAP, such as diisocyanates, may also pose risks of concern. The seriousness of risks remaining after imposition of the final MACT standards will be examined at a later date, as provided for under Section 112(f) of the Clean Air Act.

The Clean Air Act strategy avoids dependence on a detailed and comprehensive risk assessment hampered by (but not limited to) the following caveats, as a pre-requisite for controlling air toxics: (1) some of the HAP emitted from stationary sources are unknown, and (2) the EPA has incomplete data about the emissions of many of the HAP with which to describe health hazards. In addition, this is not a ''significant'' rule as defined by Executive Order 12866, and a specific benefits analysis is not required. Because of these issues, a detailed and intensive risk assessment of potential effects from HAP emitted from flexible foam plants is not included in this rulemaking.

The EPA does recognize that the degree of adverse effects to health resulting from the most significant emissions identified can range from mild to severe. The extent to which the effects could be experienced is dependent upon the ambient concentrations and exposure time. The latter is further influenced by source-specific characteristics, such as emission rates and local meteorological conditions. Human variability factors also influence the degree to which effects to health occur: genetics, age, pre-existing health conditions, and lifestyle.

The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing sources, are based on process and emissions data received from the flexible polyurethane foam industry. This included information from every existing flexible polyurethane slabstock foam facility known to be in operation at the time of the initial data collection, and the information gathered from the 46 molded foam facilities (which was assumed to be representative of the entire molded foam industry). The EPA met with industry several times to discuss this data. In addition, facilities and State regulatory authorities had the opportunity to comment on draft versions of the regulation and to provide addition information. Several facilities did provide comments; of major concern to industry were the auxiliary blowing agent (ABA) emission limitation, and the reporting and recordkeeping requirements. The proposed standards reflect these comments.

The proposed standards give existing facilities 3 years from the date of promulgation to comply. This is the maximum amount of time allowed under the Clean Air Act. New sources are required to comply with the standard upon startup. The EPA sees no reason why new facilities would not be able to comply with the requirements of the standards upon startup. For existing sources, the EPA believes that the required retrofit or other actions can be achieved in the time frame allotted.

Included in the proposed rule are methods for determining initial compliance as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule.

As described in the Basis and Purpose document, regulatory alternatives were considered that included a combination of requirements equal to, and above, the maximum achievable control technology (MACT) ''floor.'' Cost-effectiveness was a factor considered in evaluating options above the MACT floor; in cases where options more stringent than the floor were selected, they were judged to have a reasonable cost effectiveness Non-air environmental and health factors, as well as energy impacts were also considered and deemed to be reasonable for the proposed standards.

Representative from other interested EPA offices and programs, as well as representative from State regulatory agencies, are included in the regulatory development process as members of the Work Group. The Work Group is involved in the regulatory development process, and must review and concur with the regulation before proposal and promulgation. Therefore, the EPA believes that the implication to other statutory authorities and programs have been adequately considered during the development of these standards.

In addition to this proposed standards, two of the HAP use and emitted by the flexible polyurethane foam industry (toluene diisocyanate and propylene oxide) are subject to the risk management program rule requirements under section 112(r) of the CAAA. The risk management rule was signed May 24, 1996, and the rule was published in the Federal Register on June 20, 1996. Facilities handling a listed subject in quantities greater than threshold amount must comply with the risk management requirements by June 20, 1999. The list of substances and threshold quantities were published in the Federal Register on January 31, 1994.

III. Authority for National Emission Standards for Hazardous Air Pollutants Decision Process

A. Source of Authority for NESHAP Development

Section 112 of the CAAA gives the EPA the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed. The EPA must list source categories and subcategories of ''major sources'' (defined below) that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAP. This initial list of source categories was published in the Federal Register on July 26, 1992 (57 FR 31576) and include flexible polyurethane foam.

The proposed rule, as noted in § 63.1290(a), applies only to major sources (sources which emit or have the potential to emit HAP in excess of the major source thresholds). The rule does not affect area sources (those that do not emit or have the potential to emit HAP

in excess of the major source thresholds). A definition of ''major source'' and ''potential to emit'' is contained in § 63.2 of the general provisions to part 63. Some sources which would otherwise have a potential to emit HAP in excess of the major source thresholds can become area sources by accepting enforceable limitations on their operations. A number of issues exist with respect to the requirements for such enforceable limitations. These issues (particularly whether such limitations must be federally enforceable) will be subject to a separate upcoming rulemaking. In this separate rulemaking, the EPA will be amending the definitions of ''major source'' and ''potential to emit'' in § 63.2. The EPA requests that any comments on requirements for potential to emit limitations be directed towards this separate rulemaking.

For those facilities that may seek enforceable limitations on their potential to emit, the EPA believes that mechanisms are in place in most States to provide such limitations. In addition, the owners or operators of sources in the flexible polyurethane foam industry will have had to address whether the title V operating permits program affects their particular facilities well before the compliance date of the NESHAP. Title V applications vary from State to State, but generally will be due within the 1995–97 time frame. The compliance date for the proposed NESHAP would be in 3 years after promulgation of the standard, which will likely be sometime in the year 2000.

The proposed rule provides a mechanism that could be used by sources seeking area sources status to limit their emissions. The mechanism requires owners or operations to notify the Administrator of their commitment to maintaining emissions below major source levels. This notification would be included in the Precompliance Report, and would include recordkeeping and reporting procedures. The EPA requests comments on whether this provision, contained in § 63.1290(c)(1) of the proposed rule, is necessary. In addition, the EPA requests comments on any amendments to the provision that would make it more useful or understandable.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112(d) of the CAAA. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources, considering costs and other impacts. This control level is referred to as MACT.

The MACT floor is the least stringent level allowed for MACT standards. For new sources, the standards for a source category or subcategory ''shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator'' (section 112(d)(3)). Existing source standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3)). These two minimum levels of control define the MACT floor for new and existing sources. When the selection of MACT considers control levels more stringent than the MACT floor (described below), its selection must reflect consideration of the cost of achieving the emission reduction, any non-air quality, health, and environmental impacts, and energy requirements.

IV. Summary of Proposed Standards

This section provides a summary of the proposed regulation. The full regulatory text is available in Docket No. A–95–48, directly from the EPA, or from the Technology Transfer Network (TTN) on the EPA's electronic bulletin boards. More information on how to obtain a copy of the proposed regulation is provided at the beginning of the **SUPPLEMENTARY INFORMATION** section of this document.

A. Source Categories To Be Regulated

These proposed standards would regulate HAP emissions from facilities that produce slabstock, molded, or rebond flexible polyurethane foam, provided that a facility is a major source or is located at a plant site that is a major source. Flexible polyurethane foam processes meeting one of three criteria are exempted from the regulation: (1) A process located at a plant site, where the plant site is limited by a federally enforceable limit to emissions less than 10 tons per year of any single HAP and less than 25 tons per year of all HAP; (2) a process exclusively dedicated to the fabrication of flexible polyurethane foam; and (3) a research and development process.

B. Pollutants To Be Regulated

The HAP currently emitted by the facilities covered by this proposed rule include methylene chloride, toluene diisocyanate, methyl chloroform, methylene diphenyl diisocyanate, propylene oxide, diethanolamine, methyl ethyl ketone, methanol, and toluene. Emission of any of these HAP or any other HAP that are emitted from emission points discussed in the next section will be affected. Methylene chloride, which comprises over 98 percent of the total HAP emissions from this industry, will be the primary HAP affected.

C. Affected Emission Points

As noted above, three basic areas of the foam production facility are covered by the proposed regulation: (1) raw material storage; (2) production equipment and associated piping, ductwork, etc.; and (3) curing and storage areas. These areas contain the following emission points, which are covered by the proposed regulation: storage vessels, equipment leaks, mixhead flush, mold release agents, repair adhesives, equipment cleaning, and ABA.

D. Format of the Standards

This section discusses the selected formats for the proposed standards. The formats and their selection are discussed in more detail in the Basis and Purpose Document for this proposed regulation.

For mixhead flush, mold release agents, and repair adhesives at molded foam facilities; mold release agents and equipment cleaners at rebond foam facilities; and equipment cleaning at slabstock foam facilities, the format of the proposed standards is the prohibition of the use of HAP or HAP-based products.

For storage vessels at slabstock facilities, the format is an equipment standard. For equipment leaks at slabstock facilities, the proposed standards incorporate several formats including equipment standards, design standards, work practices, and operational practices.

For HAP ABA at slabstock facilities, the format of the proposed standards is an emission limitation. The proposed regulation includes provisions for the calculation of an allowable HAP ABA emissions level, which is compared to the actual HAP ABA emissions.

E. Proposed Standards

Existing sources subject to the proposed regulation would be required to comply within three years of the effective date of the regulations, and

new sources would be required to comply at startup. Following is a description of the requirements of the proposed standards.

1. Standards for Molded Flexible Polyurethane Foam Production

At molded foam facilities subject to the proposed rule, emissions from three emission sources are covered by the proposed rule: mixhead flushing, mold release agent usage, and the use of adhesives to repair molded foam. For each of these emission sources, the proposed rule prohibits the use of HAP or HAP-based products at new and existing sources. Other than the initial notification and notification of compliance, there are no associated monitoring, reporting, or recordkeeping requirements for molded foam producers.

2. Standards for Rebond Foam Production

This proposed regulation would prohibit the use of HAP-based cleaners or mold release agents in the production of rebond foam at new and existing sources. Other than the initial notification and notification of compliance, there are no associated monitoring, reporting, or recordkeeping requirements for rebond foam producers.

3. Standards for Slabstock Flexible Polyurethane Foam Production

At slabstock foam facilities subject to the proposed rule, emissions from four types of emission points are covered by the proposed rule: storage vessels, equipment leaks, HAP auxiliary blowing agent (ABA) use, and equipment cleaning. The requirements are separated into two basic categories corresponding to the two major uses of HAP in the slabstock process: (1) diisocyanate used as a reactant in the foam process, and (2) HAP ABA and equipment cleaning. The diisocyanate used in the production of slabstock foam is almost always toluene diisocyanate (TDI), and the HAP ABA used is almost always methylene chloride.

a. Diisocyanate emissions

Emissions of diisocyanate from storage vessels and equipment leaks are covered by the proposed standards. For new and existing sources, there are two compliance options for storage vessels. The vessel can be equipped with a vapor return line that returns vapors displaced during storage vessel filling to the tank truck or rail car. The second option is to equip the storage vessel with a system in which displaced vapors are routed through a carbon adsorption system prior to being discharged to the atmosphere. Storage vessels equipped with carbon adsorption systems must monitor the outlet of the carbon system to detect breakthrough.

Transfer pumps in diisocyanate service must be either sealless pumps, or submerged pump systems that are visually monitored weekly to detect leaks. Any transfer pump leaks detected must be repaired within 15 calendar days. Diisocyanate leaks for other components in diisocyanate service (valves, connectors, and pressure-relief valves) detected by visual, audible, or any other detection method must be repaired within 15 calendar days, as well.

b. HAP ABA storage and equipment leak emissions, HAP ABA emissions from the production line, and equipment cleaning HAP emissions

HAP ABA emissions from three types of emission points—storage vessels, equipment leaks, and the production line—are covered by the proposed regulation. In addition, HAP emissions from equipment cleaning are covered.

This proposed regulation requires that owners or operators comply with requirements for each of the four types of emission points (HAP ABA emissions from storage vessels, equipment leaks, and the production line, and HAP emissions from equipment cleaning). These limitations are described below.

However, since methylene chloride is the primary HAP used as an ABA and as an equipment cleaner, this proposed rule allows owners and operators flexibility in complying with the HAP ABA and equipment cleaning provisions. As an alternative to the emission point specific limitations, the owner or operator can elect to comply with a source-wide emission limitation. Owners or operators selecting the source-wide emission limitation must maintain the combined emissions from all of these sources below the required level. While this option is slightly more stringent than the emission point specific limitations, the EPA believes the flexibility it provides will prove to be beneficial for sources selecting this alternative.

HAP ABA storage vessel requirements. The requirements for HAP ABA storage vessels are identical to the diisocyanate storage vessel requirements discussed above. Storage vessels can be equipped with either a vapor return line to the tank truck or railcar, or a carbon adsorption system. The requirements for new and existing sources are identical.

HAP ABA equipment leaks. These proposed standards contain requirements for pumps, valves, connectors, pressure-relief devices, and open-ended valves or lines in HAP ABA service at new and existing sources.

Pumps and valves must be monitored quarterly for leaks using Method 21, 40 CFR part 60, appendix A, where a leak is defined as an instrument reading of 10,000 parts per million or greater. Leaks must be repaired within 15 calendar days after their detection. Alternatively, leakless pumps can be used. Valves that are designated as unsafe-to-monitor must be monitored as frequently as possible, and difficult-to-monitor valves must be monitored once per year.

Connectors must be monitored annually, unless the connector has been opened or the seal broken. In these cases, the connector must be monitored within 3 months after being returned to HAP ABA service. As with the other components, a leak is defined as an instrument reading of 10,000 parts per million or greater, and a leak must be repaired within 15 calendar days. Connectors can also be designated as unsafe-to-monitor, in which case they must be monitored as frequently as possible.

Pressure-relief devices must be monitored using Method 21 if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method. If a leak is found (10,000 parts per million), it must be repaired within 15 calendar days.

Each open-ended valve or line in HAP ABA service must be equipped with a cap, blind flange, plug, or a second valve.

HAP ABA Emissions from the production line. Compliance with the proposed provisions for HAP ABA emissions from the production line is determined by comparing actual HAP ABA emissions to an allowable emission level for a 12-month period. Compliance must be determined each month for the previous consecutive 12-month period.

This proposed regulation recognizes the variability in HAP ABA emissions for different grades of foam, where a grade of foam is determined by its density and indentation force deflection (IFD). Therefore, the allowable emission level is dependent on the mix of foam grades produced during the 12-month compliance period. The nucleus of the HAP ABA emission limitation provisions is the HAP ABA formulation limitation equation, which determines an allowable amount of HAP ABA for each grade of foam. For existing sources, this equation is:

$$ABA_{limit} = 0.25(IFD) - 19.1\left(\frac{1}{IFD}\right) - 16.2(DEN) - 7.56\left(\frac{1}{DEN}\right) + 36.5$$

Where,

ABA_{limit} = HAP ABA formulation limitation, parts HAP ABA allowed per hundred parts polyol (pph)

IFD = Indentation force deflection (25 percent), pounds

DEN = Density, pounds per cubic foot

Therefore, for each foam grade produced during the 12-month period, the owner or operator must determine the HAP ABA formulation limitation. This equation was developed using actual formulation data from the best performing foam production facilities. The development of this equation is discussed in docket item no. II–B–6.

For new sources, the equation is used to determine the HAP ABA formulation limitation for a limited number of grades. However, the formulation limitation for many higher-density, higher-IFD foams is automatically set to zero.

The allowable HPA ABA emissions for a consecutive 12-month period are calculated as the sum of allowable monthly HAP ABA emissions for each of the individual 12 months in the period. Allowable HAP ABA emissions for each individual month are calculated using the following equation.

$$emiss_{allow,month} = \sum_{j=1}^{m}\left(\sum_{i=1}^{n}\frac{(limit_i)(polyol_i)}{100}\right)j$$

Where,

$emis_{allow,\ month}$= Allowable HAP ABA emissions from the slabstock affected source for the month, pounds

m = number of slabstock foam production lines at the affected source

n = Number of foam grades produced in the month on foam production line j

$limit_i$ = HAP ABA formulation limit for foam grade i, parts HAP ABA per 100 parts polyol

$polyol_i$ = Amount of polyol used in the month in the production of foam grade i on foam production line j, pounds

The amount of polyol used is a key component of this analysis, and it must be determined by continuously monitoring the amount of polyol added to the slabstock foam production line at the mixhead when foam is being poured (see section IV(E)(4)(b) below for more information).

Actual HAP ABA emissions are determined by continuously monitoring the HAP ABA added to the slabstock foam production line at the mixhead when foam is being poured. The allowable monitoring methods for HPA ABA are the same as for polyol.

This proposed regulation also contains provisions to allow for the use of HAP ABA recovery devises. If a recovery device is used, the actual HAP emissions are the difference between the uncontrolled HAP ABA emissions and the HAP ABA recovered. The uncontrolled HAP ABA emissions are determined by monitoring the HAP ABA added to the slabstock foam production line at the mixhead, as discussed above. The amount of HAP ABA recovered is required to be monitored.

As an alternative to the rolling annual compliance approach, owners or operators can elect to comply each month. If this approach is selected, actual and allowable emissions are determined as discussed above. However, compliance is determined by comparing allowable and actual emissions for each month, rather than for the 12 previous months. An advantage of the monthly compliance approach is that a violation of the allowable monthly HAP limitation constitutes up to 30 days of violation for that compliance period, whereas a violation of the allowable annual total of HAP calculated in any given month constitutes up to 365 days of violation for that compliance period. This alternative is allowed because it is more stringent than the rolling annual compliance approach.

Equipment cleaning HAP emissions. Affected sources complying with the emission point specific limitations are prohibited from using a HAP, or a HAP-based product, as an equipment cleaner. Other than the initial notification, there are no associated reporting, recordkeeping, or monitoring requirements.

Source-wide emission limitation alternative. This alternative allows the owner or operator to choose which of the HAP ABA emission sources to control but is only available for sources using no more than one HAP as an ABA and equipment cleaner in the process. In other words, an owner or operator could choose not to control HAP ABA storage vessels and equipment leaks, and achieve a slightly higher HAP ABA emission reduction from the production line. Alternatively, an owner or operator could choose to control emissions from equipment leaks and storage to ''save'' as much HAP ABA as possible for use in the production line. In addition, under the source-wide alternative, a facility could utilize a HAP equipment cleaner, as long as the HAP used as the equipment cleaner is the same chemical as the HAP ABA. However, the equipment cleaning HAP emissions must be offset by emission reductions from one of the HAP ABA emission sources.

An owner or operator electing to comply with the source-wide emission limitation for HAP ABA and equipment cleaning determines compliance by comparing actual emissions from the three HAP ABA emission sources and from equipment cleaning with an allowable emissions level. Compliance is determined each month for the previous 12-month period.

The allowable emissions level is determined using the same procedures discussed above for HAP ABA emissions from the production line. Therefore, the total HAP ABA and equipment cleaning HAP emissions allowed under this alternative are equivalent to the allowed HAP ABA emissions from the production line if the emission point specific alternative is selected.

The actual HAP ABA and equipment cleaning emissions are determined by performing a material balance at the HAP ABA storage vessel, using the following equation:

$$PWE_{actual} = \sum_{i}^{n}\left(ST_{i,begin} - ST_{i,end} + ADD_i\right)$$

Where,

PWE_{actual} = Actual source-wide HAP ABA and equipment cleaning HAP emissions for a month, pounds/month

$ST_{i,begin}$ = Amount of HAP ABA in storage tank i at the beginning of the month, pounds

$ST_{i,end}$ = Amount of HAP ABA in storage tank i at the end of the month, pounds,

ADD_i = Amount of HAP ABA added to storage tank i during the month, pounds
n = Number of HAP ABA storage vessels

Weekly monitoring of the level of HAP ABA in the storage vessels is required, thus providing the beginning and end of month amounts to be used in the above equation. In addition, the amount of each HAP ABA delivery must be determined. The requirements for the monitoring of HAP ABA storage vessel levels and the amount of HAP ABA added during each delivery is discussed later in this section. Emission reductions achieved by recovery devices can be accounted for by monitoring the amount of HAP ABA recovered.

As with the emission point specific limitation for HAP ABA from the production line, the source-wide emission limitation includes a monthly compliance alternative.

4. Monitoring Requirements

This proposed regulation contains monitoring requirements for five situations: (1) storage vessels complying using carbon adsorption systems, (2) polyol and HAP ABA added to the production line at the mixhead, (3) recovered HAP ABA when a recovery device is used, (4) the amount of HAP ABA in a storage vessel, and (5) the amount of HAP ABA added to a storage vessel.

a. Storage Vessel Emissions Monitoring

Storage vessels equipped with carbon adsorption systems must monitor either the concentration of HAP or the concentration of total organic compounds (TOC) at the exit of the adsorption system. Measurements of HAP or TOC concentration must be made using Method 18 or 25A of Appendix A of 40 CFR 60. Outlet concentration measurements must be made monthly (or each time the vessel is filled, if filling occurs less frequently than monthly), or the owner or operator can install a monitoring system that continuously monitors HAP or TOC concentrations during vessel filling.

b. Polyol and HAP ABA Monitoring at the mixhead

All slabstock facilities must continuously monitor the amount of polyol added to the slabstock foam production line at the mixhead when foam is being poured to allow the calculation of allowable emissions. The regulation contains two options for continuously monitoring the polyol added: (1) a device installed and operated to monitor and record pump revolutions per minute, or (2) a flow rate monitoring device installed and operated to measure the amount of polyol added at the mixhead. Either of these devices must be calibrated at least once each 6 months, and must have an accuracy to within ± 2 percent. The owner or operator can develop an alternative monitoring program to monitor the amount of polyol added at the mixhead. The components of an alternative monitoring plan shall include, at a minimum, (1) description of the parameter to be monitored to measure the amount of HAP ABA or polyol added at the mixhead; (2) a description of how the monitoring results will be recorded, and how the results will be converted into amount of HAP ABA or polyol delivered to the mixhead; (3) data demonstrating that the monitoring device is accurate to within ± 2.0 percent; and (4) procedures to ensure that the accuracy of the parameter monitoring results is maintained. These procedures shall, at a minimum, consist of periodic calibration of all monitoring devices. In addition, if an owner or operator elects to comply with the emission point specific limitations, the amount of HAP ABA added to the slabstock foam production line at the mixhead must be continuously monitored when foam is being poured. The requirements for monitoring the amount of HAP ABA added are exactly the same as discussed above for polyol, except that the device must be calibrated at least once per month.

c. Recovered HAP ABA Monitoring

The proposed rule also includes monitoring requirements for slabstock facilities using a recovery device to reduce HAP ABA emissions. The amount of HAP ABA recovered is determined by using a device that monitors the cumulative amount of HAP ABA recovered by the recovery device. This device must be installed, calibrated, maintained, and operated according to the manufacturer's specifications, and must be certified by the manufacturer to be accurate to within ± 2.0 percent.

d. Monitoring to Determine Amount of HAP ABA in a Storage Vessel

The amount of HAP ABA in a storage vessel must be determined by monitoring the HAP ABA level in the storage vessel using a monitoring device that has been certified by its manufacturer to be at least 99 percent accurate, that has either a digital or printed output, and that is calibrated at least once a year. The level of HAP ABA in each storage vessel must be measured and recorded at least once per week.

e. Monitoring to Determine the Amount of HAP ABA Added to a Storage Vessel

The amount of HAP ABA added to a storage vessel during a delivery must be determined using any one of three options. The first option requires that the volume of HAP ABA added to the storage vessel be determined by monitoring the flow rate using a device with an accuracy of 98 percent or greater, and which Is calibrated at least once every six months. The second options allows the owner or operator to calculate the weight of HAP ABA added by determining the difference between the full weight of the transfer vehicle prior to unloading into the storage vessel and the empty weight of the transfer vehicle after unloading has been completed. This weight must be determined using a scale approved by the State or local agencies using the procedures contained in the National Institute of Standards and Technology Handbook 44, or a scale determined to be in compliance with the requirements of the National Institute of Standards and Technology Handbook 44 at least once per year by a registered scale technician. The third option for determining the amount of HAP ABA added to a storage vessel allows the owner or operator to develop an alternative monitoring program. The alternative monitoring program must include, at a minimum, a description of the parameter to be monitored to determine the amount of the addition, a description of how the results of the monitoring will be recorded and converted into the amount of HAP ABA added, data demonstrating the accuracy of the monitoring measurements, and procedures for ensuring that the accuracy of the monitoring measurements is maintained.

5. Testing Requirements

There are two instances where the use of test methods is required. First, for slabstock owners or operators complying with the emission point specific requirements for HAP ABA equipment leaks, testing must be conducted using Method 21 of 40 CFR part 60, subpart A.

Second, all slabstock affected sources must test each grade of foam produced during a single production ''run'' to verify the IFD and density, as these are integral inputs into the equation to determine the HAP ABA formulation limitation. This proposed rule requires these parameters to be determined using ASTM D3574 using a sample of foam cut from the center of the foam bun. The maximum sample size for which the IFD and density is determined shall not be

larger than 24 inches by 24 inches by 4 inches.

6. Alternative Means of Emission Limitation

This proposed regulation also contains provisions to allow an owner or operator to request approval to use an alternative means of emission limitation. Examples of alternative means of emission limitation could be the reduction of HAP ABA by a combustive device, use of a storage tank control not mentioned in the regulation, or an alternative program to reduce HAP ABA equipment leak emissions. The request, which may be submitted in the precompliance report for existing sources, the application for construction or reconstruction for new sources, or at any other time after the initial compliance, must include a complete description of the alternative means of emission limitation and documentation demonstrating equivalency with the requirements in the regulation. The owner or operator can begin using the alternative means of emission limitation upon approval of the request by the Administrator.

7. Applicability of General Provisions

The General Provisions for Part 63; 40 CFR 63, Sub Part A; create the technical and administrative framework for implementing national emission standards established under section 112 of the Clean Air Act. The General Provisions establish baseline applicable requirements for activities such as performance testing, monitoring, notifications, and recordkeeping and reporting, and they also implement statutory provisions such as compliance dates for new and existing sources and preconstruction review requirements. The General Provisions apply to all sources that are affected by Part 63 standards, including the proposed standard for flexible polyurethane foam production. However, certain requirements in the General Provisions may be overridden in individual standards. This proposed regulation contains a table outlining the sections of the General Provisions that are applicable to subpart III, and outlining the General Provisions' sections that are being overridden or not incorporated.

F. Reporting and Recordkeeping Requirements

1. Reporting Requirements

This proposed regulation requires the submittal of six types of reports: (1) initial notification, (2) application for approval of construction or reconstruction, (3) precompliance report, (4) notification of compliance status, (5) semi-annual compliance reports, and (6) other reports. These reports are briefly described below.

a. Initial Notification

Each owner or operator of an affected source must submit an initial notification to the Administrator within 120 days after promulgation of the rule. This initial notification must contain an identification of the facility that is subject to the regulation, the name and address of the owner or operator of the subject facility, and a brief description of the process.

b. Application for Approval of Construction or Reconstruction

Owners or operators constructing a new affected source, or reconstructing an existing process, must submit an application for approval of construction or reconstruction. This application must contain identification information such as location, owner/operator, and the anticipated completion and start-up dates. The application must also contain a description of the planned process and how compliance will be achieved. The application must be submitted as soon as practicable before the construction or reconstruction is planned to commence. A permit application can take the place of this report.

c. Precompliance Report

One year before the compliance date, each slabstock owner or operator must submit a precompliance report. This report must contain notification of whether compliance will be achieved using the emission point specific HAP ABA and equipment cleaning emission limitation or the source-wide emission limitation. The report must also indicate if either of the following compliance options are going to be utilized:

- If compliance will be achieved on a monthly basis for either the emission point specific limitation for HAP ABA emissions from the production line or the source-wide emission limitation.
- If a recovery device will be used to reduce HAP ABA emissions.

This report must also contain a description of how the amount of polyol and HAP ABA (if required) added at the mixhead will be monitored. If the owner or operator is developing an alternative monitoring plan, the plan must be submitted with the precompliance report. In addition, owners or operators of slabstock flexible polyurethane production facilities using a recovery device to reduce HAP ABA emission must include a description of the HAP ABA monitoring and recordkeeping program to determine the amount of HAP ABA recovered in the precompliance report.

Each owner or operator of a source complying with the source-wide emission limitation must submit a description of how the amount of HAP ABA in a storage vessel will be determined, and a description of how the amount of HAP ABA added to a storage vessel during a delivery will be monitored. If the owner or operator is developing an alternative monitoring program for the determination of HAP ABA added to a storage vessel, this program must be submitted with the precompliance report.

The owner or operator of a flexible polyurethane foam production facility that is planning to maintain HAP emissions below major source levels and achieve an enforceable limitation through this subpart, must report this intention in the precompliance report.

d. Notification of Compliance Status

Each owner or operator of an affected source must submit a notification of compliance status report 180 days after the compliance date. For slabstock affected sources, this report must contain notification of the compliance status of diisocyanate storage vessels and dissocyanate transfer pumps. In addition, for slabstock affected sources complying with the emission point specific limitations for HAP ABA, this report must contain compliance information for HAP ABA storage vessels and equipment in HAP ABA service. Molded and rebound affected sources must submit a statement that compliance is being achieved with the standards.

An owner or operator of a flexible polyurethane foam production facility that is committing to an enforceable limit to maintain emissions below major source levels must submit an affidavit stating the annual HAP emissions will not exceed the major source levels in the notification of compliance status. This affidavit must be signed by the owner, operator, or other responsible individual.

e. Semi-annual Compliance Reports

Each slabstock owner or operator must submit semi-annual compliance reports. For affected sources complying with the rolling annual compliance provisions (for either the emission point specific HAP ABA limitations or the source-wide emission limitation), the report must contain the allowable and actual HAP ABA emissions (or allowable and actual HAP ABA and equipment cleaning HAP emissions) for each of the 12-month periods ending on each of the six months in the reporting

period. For affected sources complying with the monthly compliance alternative, the report must contain the allowable and actual HAP ABA emissions (or allowable and actual HAP ABA and equipment cleaning HAP emissions) for each for the six months in the reporting period.

f. Other Reports

A slapstock owner or operator must provide a report to the Administrator indicating the intent to change the selected compliance alternative (emission point specific limitation or source-wide emission limitation). This report must be submitted at least 180 days prior to the change.

Similarly, the intent to switch the compliance method (rolling annual or monthly) must be reported. This report must be submitted at least 12 months prior to the change.

2. Recordkeeping Requirements

Records must be recorded in a form suitable and readily available for expeditious inspection and review, and must be kept for a period of 5 years. At a minimum, the most recent 2 years of data must be retained on-site.

Records are required for storage vessels, equipment leaks, and HAP ABA. If the owner of operator complies with the source-wide emission limitation, no records are required for HAP ABA storage vessel controls (see section ''a'' below) or controls for equipment in HAP ABA service (see section ''b'' below).

a. Storage Vessel Records

All slabstock affected sources must maintain records listing all diisocyanate storage vessels and the type of control utilized to comply with the regulation. For the storage vessels complying through the use of a carbon absorption system, the records must include the design parameters of the system and the monitoring records.

(vi) Records of all calibrations for each device used to measure the amount of HAP ABA in the storage vessel, conducted in accordance with § 63.1303(d)(3).

(vii) Records to verify that all scales used to measure the amount of HAP ABA added to the storage vessel meet the requirements of § 63.1303(e)(2). For scales meeting the criteria of § 63.1303(e)(2)(i), this documentation shall be in the form of written confirmation of the State or local approval. For scales complying with § 63.1303(e)(2)(ii), this documentation shall be in the form of a report provided by the registered scale technician.

(d) *Records for sources with enforceable emission limitations below major source levels.* Processes exempted from this subpart through a federally enforceable emission limitation in accordance with § 63.1290(b)(1), and that have notified the Administrator of this self-imposed limitation through § 63.1306(c)(9), shall maintain records to support the emission estimates provided in the annual emission reports, submitted in accordance with § 63.1306(f)(3). These emission estimates may be based on inventory records, material balance calculations, emission tests, or other engineering analyses.

b. Equipment Leak Records

All slabstock affected sources must maintain a list of components in diisocyanate service, and a description of the control utilized for each transfer pump. If the affected source is complying with the emission point specific limitations, then records listing each component in HAP ABA service must also be maintained.

When a leak, as defined in the proposed rule, is detected for any component, the component must be marked with a readily visible identification until the leak is repaired. For valves, the identification must remain until 2 successive months have passed where no leak is detected. Records must be kept specifying when the leak was detected when it was repaired, and when the identification was removed.

c. HAP ABA Records

All slabstock affected sources must keep records integral to the calculation of allowable emissions. These include a daily log of foam runs, and daily records of the amount of polyol added at the mixhead for each grade of foam, and the results of the density and IFD testing for each grade. Monthly, a cumulative record must be maintained listing the foam grades produced during the month, along with the total amount of polyol used for each foam grade, and the corresponding allowable HAP ABA (or HAP ABA and equipment cleaning) emission level. If complying on an annual rolling basis, the allowable HAP ABA (or HAP ABA and equipment cleaning) emission level for the previous 12 consecutive months must also be recorded each month.

For affected sources complying with the emission point specific limitation for HAP ABA emissions from the production line, records must be kept regarding the amount of HAP ABA added at the mixhead each day. In addition, there must also be a cumulative HAP ABA usage record for each month, and a cumulative record for the previous 12 consecutive months (if complying on an annual rolling basis).

For affected sources complying with the source-wide emission limitation, monthly records must be kept regarding the actual HAP ABA and equipment cleaning emissions, as measured at the storage vessel. Also required are daily records of the HAP ABA storage vessel levels and records of the amount of HAP ABA added to the storage vessel during each delivery. If complying on an annual rolling basis, monthly records must be kept of the actual cumulative HAP ABA and equipment cleaning emissions for the previous 12 months.

If an affected source uses a recovery device to reduce HAP ABA emissions, records must be kept regarding the amount of HAP ABA recovered. In addition, records of all required calibrations must be maintained.

d. Records for Sources With Enforceable Emission Limitations Below Major Source Levels

The owner or operator of a flexible polyurethane foam production facility that is committing to an enforceable limit to maintain emissions below major source levels must keep records documenting HAP emissions. These records can consist of basic inventory records and engineering calculations.

V. Request for Comment on Specific Issues

The Administrator welcomes comments from interested persons on any aspect of this proposed standards, and on any statement in the preamble or the referenced supporting documents. These proposed standards were developed on the basis of information available. The Administrator is specifically requesting factual information that may support either the approach taken in these proposed standards or an alternate approach. To receive proper consideration, documentation or data should be provided. Specifically, the EPA is requesting comment and data on the following issue.

The proposed standards for slabstock foam production contain provisions to control emissions of TDI from storage vessels and equipment leaks. However, the standards do not contain provisions to control TDI emissions from the foam production line. At baseline, no facilities in the industry reported control for these TDI emissions; therefore, the MACT floor was determined to be ''no control.'' Further, no control options more stringent than the MACT floor were investigated, since

no demonstrated technology were identified. However, some State and local agencies have requirements affecting sources emitting TDI in their air toxics regulations. One State with such a regulation has expressed concern to the EPA that this proposed regulation will not reduce TDI emissions from foam production. Therefore, the EPA is requesting comments on the need for additional controls for TDI from this industry. The EPA would like to be made aware of any control technologies that are being used, or could be used, to reduce TDI emissions from slabstock foam production lines. Comments should be detailed and include costs, control effectiveness, operation and monitoring requirements, and any other relevant factors to be considered.

For the proposed requirements for HAP ABA emissions from the production line, and source-wide HAP ABA and equipment cleaning HAP emissions, the EPA considered two averaging time formats: (1) Compliance determined monthly for the previous 12 months (i.e., a rolling annual compliance determination), and (2) compliance determined for each individual month. The Agency determined that the rolling annual compliance format was most appropriate for this industry, but the industry was particularly concerned about enforcement implications of this format. Therefore, the proposed rule allows each slabstock facility to choose the individual monthly averaging time as an alternative, because it is more stringent. The EPA is specifically requesting comments from State and local agencies, as well as the industry, on the burdens caused by the inclusion of this choice in the proposed regulation.

The point of compliance for the proposed source-wide HAP ABA and equipment cleaning ABA emission limitation would be the HAP ABA storage vessel, where a monthly material balance would be performed to determine the amount of HAP ABA and HAP equipment cleaner used/emitted. This proposed rule requires sources complying with the source-wide emission limitation to monitor the amount of HAP ABA in each storage vessel at least once per week. These monitoring results are used to determine monthly source-wide HAP ABA emissions. The device used to determine this amount must meet three criteria: (1) It must be certified by its manufacturer to be accurate to within +/ − 1 percent, (2) it must have either a digital or printed output, and (3) it must be calibrated at least once per year. As proposed, the rule would not allow the use of gauge glasses and simple float systems (i.e., float and tape), which are common practices in the industry. The concerns that led the Agency to propose requirements that exclude the use of these devices were the uncertainty of the accuracy of these devices, and the potential errors associated with the visual reading of the level of liquid in the tank. Since the use of these technologies is wide-spread in the slabstock foam industry, the EPA would prefer that the use of these technologies be allowed. However, questions regarding the concerns mentioned above remain unanswered. Therefore, the EPA is requesting comment on the proposed monitoring requirements to determine the amount of HAP ABA in storage vessels. The EPA is also specifically requesting comment on whether the use of gauge glasses, float and tape systems, and other visually-read systems should be allowed under this rule. Commenters that believe that it is appropriate to allow the use of these systems should provide rationale and supporting documentation regarding the accuracy of these systems, measures to ensure the accuracy of visual readings, and calibration procedures.

The EPA estimated that there are 228 molded foam facilities in the U.S. The EPA is requesting comments on this estimate, and any information related to the molded foam production facility population.

This proposed regulation prohibits the use of HAP-based adhesives for molded foam repair. The EPA is requesting comments on the technical feasibility of these requirements.

VI. Summary of Environmental, Energy, Cost, and Economic Impacts

This section presents the air, non-air environmental (waste and solid waste), energy, cost, and economic impacts resulting from the control of HAP emissions under this rule.

A. Facilities Affected by These NESHAP

It is estimated that 176 sources will be subject to the proposed regulation. This consists of 57 slabstock foam facilities, 21 facilities with slabstock and rebond processes, and 98 molded foam facilities. It is assumed that 130 molded foam facilities are area sources, and will not be subject to today's proposed rule. It is also assumed that all rebond facilities not co-located with a slabstock foam process are area sources.

B. Primary Air Impacts

These proposed standards are estimated to reduce HAP emissions from all existing sources of flexible polyurethane foam manufacturing by over 12,500 Mg/yr. This represents a 70 percent reduction from baseline. This includes over 10,400 Mg/yr from slabstock foam production (69 percent reduction from baseline) and over 2,100 Mg/yr from molded foam production (73 percent reduction from baseline). No reduction is expected from rebond foam production, since it is believed that the entire industry has already stopped using HAP cleaners and mold release agents.

C. Other Environmental Impacts

The Agency estimates that there will be minimal secondary environmental impacts from this proposed regulation. There could be a slight increase in volatile organic compound (VOC) air emissions if facilities switch from a HAP-based product to a non-HAP VOC based product for equipment cleaning, mold release agents, mixhead flushes, and repair adhesives. Wastewater could contain minor amounts of HAP if carbon adsorption systems are used to comply with the HAP ABA limitations, but the Agency believes the use of such systems will be rare. The only potential hazardous waste impact would be due to the disposal of spent carbon adsorption canisters used to control storage vessels.

D. Energy Impacts

Due to the use of several control technologies in both slabstock and molded foam there will be some increase in the amount of energy used by this source category. The impact will vary depending on which control technology is chosen by each facility, but is not expected to be significant.

E. Cost Impacts

Cost impacts include the capital costs of new equipment that reduces HAP emissions, the cost of energy required to operate the equipment, operation and maintenance costs, as well as cost savings. Also, cost impacts include the costs of monitoring, recordkeeping, and reporting associated with the proposed standards. Average cost effectiveness ($/Mg of pollutant removed) is also presented as part of cost impacts and is determined by dividing the annual cost by the annual emission reduction.

For the molded subcategory, the estimated total capital investment in $6.1 million, and the total estimated annual cost is almost $760,000 per year. The total annual HAP emission reduction is 2,100 Mg/year, resulting in a cost effectiveness of $360/Mg per year.

For the rebond subcategory, it is anticipated that there will be no cost or environmental impacts, since it is believed that every facility already

complies with these provisions. The regulation will prohibit the future use of HAP-based cleaners and mold release agents in this industry.

For the slabstock subcategory, the total estimated capital investment is around $68 million, and the total estimated annual cost is $7.3 million per year. The total annual HAP emission reduction is over 10,400 Mg/yr, resulting in a cost-effectiveness of around $700/Mg per year.

Therefore, the total capital investment for this proposed regulation is estimated at $74 million. The total estimated annual cost is $8.1 million per year. The total emission reduction is over 12,560 Mg/yr, resulting in an overall cost effectiveness of around $650/Mg per year.

F. Economic Impacts

An economic impact analysis of these proposed standards was prepared to evaluate primary and secondary impacts on (1) the slabstock and molded foam sectors of the flexible polyurethane foam industry, (2) consumers, and (3) society.

For the slabstock foam sector of the industry, the total annualized social cost (in 1994 dollars) of this proposed regulation is $7.18 million. Market price is estimated to increase by 2.20 percent, and the corresponding decrease in market output is estimated to be 1.08 percent. Employment loss is estimated to be 1.09 percent (i.e., 96 jobs).

For the molded foam sector, impacts on price and output are estimated to be smaller than those predicted for the slabstock market. The total annualized social cost (in 1994 dollars) of the proposed standards for the molded foam subcategory is $0.71 million. Price is estimated to increase by 1.14 percent, and the corresponding decrease in market output is estimated to be 0.56 percent. Employment loss in the molded sector is estimated to be 0.67 percent (37 jobs).

However, given the predicted changes in market price and output, the industry will experience increases in the value of shipments (i.e., industry profits), because estimated price increases more than offset the lower production volumes. Since no significant export or import markets exist for the industry (due to prohibitive transportation costs), no impacts on foreign trade are expected.

The analysis also predicts the number of plant closures that may result from the imposition of compliance costs on a facility. For the analysis, worst-case assumption is adopted that the facilities with the highest emission control costs are the least efficient producers in the market. Actual plant closures will be less than that predicted if plants with the highest emission control costs are not the least efficient producers in the industry. In addition, the outcome of predicted closures is sensitive to the wide variety of emission control technologies assigned to the model plants. If the control technology assigned to the representative model plant is different than that which would be chosen by an actual facility, the analysis could overestimate the number of predicted plant closures. Therefore, a sensitivity analysis was performed to test the outcome of closures based on the assignment of control technology to model plants. For the slabstock sector, plant closures are estimated to range from 1 to 3 facilities for this proposed standard. For the molded foam sector, closures are estimated to be zero for this proposed standard (a sensitivity analysis was not performed for the molded foam production subcategory). Given the significant amount of restructuring currently occurring in the industry (mergers, buy-outs, and shut-downs), the number of facility closures that will result from the proposed regulation is likely to be minimal.

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standard in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentation on the proposed standards for flexible polyurethane foam production should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–95–48.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review (except for interagency review materials [section 307(d)(7)(A)]).

C. Executive Order 12866

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875 the EPA has involved State and local Governments in the development of this rule. These governments are not directly impacted by the rule; i.e., they are not required to purchase control systems to meet the requirements of the rule. However, they will be required to implement the rule; e.g., incorporate the rule into permits and enforce the rule. They will collect permit fees that will be used to offset the resource burden of implementing the rule. Three representatives of the State and local governments have been members of the EPA Work Group developing the rule. The Work Group has met numerous times, and comments have been solicited from the Work Group members, including the State representatives; and their comments

have been carefully considered in the rule development. In addition, all States are encouraged to comment on this proposed rule during the public comment period, and the EPA intends to fully consider these comments in the final rulemaking.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by the EPA (ICR) No. 1783.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. EPA (2137); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740.

The information collection is needed as part of the overall compliance and enforcement program required by section 112 of the CAAA. The prescribed records and reports are necessary to enable the EPA to identify sources subject to the emission standards and to ensure that the standards are being achieved. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Information.

The public reporting burden for this collection of information is estimated to average 101 hours per respondent per year. The average burden for the 78 affected slabstock foam producers is somewhat higher than this estimate, due to their monthly recordkeeping and semiannual reporting requirements, while the average burden for the 98 affected molded foam manufacturers is less than 101 hours, since they are only required to submit an initial one-time notification of compliance. No cost burden associated with the purchase of new equipment or technology is estimated to result from this collection of information.

''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 27, 1996 a comment to the OMB is best assured of having its full effect if the OMB receives it by January 27, 1997. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), as amended, Pub. L. 104–121, 110 Stat. 847, the EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities and therefore no initial regulatory flexibility analysis under section 604(a) of the Act is required.

Due to insufficient data on the ownership of the plants in the flexible polyurethane foam industry, an analysis of each parent company in the industry was not feasible. Consequently, the EPA used data collected in the section 114 survey to evaluate the impact on small businesses based on model facilities. That analysis indicates that there is a total of approximately 121 businesses (31 slabstock, 90 molded) that are affected by the proposed regulation, of which approximately 71 are small businesses (18 slabstock, 53 molded).

The calculation of average compliance costs as a percent of revenues is less than one percent for nearly all model facilities in the analysis. The analysis also indicates a potential for business courses ranging from 0 to 3 of the total number of estimated entities. However, because there is insufficient data to determine the exact size of the plants that may close, the analysis cannot determine if these impacts will occur at small businesses. Given the results of the analysis and the use of worst-case assumptions in the closure analysis, the EPA believes that the affect of the proposed regulation on small businesses will be minimal.

G. 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 EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows 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 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 aggregate, or the private sector in any one year, because

they contain no requirements that apply to such governments or impose obligations upon them.

H. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of this proposed regulation, including health, economic and technical issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health and environmental risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 9, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR AFFECTED SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. It is proposed that part 63 be amended by adding subpart III, consisting of §§ 63.1290 through 63.1307, to read as follows:

Subpart III—National Emission Standards for Hazardous Air Pollutant Emissions from Flexible Polyurethane Foam Production

Sec.

Subpart III—National Emission Standards for Hazardous Air Pollutant Emissions from Flexible Polyurethane Foam Production

§ 63.1290 Applicability.

(a) The provisions of this subpart apply to each new and existing flexible polyurethane foam or rebond foam process that meets the criteria listed in paragraphs (a) (1) through (3) of this section:

(1) Produces flexible polyurethane or rebond foam;

(2) Uses a HAP, except as provided in paragraph (c)(2) of this section; and

(3) Is located at a major source plant site.

(b) For the purpose of this subpart, an affected source includes all processes meeting the criteria in paragraphs (a)(1) through (a)(3) of this section that are located at a contiguous plant site.

(c) A process meeting one of criteria listed in paragraphs (c) (1) through (3) of this section shall not be subject to the provisions of this subpart, but shall maintain supporting documentation of the applicable criteria.

(1) A process located at a plant site for which the plant site does not have a potential to emit more than 10 tons per year of any single HAP, or more than 25 tons per year of all HAP. A limitation on potential to emit may be obtained by notifying the Administrator of a commitment to maintain emissions below the major source levels noted in the Precompliance Report, as specified in § 63.1306(c)(9), and following the applicable reporting and recordkeeping procedures.

(2) A process exclusively dedicated to the fabrication of flexible polyurethane foam; or

(3) A research and development process.

§ 63.1291 Compliance schedule.

(a) Existing affected sources shall be in compliance with all provisions of this subpart no later than [3 years from effective date of final rule].

(b) New or reconstructed affected sources shall be in compliance with all provisions of this subpart upon startup.

§ 63.1292 Definitions.

All terms used in this subpart shall have the meaning given them in the Act, in subpart A of this part, and in this section. If a term is defined in subpart A and in this section, it shall have the meaning given in this section for purposes of this subpart.

Auxiliary blowing agent, or ABA, means a low-boiling point liquid added to assist foaming by generating gas beyond that resulting from the isocyanate-water reaction.

Breakthrough means that point in the adsorption step when the mass transfer zone (i.e., the section of the carbon bed where the adsorbate is removed from the carrier gas stream) first reaches the carbon bed outlet as the mass transfer zone moves down the bed in the direction of flow. The breakthrough point is characterized by the beginning of a sharp increase in the outlet adsorbate concentration.

Calibrate means to verify the accuracy of a measurement device against a known standard. For the purpose of this subpart, there are two levels of calibration. The initial calibration includes the verification of the accuracy of the device over the entire operating range of the device. Subsequent calibrations can be conducted for a point or several points in a limited range of operation that represents the most common operation of the device.

Canned motor pump means a pump with interconnected cavity housings, motor rotors, and pump casing. In a canned motor pump, the motor bearings run in the process liquid and all seals are eliminated.

Carbon adsorption system means a system consisting of a tank or container that contains a specific quantity of activated carbon. For the purposes of this subpart, a carbon adsorption system is used as a control device for storage vessels. Typically, the spent carbon bed does not undergo regeneration, but is replaced.

Connector means flanged, screwed, or other joined fittings used to connect two pipe lines or a pipe line and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered to be connectors for the purposes of this subpart.

Cured foam means flexible polyurethane foam with fully developed physical properties. A period of 12 to 24 hours from pour is typically required to completely cure foam, although mechanical or other devices are sometimes used to accelerate the curing process.

Curing area means the area in a slabstock foam production facility where foam buns are allowed to fully develop physical properties.

Diaphragm pump means a pump where the driving member is a flexible diaphragm made of metal, rubber, or plastic. In a diaphragm pump, there are no packing or seals that are exposed to the process liquid.

Diisocyanate means a compound containing two isocyanate groups per molecule. The most common diisocyanate compounds used in the flexible polyurethane foam industry are toluene diisocyanate (TDI) and methylene diphenyl diisocyanate (MDI).

Flexible polyurethane foam means a flexible cellular polymer containing urea and carbamate linkages in the chain backbone produced by reacting a diisocyanate, polyol, and water.

Flexible polyurethane foam process means the equipment used to produce a flexible polyurethane foam product. For the purpose of this subpart, the flexible polyurethane foam process includes raw material storage; production equipment and associated piping, ductwork, etc.; and curing and storage areas.

Grade of foam means foam with a distinct combination of indentation force deflection (IFD) and density values.

HAP ABA means methylene chloride, or any other Hap compound used as an auxiliary blowing agent.

High-pressure mixhead means a mixhead where mixing is achieved by impingement of the high pressure streams within the mixhead.

Identation Force Deflection (IFD) means a measure of the load bearing capacity of flexible polyurethane foam. IFD is generally measured as the force (in pounds) required to compress a 50 square inch circular indentor foot into a four inch thick sample, typically 15 inches square or larger, to 25 percent of the sample's initial height.

In diisocyanate service means a piece of equipment that contains or contacts a diisocyanate.

In HAP ABA service means a piece of equipment that contains or contacts a HAP ABA.

Isocyanate means a reactive chemical grouping composed of a nitrogen atom bonded to a carbon atom bonded to an oxygen atom; or a chemical compound, usually organic, containing one or more isocyanate groups.

Magnetic drive pump means a pump where an externally-mounted magnet coupled to the pump motor drives the impeller in the pump casing. In a magnetic drive pump, no seals contact the process fluid.

Metering pump means a pump used to deliver reactants, ABA, or additives to the mixhead.

Mixhead means a device that mixes two or more component streams before dispensing foam producing mixture to the desired container.

Mold release agent means any material which, when applied to the mold surface, serves to prevent sticking of the foam part to the mold.

Molded flexible polyurethane foam means a flexible polyurethane foam that is produced by shooting the foam mixture into a mold of the desired shape and size.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or otherwise operated by the same entity, parent entity, subsidiary, or any combination thereof.

Rebond foam means the foam resulting from a process of adhering small particles of foam together to make a usable cushioning product. Various adhesives and bonding processes are used. A typical application for rebond foam is for carpet underlay.

Rebond foam process means the equipment used to produce a rebond foam product. For the purpose of this subpart, the rebond foam process includes raw material storage; production equipment and associated piping, ductwork, etc.; and curing and storage areas.

Reconstructed source means an affected source undergoing reconstruction, as defined in subpart A. For the purposes of this subpart, process modifications made to reduce HAP ABA emissions to meet the existing source requirements of this subpart shall not be counted in determining whether or not a change or replacement meets the definition of reconstruction.

Recovery device means an individual unit of equipment capable of and used for the purpose of recovering chemicals for use, reuse, or sale. Recovery devices include, but are not limited to, carbon absorbers, absorbers, and condensers.

Research and development process means a laboratory or pilot plant operation whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and which is not engaged in the manufacture of products for commercial sale.

Run of foam means a continuous production of foam, which may consist of several grades of foam.

Sealless pump means a canned-motor pump, diaphragm pump, or magnetic drive pump, as defined in this section.

Slabstock flexible polyurethane foam means flexible polyurethane foam that is produced in large continuous buns that are then cut into the desired size and shape.

Slabstock flexible polyurethane foam production line includes all portions of the flexible polyurethane foam process from the mixhead to the point in the process where the foam is completely cured.

Storage vessel means a tank or other vessel that is used to store diisocyanate or HAP ABA for use in the production of flexible polyurethane foam. Storage vessels do not include vessels with capacities smaller than 38 cubic meters (or 10,000 gallons).

Transfer pump means all pumps used to transport diisocyanate or HAP ABA that are not metering pumps.

Transfer vehicle means a railcar, tank truck, or other vehicle used to transport HAP ABA to the flexible polyurethane foam facility.

§ 63.1293 Standards for slabstock flexible polyurethane foam production.

Each owner or operator of a new or existing slabstock affected source shall comply with § 63.1294 and either paragraph (a) or (b) of this section:

(a) The emission point specific limitations in §§ 63.1295 through 63.1298, or

(b) For sources that use only one HAP as an ABA and equipment cleaner, the source-wide emission limitation in § 63.1299.

§ 63.1294 Standards for slabstock flexible polyurethane foam production—diisocyanate emissions.

Each new and existing slabstock affected source shall comply with the provisions of this section.

(a) *Diisocyanate storage vessels.* Diisocyanate storage vessels shall be equipped with either a system meeting the requirements in paragraph (a)(1) of this section, or a carbon adsorption system meeting the requirements of paragraph (a)(2) of this section.

(1) The storage vessel shall be equipped with a vapor return line from the storage vessel to the tank truck or rail car that is connected during unloading, and contains no leaks, where

a leak is detected by visual, audible, or any other detection method.

(2) The storage vessel shall be equipped with a carbon adsorption system, meeting the monitoring requirements of § 63.1303(a), that routes displaced vapors through activated carbon before being discharged to the atmosphere.

(b) *Transfer pumps in diisocyanate service.* Each transfer pump in diisocyanate service shall meet the requirements of paragraph (b)(1) or (b)(2) of this section.

(1) The pump shall be a sealless pump; or

(2) The pump shall be a submerged pump system meeting the requirements in paragraphs (b)(2)(i) through (iii) of this section.

(i) The pump is completely immersed in bis(2-ethylhexyl)phthalate (DEHP, CAS #118–81–7), 2(methyloctyl)phthalate (DINP, CAS #68515–48–0), or another neutral oil.

(ii) The pump shall be visually monitored weekly to detect leaks,

(iii) When a leak is detected, it shall be repaired in accordance with the procedures in paragraphs (b)(2)(iii)(A) and (b) of this section.

(A) The leak shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

(B) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. First attempts at repair include, but are not limited to, the following practices where practicable:

(*1*) Tightening of packing gland nuts.

(*2*) Ensuring that the seal flush is operating at design pressure and temperature.

(c) *Other components in diisocyanate service.* If evidence of a leak is found by visual, audible, or any other detection method, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 63.1296(f). The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

§ 63.1295 Standards for slabstock flexible polyurethane foam production—HAP ABA storage vessels.

Each owner or operator of a new or existing slabstock affected source complying with the emission point specific limitation option provided in § 63.1293(a) shall control HAP ABA storage vessels in accordance with the provisions of this section.

(a) Each HAP ABA storage vessel shall be equipped with either a vapor balance system meeting the requirements in paragraph (b) of this section, or a carbon adsorption system meeting the requirements of paragraph (c) of this section.

(b) The storage vessel shall be equipped with a vapor balance system. The owner or operator must ensure that the vapor return line from the storage vessel to the tank truck or rail car is connected during unloading, and that there are no significant leaks in the system.

(c) The storage vessel shall be equipped with a carbon adsorption system, meeting the monitoring requirements of § 63.1303(a), that routes displaced vapors through activated carbon before discharging to the atmosphere.

§ 63.1296 Standards for slabstock flexible polyurethane foam production—HAP ABA equipment leaks.

Each owner or operator of a new or existing slabstock affected source complying with the emission point specific limitation option provided in § 63.1293(a) shall control HAP ABA emissions from leaks from transfer pumps, valves, connectors, pressure-relief valves, and open-ended lines in accordance with the provisions in this section.

(a) *Pumps.* Each pump in HAP ABA service shall be controlled in accordance with either paragraph (a)(1) or (a)(2) of this section.

(1) The pump shall be a sealless pump, or

(2) Each pump shall be monitored for leaks in accordance with paragraphs (a)(2) (i) and (ii) of this section. Leaks shall be repaired in accordance with paragraph (a)(2)(iii) of this section.

(i) Each pump shall be monitored quarterly to detect leaks by the method specified in § 63.1304(a). If an instrument reading of 10,000 parts per million (ppm) or greater is measured, a leak is detected.

(ii) Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. If there are indications of liquids dripping from the pump seal, a leak is detected.

(iii) When a leak is detected, it shall be repaired in accordance with the procedures in paragraphs (a)(2)(iii) (A) and (B) of this section, except as provided in paragraph (f) of this section.

(A) The leak shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

(B) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. First attempts at repair include, but are not limited to, the following practices, where applicable:

(*1*) Tightening of packing gland nuts.

(*2*) Ensuring that the seal flush is operating at design pressure and temperature.

(b) *Valves.* Each valve in HAP ABA service shall be monitored for leaks in accordance with paragraph (b)(1) of this section, except as provided in paragraphs (b) (3) and (4) of this section. Leaks shall be repaired in accordance with paragraph (b)(2) of this section.

(1) Each valve shall be monitored quarterly to detect leaks by the method specified in § 63.1304(a). If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected.

(2) When a leak is detected, the owner or operator shall repair the leak in accordance with the procedures in paragraphs (b)(2) (i) and (ii) of this section, except as provided in paragraph (f) of this section.

(i) The leak shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. First attempts at repair include, but are not limited to, the following practices where practicable:

(A) Tightening of bonnet bolts;

(B) Replacement of bonnet bolts;

(C) Tightening of packing gland nuts; and

(D) Injection of lubricant into lubricated packing.

(3) Any valve that is designated as an unsafe-to-monitor valve is exempt from the requirements of paragraphs (b) (1) and (2) of this section if:

(i) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraphs (b) (1) and (2) of this section; and

(ii) The owner or operator of the valve has a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times, but not more frequently than monthly.

(4) Any valve that is designated as a difficult-to-monitor valve is exempt from the requirements of paragraphs (b) (1) and (2) of this section if:

(i) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface or it is not accessible at any time in a safe manner;

(ii) The process within which the valve is located is an existing source, or the owner or operator designates less

than 3 percent of the total number of valves in a new source as difficult-to-monitor; and

(iii) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

(c) *Connectors.* Each connector in HAP ABA service shall be monitored for leaks in accordance with paragraph (c)(1) of this section, except as provided in paragraphs (c) (3) and (4) of this section. Leaks shall be repaired in accordance with (c)(2) of this section.

(1) Connectors shall be monitored at the times specified in paragraphs (c)(1) (i) through (iii) of this section to detect leaks by the method specified in § 63.1304(a). If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(i) Each connector shall be monitored annually, and

(ii) Each connector that has been opened or has otherwise had the seal broken shall be monitored for leaks within the first 3 months after being returned to HAP ABA service.

(iii) If a leak is detected, the connector shall be monitored for leaks in accordance with paragraph (c)(1) of this section within the first 3 months after its repair.

(2) When a leak is detected, it shall be repaired in accordance with the procedures in paragraphs (c)(2) (i) and (ii) of this section, except as provided in paragraph (c)(4) and paragraph (f) of this section.

(i) The leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(3) Any connector that is designated as an unsafe-to-monitor connector is exempt from the requirements of paragraph (c)(1) of this section if:

(i) The owner or operator determines that the connector is unsafe to monitor because personnel would be exposed to an immediate danger as a result of complying with paragraph (c)(1) of this section; and

(ii) The owner or operator has a written plan that requires monitoring of the connector as frequently as practicable during safe to monitor periods, but not more frequently than annually.

(4) Any connector that is designated as an unsafe-to-repair connector is exempt from the requirements of paragraphs (c)(1) and (c)(2) of this section if:

(i) The owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with paragraph (c)(2) of this section; and

(ii) The connector will be repaired as soon as practicable, but not later than 6 months after the leak was detected.

(d) *Pressure-relief devices.* Each pressure-relief device in HAP ABA service shall be monitored for leaks in accordance with paragraph (d)(1) of this section. Leaks shall be repaired in accordance with paragraph (d)(2) of this section.

(1) Each pressure-relief device in HAP ABA service shall be monitored within 5 calendar days by the method specified in § 63.1304(a) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method. If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) When a leak is detected, the leak shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (f) of this section. The owner or operator shall make a first attempt at repair no later than 5 calendar days after the leak is detected.

(e) *Open-ended valves or lines.*

(1) Each open-ended valve or line in HAP ABA service shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in paragraph (e)(5) of this section.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance or repair.

(3) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(4) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

(5) Open-ended valves or lines in an emergency shutdown system which are designed to open automatically in the event of a process upset are exempt from the requirements of paragraphs (e) (1), (2), (3), and (4) of this section.

(f) *Delay of repair.*

(1) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in diisocyanate or HAP ABA service.

(2) Delay of repair for valves and connectors is also allowed if:

(i) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the fugitive emissions likely to result from delay of repair, and

(ii) The purged material is collected and destroyed or recovered in a control device when repair procedures are effected.

(3) Delay of repair for pumps is also allowed if repair requires replacing the existing seal design with a sealless pump, and repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

§ 63.1297 Standards for slabstock flexible polyurethane foam production—HAP ABA emissions from the production line.

(a) Each owner or operator of a new or existing slabstock affected source complying with the emission point specific limitation option provided in § 63.1293(a)(1) shall control HAP ABA emissions from the slabstock polyurethane foam production line in accordance with the provisions in this section. Compliance shall be determined on a rolling annual basis as described in paragraph (a)(1) of this section. As an alternative, the owner or operator can determine compliance on a monthly basis, as described in paragraphs (a)(2) and (a)(3) of this section.

(1) *Rolling annual compliance.* In determining compliance on a rolling annual basis, actual HAP ABA emissions shall be compared to allowable HAP ABA emissions for each consecutive 12-month period. The allowable HAP ABA emission level shall be calculated based on the production for the 12-month period, resulting in a potentially different allowable level for each 12-month period. Compliance shall be determined each month for the previous 12-month period. The compliance requirements are provided in paragraph (b) of this section.

(2) *Monthly compliance alternative.* As an alternative to determining compliance on a rolling annual basis, an owner or operator can determine compliance by comparing actual HAP ABA emissions to allowable HAP ABA emissions for each month. The allowable HAP ABA emission level shall be calculated based on the production for the month, resulting in a potentially different allowable level each month. The requirements for this monthly compliance alternative are provided in paragraph (c) of this section.

(3) Each owner or operator complying with the monthly compliance alternative described under paragraph

(a)(2) of this section shall include notification of the intent to use this option in the precompliance report.

(4) Each owner or operator electing to change between the compliance methods described under paragraphs (a)(1) and (a)(2) of this section shall notify the Administrator no later than 180 days prior to the change.

(b) *Rolling Annual Compliance.* At each slabstock foam production source complying with the rolling annual compliance provisions described in § 63.1297(a)(1), actual HAP ABA emissions shall not exceed the allowable HAP ABA emission level for a consecutive 12-month period. The actual HAP ABA emission level for a consecutive 12-month period shall be determined using the procedures in paragraph (b)(1) of this section, and the allowable HAP ABA emission level for the corresponding 12-month period shall be calculated in accordance with paragraph (b)(2) of this section.

(1) The actual HAP ABA emissions for a 12-month period shall be calculated as the sum of actual monthly HAP ABA emissions for each of the individual 12 months in the period. Actual monthly HAP ABA emissions shall be based on the amount of HAP ABA added to the slabstock foam production line at the mixhead, determined in accordance with § 63.1303(b). Slabstock foam production sources using recovery devices to reduce HAP ABA emissions shall determine actual monthly HAP ABA emissions using the procedures in paragraph (e) of this section.

(2) The allowable HAP ABA emissions for a consecutive 12-month period shall be calculated as the sum of allowable monthly HAP ABA emissions for each of the individual 12 month shall be calculated using Equation 1.

$$\text{emiss}_{\text{allow,month}} = \sum_{j=1}^{m}\left(\sum_{i=1}^{n}\frac{(\text{limit}_i)(\text{polyol}_i)}{100}\right)j \qquad \text{(Eq. 1)}$$

Where:

$\text{emiss}_{\text{allow, month}}$ = Allowable HAP ABA emissions from the slabstock foam production source for the month, pounds.

m = Number of slabstock foam production lines.

polyol_i = Amount of polyol used in the month in the production of foam grade i on foam production line j, determined in accordance with paragraph (b)(3) of this section, pounds.

n = Number of foam grades produced in the month on foam production line j.

limit_i = HAP ABA formulation limit for foam grade i, parts HAP ABA per 100 parts polyol. The HAP ABA formulation limits are determined in accordance with paragraph (d) of this section.

(3) The amount of polyol used for specific foam grades shall be based on the amount of polyol added to the slabstock foam production line at the mixhead, determined in accordance with the provisions of § 63.1303(b).

(c) *Monthly Compliance Alternative.* At each slabstock foam production source complying with the monthly compliance alternative described in paragraph (a)(2) of this section, actual HAP ABA emissions shall not exceed the corresponding allowable HAP ABA emission level for the same month. The actual monthly HAP ABA emission level shall be determined using the procedures in paragraph (c)(1) of this section, and the allowable monthly HAP ABA emission level shall be calculated in accordance with paragraph (c)(2) of this section.

(1) The actual monthly HAP ABA emission shall be based on the amount of HAP ABA added to the slabstock foam production line at the mixhead, determined in accordance with § 63.1303(b). Slabstock foam production sources using recovery devices to reduce HAP ABA emissions shall determine actual monthly HAP ABA emissions using the procedures in paragraph (e) of this section.

(2) The allowable HAP ABA emissions for the month shall be determined in accordance with Equation 1.

(d) *HAP ABA Formulation Limitations.* The HAP ABA formulation limitations shall be determined in accordance with paragraphs (d)(1) through (d)(3) of this section.

(1) For existing sources, the HAP ABA formulation limitation for each grade of slabstock foam produced shall be determined using Equation 2.

$$\text{ABA}_{\text{limit}} = -0.25(\text{IFD}) - 19.1\left(\frac{1}{\text{IFD}}\right) - 16.2(\text{DEN}) - 7.56\left(\frac{1}{\text{DEN}}\right) + 36.5 \qquad \text{(Eq. 2)}$$

Where:

$\text{ABA}_{\text{limit}}$ = HAP ABA formulation limitation, parts HAP ABA allowed per hundred parts polyol (pph).

IFD = Indentation force deflection, pounds.

DEAN = Density, pounds per cubic foot.

(2) For new sources, the HAP ABA formulation limitation for each grade of slabstock foam produced shall be determined as described in paragraphs (d)(2)(i) through (d)(2)(iv) of this section.

(i) For each foam grade with a density of 0.95 pounds per cubic foot or less, the HAP ABA formulation limitation shall be determined using Equation 2.

(ii) For each foam grade with a density of 1.4 pounds per cubic foot or less, and an IFD of 15 pounds or less, the HAP ABA formulation limitation shall be determined using Equation 2.

(iii) For each foam grade with a density greater than 0.95 pounds per cubic foot and an IDF greater than 15 pounds, the HAP ABA formulation limitation shall be zero.

(iv) For each foam grade with a density greater than 1.40 pounds per cubic foot, the HAP ABA formulation limitation shall be zero.

(3) The IFD and density for each foam grade shall be determined in accordance with § 63.1304(b).

(e) *Compliance using recovery devices.* If a recovery device is used to comply with paragraphs (b) through (c) of this section, the owner or operator shall determine the allowable HAP ABA emissions for each month using Equation 1 in paragraph (b)(2) of this section, and the actual monthly HAP ABA emissions in accordance with paragraph (e)(1) of this section. The owner or operator shall also comply with the provisions of paragraph (e)(2) of this section.

(1) The actual monthly HAP ABA emissions shall be determined using Equation 3.

$$E_{actual} = E_{unc} - HAPABA_{recovered} \quad \text{(Eq. 3)}$$

Where:

E_{actual} = Actual HAP ABA emissions after control, pounds/month.

E_{unc} = Uncontrolled HAP ABA emissions, pounds/month, determined in accordance with paragraph (b)(2) of this section.

$HAPABA_{recovered}$ = HAP ABA recovered, pounds/month, determined in accordance with paragraph (e)(2) of this section.

(2) The amount of HAP ABA recovered shall be determined in accordance with § 63.1303(c).

§ 63.1298 Standards for slabstock flexible polyurethane foam production—HAP emissions from equipment cleaning.

Each owner or operator of a new or existing slabstock affected source complying with the emission point specific limitation option provided in § 63.1293(a)(1) shall not use a HAP, or a HAP-containing product, as an equipment cleaner.

§ 63.1299 Standards for slabstock flexible polyurethane foam production—source-wide emission limitation.

Each owner or operator of a new or existing slabstock affected source complying with the source-wide emission limitation option provided in § 63.1293(a)(2) shall control HAP ABA storage and equipment leak emissions, HAP ABA emissions from the production line, and equipment cleaning HAP emissions in accordance with the provisions in this section. Compliance shall be determined on a rolling annual basis in accordance with paragraph (a) of this section. As an alternative, the owner or operator can determine compliance monthly, as described in paragraph (b) of this section.

(a) *Rolling annual compliance.* Under the rolling annual compliance provisions, actual source-wide HAP ABA storage and equipment leak emissions, HAP ABA emissions from the production line, and equipment cleaning HAP emissions are compared to allowable source-wide emissions for each consecutive 12-month period. The allowable source-wide HAP emission level is calculated based on the production for the 12-month period, resulting in a potentially different allowable level for each 12-month period. While compliance is on an annual basis, compliance shall be determined monthly for the preceding 12-month period. The actual source-wide HAP emission level for a consecutive 12-month period shall be determined using the procedures in paragraph (c) of this section, and the allowable HAP emission level for a consecutive 12-month period shall be determined using the procedures in paragraph (d) of this section.

(b) *Monthly compliance alternative.* As an alternative to determining compliance on a rolling annual basis, an owner or operator can determine compliance by comparing actual HAP emissions to allowable HAP emissions for each month. The allowable source-wide emission level is calculated based on the production for the month, resulting in a potentially different allowable level each month. The actual monthly emission level shall be determined using the procedures in paragraph (c) of this section, and the allowable monthly HAP ABA emission level shall be determined using the procedures in paragraph (e) of this section.

(c) *Procedures for determining actual source-wide HAP emissions.* The actual source-wide HAP ABA storage and equipment leak emissions, HAP ABA emissions from the production line, and equipment cleaning HAP emissions shall be determined using the procedures in this section. Actual source-wide HAP emissions for each consecutive 12-month period shall be calculated as the sum of actual monthly source-wide HAP emissions for each of the individual 12 months in this period. Actual source-wide HAP emissions for each individual month shall be determined using the procedures specified in paragraphs (c) (1) through (3) of this section.

(1) The actual source-wide HAP emissions for a month shall be determined using Equation 4 and the information determined in accordance with paragraphs (c) (2) and (3) of this section.

$$PWE_{actual} = \sum_{i}^{n} \left(ST_{i,begin} - ST_{i,end} + ADD_i \right) \quad \text{(Eq. 4)}$$

Where:

PWE_{actual} = Actual source-wide HAP ABA and equipment cleaning HAP emissions for a month, pounds/month.

n = Number of HAP ABA storage vessels.

$ST_{i,\ begin}$ = Amount of HAP ABA in storage vessel i at the beginning of the month, pounds, determined in accordance with the procedures listed in paragraph (c)(2) of this section.

$ST_{i,\ end}$ = Amount of HAP ABA in storage vessel i at the end of the month, pounds, determined in accordance with the procedures listed in paragraph (c)(2) of this section.

ADD_i = Amount of HAP ABA in storage vessel i at the end of the month, pounds, determined in accordance with the procedures listed in paragraph (c)(1)(3) of this section.

(2) The amount of HAP ABA in a storage vessel shall be determined by monitoring the HAP ABA level in the storage vessel in accordance with § 63.1303(d).

(3) The amount of HAP ABA added to a storage vessel for a given month shall be the sum of the amounts of all individual HAP ABA deliveries that occur during the month. The amount of each individual HAP ABA delivery shall be determined in accordance with § 63.1303(e).

(4) At each slabstock foam production source complying with the monthly compliance alternative described in paragraph (b) of this section, the actual source-wide HAP emissions for each month shall be calculated in accordance with paragraphs (c) (1) through (3) of this section.

(d) The allowable HAP emissions for a consecutive 12-month period shall be calculated as the sum of allowable monthly HAP ABA emissions for each of the individual 12 months in the period. Allowable HAP ABA emissions for each individual month shall be calculated using Equation 5.

$$\text{emiss}_{\text{allow,month}} = \sum_{j=1}^{m}\left(\sum_{i=1}^{n}\frac{(\text{limit}_i)(\text{polyol}_i)}{100}\right)_j \qquad \text{(Eq. 5)}$$

Where:

$\text{emiss}_{\text{allow,month}}$ = Allowable HAP ABA storage and equipment leak emissions HAP ABA emissions from the production line, and equipment cleaning HAP emissions from the slabstock foam production source for the month, pounds.

m = Number of slabstock foam production lines.

polyol_i = Amount of polyol used in the month in the production of foam grade i on foam production line j, determined in accordance with § 63.1303(b), pounds.

n = Number of foam grades produced in the month on foam production line j.

limit_i = HAP ABA formulation limit for foam grade i, parts HAP ABA per 100 parts polyol. The HAP ABA formulation limits are determined in accordance with § 63.1297(d).

§ 63.1300 Standards for molded flexible polyurethane foam production.

Each owner or operator of a new or existing molded affected source shall comply with the provisions in paragraphs (a), (b), and (c) of this section.

(a) A HAP solvent shall not be used as an equipment cleaner to flush the mixhead, nor shall it be used elsewhere at a molded flexible polyurethane foam source.

(b) A HAP-based mold release agent shall not be used in a molded flexible foam source.

(c) A HAP-based adhesive shall not be used to repair foam products in a molded flexible polyurethane foam source.

§ 63.1301 Standards for rebond foam production.

Each owner or operator of a new or existing rebond foam affected source shall comply with the provisions in paragraphs (a) and (b) of this section.

(a) A HAP solvent shall not be used as an equipment cleaner at a rebond foam source.

(b) A HAP-based mold release agent shall not be used in a rebond foam source.

§ 63.1302 Applicability of subpart A requirements.

Table 1 provides cross references to 40 CFR part 63, subpart A, indicating the applicability of the general provisions requirements to subpart III.

§ 63.1303 Monitoring requirements.

Owners and operators of affected sources shall comply with each applicable monitoring provision in this section.

(a) *Monitoring requirements for storage vessel carbon adsorption systems.* Each owner or operator using a carbon adsorption system to meet the requirements of § 63.1294(a) or § 63.1295 shall monitor the concentration level of the HAP or the organic compounds in the exhaust vent stream (or outlet stream exhaust) from the carbon adsorption system monthly and replace the existing carbon with fresh carbon immediately upon indication of carbon breakthrough.

(1) As an alternative to monthly monitoring, the owner or operator can set the monitoring frequency at an interval no greater than 20 percent of the carbon replacement interval, which is established using a design analysis described in paragraphs (a)(1)(i) through (iii) of this section.

(i) The design analysis shall consider the vent stream composition, constituent concentration, flow rate, relative humidity, and temperature.

(ii) The design analysis shall establish the outlet organic concentration level, the capacity of the carbon bed, and the working capacity of activated carbon used for the carbon bed, and

(iii) The design analysis shall establish the carbon replacement interval based on the total carbon working capacity of the carbon adsorption system and the schedule for filling the storage vessel.

(2) Measurement of HAP concentration shall be made using 40 CFR part 60, appendix A, Method 18. The measurement shall be conducted over at least one 5-minute interval during which the storage vessel is being filled.

(b) *Monitoring for HAP ABA and polyol added to the foam production line at the mixhead.*

(1) The owner or operator of each slabstock affected source shall comply with the provisions in paragraph (b)(1)(i) of this section, and the provisions of paragraph (b)(1)(ii) of this section, if applicable.

(i) All slabstock affected sources shall continuously monitor the amount of polyol added at the mixhead when foam is being poured, in accordance with paragraphs (b)(2) and (4) of this section.

(ii) For sources using the emission point specific limitation option provided in § 63.1293(a)(1), the amount of HAP ABA added at the mixhead shall be continuously monitored when foam is being poured in accordance with paragraphs (b)(2)(ii), (3), and (4) of this section.

(2) The owner or operator shall monitor either:

(i) Pump revolutions; or

(ii) Flow rate.

(3) The device used to monitor the parameter from paragraph (b)(2) shall have an accuracy to within ± 2.0 percent of the HAP ABA being measured, and shall be calibrated initially, and periodically, in accordance with paragraph (b)(3) (i) or (ii) of this section.

(i) For polyol pumps, the device shall be calibrated at least once each 6 months.

(ii) For HAP ABA pumps, the device shall be calibrated at least once each month.

(4) Measurements must be recorded at the beginning and end of the production of each grade of foam within a run of foam.

(5) As an alternative to the monitoring described in paragraphs (b) (2) through (4) of this section, the owner or operator may develop an alternative monitoring program. The components of an alternative monitoring plan shall include, at a minimum, the items listed in paragraphs (b)(5) (i) through (iv) of this section.

(i) A description of the parameter to be continuously monitored when foam is being poured to measure the amount of HAP ABA or polyol added at the mixhead.

(ii) A description of how the monitoring results will be recorded, and how the results will be converted into amount of HAP ABA or polyol delivered to the mixhead.

(iii) Data demonstrating that the monitoring device is accurate to within ± 2.0 percent.

(iv) Procedures to ensure that the accuracy of the parameter monitoring results is maintained. These procedures shall, at a minimum, consist of periodic calibration of all monitoring devices.

(c) *Recovered HAP ABA monitoring.* The owner or operator of each slabstock affected source using a recovery device to reduce HAP ABA emissions shall develop a recovered HAP ABA monitoring and recordkeeping program. The components of these plans shall include, at a minimum, the items listed in paragraphs (c) (1) through (5) of this section.

(1) A device, installed, calibrated, maintained, and operated according to the manufacturer's specifications, that

indicates the cumulative amount of HAP ABA recovered by the solvent recovery device over each 1-month period. The device shall be certified by the manufacturer to be accurate to within ± 2.0 percent.

(2) The location where the monitoring will occur. The location shall ensure that the measurements are taken after HAP ABA has been fully recovered (i.e., after separation from water introduced into the HAP ABA during regeneration).

(3) A description of the parameter to be monitored, and the times the parameter will be monitored.

(4) Data demonstrating that the monitoring device is accurate to within ± 2.0 percent.

(5) Procedures to ensure that the accuracy of the parameter monitoring results is maintained. These procedures shall, at a minimum, consist of periodic calibration of all monitoring devices.

(d) *Monitoring of HAP ABA in a Storage Vessel.* The amount of HAP ABA in a storage vessel shall be determined weekly by monitoring the HAP ABA level in the storage vessel using a device that meets the criteria described in paragraphs (d)(1) through (d)(3) of this section.

(1) A device certified by the manufacturer to be no less than 99 percent accurate,

(2) The device must have either a digital or printed output,

(3) The device must be calibrated initially and at least once per year thereafter.

(e) *Monitoring of HAP ABA added to a Storage Vessel.* The amount of HAP ABA added to a storage vessel during a delivery shall be determined in accordance with either paragraphs (e)(1), (2), or (3) of this section.

(1) The volume of HAP ABA added to the storage vessel shall be determined by monitoring the flow rate using a device with an accuracy of ± 2.0 percent, and calibrated initially and at least once each six months thereafter.

(2) The weight of HAP ABA added to the storage vessel shall be calculated as the difference of the full weight of the transfer vehicle prior to unloading into the storage vessel and the empty weight of the transfer vehicle after unloading into the storage vessel. The weight shall be determined using a scale meeting the requirements of either paragraph (e)(2)(i) or (ii) of this section.

(i) A scale approved by the State or local agencies using the procedures contained in the National Institute of Standards and Technology Handbook 44.

(ii) A scale determined to be in compliance with the requirements of the National Institute of Standards and Technology Handbook 44 at least once per year by a registered scale technician.

(3) As an alternative to the monitoring options described in paragraphs (e)(1) and (e)(2) of this section, the owner or operator may develop an alternative monitoring program shall include, at a minimum, the items listed in paragraphs (e)(3) (i) through (iv) of this section.

(i) A description of the parameter to be monitored to determine the amount of HAP ABA added to the storage vessel during a delivery,

(ii) A description of how the results will be recorded, and how the results will be converted into the amount of HAP ABA added to the storage vessel during a delivery,

(iii) Data demonstrating that the monitoring device is accurate to within ± 2.0 percent, and

(iv) Procedures to ensure that the accuracy of the monitoring measurements is maintained. These procedures shall, at a minimum, consist of periodic calibration of all monitoring devices.

§ 63.1304 Testing Requirements.

Owners and operators of affected sources shall use the test methods listed in this section, as applicable, to demonstrate compliance with this subpart.

(a) *Test Method and Procedures to Determine Equipment Leaks.* Monitoring, as required under §§ 63.1294(c) and 63.1296, shall comply with the following requirements:

(1) Monitoring shall comply with Method 21 of 40 CFR part 60, appendix A.

(2) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except that the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the source fluid, rather than for each individual VOC in the stream. For source streams that contain nitrogen, air, or other inerts which are not HAP or VOC, the average stream response factor shall be calculated on an inert-free basis. The response factor may be determined at any concentration for which monitoring for leaks will be conducted.

(3) The instrument shall be calibrated before use on each days of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air); and

(ii) A mixture of methane and air at a concentration of approximately, 1,000 ppm for all transfer pumps; and 500 ppm for all other equipment, except as provided in paragraph (f)(4)(iii) of this section.

(iii) The instrument may be calibrated at a higher methane concentration (up to 2,000 ppm) than the leak definition concentration for a specific piece of equipment for monitoring that piece of equipment. If the monitoring instrument's design allows for multiple calibration gas concentrations, then the lower concentration calibration gas shall be no higher than 2,000 ppm methane and the higher concentration calibration gas shall be no higher than 10,000 ppm methane.

(5) Monitoring shall be performed when the equipment is in HAP ABA service, in use with an acceptable surrogate volatile organic compound which is not a HAP ABA, or is in use with any other detectable gas or vapor.

(6) If no instrument is available onsite that will meet the performance criteria specified in section 3.1.2(a) of Method 21 of 40 CFR Part 60, appendix A, the readings from an available instrument may be adjusted by multiplying by the average response factor for the stream.

(b) *Test Method to Determine Foam Properties.* The IFD and density shall be determined using ASTM D3574, using a sample of foam cut from the center of the foam bun. The maximum sample size for which the IFD and density is determined shall not be larger than 24 inches by 24 inches by 4 inches.

§ 63.1305 Alternative Means of Emission Limitation.

An owner or operator of an affected source may request approval to use an alternative means of emission limitation, following procedures in this section.

(a) The owner or operator can request approval to use an alternative means of emission, limitation in the precompliance report for existing sources, the application for construction or reconstruction for new sources, or at any time.

(b) This request shall include a complete description of the alternative means of emission limitation.

(c) Each owner or operator applying for permission to use an alternative means of emission limitation under § 63.6(g) shall be responsible for collecting and verifying data to demonstrate the emission reduction achieved by the alternative means of emission limitation.

(d) Use of the alternative means of emission limitation shall not begin until approval is granted by the Administrator in accordance with § 63.6(g).

§ 63.1306 Reporting requirements.

Owners and operators of affected sources shall comply with each applicable reporting provision in this section.

(a) *Initial Notification.* Each affected source shall submit an initial notification in accordance with § 63.9(b).

(b) *Application for Approval of Construction or Reconstruction.* Each owner or operator shall submit an application for approval of construction or reconstruction in accordance with the provisions of § 63.5(d).

(c) *Precompliance Report.* Each slabstock affected source shall submit a precompliance report no later than (12 months before the compliance date). This report shall contain the information listed in paragraphs (c)(1) through (6) of this section, as applicable. Processes requesting a federally enforceable emission limitation in accordance with § 63.1290(b)(1) shall submit a precompliance report in accordance with paragraph (c)(9) of this section.

(1) Whether the source will comply with the emission point specific limitations described in § 63.1293(a), or with the source-wide emission limitation described in § 63.1293(b).

(2) For a source complying with the emission point specific limitations, whether the source will comply on a rolling annual basis in accordance with § 63.1297(b), or will comply with the monthly alternative for compliance contained in § 63.1297(c).

(3) For a source complying with the source-wide emission limitation, whether the source will comply on a rolling annual basis in accordance with § 63.1299(a), or will comply with the monthly alternative for compliance contained in § 63.1299(b).

(4) A description of how HAP ABA and/or polyol added at the mixhead will be monitored, and whether or not the owner or operator is developing an alternative monitoring program, as described in § 63.1303(b)(5).

(5) Notification of the intent to use a recovery device to comply with the provisions of § 63.1297 or § 63.1299.

(6) For slabstock affected sources complying with § 63.1297 or § 63.1299 using of a recovery device, the continuous recovered HAP ABA monitoring and recordkeeping program, developed in accordance with § 63.1303(c).

(7) For sources complying with the source-wide emission limitation, a description of how the amount of HAP ABA in a storage vessel shall be determined.

(8) For sources complying with the source-wide emission limitation, a description of how the amount of HAP ABA added to a storage vessel during a delivery will be monitored, and whether or not the owner or operator is developing an alternative monitoring program, as described in § 63.1303(e)(3).

(9) Processes requesting a federally enforceable emission limitation in accordance with § 63.1290(b)(1) shall submit a precompliance report. This report shall notify the Agency of the intention to limit emissions to less than 10 tons per year of any single HAP, and less than 25 tons per year of all HAP from the plant site. Notification of this status relieves the owner or operator from the provisions of this subpart, other than the requirements to annually report HAP emissions in accordance with (f)(3) of this section, and to maintain records documenting the reported emission estimates.

(d) *Notification of Compliance Status.* Each affected source shall submit a notification of compliance status report no later than (180 days after the compliance date). For slabstock affected sources, this report shall contain the information listed in paragraphs (d)(1) through (3) of this section, as applicable. This report shall contain information listed in paragraph (d)(4) of this section for molded foam processes and in paragraph (d)(5) for rebond foam processes.

(1) A list of diisocyanate storage vessels, along with a record of the type of control utilized for each storage vessel.

(2) For transfer pumps in diisocyanate service, a record of the type of control utilized for each transfer pump.

(3) If the source is complying with the emission point specific limitations of § § 63.1294 through 63.1298, the information listed in paragraphs (b)(3)(i) through (iii) of this section.

(i) A list of HAP ABA storage vessels, along with a record of the type of control utilized for each storage vessel.

(ii) A list of pumps, valves, connectors, pressure-relief devices, and open-ended valves or lines in HAP ABA service.

(iii) A list of any modifications to equipment in HAP ABA service made to comply with the provisions of § 63.1296.

(4) A statement that the molded foam affected source is in compliance with § 63.1300, or a statement that molded foam processes at an affected source are in compliance with § 63.1300.

(5) A statement that the rebond foam affected source is in compliance with § 63.1301, or that rebond processes at an affected source are in compliance with § 63.1301.

(e) *Semi-Annual Compliance Reports.* Each slabstock affected source shall submit a compliance report containing the information specified in paragraphs (e)(1) through (3) of this section semiannually no later than 60 days after the end of each 180 day period. The first report shall be submitted no later than 240 days after the date that the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date that the Notification of Compliance Status Report is due.

(1) For slabstock affected sources complying with the rolling annual compliance provisions of either § 63.1297 or § 63.1299, the allowable and actual HAP ABA emissions (or allowable and actual source-wide HAP emissions) for each of the 12-month periods ending on each of the six months in the reporting period. This information is not required to be included in the initial semi-annual compliance report.

(2) For sources complying with the monthly compliance alternative of either § 63.1297 or § 63.1299, the allowable and actual HAP ABA emissions (or allowable and actual source-wide HAP emissions) for each of the six months in the reporting period.

(3) For sources complying with the storage vessel provisions of § 63.1294(a) or § 63.1295 using a carbon adsorption system, instances where the carbon in the system is replaced, along with the date of the replacement.

(4) Any equipment leaks that were not repaired in accordance with § 63.1294(b) or § 63.1296.

(f) *Other Reports.*

(1) *Change in selected emission limitation.* An owner or operator electing to change their slabstock flexible polyurethane foam emission limitation (from emission point specific limitations to a source-wide emission limitation, or vice versa), selected in accordance with § 63.1293, shall notify the Administrator no later than 180 days prior to the change.

(2) *Change in selected compliance method.* An owner or operator changing the period of compliance for either § 63.1297 or § 63.1299 (between rolling annual and monthly) shall notify the Administrator no later than 180 days prior to the change.

(3) *Annual emission reports for area sources.* Processes exempted from this subpart through a federally enforceable emission limitation in accordance with § 63.1290(b)(1), and that have notified the Administrator of this self-imposed limitation through § 63.1306(c)(9), shall

submit an annual emission report. This report shall be submitted once per year and shall report the total HAP emissions for the plant site for the previous 12-month period.

§ 63.1307 Recordkeeping requirements.

The applicable records designated in paragraphs (a) through (c) of this section shall be maintained by owners and operators of processes exempted from this subpart through a federally enforceable emission limitation in accordance with § 63.1290(b)(1) shall maintain records in accordance with paragraph (d) of this section.

(a) *Storage Vessel Records.*

(1) A list of diisocyanate storage vessels, along with a record of the type of control utilized for each storage vessel.

(2) For each slabstock affected source complying with the emission point specific limitations of §§ 63.1294 through 63.1298, a list of HAP ABA storage vessels, along with a record of the type of control utilized for each storage vessel.

(3) For storage vessels complying through the use of a carbon adsorption system, paragraph (a)(3) (i) or (ii), and paragraph (a)(3)(iii) of this section.

(i) Records of dates and times when the carbon absorption system is monitored for carbon breakthrough and the monitoring device reading, when the device is monitored monthly in accordance with § 63.1303(a); or

(ii) For affected sources monitoring at an interval no greater than 20 percent of the carbon replacement interval, in accordance with § 63.1303(a)(1), the records listed in paragraphs (a)(3)(ii) (A) and (B) of this section.

(A) Records of the design analysis, including all the information listed in § 63.1303(a)(1) (i) through (iii), and

(B) Records of dates times when the carbon adsorption system is monitored for carbon breakthrough and the monitoring device reading.

(iii) Date when the existing carbon in the carbon adsorption system is replaced with fresh carbon.

(b) *Equipment Leak Records.*

(1) A list of components as specified in paragraphs (b)(1) (i) and (ii) of this section.

(i) For all affected sources, a list of components in diisocyanate service,

(ii) For affected sources complying with the emission point specific limitations of §§ 63.1294 through 63.1298, a list of components in HAP ABA service.

(2) For transfer pumps in diisocyanate service, a record of the type of control utilized for each transfer pump and the date of installation.

(3) When a leak is detected as specified in § 63.1294(b)(2)(ii), § 63.1294(c), § 63.1296(a)(2), (b)(1), (c)(1), and (d)(1), the requirements listed in paragraphs (b)(3) (i) and (ii) of this section apply:

(i) Leaking equipment shall be identified in accordance with the requirements in paragraphs (b)(3)(i) (A) and through (C) of this section.

(A) A readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment.

(B) The identification on a valve may be removed after it has been monitored for 2-successive months as specified in § 63.1296(b)(1) and no leak has been detected during those 2 months.

(C) The identification on equipment, other than a valve, may be removed after it has been repaired.

(ii) The information in paragraphs (b)(2)(ii) (A) through (G) shall be recorded for leaking components.

(A) The instrument and operator identification numbers and the equipment identification number.

(B) The date the leak was detected and the dates of each attempt to repair the leak.

(C) Repair methods applied in each attempt to repair the leak.

(D) The words ''above leak definition'' if the maximum instrument reading measured by the methods specified in § 63.1296(f) after each repair attempt is equal or greater than the leak definitions for the specified equipment.

(E) The words ''repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(F) The expected date of the successful repair of the leak if a leak is not repaired within 15 days.

(G) The date of successful repair of the leak.

(H) The date the identification is removed.

(c) *HAP ABA Records.*

(1) *Emission Point Specific Limitations—Rolling Annual Compliance and Monthly Compliance Alternative Records.* Each slabstock affected source complying with the emission point specific limitations of §§ 63.1294 through 63.1298, and the rolling annual compliance provisions of § 63.1297(a)(1), shall maintain the records listed in paragraphs (c)(1) (i), (ii), (iii), and (iv) of this section. Each flexible polyurethane foam slabstock source complying with the emission point specific limitations of §§ 63.1294 through 63.1298, and the monthly compliance alternative of § 63.1297(a)(2), shall maintain the records listed in paragraphs (c)(1) (i), (ii), and (iv) of this section.

(i) Daily records of the information listed below in paragraphs (c)(1)(i) (A) through (C) of this section.

(A) A log of foam runs each day, identified by the amount of each grade produced during the run.

(B) Results of the density and IFD testing for each run of foam, conducted in accordance with the procedures in § 63.1304(b).

(C) The amount of polyol added to the slabstock foam production line at the mixhead for each run of foam, determined in accordance with § 63.1303(b).

(ii) Monthly records of the information listed in paragraphs (c)(1)(ii) (A) through (E) of this section.

(A) A listing of all foam grades produced during the month,

(B) For each foam grade produced, the residual HAP formulation limitation, calculated in accordance with § 63.1297(d).

(C) For each foam grade produced, the total amount of polyol used in the month.

(D) The total allowable HAP ABA emissions for the month, determined in accordance with § 63.1297(b)(2).

(E) The total amount of HAP ABA added to the slabstock foam production line at the mixhead during the month, determined in accordance with § 63.1303(b).

(iii) Each source complying with the rolling annual compliance provisions of § 63.1297(b) shall maintain the records listed in paragraphs (c)(1)(iii) (A) and (B) of this section.

(A) The sum of the total allowable HAP ABA emissions for the month and the previous 11 months.

(B) The sum of the total actual HAP ABA emissions for the month and the previous 11 months.

(iv) Records of all calibrations for each device used to measure polyol and HAP ABA added at the mixhead, conducted in accordance with § 63.1303(b)(3).

(2) *Source-Wide Limitations—Rolling Annual Compliance and Monthly Compliance Alternative Records.* Each slabstock affected source complying with the source-wide limitations of § 63.1299, and the rolling annual compliance provisions in § 63.1299(a), shall maintain the records listed in paragraphs (c)(2)(i) through (c)(2)(vii) of this section. Each flexible polyurethane foam slabstock source complying with the source-wide limitations of § 63.1299, and the monthly compliance alternative of § 63.1299(b), shall maintain the records listed in paragraphs (c)(2)(i) through (c)(2)(iii) and paragraphs

(c)(2)(v) through (c)(2)(vii) of this section.

(i) Daily records of the information listed in paragraphs (c)(2)(i) (A) through (C) of this section.

(A) A log of foam runs each day, identified by the grade.

(B) Results of the density and IFD testing for each run of foam, conducted in accordance with the procedures in § 63.1304(b).

(C) The amount of polyol added to the slabstock foam production line at the mixhead for each run of foam, determined in accordance with § 63.1303(b).

(ii) For sources complying with the source-wide emission limitation, weekly records of the storage tank level, determined in accordance with § 63.1303(d).

(iii) Monthly records of the information listed in paragraphs (c)(2)(iii) (A) through (E) of this section.

(A) A listing of all foam grades produced during the month,

(B) For each foam grade produced, the residual HAP formulation limitation, calculated in accordance with § 63.1297(d).

(C) For each foam grade produced, the total amount of polyol used in the month.

(D) The total allowable HAP ABA and equipment cleaning emissions for the month, determined in accordance with § 63.1297(b)(2).

(E) The total actual source-wide HAP ABA emissions for the month, determination in accordance with § 63.1299(c)(1), along with the information listed in paragraphs (c)(2)(iii)(E) (*1*) and (*2*) of this section.

(*1*) The amounts of HAP ABA in the storage vessel at the beginning and end of the month, determined in accordance with § 63.1299(c)(2); and

(*2*) The amount of each delivery of HAP ABA to the storage vessel, determined in accordance with § 63.1299(c)(3).

(iv) Each source complying with the rolling annual compliance provisions of § 63.1299(a) shall maintain the records listed in paragraphs (c)(2)(iv) (A) and (B) of this section.

(A) The sum of the total allowable HAP ABA and equipment cleaning HAP emissions for the month and the previous 11 months.

(B) The sum of the total actual HAP ABA and equipment cleaning HAP emissions for the month and the previous 11 months.

(v) Records of all calibrations for each device used to measure polyol added at the mixhead, conducted in accordance with § 63.1303(b)(3).

TABLE 1 TO SUBPART III.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART III

Subpart A reference	Applies to subpart III	Comment
§ 63.1	Yes	Except that § 63.1(c)(2) is not applicable since area sources are not subject to subpart III.
§ 63.2	Yes.	
§ 63.3	Yes.	
§ 63.4	Yes.	
§ 63.5	Yes.	
§ 63.6	Yes	Except that § 63.6(h) is not applicable since subpart III does not require opacity and visible emission standards.
§ 63.7	No	Performance tests not required by subpart III.
§ 63.8	No	Continuous monitoring, as defined in subpart A, is not required by subpart III.
§ 63.9(a)–(d)	Yes.	
§ 63.9(e)–(g)	No.	
§ 63.9(h)	No	Subpart III specifies Notification of Compliance Status requirements.
§ 63.9(i)–(j) ...	Yes.	
§ 63.10(a)–(b)...	Yes	Except that the records specified in § 63.10(b)(2)(vi) through (xiv) are not required.
§ 63.10(c)	No.	
§ 63.10(d)(1)	Yes.	
§ 63.10(d)(2)–(3).	No.	
§ 63.10(d)(4)–(5).	Yes.	
§ 63.10(e)	No.	
§ 63.10(f)	Yes.	
§ 63.11	Yes.	
§ 63.12	Yes.	
§ 63.13	Yes.	
§ 63.14	Yes.	
§ 63.15	Yes.	

[FR Doc. 96–32237 Filed 12–26–96; 8:45 am]

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Part V

Environmental Protection Agecny

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants Phosphoric Acid Manufacturing and Phosphate Fertilizers Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[IL–64–2–5807; FRL–5656–4]

RIN 2060–AE40 and 2060–AE44

National Emission Standard for Hazardous Air Pollutants Phosphoric Acid Manufacturing and Phosphate Fertilizers Production

AGENCY: Environmental Protection Agency (Agency).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for new and existing major sources in phosphoric acid manufacturing and phosphate fertilizers production plants. Hazardous air pollutants (HAPs) emitted by the facilities covered by this proposed rule include hydrogen fluoride (HF); arsenic, beryllium, cadmium, chromium, manganese, mercury, and nickel (HAP metals); and methyl isobutyl ketone (MIBK) emissions. Human exposure to the HAP constituents in these emissions may be associated with adverse carcinogenic, respiratory, nervous system, dermal, developmental, and/or reproductive health effects. Implementation of the proposed requirements would achieve an emission reduction of HF estimated at 315 megagrams per year (Mg/yr) (345 tons per year [tpy]). The standards would reduce 940 Mg/yr (1035 tpy)of total fluorides and particulate matter containing heavy metals which are regulated pollutants under the Clean Air Act as amended (the Act).

The standards are proposed under the authority of section 112(d) of the Act and are based on the Administrator's determination that phosphoric acid manufacturing and phosphate fertilizers production plants may reasonably be anticipated to emit several of the 189 HAPs listed in section 112(b) of the Act from the various process operations found within the industry. The proposed NESHAP would provide protection to the public by requiring all phosphoric acid manufacturing and phosphate fertilizers plants that are major sources to meet emission standards reflecting the application of the maximum achievable control technology (MACT).

DATES: *Comments.* Comments on the proposed standards must be received on or before February 25, 1997 at the address noted below.

Public hearing. If anyone contacts the Agency requesting to speak at a public hearing, the hearing will be held on February 10, 1997 beginning at 9 a.m. Persons wishing to present oral testimony must contact the Agency by January 21, 1997.

ADDRESSES: *Comments.* Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–94–02 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (formerly known as the Air Docket) (6102), 401 M Street, S.W., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 4 p.m., Monday through Friday. The docket is an organized and complete file of all the information submitted to or otherwise considered by Agency in the development of this proposed rulemaking. For additional information on the Docket and electronic availability see Supplementary Information.

Public Hearing. If anyone contacts the Agency requesting to speak at a public hearing, the hearing will be held at the Agency's Office of Administration Auditorium, Research Triangle Park, North Carolina. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held. Persons wishing to present oral testimony or to inquire as to whether or not a hearing is to be held should notify Ms. Cathy Coats, Minerals and Inorganic Chemicals Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5422.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this proposal, contact Mr. David Painter [telephone number (919) 541–5515], Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Today's proposed rulemaking would apply to process components at new and existing phosphoric acid manufacturing and phosphate fertilizers production plants. Examples of those process components are listed in the following table:

Source category	Examples
Phosphoric acid manufacturing.	Wet Process Phosphoric Acid Plant, Superphosphoric Acid Plant, Phosphate Rock Dryer, Phosphate Rock Calciner, Purified Phosphoric Acid Plant.
Phosphate fertilizers production.	Diammonium and/or Monoammonium Phosphate Plant, Granular Triple Superphosphate Plant, Granular Triple Superphosphate Storage Building.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed regulations. This table lists the types of entities that the Agency is now aware could be potentially regulated. To determine whether your facility could be regulated by the proposed regulations, you should carefully examine the applicability criteria in the proposed rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The principal purposes of the docket are: (1) to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review. The docket index, technical support information, the economic profile of the industry (item II-A–27) and other materials related to this rulemaking are available for review in the docket center or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548 or 7549. The FAX number for the Center is (202) 260–4000. A reasonable fee may be charged for copying docket materials.

In addition to being available in the docket, an electronic copy of today's document which includes the proposed regulatory text is available on the Technology Transfer Network (TTN), one of Agency's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up

to a 14,400 bps modem. If more information on the TTN is needed, call the TTN HELP line at (919) 541–5384.

The information in this preamble is organized as shown below.

I. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

II. Introduction

A. Background

The EPA estimates that up to 550 Mg/yr (605 tpy) of HF, the predominate HAP, and other HAPs are emitted from sources at phosphoric acid manufacturing and phosphate fertilizers production plants at the current level of control. Implementing MACT-level controls is expected to reduce these HAP emissions from regulated sources by about 315 Mg/yr (345 tpy) nationwide. Plants affected by the standards could achieve these reductions by upgrading or installing wet scrubbing systems.

The overall effect would be to raise the control performance of plants in the industry to the level achieved by the best performing plants. In addition to the health and environmental benefits associated with HAP emission reductions, benefits of this action include a decrease in site-specific levels of nonHAP pollutants and lowered occupational exposure levels for employees.

The nationwide capital and annualized costs of the proposed NESHAP, including emission controls and associated monitoring equipment, are estimated at $1.4 million and $862,000/yr, respectively. The economic impacts are predicted to increase prices in all products less than three fourths of a percent. At least one company in the industry is a small entity which would be subject to the proposed standards. The economic impact of the proposed NESHAP on this company is estimated to be low and would not be significant. No production line or plant closures are expected.

The Agency has proposed controls at the MACT-floor level and tailored the requirements to allow less-costly testing and monitoring by using surrogates for HAP emissions.

A detailed description of industry processes and emissions data used to support the standards is presented in the draft ''Technical Support Document for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production NESHAP'' which, along with additional supporting information is included in a memorandum in air docket A–94–02, as item II–B–20. This memorandum is referred to as the TSD in the following discussions.

B. NESHAP for Source Categories

Section 112 of the Act requires that EPA promulgate regulations for the control of HAP emissions from both new and existing major sources. The statute requires the regulations to reflect the maximum degree of reduction in emissions of HAPs that is achievable taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental reduction, and energy requirements. This level of control is commonly referred to as the maximum achievable control technology (MACT).

The control of HAPs is achieved through the promulgation of technology-based emission standards under sections 112(d) and 112(f) and work practice standards under 112(h) for categories of sources that emit HAPs. Emission reductions may be accomplished through the application of measures, processes, methods, systems, or techniques including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage or fugitive emissions point; (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h); or (5) a combination of the above. [See section 112(d)(2).] The EPA may promulgate more stringent regulations at a later date to address residual risk that remains after the imposition of controls. [See section 112(f)(2).]

C. Health Effects of Pollutants

The Act was created, in part, ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population'' (CAA, section 101(b)(1)). Title III of the Act establishes a control technology-based program to reduce stationary source emissions of HAPs. The goal of section 112(d) is to apply such control technology to reduce emissions and thereby reduce the hazard of HAPs emitted from stationary sources.

This proposed rule is technology-based (i.e., based on MACT). The Act's strategy avoids dependence on a risk-based approach which would be limited by incomplete information on what HAPs are emitted, what level of emissions is occurring, what health and safety benchmarks are available to assess risk, what health effects may be caused by certain pollutants, and how best to model these effects, among other things. Because of these issues, a detailed quantitative risk assessment of potential effects from HAPs emitted from phosphoric acid manufacturing and phosphate fertilizer production plants is not included in this rulemaking.

The EPA does recognize that the degree of adverse effects to health can range from mild to severe. The extent and degree to which the health effects may be experienced is dependent upon (1) the ambient concentrations observed

in the area, (2) duration of exposures, and (3) characteristics of exposed individuals (e.g., genetics, age, pre-existing health conditions, and lifestyle) which vary significantly with the population. Some of these factors are also influenced by source-specific characteristics (e.g., emission rates and local meteorological conditions) as well as pollutant-specific characteristics.

Available emission data, collected during development of this proposed NESHAP, show that HF, a number of HAP metals, and MIBK are the most significant HAPs emitted from phosphoric acid manufacturing and phosphate fertilizer production plants. These pollutants have the potential to be reduced by implementation of the proposed emission limits. Following is a summary of the potential health effects associated with exposures, at some level, to emitted pollutants that would be reduced by the standard.

Short-term inhalation exposure to gaseous HF and related fluoride compounds can cause severe respiratory damage in humans, including severe irritation and pulmonary edema. Long-term inhalation exposures to low levels of HF by humans has been reported to result in irritation and congestion of the nose, throat, and bronchi while damage to liver, kidney, and lungs has been observed in animals. Long-term inhalation exposure, at levels of HF well above the ambient concentrations being observed at phosphate fertilizers complexes can result in skeletal fluorosis (i.e., an accumulation of fluoride in the bones). There is generally a lack of information on human health effects associated with exposures to hydrogen fluoride at current ambient air concentrations near phosphate fertilizers complexes. Occupational studies have not specifically implicated inhaled fluoride as a cause of cancer and the Agency has not classified HF with respect to potential carcinogenicity.

Almost all metals appearing on the section 112(b) list of HAPs are emitted from phosphoric acid manufacturing and phosphate fertilizers production facilities. The most important of the nonvolatile metals that would be reduced by the standard are arsenic, beryllium, cadmium, chromium, nickel, and manganese compounds. The major target of toxicity for these metals via inhalation tends to be the respiratory tract, with the exception of manganese, for which the central nervous system is the primary target. These metals can cause a range of effects including mucous membrane irritation (e.g., bronchitis, decreased lung function), gastrointestinal effects, nervous system disorders (from loss of function to tremor and numbness), skin irritation, and reproductive and developmental disorders. Additionally, several of the metals accumulate in the environment and in the human body. Cadmium, for example, is a cumulative pollutant, which can cause kidney effects after the cessation of exposure. Similarly, the onset of effects from beryllium exposure may be delayed months to years. Metals and metal compounds that would be reduced by this proposed rule are also known (arsenic and chromium) and probable (beryllium and cadmium)human carcinogens.

Mercury, a volatile metal, would also be reduced by the proposed standard. All forms of mercury may be characterized as quite toxic, with different health effects associated with different forms of the pollutant. Methyl mercury is the most toxic form of mercury to which humans and wildlife are generally exposed. Exposure to methyl mercury occurs primarily through ingestion of fish. Methyl mercury primarily effects the nervous systems in humans. The range of neurotoxic effects can vary from subtle decrements in motor skills and sensory ability to tremors, inability to walk, convulsions, and death. Exposure to inorganic mercury is associated with renal impairment. Some forms of mercury have also been classified as possible human carcinogens. Exposure to mercury compounds can also cause effects in plants, birds, and non-human mammals. Reproductive effects are the primary concern for avian mercury poisoning.

The organic compound that would be reduced by this standard is MIBK. Some of the human health effects associated with short-term exposure, at some level, to this pollutant include irritation to the eyes and mucous membranes, weakness, headache, nausea, lightheadedness, dizziness, incoordination, and narcosis. Long-term occupational exposure has been observed to cause nausea, headache, burning in the eyes, weakness, insomnia, intestinal pain, and slight enlargement of the liver in humans. No information is available on the carcinogenic effects of MIBK in humans.

D. Phosphoric Acid Manufacturing and Phosphate Fertilizers Production Industry Profile

This section includes general overviews of the two source categories for which NESHAP are being proposed. Phosphoric acid is manufactured by way of two process approaches. One approach is the thermal process whereby purified elemental phosphorous is combusted and hydrated to directly form phosphoric acid. There are currently ten facilities operating in the United States. For the period from 1971–1991, nationwide production of phosphoric acid via the thermal process declined by forty-seven percent and this trend is expected to continue. No new thermal process plants are expected to be constructed. The decline in usage of this process may be attributed to price competition by competitive products, energy costs associated with production of feedstock phosphorous and safety concerns with regard to shipping phosphorous.

The second means of manufacturing phosphoric acid is through wet processes. There are 47 wet acid plants at 21 locations. The basic step for producing phosphoric acid is the acidulation of phosphate rock. Typically, sulfuric acid, phosphate rock and water are reacted with one another to produce phosphoric acid and gypsum. When phosphate rock is acidulated to manufacture wet process phosphoric acid (WPPA), fluorine contained in the rock is released. Fluoride compounds, including HF, are evolved as particulates and gases which are emitted to the atmosphere unless removed from the exhaust stream. Some of these same fluoride compounds also remain in the product acid and are available for release as air pollutants during subsequent processing of the acid. Gypsum is pumped as a slurry to ponds atop stacks of waste gypsum where the liquids separate from the slurry and are decanted for return to the process with process cooling water. The gypsum is discarded as a major solid waste stream. There are 13 acid plants at eight locations which concentrate WPPA to make superphosphoric acid (SPA). Most producers use the vacuum evaporation process. One manufacturer uses the submerged combustion process to achieve the same effect.

The bulk of WPPA is used to produce fertilizers and animal feeds. In addition, two companies now use solvent extraction processes to further refine WPPA into purified phosphoric acid (PPA) for use in food manufacturing or specialized chemical processes. Purified phosphoric acid produced through wet processes now competes directly with acid produced by the thermal process.

There are two major processes employed for the production of phosphate fertilizers. One produces ammoniated phosphate fertilizers in the form of either diammonium phosphate (DAP) or monoammonium phosphate (MAP). Approximately 85 percent of all ammonium phosphates are produced as DAP. Diammonium phosphate and MAP

plants are generally collocated with wet-process phosphoric acid plants. Forty individual production units for DAP or MAP are located at 22 facilities. Plants that produce DAP and MAP are generally co-located with wet-process phosphoric acid plants. Most facilities can produce either product in the same process train.

Diammonium phosphate and MAP are manufactured from phosphoric acid and ammonia. The process consists of three basic steps: reaction, granulation, and finishing operations such as drying, cooling, and screening. Side reactions resulting from the production of ammonium phosphates produce ammonium fluoride, ammonium sulfate, and ammonium fluorosilicate. In addition, some of the fluorine is liberated as SiF_4 and HF. Sources of fluoride emissions from DAP/MAP plants include the reactor, granulator, dryer, cooler, screens, and mills.

The second major process employed in the phosphate fertilizers industry produces granular triple superphosphate (GTSP). Ten production units at seven facilities produce GTSP in the U.S. The primary raw materials used to produce GTSP are WPPA and ground phosphate rock. Plants that produce GTSP are generally collocated with wet-process phosphoric acid plants. Granular triple superphosphate is an impure monocalcium phosphate made by reacting phosphoric acid with ground phosphate rock. After manufacture, the product is sent to a storage building by a conveyor belt which discharges the material into bins or piles for curing. The GTSP is typically held five to ten days to stabilize the composition, after which it is considered cured and ready for shipping. Sources of emissions from GTSP plants include the reactor, the granulator, the dryer, the cooler, the screening and crushing equipment, and the storage building. Fluorides are emitted in both gaseous and particulate form. The reactor and granulator account for about 38 percent of the fluoride emissions; the dryer and screens account for 50 percent, and the storage facilities account for the remainder.

III. Summary of Proposed Standards

A. Applicability

The proposed standards apply to affected sources at each existing, modified, reconstructed, and newly constructed phosphoric acid manufacturing plant and each phosphate fertilizers production plant. All phosphoric acid manufacturing and phosphate fertilizers production plants that are major sources of HAPs would be subject to the standards. Provisions are included in the NESHAP General Provisions (40 CFR part 63, subpart A) for the owner or operator to obtain a determination of applicability. A facility that is determined by EPA to be an area source would not be subject to the NESHAP.

B. Emission Limits and Requirements

The emissions levels being proposed for NESHAP for existing and new sources are given in the tables below. The permit information and test data used to select these proposed limits are presented in the TSD referenced above. The rationale for selection of the individual emissions limits is explained in section V.C. of this notice.

PROPOSED EMISSIONS LIMITATIONS FOR EXISTING PHOSPHORIC ACID MANUFACTURING PLANTS AND PHOSPHATE FERTILIZERS PLANTS

Class of source	Pollutant	Proposed emission limit
Wet Process Phosphoric Acid Plant.	Total Fluorides.	0.020 lb. Total Fluoride (F^-)Per Ton P_2O_5 Feed.
Superphosphoric Acid Plant.	Total Fluorides.	0.010 lb. F^- Per Ton P_2O_5 Feed.
Diammonium and/or Monoammonium Phosphate Plant.	Total Fluorides.	0.060 lb. F^- Per Ton P_2O_5 Feed.
Granular Triple Superphosphate Plant.	Total Fluorides.	0.150 lb. F^- Per Ton P_2O_5 Feed.
Granular Triple Superphosphate Storage Buildings.	Total Fluorides.	5.0 X 10^{-4} lb. F^- Per Hour Per Ton of P_2O_5 Stored.
Phosphate Rock Dryers.	Particulate Matter.	0.2150 lb. PM Per Ton of Rock Feed.
Phosphate Rock Calciners.	Particulate Matter.	0.060 grains PM Per Dry Standard Cubic Foot.
Purified Phosphoric Acid Plants.	MIBK	0.168640 lb. MIBK Per Ton P_2O_5 Feed.

PROPOSED EMISSIONS LIMITATIONS FOR NEW PHOSPHORIC ACID MANUFACTURING PLANTS AND PHOSPHATE FERTILIZERS PLANTS

Class of source	Pollutant	Proposed emission limit
Wet Process Phosphoric Acid Plant.	Total Fluorides.	0.01350 lb. Total Fluoride ($F-$) per ton P_2O_5 Feed.
Superphosphoric Acid Plant.	Total Fluorides.	0.00870 lb. $F-$ per ton P_2O_5 Feed.
Diammonium and/or Monoammonium Phosphate Plant.	Total Fluorides.	0.0580 lb. $F-$ per ton P_2O_5 Feed.
Granular Triple Superphosphate Plant.	Total Fluorides.	0.1230 lb. $F-$ per ton P_2O_5 Feed.
Granular Triple Superphosphate Storage Buildings.	Total Fluorides.	$5.0\times10-4$ lb. $F-$ Per Hour Per Ton of P_2O_5 Stored.
Phosphate Rock Dryers.	Particulate Matter.	0.060 lb. PM Per Ton of Rock Feed.
Phosphate Rock Calciners.	Particulate Matter.	0.040 grains PM Per Dry Standard Cubic Foot.
Purified Phosphoric Acid Plants.	MIBK	0.168640 lb. MIBK Per Ton P_2O_5 Feed.

C. Performance Test and Compliance Provisions

A one-time performance test would be required to demonstrate initial compliance with each applicable numerical limit for total fluorides or particulate matter. The owner/operator would be required to record process and control device operating parameters during the performance test. The owner/operator would be required to maintain scrubber pressure drop and liquid flow rate within plus or minus ten percent of the values recorded during the performance test. Any exceedance of that operating range would be considered a violation of the applicable standard. A source would be allowed up to 30 days to re-test and demonstrate compliance with the numerical limit of the standard. As an alternative to the preceding, the proposed regulations would provide sources the option of establishing ranges of the control device operating ranges on the basis of data derived from previous performance tests

or specially-conducted performance tests. Any exceedance of those ranges would be considered a violation of the numerical limit of the applicable standard.

Compliance with the limitations upon MIBK emissions would be established through inventory and production records and through daily measurements of process parameters.

D. Monitoring Requirements

The proposed monitoring provisions require the owner or operator to continuously monitor the pressure drop and liquid flow rate of scrubbing devices used to control total fluorides or particulate matter. The feed rate of raw materials to the processes would also be continuously monitored.

For PPA plants that emit MIBK, the standards would require continuous monitoring of chiller stack temperature and daily monitoring of MIBK concentrations at two points in the process.

As required by the NESHAP General Provisions (40 CFR part 63, subpart A), the owner or operator also must develop and implement a Startup, Shutdown, and Malfunction Plan.

E. Notification, Recordkeeping, and Reporting Requirements

All notification, recordkeeping, and reporting requirements in the General Provisions would apply to phosphoric acid manufacturing and phosphate fertilizers production facilities. These include: (1) initial notification(s) of applicability, notification of performance test, and notification of compliance status; (2) a report of performance test results; (3) a Startup, Shutdown, and Malfunction Plan with semiannual reports of reportable events (if they occur); and (4) semiannual reports of excess emissions. If excess emissions are reported, the owner or operator must report quarterly until a request to return the reporting frequency to semiannual is approved.

The NESHAP General Provisions (40 CFR part 63, subpart A) require that records be maintained for at least 5 years from the date of each record. The owner or operator must retain the records on site for at least 2 years but may retain the records off site the remaining 3 years. The files may be retained on microfilm, microfiche, on a computer, on computer disks, or on magnetic tape disks. Reports may be made on paper or on a labeled computer disk using commonly available and compatible computer software.

IV. Selection of Proposed Standards

A. Selection of Source Categories

Section 112(c) of the Act directs the Agency to list each category of major and area sources, as appropriate, emitting one or more of the 189 HAPs listed in section 112(b) of the Act. The EPA published an initial list of source categories on July 16, 1992 (57 FR 31576), and may amend the list at any time. ''Phosphoric acid manufacturing and phosphate fertilizers production'' are two of the 174 categories of sources listed in the notice.

For this study, EPA collected information and data through the following: (1) review of existing literature; (2) visits to State air pollution control agencies to obtain plant-specific test data and permits; (3) visits to three plant sites; (4) meetings with representatives of individual companies; (5) meetings with The Fertilizer Institute, an industry trade organization; and (8) meetings with State air pollution control agency personnel. Based on this information and data, EPA believes that 15 facilities may be major sources subject to the NESHAP. As defined in the Act, a major source must have the potential to emit 9.1 Mg/yr (10 tpy) or more of a single HAP or 22.7 Mg/yr (25 tpy) or more of a combination of HAPs.

On December 3, 1993 (58 FR 63941), EPA published a schedule for the promulgation of standards for the sources selected for regulation under section 112(c) of the Act. According to this schedule, MACT standards for this source category must be promulgated no later than November 15, 2000. If standards are not promulgated by May 15, 2002 (18 months following the promulgation deadline), section 112(j) of the Act requires States or local agencies with approved permit programs to issue permits or revise existing permits containing either an equivalent emission limitation or an alternate emission limitation for HAP control.

Section 112 of the Act requires the Agency to establish national standards to reduce air emissions from major sources and certain area sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the Agency to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed and a schedule for development of those NESHAP. The Agency must list all known source categories and subcategories of ''major sources'' that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAP. This list of source categories was published in the Federal Register on July 16, 1992 (57 FR 31576) and includes phosphoric acid manufacturing and phosphate fertilizers production.

For area sources, the Agency examined available data on facilities, emissions, and health and environmental effects of emitted HAPs and concluded that there is no threat of adverse effects to human health or the environment from the area sources in these two source categories. Consequently, the Agency decided not to list the area sources.

B. Selection of Emission Sources and Pollutants

While phosphoric acid manufacturing and phosphate fertilizers production facilities are listed separately for the purposes of section 112 (c) of the Act, they are generally collocated. Phosphoric acid manufacturing facilities provide feedstock for phosphate fertilizer production facilities and much of the phosphoric acid produced in the United States is consumed in the manufacture of fertilizers. Thus, the Agency has chosen to regulate component processes of both source categories through a combined rulemaking action. This course of action was previously adopted when the Agency promulgated new source performance standards (NSPS) (see 40 FR 33152) to limit emissions of total fluoride compounds (which include the HAP HF) from several processes in the phosphate fertilizers industry. The NSPS apply to processes units producing WPPA, SPA, DAP, and GTSP, including GTSP storage buildings.

Once source categories have been listed as major for one or more HAPs, the Act requires that the Agency establish emission limits for all HAP-emitting units at sources within the source category regardless of whether or not those individual units emit HAPs in major quantities. An exception to this occurs when the Agency has listed specific types of sources as major sources and is developing a separate rule for those individual sources. Examples are boilers and cooling towers. For phosphoric acid manufacturing, the Agency explored the need to establish standards for phosphate rock drying and calcination (arsenic, beryllium, cadmium,

chromium, manganese, mercury, and nickel (HAP metals) emissions), WPPA manufacturing (HF emissions), SPA manufacturing (HF emissions), thermal process SPA (phosphorous emissions), and solvent extracted SPA (methyl isobutyl ketone (MIBK) emissions) which is commonly referred to as purified phosphoric acid (PPA).

A review of information for existing thermal process acid plants indicated that none are major sources of HAP emissions nor are they collocated with major sources. The potential for emissions of the HAP phosphorous is quite minimal because phosphorous is extremely reactive with oxygen and, therefore, does not exist in nature as a pure substance. Many plants previously in service have been closed due to economic pressures and no new ones are expected to be built. Since no existing thermal process plants are major sources and no new ones are to be built, there is no benefit to be derived from the development of applicable NESHAP. Given that the manufacture of WPPA, SPA, and PPA cause emission of significant quantities of HAPs and the availability of emission control systems, the Agency elected to develop and propose NESHAP for manufacture of those three products.

The phosphate fertilizers production source category potentially includes production of DAP, MAP, GTSP, normal superphosphate (NSP), and ammonium polyphosphate (APP). No NESHAP were developed for the NSP process because no production occurs at major sources and no stand-alone major sources were identified. Standards were not developed for APP production because the pollutant of concern is ammonia which is not a listed HAP. For the other phosphate fertilizers production processes, emissions limits were developed and are being proposed in today's action.

Today's action proposes NESHAP that would be applicable to new and existing major sources emitting HAP from the phosphoric acid manufacturing and phosphate fertilizers production source categories. For major sources, the rules would apply to each of the following affected sources: (1) WPPA plants; (2) SPA plants; (3) PPA plants; (4) phosphate rock dryers; (5) phosphate rock calciners; (6) DAP/MAP plants; (7) GTSP plants; and (8) GTSP storage facilities. The proposed emission limits are based on an analysis of the available emission test data from the various types of sources present in the source categories. Except for PPA plants, phosphate rock dryers, and phosphate rock calciners, the potentially affected units listed above are subject to NSPS and State regulations which limit emissions of total fluorides. The Agency test methods used to determine compliance with the NSPS measure total fluoride and are not specific to the HAP HF. At the time data were collected for this action, many sources affected by today's proposal were subject to either NSPS or State regulations. No performance test data were provided which specifically measured the HAP HF. Therefore, the database contains many performance tests for total fluorides and none for HF. To support a State air toxics permit application, one company performed tests which indicated that the HF content of emissions from WPPA plants can vary from 28 to 49 percent of total fluoride emissions depending upon whether the phosphate rock has been calcined (docket item II–I–32 cc). Since the wet scrubbing systems used for control of total fluorides are effective at reducing HF emissions, the Agency chose to use total fluorides as a surrogate for HF for those classes of sources for which HF is the regulated pollutant. This approach allows use of the available test data for establishing the MACT level of control and it provides consistency with current Federal and State permits. It would also result in a common basis for permitting in those cases where sources would continue to be covered by existing regulations but not be subject to NESHAP due to their nonmajor status.

Particulate emissions from phosphate rock dryers and calciners, contain HAP metals. Particulate matter emissions from dryers include arsenic, beryllium, cadmium, chromium, manganese, mercury, and nickel. Particulate matter emissions from calciners include arsenic, beryllium, chromium, manganese, mercury, and nickel. However, there are no stack test data specific to HAP metals. All permits and test data are for particulate matter. In the absence of detailed information on HAP metals emissions, the MACT floor has been determined using particulate matter as a surrogate for HAP metals. Accordingly, the proposed emissions limits are expressed as particulate matter.

One PPA plant is a major source of MIBK emissions. For that source, there is sufficient information to directly establish NESHAP for MIBK.

C. Selection of Proposed Standards for Existing and New Sources

1. Background

After EPA has identified the specific source categories or subcategories of major sources to regulate under section 112, it must set MACT standards for each category or subcategory. Section 112 establishes a minimum baseline or ''floor'' for standards. For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. [See section 112(d)(3).] The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the best-performing 5 sources for categories or subcategories with fewer than 30 sources.

After the floor has been determined for a new or existing source in a source category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory. In establishing the standards, EPA may distinguish among classes, types, and sizes of sources within a category or subcategory. [See section 112(d)(1).]

The next step in establishing MACT standards is traditionally the investigation of regulatory alternatives. With MACT standards, only alternatives at least as stringent as the floor may be selected. Information about the industry is analyzed to develop model plants for projecting national impacts, including HAP emission reduction levels and cost, energy, and secondary impacts. Several regulatory alternative levels (which may be different levels of emissions control, equal to or more stringent than the floor levels) are then evaluated to select the regulatory alternative that best reflects the appropriate MACT level. The selected alternative may be more stringent than the MACT floor, but the control level selected must be technically achievable. The regulatory alternatives selected for new and existing sources may be different because of different MACT floors, and separate regulatory decisions may be made for new and existing sources.

The Agency may consider going ''beyond-the-floor'' to require more stringent controls. Here, EPA considers the achievable emission reductions of HAPs (and possibly other pollutants that are co-controlled), cost and economic impacts, energy impacts, and other non-air environmental impacts. The objective is to achieve the maximum degree of emissions reduction without unreasonable economic or other impacts. [See section 112(d)(2).]

Subcategorization within a source category may be considered only when there is enough evidence to demonstrate clearly that there are significant differences among the subcategories. The criteria to consider include process operations (including differences between batch and continuous operations), emission characteristics, and control device applicability.

The EPA examined the processes, the process operations, and other factors to determine if separate classes of units, operations, or other criteria have an effect on air emissions. For phosphoric acid manufacturing and phosphate fertilizers production plants, characteristics of emissions streams and, therefore, effectiveness of control technologies are differentiated by the products being manufactured. Thus, in this rulemaking, the Agency has adopted the overall approach used in the previous development of NSPS and developed proposed emissions limits for major unit operations that manufacture specific products.

2. Emission Limits—General

For existing sources, § 112(d)(3) of the Act requires that the Agency establish NESHAP no less stringent than ''the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has information).'' This language has led to two differing interpretations of the intent of the CAA language. One interpretation is that the Act requires the Agency to establish MACT on the basis of permitted emissions limits. The other interpretation holds that MACT must be established on the basis of actual emissions as established through emissions test data. In the document ''Municipal Waste Combustion: Background Information for Promulgated Standards and Guidelines—Summary of Public Comments and Responses,'' EPA–453/R–95–0136, October 1995, published in support of the December 19, 1995 Federal Register notice (60 FR 65387) for promulgated standards of performance for new municipal waste combustors (MWC) and emission guidelines for existing MWC, the Agency discussed the legislative history and relevant case law at some length. In that discussion, the Agency concluded that Congress did not directly speak to the question at issue. The discussion was focused upon § 129 of the Act. Since sections 129 and 112 are quite similarly worded, the same approach is being applied in this instance. Accordingly, the Agency has applied the test from *Chevron* v. *NRDC,* 467 U.S. 837 (1984) that its interpretation of the Act must be a ''permissible construction'' of the statute.

In this instance, the Agency first notes that it was the clear intent of Congress that, when possible, NESHAP are to be numerical limitations derived from the application of emissions control technologies. As was described above, for existing sources, the limitations may be no less stringent than the average level of control achieved by the best controlled twelve percent of those sources. This is commonly referred to as the MACT floor. As a starting point, the Agency attempted to identify the technology applied to achieve the lowest emissions. Since the HAP HF was the main concern for this standard, the initial approach was focused upon determining MACT for HF. The same approach was later extended to HAP metals for subsequent analyses. After thoroughly searching for studies which directly measured stack emissions of HF, the Agency concluded that there is a paucity of definitive data as to the exact amount of HF actually being emitted, although, as was previously noted, the HF content potentially ranges from 28 to 49 percent of total fluoride. This finding led the Agency to look for other means to establish a technical basis for NESHAP. During its information collection effort, the Agency found that there is a large body of existing data for the surrogate pollutant total fluoride, which the Agency previously designated for control under § 111 of the Act through the development of NSPS. Those NSPS are emissions limitations based upon demonstrated technologies. Given a paucity of direct data on HF emissions and a large body of data developed to demonstrate achievement of permitted emissions which include HF as a component of total fluorides, the Agency chose to use total fluoride as a surrogate for HF in its analyses. By adopting the approach of regulating total fluoride as surrogate for HF, the Agency avails itself of information reflecting the effect of over twenty years of implementation of NSPS and emissions guidelines (EG) which are technology-based standards. The Agency has obtained a wealth of performance data derived from emissions tests conducted to establish compliance with permitted emissions limitations required by NSPS and with State-permitted emissions limitations developed pursuant to EG for previously existing sources. Reviewing this information base reveals that, in general, the best controlled sources for the various processes used differently configured combinations of wet scrubbing devices. Several different types and configurations of wet scrubbing devices were found to give high levels of removal of fluorides. For most sources, the control systems were designed to achieve emissions limits equal to or more stringent than the NSPS. For this rulemaking, the Agency has concluded that permitted emissions constitute the emissions limits which the technological controls were designed to achieve. To determine emissions limits corresponding to MACT floors, the Agency first identified the median of the top twelve percent of permits issued for the best controlled sources for each process. Generally, this resulted in the identification of the third of the five most stringently permitted sources for a given process. After thus identifying the best controlled sources and establishing preliminary MACT floors, the Agency then used the available test data to ascertain that the permit limits were being achieved and to determine if greater degrees of control were actually being achieved in practice. For sources of total fluorides, the range of the available test data showed that the permitted emissions were reflective of the degree of emissions control actually being achieved.

For phosphate rock dryers and calciners, the MACT floors were established using particulate matter as a surrogate for HAP metals. For dryers, there was very little available test data. So, the MACT floor analysis was performed using permitted emissions of particulate matter. For calciners, there were numerous test reports for particulate matter. The permits for calciners were all based upon general process rate allowances which were not developed specifically for phosphate rock calcining. Test data showed that the permits do not reflect the level of emissions reductions achieved in practice. So, for calciners, the MACT analysis was based upon the test data.

One source manufactures a purified phosphoric acid through a solvent extraction method. The plant emits MIBK, which is a HAP. The source has modified its process several times to improve capacity and there is no information which the Agency can use to determine the effects of those modifications upon emissions as determined from inventory records. Therefore, MACT was determined on the basis of the original permitted emissions. Those limits were based upon the engineering design of the controls built into the plant. To that permitted amount, the Agency added an allowance for fugitive emissions of

MIBK known to occur because of utilization of a waste stream in an adjoining fertilizer plant. The permitted emissions were added to the fugitives and divided by permitted production capacity to calculate a unit emissions factor for MIBK based upon the input of P_2O_5.

For new sources, the most stringent permit issued for any given process was adopted as MACT, except for calciners. The calciners limit was based upon test data. Performance test data are presented in the TSD and show that the most stringent permit limits are being achieved in practice.

Having thus identified the floor level of control, the Agency then considered the possibility of setting more stringent limitations. As a part of that consideration, the Agency modeled MACT floor level emissions of HF for the purpose of quantifying potential health concerns. For HF, there is no Agency-approved health bench mark with which to identify potential public exposure and risk problems. A screening level exposure analysis was performed using State agency health bench marks and no health concerns were identified (docket item II–B–14). In addition, the Agency reviewed a detailed exposure and risk assessment performed for a source subject to State air toxics requirements which reached this same conclusion (docket item II–I–32 cc). Besides exploring potential health impacts for HF, the Agency also examined modeling performed by a source for trace metal emissions from calciners subject to the MACT floor level of control. Estimated health risks were minimal. None of the health impacts analyses for existing sources indicated a need to control emissions beyond the levels corresponding to the MACT floors. Therefore, the Agency proposes to establish limits for existing major sources at the floor levels.

During the analysis of public health impacts, the Agency also considered the need for area source standards. A screening level exposure analysis using a ten ton per year of HF model plant and State agency health bench marks did not identify ''a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate).'' Therefore, the Agency does not recommend listing area sources and developing standards.

3. Emission Limits for Classes of Sources

WPPA Plants. The Agency previously promulgated NSPS which limit emissions of total fluorides. Those NSPS appear in 40 CFR Subpart T. For NSPS purposes, a WPPA plant is defined as any plant manufacturing phosphoric acid by reacting phosphate rock and acid. This same definition is applied herein. The NSPS limit total fluoride emissions to 0.02 pounds per ton of P_2O_5 fed to the process. At this time there are 35 WPPA plants and permitted emissions range from 0.0135 to 0.69 pounds of total fluoride per ton of P_2O_5 fed to the process. Twenty five of those plants are permitted at limits equivalent to or more stringent than the NSPS. All plants employ wet scrubbing devices to control total fluoride emissions.

The Act requires that the MACT floor for existing sources in categories with 30 or more sources must be no less stringent than the average emission limitation achieved by the best performing 12 percent of those sources. In this instance, the best performing sources are all subject to permit provisions requiring that they achieve emissions limitations equivalent to or more stringent than the NSPS. For those plants, permitted emissions range from 0.01350 to the NSPS limit of 0.020 pounds of total fluoride per ton of P_2O_5 fed to the process. The median of these permit limits is at the NSPS level of control and this was selected as the MACT floor level. The available test data summarized in the TSD show that the plants which form the basis for the MACT floor are achieving the NSPS level of control. Tested emissions for all plants permitted at or below the MACT floor range from 0.0004 to 0.019 pounds of total fluoride per ton of P_2O_5 fed to the process. Thus, the emissions limit corresponding to the MACT floor, which is the NSPS, is being proposed as MACT for existing WPPA plants.

For new sources, MACT must be as stringent as the emission limitation that is achieved in practice by the best controlled similar source, as determined by the Administrator. Currently, the most stringent permit for a WPPA plant is for the Cargill Industries facility in Riverview Florida which has been permitted at an emission limitation of 0.01350 pounds of total fluoride per ton of P_2O_5 fed to the process. Therefore, this limit is being proposed for new WPPA plants.

During the development of NESHAP, the Agency examined the emission of HF from gypsum and cooling pond systems. Recent testing of pond systems was performed using long path Fourier transform infra-red spectroscopy to typify emissions of HF (docket item II–D–15). The tests indicted that although small quantities of HF may be evolved from pond surfaces, the measured quantities would not be significant in comparison to overall process emissions. The Agency did investigate options for treating pond water to further minimize HF emissions (docket item II–B–9). None of the technologies considered have been successfully demonstrated on a commercial basis when applied to the ores and processes common to the United States. Thus, the Agency concluded that MACT for pond systems is no control.

All the plants which are being used to define MACT discharge scrubber effluent to cooling ponds. Four sources subject to the NSPS pump effluent from scrubbers to evaporative cooling towers where the collected fluorides are subjected to air stripping. This practice renders the air pollution controls largely ineffective for their intended purpose. Accordingly, the proposed NESHAP specifically prohibits this practice. The plants affected by the proposed NESHAP have other options available, such as discharging scrubber effluents to gypsum ponds. This requirement would be applied to both WPPA and SPA plants. The Agency notes that this provision will apply only to liquid discharges from air pollution control devices and is not intended to apply to process equipment.

SPA Plants. The Agency previously promulgated NSPS which limit emissions of total fluorides. Those NSPS appear in 40 CFR Part 60, Subpart U. The NSPS limit total fluoride emissions to 0.01 pounds per ton of P_2O_5 fed to the process. For NSPS purposes, an SPA plant is defined as any facility which concentrates WPPA to 66 percent or greater P_2O_5 content for eventual consumption as fertilizer. For purposes of the proposed NESHAP, the basic NSPS definition for the plant will be adopted but it will not be limited to production of SPA for consumption as fertilizer. The end use of the manufactured SPA is not relevant to the need to control HAP emissions pursuant to the Act. With the exception of one source employing the submerged combustion process, all producers in the United States employ vacuum evaporation to make SPA. The best-controlled plants for which data were available use the vacuum evaporation process. There are twelve SPA plants using vacuum evaporation and permitted emissions range from 0.0087 to 1.1 pounds of total fluoride per ton of P_2O_5 fed to the process. Nine of those plants are permitted at limits equivalent to or more stringent than the NSPS. All plants employ wet scrubbing devices to control total fluoride emissions. Several different scrubber designs are employed.

The Act requires that the MACT floor for existing sources in categories with fewer than 30 sources must be no less stringent than the average emission

limitation achieved by the best performing five of those sources. In this instance, the five best performing sources are all subject to permit provisions requiring that they achieve emissions limitations equivalent to or more stringent than the NSPS. The median of these permit limits is at the NSPS level of control, 0.01 pounds per ton of P_2O_5 fed to the process, and this was selected as the MACT floor level. The available test data summarized in the TSD show that the plants which form the basis for the MACT floor are achieving the NSPS level of control. Tested emissions for all plants permitted at or below the MACT floor range from 0.00013 to 0.00847 pounds of total fluoride per ton of P_2O_5 fed to the process. Thus, the emissions limit corresponding to the MACT floor, which is the NSPS, is being proposed as MACT for existing SPA plants that use the vacuum evaporation process.

The one source which manufactures SPA using a variation of the submerged combustion process requested that the Agency consider a separate subcategory for the process on the basis that a combination of feedstock, final product, and process requirements uniquely influences the level of control achievable at that site. The source provided information (docket item II–D–52) showing that their imported feedstock differs from that of other domestic producers of SPA in that it contains lesser amounts of impurities including radium and magnesium. The lesser amounts of radium are beneficial from the perspective that this reduces the radioactivity of the phosphogypsum waste material resulting from the processes. The lowered magnesium content is important to customers with whom the source has contractual obligations. The negative result of the lesser magnesium content is that it causes increased corrosivity of the acid manufactured at that site. Engineering studies have been unable to resolve the corrosion problem and, so, the source cannot readily convert its production to the vacuum evaporation process. In discussions with its State agency, the source has committed itself to install new air pollution controls and has performed engineering analyses which indicate that the source cannot meet the MACT performance level of the vacuum evaporation process. The potential to meet a level of 0.20 pounds of total fluoride per ton of P_2O_5 fed to the process has been successfully tested in a pilot test. In consideration of the overall environmental and technical factors unique to the existing operations of that source, the Agency has determined that subcategorization of that one existing source is appropriate and that MACT is 0.20 pounds of total fluoride per ton of P_2O_5 fed to the process for existing operations. For a new SPA plant at that site, the Agency would expect that the source could avail itself of the same resources as other companies in the industry and that no special consideration would be appropriate.

For new sources, MACT must be as stringent as the emission limitation that is achieved by the best controlled similar source, as determined by the Administrator. Currently, the best controlled SPA plant achieves a permitted emission limit of 0.0087 pounds of total fluoride per ton of P_2O_5 fed to the process. Emissions test data confirm that this level of control is being achieved in practice. Therefore, this limit is being proposed for new SPA plants.

DAP/MAP Plants. The Agency previously promulgated NSPS which limit emissions of total fluorides from DAP production. Those NSPS appear in 40 CFR Part 60, Subpart V. The NSPS limit total fluoride emissions to 0.06 pounds per ton of P_2O_5 fed to the process. For NSPS purposes, a DAP plant is defined as any plant manufacturing granular DAP by reacting phosphoric acid with ammonia. The NSPS do not include MAP production plants as affected facilities. Available information shows that many production plants are dedicated to produce either DAP or MAP. Other plants are configured and permitted to produce either product using the same equipment. As a part of the Agency's MACT partnership initiative, the Agency met with State agency and industry representatives to discuss issues pertinent to the proposed NESHAP. Several discussions addressed the question of whether to have separate rules for DAP, MAP and combined DAP/MAP production plants. During those discussions it was noted that the plant configurations used to make either one or both products are essentially identical. All plants employ wet scrubbing devices to control total fluoride emissions. Several different scrubber designs were employed. During the MACT partnership discussions, the Agency was advised that technical considerations cause a dual use production plant to be more difficult to control than those dedicated to individual products. All parties to the discussion were in agreement that the current NSPS for DAP is achievable for DAP, MAP or combined DAP/MAP production. After due consideration of these factors, the Agency is proposing that a single emissions limitation should be applied to this class of ammoniated phosphates. Accordingly, the data for plants permitted to produce both products were selected for analysis to establish the MACT floor.

There are 12 plants permitted to produce both DAP and MAP. For those plants, permitted emissions range from 0.0580 to 0.9640 pounds of total fluoride per ton of P_2O_5 fed to the process. The Act requires that the MACT floor for existing sources in categories with fewer than 30 sources must be no less stringent than the average emission limitation achieved by the best performing five of those sources. In this instance, the five best performing sources are all subject to permit provisions requiring that they achieve emissions limitations equivalent to or more stringent than the NSPS. For those plants, permitted emissions range from 0.0580 to the NSPS limit of 0.06 pounds of total fluoride per ton of P_2O_5 fed to the process. The median of these permit limits is at the NSPS level of control and this was selected as the MACT floor level. The available test data summarized in the TSD show that the plants which form the basis for the MACT floor are achieving the NSPS level of control. Tested emissions for all plants permitted at or below the MACT floor range from 0.0021 to 0.0408 pounds of total fluoride per ton of P_2O_5 fed to the process. Thus, the emissions limit corresponding to the MACT floor, which is the NSPS, is being proposed as MACT for existing DAP and/or MAP plants.

For new sources, MACT must be as stringent as the emission limitation that is achieved by the best controlled similar source, as determined by the Administrator. Currently, the best controlled combined DAP/MAP plant achieves a permitted emission limit of 0.00580 pounds of total fluoride per ton of P_2O_5 fed to the process. Emissions test data confirm that this level of control is being achieved in practice. Therefore, this limit is being proposed for new sources producing DAP and/or MAP.

GTSP Production Plants. The Agency previously promulgated NSPS which limit emissions of total fluorides from triple superphosphate production. Those NSPS appear in 40 CFR Part 60, Subpart W. The NSPS limit total fluoride emissions to 0.2 pounds per ton of P_2O_5 fed to the process. For NESHAP purposes, a GTSP plant would be defined as any plant manufacturing GTSP by reacting phosphate rock with phosphoric acid. At this time, there are ten GTSP plants and permitted

emissions range from 0.1230 to 0.760 pounds of total fluoride per ton of P_2O_5 fed to the process. Seven of those plants are permitted at limits equivalent to or more stringent than the NSPS. Six of those plants are permitted at State limits below the NSPS. All plants employ wet scrubbing devices to control total fluoride emissions. Several different scrubber designs are employed.

The Act requires that the MACT floor for existing sources in categories with fewer than 30 sources must be no less stringent than the average emission limitation achieved by the best performing five of those sources. In this instance, the five best performing sources are all subject to permit provisions requiring that they achieve emissions limitations equivalent to or more stringent than the NSPS. The median of the permit limits for the five best controlled existing plants is 0.150 pounds of total fluoride per ton of P_2O_5 fed to the process and this was selected as representing the MACT floor level of control. The available test data summarized in the TSD show that the plants which form the basis for the MACT floor are achieving the permit limit of 0.150 pounds of total fluoride per ton of P_2O_5 fed to the process in practice. Tested emissions for all plants permitted at or below the MACT floor range from 0.00845 to 0.148 pounds of total fluoride per ton of P_2O_5 fed to the process. Thus, an emissions limit equivalent to the MACT floor is being proposed for existing GTSP plants.

For new sources, MACT must be at least as stringent as the emission limitation that is achieved by the best controlled similar source, as determined by the Administrator. Currently, the best controlled GTSP plant achieves a permitted emission limit of 0.01230 pounds of total fluoride per ton of P_2O_5 fed to the process. Emissions test data confirm that this level of control is being achieved in practice. Therefore, this value is being proposed as an emissions limit for new GTSP plants.

GTSP Storage Buildings. The Agency previously promulgated NSPS which limit emissions of total fluorides from GTSP storage buildings. Those NSPS appear in 40 CFR Part 60, Subpart X. The NSPS limit total fluoride emissions to $5.0 \times 10-4$ pounds per hour per ton of P_2O_5 stored. For NESHAP purposes, the same definition used in the NSPS will be used for GTSP storage buildings. At this time there are seven GTSP storage buildings in operation. Of the seven, four are equipped with wet scrubbers to control fluoride emissions. These provide the control technology basis for the MACT floor. In general, the permitted emissions limits reflect apportionments assigned by the operators to meet emissions limitations for their GTSP plants as a whole. Thus, the emissions limits are not based upon the technological performance of control systems. The State air pollution control agency with jurisdiction over most of the sources was contacted and indicated that impacts of emissions from the storage buildings had been considered as a part of the overall emissions allowances for the fertilizer plants. None of the seven existing GTSP storage buildings is subject to the NSPS. Further, the applicable emissions limitations for the controlled buildings are in a format which differs from the NSPS. Permitted emissions are dependent upon the rate at which GTSP is transferred into the buildings. Available data indicate that the actual emission rates are comparable to the NSPS limits.

The Agency previously addressed the issue of determining the best technological approach for establishing emission limits for GTSP storage buildings during the development of the NSPS in 40 CFR Part 60, Subpart X. Those standards reflect the previous judgement of the Agency as to the best approach to controlling emissions of total fluorides from GTSP storage buildings. That same judgement was reflected in the Agency's emissions guidelines for then-existing sources. During development of the proposed NESHAP, the Agency requested the opinions of State air pollution control agencies and the technical representatives of companies which produce phosphate fertilizers. The State representatives concluded that the NSPS approach to setting emissions limits is preferable to the basis for the permitted emissions in that it is clearly based upon technological considerations. The industry representatives noted that the NSPS approach accounts for the effects of the continued curing of GTSP during initial storage and the NSPS also provides consideration of the amount of GTSP stored. Given the similarity of the results of the two approaches and the clear preference of the involved parties for the NSPS format, the Agency has concluded that the NSPS best expresses the MACT floor level of control for existing GTSP storage buildings. Should any new GTSP storage buildings be placed in service, the Agency continues to believe that the NSPS also constitutes the best approach to new source MACT. The NSPS is based upon a demonstrated control technology and directly ties allowable emissions to the quantity of GTSP in storage. Thus, existing and new source MACT is proposed to be a maximum emission of $5.0 \times 10-4$ pounds of total fluorides per hour per ton of P_2O_5 stored.

During the development of the NESHAP, the question was raised as to whether the proposed NESHAP should be applied to GTSP storage buildings which are not co-located with GTSP production plants. The Agency has concluded that the proposed NESHAP should only apply to co-located storage buildings. The reason for this is that the reactions which cause emissions of HF and total fluorides continue for several days after newly manufactured GTSP is placed into storage. This is referred to as curing. Thus, there is a clear reason to place emissions limits upon this class of sources. Opinions differed as to how long appreciable emissions are generated. Material handling problems can occur if GTSP is shipped from the production plant prior to the completion of the curing phase. So, the need for controlling emissions during storage coincides with the need to allow time for curing. Accordingly there is no benefit to be gained from applying the proposed NESHAP to GTSP storage facilities that handle only cured GTSP and are not located at GTSP production plants.

Phosphate Rock Dryers at Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants. On April 16, 1982, the Agency promulgated emissions limits (47 FR 16589) which apply to phosphate rock dryers at phosphate rock plants as 40 CFR Part 60 Subpart NN. The NSPS limit particulate matter emissions to 0.030 kilogram per megagram of phosphate rock feed (0.060 pounds per ton). For NSPS purposes, a dryer is defined as a unit in which the moisture content of phosphate rock is reduced by contact with a heated gas stream. For the proposed NESHAP, the NSPS definition will be adopted. The Agency has found little test data for particulate matter emissions. Initially available permit information indicated that eight dryers were present at seven major sources. One of those dryers is subject to Subpart NN. More recent information provided by industry representatives indicates that two of those dryers have been demolished and that two others are not used as rock dryers. That leaves four dryers from which to establish the MACT floor for existing sources.

The Act requires that the MACT floor for existing sources in categories with fewer than 30 sources must be no less stringent than the average emission limitation achieved by the best performing five of those sources. In this instance, there are only four sources. To

provide consistency with the methodology used elsewhere in this notice, the third or ''median'' dryer was selected as representing the floor level of control. That dryer is limited to 0.215 pounds of particulate matter per ton of rock fed. With no additional information available, the Agency is unable to conclude that a more stringent emissions limit is warranted for dryers. Thus, the emissions limit corresponding to the MACT floor is being proposed as MACT for existing phosphate rock dryers at phosphoric acid manufacturing plants.

For new sources, MACT must be at least as stringent as the emission limitation that is achieved by the best controlled similar source, as determined by the Administrator. Currently, the best controlled dryer achieves a permitted emission limit of 0.060 pounds of particulate matter per ton of rock fed to the process. Emissions test data confirm that this level of control is being achieved in practice. Therefore, this value is being proposed as MACT for new phosphate rock dryers at phosphoric acid manufacturing plants.

Calciners at Phosphoric Acid Manufacturing Plants. On April 16, 1982, the Agency promulgated emissions limits (47 FR 16589) which apply to phosphate rock calciners at phosphate rock plants as 40 CFR Part 60 Subpart NN. For NSPS purposes, a calciner is defined as a unit in which the moisture and organic matter of phosphate rock is reduced within a combustion chamber. For the proposed NESHAP, the NSPS definition will be adopted. Information gathered during the development of proposed NESHAP show that calciners are present at four major sources. None of those calciners are subject to Subpart NN. As previously discussed, the Agency chose to use particulate matter as a surrogate for HAP metal compounds because no speciated test data were available for calciners. All plants use wet scrubbers to control particulate matter. Calciners permitted to operate at one source are not in service at this time. A second source operates two calciners controlled by wet scrubbers. No performance data were available for the second source. A third source operates a calciner controlled by a wet scrubber. Performance test data for the calciner are included in the docket. A fourth source operates six calciners. The calciners are similar in their design and emissions controls. Performance test data for those six are summarized in the TSD. Although speciation factors for HAP metals were available for the fourth source, the enforceable permit limits were for particulate matter. Given that the controls are the same for the best five units, the MACT floor level of control is based upon the use of wet scrubbers. The best performing calciners are permitted in a process rate format which allows the emissions rate to vary as function of process feed rate. For this class of sources, performance data show actual emissions to be well below permitted levels. The Agency has concluded that analysis of test data would best characterize the level of control being achieved in practice. Review of test data indicates that an emission limit equivalent to 0.06 grains of particulate matter per dry standard cubic foot (gr/dscf) is now being achieved by all calciners for which the Agency has data. This level of control was selected as the MACT floor for existing sources. The highest test data point for the calciners constituting the MACT floor was 0.058 gr/dscf. The Agency reviewed health impacts modelling provided by the fourth source and concluded that an ample margin of safety is provided at the MACT floor and that a more stringent standard for existing sources is not indicated. Thus, an emissions limit equivalent to the MACT floor is being proposed for existing calciners.

Emissions test data for the best performing calciner indicated that it could meet a somewhat lower emission limit and that this could be considered the best controlled source for establishing new source MACT. The data showed that a similar new source could achieve an emission limit of 0.04 grains per dry standard cubic foot. This level of control is consistent with that which the Agency selected as best demonstrated technology for similar sources in the NSPS for calciners and dryers in the mineral industries (40 CFR Part 60, Subpart UUU). That standard was promulgated on September 28, 1992 in 57 FR 44503. Thus, the Agency is proposing 0.040 grains per dry standard cubic foot as MACT for new calciners located at phosphoric acid manufacturing plants.

PPA Plants. Two sources in the United States manufacture PPA through the use of solvent extraction to further refine WPPA. One plant uses the HAP compound MIBK as a solvent. This results in permitted losses of MIBK which total approximately 29 tons per year. The second plant uses a different solvent and a different process from which no HAPs are emitted. The Act does not provide clear guidance on the establishment of MACT when less than five sources are present for floor analysis. In this instance, the following facts were considered. The two process designs are distinctly different. The owners of the second plant have patented their process and it is not readily available for licensing by competitors. The PPA produced by the source using MIBK is used in applications which differ in their requirements from the PPA produced by the competing source. Information provided by the owners of the plant using MIBK included information showing that reconstructing their plant to use a non-HAP solvent would result in a control cost of $800,000 per ton of MIBK reduced. This would clearly exceed the value of any environmental benefits to be derived. Thus, the Agency elected to set an emissions limit for MIBK based upon a MACT analysis of the one plant which uses that compound.

The initial permit for the PPA plant in question allows the source to emit 19 tons of MIBK per year from the operation of the plant itself. That amount was determined by engineering calculations to predict the performance of the emissions controls installed at the plant. Information provided by the operator shows an estimated 9.9 tons per year of MIBK in a process waste stream being emitted from an adjoining fertilizer plant. The combined total of 28.9 tons of MIBK is equivalent to 0.16864 pounds of MIBK per ton of P_2O_5 fed to the process. Information listing historical purchases of makeup MIBK provided by the operators indicates that emissions may have exceeded that rate on several occasions. Additional information from the source shows that several changes to the process have been made to increase production. Insufficient information was provided to allow an analysis of how the process changes are affecting emissions. Likewise, no information has been provided to show what options have or could have been pursued to maintain the permitted emissions levels. Absent any basis for determining that the permitted limits are inconsistent with the emission controls installed at the plant, the Agency has elected to use the approach consistently applied to other phosphoric acid manufacturing processes during this rulemaking and to base MACT upon permitted emissions of MIBK. The MACT limit is proposed as 0.16864 pounds of MIBK per ton of P_2O_5 fed to the process. The Agency specifically invites public comment upon this proposed action. Any comments advocating a different standard for emissions of MIBK from PPA plants should be accompanied and supported by data and information that clearly support the commenter's position.

D. Selection of Test Methods

Included in the proposed rules are methods for determining initial compliance as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. The Agency has made every effort to simplify the requirements in the rule. The Agency has also attempted to maintain consistency with existing regulations by either incorporating text from existing regulations or cross-referencing such regulations. Under the proposed rules, total fluoride would serve as a surrogate for HF and particulate matter would serve as a surrogate measure for HAP metals. So, for those standards which would limit emissions of total fluorides or particulate matter, the approaches to testing and monitoring in the corresponding NSPS would be adopted as closely as possible. That is, initial compliance would be determined by a performance test employing Agency Test Method 13 A or B for total fluorides or Method 5 for particulate matter. The owner or operator could also use other alternative test methods subject to approval by the Administrator. The proposed standards would require that sources continuously record and maintain control device pressure drop and liquid flow rate parameters within plus or minus ten percent of the values established during performance testing. Those values would have to be determined concurrently with initial performance testing. The values of the operating parameters would be based upon the average values recorded during three one-hour test runs. This approach to monitoring control device operating parameters and an alternative requested by industry are discussed in the monitoring requirements section of this preamble.

During the development of the proposed NESHAP, two concerns were raised by industry about testing for fluoride emissions. First, the industry suggested that Method 13 B could be simplified. In response, the Agency is proposing to simplify Method 13 B for this source category by eliminating the fusion and distillation steps in the sample preparation. The fusion step is intended to make all fluorides water soluble. For these source categories, preliminary information indicates that all fluorides are water soluble. The distillation step is intended to eliminate analytical interferences. Industry has submitted data that indicates that the distillation step is unneeded for these source categories. At this time the Agency is reviewing data to verify that the requested changes in the test method are reasonable. The changes would not apply to other categories of sources.

The second concern raised was that of how to test uncontrolled GTSP storage buildings using method 13 A or B. Uncontrolled buildings do not have a stack or a single discharge point. Section 63.7 of the general provisions provides that sources may develop site-specific test plans.

The Agency is working with the affected sources and their respective permitting agencies through this site-specific test plan process to develop a consistent methodology for the purpose of determining whether the sources can achieve the emission limits of the proposed standards without add-on controls.

E. Selection of Monitoring Requirements

The proposed standards would require that sources continuously monitor and maintain control device operating parameters within plus or minus ten percent of the values established during performance testing. Since control of particulate matter is impaired by a lessening of pressure drop or liquid flow rate, decreases in these parameters indicate a decline in emissions control efficiency. For HF, as determined by total fluoride, the opposite effect can occur. Removal of fluorides by wet scrubbers is enhanced by increased residence time in the control device. So, it is appropriate that an upper bound to pressure drop should be included as a means of maintaining residence time at a value similar to that obtained during the performance test. Similar to the NSPS, the proposed NESHAP would require monitoring of process feed rate.

During development of the proposed NESHAP, industry representatives expressed some concern over EPA's intention to define scrubber monitoring parameter exceedances in excess of plus or minus ten percent of the values established during the most recent performance test as violations. That concern centered upon the possibility that those values could change as a result of equipment or process variables which would not necessarily result in noncompliance with the numerical limits of the standards. They suggested that Agency should allow a grace period for re-testing to determine compliance with the numerical limits of the standard. In particular, the inclusion of the upper bound was questioned. The Agency's response is that the upper limit is appropriate because higher pressure drops could indicate that emissions controls were suffering from a reduction in residence time associated with higher pressure drops or process upsets and the Agency has elected to keep the upper band for parameter excursions because of enforcement concerns. To allay the concerns of industry, the Agency is including in the proposed regulation language which provides a grace period for re-testing under the conditions measured during the exceedance to determine compliance. Upon considering that some sources at relatively remote locations need time to arrange for services of outside test crews, the proposed rule would allow sources thirty days to re-test and demonstrate compliance with the numerical emissions limits. If a source is re-tested within that time period and passes the required test, the exceedances of the parameter limits would not be considered violations of the Act.

Some industry representatives recommended defining the acceptable range of operational parameters on the basis of the ranges resulting from previous or specially-conducted successful performance tests. Initially, the Agency considered this approach and concluded that to require extensive testing to develop operational ranges during performance testing could be construed as burdensome. So, the Agency chose the approach first described in this section as a requirement. In addition, the proposed regulations would allow use of the approach requested by industry, with its attendant costs, as an alternative which sources could choose to employ at their discretion. In particular, the alternative provides flexibility for sources to establish operational ranges for control device parameters on the basis of data derived from multiple performance tests. Operating ranges could based upon values recorded during previous successful performance tests or upon the results of new performance testing conducted specifically for the purpose of establishing operating ranges. Sources would be required to certify that the control devices and processes had not been modified subsequent to the testing upon which the data used to establish the operating ranges were obtained. Following the approval by the permitting authority of operating ranges for the affected source, any three hour averages of the values of total pressure drop or flow rate of the scrubbing liquid in exceedance of the approved operating ranges would constitute violations of applicable emission limits.

For PPA plants, compliance would be determined by inventory records documenting the amounts of MIBK

added to the process as makeup for routine losses from the system. In addition, the source would be required to maintain records of maintenance activities which would include estimates of MIBK losses. The source would be required to document in its inventory any losses from nonroutine equipment failures or malfunctions. On a continuing basis, the source would be required to monitor and record the MIBK content of raffinate, gas chiller temperature and cooling tower losses. Recordkeeping and reporting would be subject to the General Provisions to 40 CFR Part 63.

F. Selection of Notification, Reporting, and Recordkeeping Requirements

All requirements of the General Provisions apply under the proposed rule. The General Provisions include requirements for notifications; reports on performance test results; semiannual excess emissions reports; and startup, shutdown, and malfunction plans and reports. Startups, shutdowns, and malfunctions of production lines can occur in this industry. The development and implementation of the plan will aid in reducing emissions from these events and in reducing malfunctions. A semiannual report to EPA is required only in the event a reportable event occurs and the steps in the plan were not followed. Semiannual excess emission reports are required to ensure that the permitting authority is aware of any potential operating or compliance problems at the source.

The proposed rule requires that minimum information and data be maintained in a file available for inspection at the site. Records of control device operational parameters, process feed rate, MIBK addition to PPA plants and MIBK concentrations at specified points would be required to ensure that MACT-level controls are in place and properly operated and maintained.

G. Solicitation of Comments

The EPA seeks full public participation in arriving at its final decisions and encourages comments on all aspects of this proposal from all interested parties. Full supporting data and detailed analyses should be submitted with comments to allow EPA to make maximum use of the comments. All comments should be directed to the Air and Radiation Docket and Information Center, Docket No. A–95–33 (see **ADDRESSES**). Comments on this notice must be submitted on or before the date specified in **DATES**.

Commentors wishing to submit proprietary information for consideration should clearly distinguish such information from other comments and clearly label it ''Confidential Business Information'' (CBI). Submissions containing such proprietary information should be sent directly to the Emission Standards Division CBI Office, U.S. Environmental Protection Agency (MD–13), Research Triangle Park, North Carolina 27711, with a copy of the cover letter directed to the contact person listed above. Confidential business information should not be sent to the public docket. Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commentor.

V. Impacts of Proposed Standards

A. Applicability

Currently, 21 phosphoric acid manufacturing and phosphate fertilizers production complexes, owned by 15 companies, are located in seven States. The EPA estimates that five of these plants would need to install better controls on at least one process each to reduce emissions. All plants in the industry would be subject to the proposed standards unless the plant owner or operator demonstrates that the facility is not a major source. The Agency expects that six of the 21 phosphate fertilizers production complexes will be demonstrated to be non-major sources.

B. Air Quality Impacts

Nationwide HAP emissions from phosphoric acid manufacturing and phosphate fertilizers production complexes are estimated to be up to 550 Mg/yr (605 tpy) of HF and other HAP at the current level of control. Implementation of the proposed NESHAP would reduce HF emissions by 315 Mg/yr (345 tpy) from currently permitted levels. The corresponding reduction in total fluorides would be 940 Mg/yr (1035 tpy). This would equate to 1570 Mg (1725 tons) of HF and 4700 Mg (5175 tons) of total fluoride over the first five years of the proposed standards. Since the PPA plant emitting MIBK and calciners emitting HAP metals in the form of particulates would meet the NESHAP in their current configurations, no additional emissions reductions would be gained from those operations. The proposed NESHAP would ensure that the currently installed control systems would be properly operated and maintained. Additional information on emissions and emission reductions is included in the TSD.

C. Water Impacts

As a result of NESHAP, five plants would install five to six low energy scrubbers using recycled pond water as the scrubbing liquid would result from NESHAP. Most, if not all, new scrubbers would employ cooling pond water as the scrubbing fluid and return the scrubber discharge to the pond for recycle to the process. The impacts of this would therefore be minimal.

D. Solid Waste Impacts

Solid waste impacts would be minimal.

E. Energy Impacts

A total of five to six low energy scrubbers would result from NESHAP. Increased power for the scrubbers was estimated to cause an additional annual power consumption of twenty million kilowatt hours.

F. Nonair Environmental and Health Impacts

Reducing HAPs and ambient pollutant levels may help lower occupational exposure levels.

G. Cost Impacts

The proposed rule would affect phosphoric acid manufacturing and phosphate fertilizers production facilities that are major sources or that are located at major sources. The Agency projects that six process lines at existing source complexes would install new control systems. The Agency estimated that five additional sources would be expected to employ better operation and maintenance practices to meet the standards. Based upon availability of surplus production capacity and recent market trends, the Agency projects that no new facilities will be constructed within the next five years. For the five plants expected to add new air pollution control scrubbers to meet the proposed NESHAP, the capital cost of new control devices is estimated to be $1,401,561. Estimated annualized capital, operation, and maintenance costs of new scrubbers are estimated to total $847,851. The annual costs for the plants expected to implement improved operation and maintenance are estimated to be $14,400. Thus, the total annualized costs of the standards would be $862,251 nationwide.

H. Economic Impacts

Prices are expected to increase in each regional market by the per-unit-cost

increase for the marginal firm. Because neither the exact regional structure, nor which firm is the high cost producer within the region, is known, a range of prices changes has been estimated. For the lower estimate, one national market is assumed for each good. The production weighted average cost increase is assumed to be the expected cost increase for the marginal firm and is used for the price increase. The higher estimate has been developed by using the highest cost increase among the facilities as the cost increase for the marginal firm. This makes the highest cost increase the price increase for the national market. Even the highest estimate for the product (MAP/DAP) with the highest cost increase would be a price increase of less than one third of one percent.

Although demand elasticity estimates are not available, the lack of close substitutes, the small cost share of fertilizers in final agricultural products, and the expected low elasticity for the production of food lead to the expectation of an inelastic demand. Since elasticity of demand would be expected to be less than one, percentage quantity adjustments would be expected to be smaller than the percentage price changes discussed above.

Detailed plant information needed for plant closure analysis is not available, but, plant closure as a result of the costs of this regulation would be unlikely. The highest estimate for market quantity adjustment is less than three percent of the production of the smallest affected facility for each of the three markets. If there were to be no market price increase, the cost increase as a percentage of sales would always be less than two-fifths of a percent. While closure due to the regulation would be unlikely, a facility planning to close in the absence of the regulation could close earlier because of the regulation. The effect of this regulation would be expected to be minimal on both small businesses and the industry as a whole.

VI. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. [See section 307(d)(7)(A) of the Act.]

B. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentations on the proposed standards should contact EPA (see **ADDRESSES**). If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement on or before February 25, 1997. Written statements should be addressed to the Air and Radiation Docket and Information Center (see **ADDRESSES**), and refer to Docket No. A–95–33. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held. A verbatim transcript of the hearing and written statements will be placed in the docket and be available for public inspection and copying, or mailed upon request, at the Air and Radiation Docket and Information Center (see **ADDRESSES**).

C. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB), and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the Agency has determined that this rule is not ''significant'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875, the Agency involved State,local and Federal governments in the development of this rule. These governments are not directly impacted by the rule; i.e. they are not required to purchase control systems to meet the requirements of the rule. However, they will be required to implement the rule; e.g. incorporate the rule into permits and enforce the rule. They will collect permit fees which will be used to offset the resource burden of implementing the rule. One representative of a State environmental agency has been a member of the EPA work group developing the rule. In addition, the Agency has contacted the staffs of State air pollution control agencies to exchange information during development of the rule. The comments and suggestions of the State agency staffs have been carefully considered in the rule development. In addition, all States are encouraged to comment on this proposed rule during the public comment period and the Agency intends to fully consider these comments in the final rulemaking.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995 (109 Stat. 48), requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative for State, local, and tribal governments and the private sector that

achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

Because this proposed rule, if promulgated, is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, Federal agencies are required to assess the economic impact of Federal regulations on small entities. The Regulatory Flexibility Act specifies that Federal agencies must prepare an initial Regulatory Flexibility Analysis (RFA) if a proposed regulation will have a significant economic impact on a substantial number of small entities.

The Agency has found that two of the twenty one firms that potentially would be subject to the proposed standards are small firms. Of the two, one is an area source which would not be covered by the standards. The second source would be major and subject to the requirements of the standards. Information available to the Agency shows that the second source is able to achieve the control levels of the proposed NESHAP using existing equipment. The testing, monitoring, recordkeeping and reporting requirements are essentially identical to current requirements and, thus, would cause little or no change in these burdens. Therefore, given that only one small entity would see only a minimal change from its current requirements, the Agency certifies that the proposed rulemaking will not impact a substantial number of small entities and that any impacts would be non-significant.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1790.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740.

The information to be collected includes the results of performance testing to be conducted to demonstrate initial compliance with the emissions limits in the proposed rules. At the time that performance testing would be performed, sources would be required to measure and record operating parameters for the processes and control devices. Following the performance testing, sources would be required under authority of the Act to monitor and record operating parameters to assure that they were maintained within approved ranges, based upon values determined during the initial tests. The purpose of the monitoring and recordkeeping requirements would be to provide implementing agencies information to assure that MACT was being implemented on an ongoing basis.

The Agency estimated the projected cost and hour burden of the proposed standards. The average annual reporting burden was estimated to be 132 hours per response. There would be fifteen likely respondents and reports would required twice a year. The total burden would equate to 3790 hours per year nationwide and the corresponding cost was estimated to be $121,773 per year. The total capital cost of the monitoring devices was estimated to be $564, 200 of which the major cost would be for the installation of sensors to measure and record the flow of scrubbing liquid to the control devices. The annualized cost of that capital would be $53,200 per year and the operation and maintenance of the monitoring equipment was estimated as $13,300 per year. Thus, the total annualized capital and operation and maintenance costs were estimated to be $66,500 per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 27, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by January 27, 1997. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. Clean Air Act

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

I. Pollution Prevention Act

During the development of the standards, the Agency explored opportunities to eliminate or reduce emissions through the application of new processes or work practices. As previously discussed, at the outset the Agency explored options for reduction of cooling pond emissions of HF. Among the possibilities was a recently patented process which offers the promise of eliminating the ponds altogether while at the same time

recovery HF for sale to outside parties. At this time that process has not yet been commercially demonstrated.

The other opportunity for prevention of pollution arose when the Agency learned of the piping of air pollution control scrubber effluent to cooling towers, where the HF content was being stripped and emitted to the atmosphere. As previously discussed, the proposed NESHAP would expressly prohibit that practice.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Phosphoric acid manufacturing, and Phosphate fertilizers production.

Dated: November 21, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, it is proposed that part 63 of title 40, chapter I, of the Code of Federal Regulations be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart AA consisting of §§ 63.600 through 63.610 to read as follows:

Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

Sec.

Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

§ 63.600 Applicability.

(a) Except as provided in paragraph (c) of this section, the requirements of this subpart apply to the owner or operator of each new or existing phosphoric acid manufacturing plant.

(b) The requirements of this subpart apply to emissions of hazardous air pollutants (HAPs) emitted from the following affected sources at a new or existing phosphoric acid manufacturing plant:

(1) Each wet-process phosphoric acid plant. The requirements of this subpart apply to the following emission points which are components of a wet-process phosphoric acid plant: reactors, filters, evaporators, and hot wells.

(2) Each evaporative cooling tower at a phosphoric acid manufacturing plant.

(3) Each phosphate rock dryer located at a phosphoric acid manufacturing plant.

(4) Each phosphate rock calciner located at a phosphoric acid manufacturing plant.

(5) Each superphosphoric acid plant. The requirements of this subpart apply to the following emission points which are components of a superphosphoric acid plant: evaporators, hot wells, acid sumps, and cooling tanks; and

(6) Each purified acid plant. The requirements of this subpart apply to the following emission points which are components of a purified phosphoric acid plant: solvent extraction process equipment, solvent stripping and recovery equipment, seal tanks, carbon treatment equipment, cooling towers, storage tanks, pumps and process piping.

(c) The requirements of this subpart do not apply to the owner or operator of a new or existing phosphoric acid manufacturing plant for which the owner or operator demonstrates, to the satisfaction of the Administrator, that the facility is not a major source as defined in § 63.2.

§ 63.601 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, or in this section as follows:

Equivalent P_2O_5 feed means the quantity of phosphorus, expressed as phosphorous pentoxide, fed to the process.

Evaporative cooling tower means an open water recirculating device that uses fans or natural draft to draw or force ambient air through the device to remove heat from process water by direct contact.

HAP metals mean those chemicals and their compounds (in particulate or volatile form) that are included on the list of hazardous air pollutants in section 112 of the Clean Air Act. HAP metals include, but are not limited to: antimony, arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium expressed as particulate matter as measured by the methods and procedures in this subpart or an approved alternative method. For the purposes of this subpart, HAP metals are expressed as particulate matter as measured by 40 CFR Part 60, Appendix A, Method 5.

Phosphate rock calciner means the equipment used to remove moisture and organic matter from phosphate rock through direct or indirect heating.

Phosphate rock dryer means the equipment used to reduce the moisture content of phosphate rock through direct or indirect heating.

Phosphate rock feed means all material entering any phosphate rock dryer or phosphate rock calciner including moisture and extraneous material as well as the following ore materials: fluorapatite, hydroxylapatite, chlorapatite, and carbonateapatite.

Purified phosphoric acid plant means any facility which concentrates wet-process phosphoric acid to 58 percent or greater P_2O_5 content by weight and which uses solvent extraction to separate impurities from the product acid for the purposes of rendering that product suitable for industrial, manufacturing or food grade uses.

Superphosphoric acid plant means any facility which concentrates wet-process phosphoric acid to 66 percent or greater P_2O_5 content by weight.

Total fluorides means elemental fluorine and all fluoride compounds, including the HAP hydrogen fluoride, as measured by reference methods specified in 40 CFR Part 60, Appendix A , Method 13 A or B, or by equivalent or alternative methods approved by the Administrator pursuant to § 63.7(f).

Wet process phosphoric acid plant means any facility manufacturing phosphoric acid by reacting phosphate rock and acid.

§ 63.602 Standards for existing sources.

(a) *Wet process phosphoric acid plant.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.605 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 10.0 gram/metric ton of equivalent P_2O_5 feed (0.020 lb/ton).

(b) *Superphosphoric acid plant.* (1) On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.605 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 5.0 gram/metric ton of equivalent P_2O_5 feed (0.010 lb/ton).

(2) Notwithstanding paragraph (b)(1) of this section, on and after the date on which the performance test required to be conducted by §§ 63.7 and 63.605 is completed, each submerged combustion process superphosphoric acid plant at the Arcadian Fertilizers facility in Geismar, Louisiana shall not cause to be discharged into the atmosphere any gases which contain total fluorides in excess of 100.0 gram/metric ton of equivalent P_2O_5 feed (0.20 lb/ton).

(c) *Phosphate rock dryer.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.605 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.10750 kilogram/metric ton of phosphate rock feed (0.2150 lb/ton).

(d) *Phosphate rock calciner.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.605 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.138 gram per dry standard cubic meter (g/dscm) [0.060 grain per dry standard cubic foot (gr/dscf)].

(e) *Evaporative cooling tower.* No owner or operator shall introduce into any evaporative cooling tower any liquid effluent from any wet scrubbing device installed to control emissions from process equipment.

(f) *Purified phosphoric acid plant.* No owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain methyl isobutyl ketone in excess of 84.320 gram/metric ton of equivalent P_2O_5 feed (0.16864 lb/ton). Compliance shall be determined as a monthly average based upon records of the addition of methyl isobutyl ketone to the process as required in § 63.605(f).

§ 63.603 Standards for new sources.

(a) *Wet process phosphoric acid plant.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.605 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 6.750 gram/metric ton of equivalent P_2O_5 feed (0.01350 lb/ton).

(b) *Superphosphoric acid plant.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.605 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 4.35 gram/metric ton of equivalent P_2O_5 feed (0.00870 lb/ton).

(c) *Phosphate rock dryer.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.605 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.030 kilogram/metric ton per megagram of phosphate rock feed (0.060 lb/ton).

(d) *Phosphate rock calciner.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.605 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.0920 gram per dry standard cubic meter (g/dscm) [0.040 grain per dry standard cubic foot (gr/dscf)].

(e) *Evaporative cooling tower.* No owner or operator shall introduce into any evaporative cooling tower any liquids containing the effluent from any air pollution control device.

(f) *Purified phosphoric acid plant.* No owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain methyl isobutyl ketone in excess of 84.320 gram/metric ton of equivalent P_2O_5 feed (0.16864 lb/ton). Compliance shall be determined as a monthly average based upon records of the addition of methyl isobutyl ketone to the process.

§ 63.604 Monitoring requirements.

(a) Each owner or operator of a new or existing wet-process phosphoric acid plant, superphosphoric acid plant, phosphate rock dryer, phosphate rock calciner, or purified phosphoric acid plant subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring system which can be used to determine and permanently record the mass flow of phosphorus-bearing feed material to the process. The monitoring system shall have an accuracy of ±5 percent over its operating range.

(b) Each owner or operator of a new or existing wet-process phosphoric acid plant, superphosphoric acid plant, phosphate rock calciner, or purified phosphoric acid plant subject to the provisions of this subpart shall maintain a daily record of equivalent P_2O_5 feed by first determining the total mass rate in metric ton/hour of phosphorus bearing feed using a monitoring system for measuring mass flowrate which meets the requirements of paragraph (a) of this section and then by proceeding according to § 63.605(c)(3).

(c) Each owner or operator of a new or existing wet-process phosphoric acid plant, superphosphoric acid plant, phosphate rock dryer or phosphate rock calciner using a wet scrubbing emission control system shall install, calibrate, maintain, and operate the following monitoring systems:

(1) A monitoring system which continuously measures and permanently records the total pressure drop across each scrubber in the process scrubbing system. The monitoring system shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

(2) A monitoring system which continuously measures and permanently records the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system. The monitoring system shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

(d) Any new or existing source subject to emissions limitations for total fluorides or particulate matter contained in this subpart shall comply with either paragraph (d) (1) or (2) of this section:

(1) For a new or existing affected source, following the date on which the performance test required in § 63.605 is completed, any three-hour average of the total pressure drop across the scrubber(s) or of the flow rate of the scrubbing liquid to the scrubber(s) in the process scrubbing system which exceeds ± ten percent of the value determined as a requirement of § 63.605(c)(4), (d)(4), or (e)(2) shall constitute a violation of the applicable emission limit contained in this subpart unless the affected source performs and passes a performance test as required in § 63.605 within thirty days following the exceedance. Any owner or operator who intends to conduct a performance test pursuant to this paragraph shall notify the Administrator of that intention within one business day of the parameter exceedance. Any owner or operator conducting a performance test pursuant to this paragraph (d)(1) shall establish and maintain during that test the same operating conditions as were determined during the exceedance of the operating range.

(2) The owner or operator of any new or existing affected source shall establish operating ranges for the total

pressure drop across or of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system for the purpose of assuring compliance with applicable emission limits required in this subpart. Operating ranges may be based upon values recorded during previous performance tests using the test methods required in this subpart and established in the manner required in § 63.605 (c)(4), (d)(4), or (e)(2). As an alternative the owner or operator can base the operating ranges upon the results of performance tests conducted specifically for the purposes of this paragraph (d)(2) using the test methods required in this subpart and established in the manner required in § 63.605(c)(4), (d)(4), or (e)(2). The source shall certify that the control devices and processes have not been modified subsequent to the testing upon which the data used to establish the operating ranges were obtained. Following the approval by the permitting authority of operating ranges for the affected source, any three hour average of the values of total pressure drop or flow rate of the scrubbing liquid which exceeds the approved operating ranges shall constitute a violation of the applicable emission limit contained in this subpart.

(e) Each owner or operator of a new or existing purified phosphoric acid plant shall: (1) Install, calibrate, maintain, and operate a monitoring system which continuously measures and permanently records the stack gas exit temperature for each chiller stack. (2) Measure and record the concentration of methyl isobutyl ketone in each product acid stream and each raffinate stream once daily.

(f) For any new or existing purified phosphoric acid plant, any of the following shall constitute a violation of this subpart:

(1) A thirty day average of daily concentration measurements of methyl isobutyl ketone in excess of twenty parts per million for each stripped acid stream.

(2) A thirty day average of daily concentration measurements of methyl isobutyl ketone in excess of thirty parts per million for each raffinate stream.

(3) A daily average chiller stack exit gas stream temperature in excess of fifty degrees Fahrenheit.

§ 63.605 Performance tests and compliance provisions.

(a) Each owner or operator of a new or existing phosphoric acid manufacturing plant shall conduct a performance test to demonstrate compliance with the applicable emission standard for each wet-process phosphoric acid plant, superphosphoric acid plant, phosphate rock dryer, and phosphate rock calciner. If the affected source has multiple control devices and/or emission points subject to the provisions of this subpart, those control devices and/or emission points shall be tested simultaneously. The owner or operator shall conduct the performance test according to the procedures in the General Provisions in subpart A of this part and in this section.

(b) In conducting performance tests, each owner or operator of an affected source shall use as reference methods and procedures the test methods in 40 CFR Part 60, Appendix A, or other methods and procedures as specified in this section, except as provided in § 63.7(f).

(c) Each owner or operator of a new or existing wet-process phosphoric acid plant or superphosphoric acid plant shall determine compliance with the applicable total fluorides standards in § 63.602 or § 63.603 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si} Q_{sdi} \right) / (P K)$$

Where:

E=emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.

C_{si}=concentration of total fluorides from emission point ''i,'' mg/dscm (mg/dscf).

Q_{sdi}=volumetric flow rate of effluent gas from emission point ''i,'' dscm/hr (dscf/hr).

N=number of emission points associated with the affected facility.

P=equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).

K=conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13B (40 CFR part 60, appendix A) shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. If Method 13 B is used, the fusion of the filtered material described in Section 7.3.1.2 and the distillation of suitable aliquots of containers 1 and 2, described in section 7.3.3 and 7.3.4. in Method 13 A, may be omitted. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed for each run using the following equation:

$P=M_p R_p$

Where:

M_p=total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).

R_p=P_2O_5 content, decimal fraction.

(i) The accountability system of § 63.604 (a) and (b) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The Association of Official Analytical Chemists (AOAC) Method 9 (incorporated by reference—see 40 CFR 60.17) shall be used to determine the P_2O_5 content (R_p) of the feed.

(4) To comply with § 63.604(d) (1) or (2), the owner or operator shall use the monitoring systems in § 63.604(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the total fluoride runs. The arithmetic averages of the three runs shall be used as the baseline average values for the purposes of § 63.604(d) (1) or (2).

(d) Each owner or operator of a new or existing phosphate rock dryer shall demonstrate compliance with the particulate matter standards in § 63.602 or § 63.603 as follows:

(1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$E=(c_s Q_{sd})/(P K)$

Where:

E=emission rate of particulate matter, kg/Mg (lb/ton) of phosphate rock feed.

c_s=concentration of particulate matter, g/dscm (g/dscf).

Q_{sd}=volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

P=phosphate rock feed rate, Mg/hr (ton/hr).

K=conversion factor, 1000 g/kg (453.6 g/lb).

(2) Method 5 (40 CFR part 60, appendix A) shall be used to determine the particulate matter concentration (c_s) and volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(3) The system of § 63.604(a) shall be used to determine the phosphate rock feed rate (P) for each run.

(4) To comply with § 63.604 (d)(1) or (2), the owner or operator shall use the monitoring systems in § 63.604(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the particulate matter runs. The arithmetic average of the one-hour averages determined during the three test runs shall be used as the baseline average values for the purposes of § 63.604 (d)(1) or (2).

(e) Each owner or operator of a new or existing phosphate rock calciner shall

demonstrate compliance with the particulate matter standards in §§ 63.602 and 63.603 as follows:

(1) Method 5 (40 CFR part 60, appendix A) shall be used to determine the particulate matter concentration. The sampling time and volume for each test run shall be at least 2 hours and 1.70 dscm.

(2) To comply with § 63.604(d)(1) or (2), the owner or operator shall use the monitoring systems in § 63.604(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the particulate matter runs. The arithmetic average of the one-hour averages determined during the three test runs shall be used as the baseline average values for the purposes of § 63.604 (d)(1) or (2).

(f) Each owner or operator of a new or existing purified phosphoric acid manufacturing plant shall establish and maintain an inventory system to determine the mass of methyl isobutyl ketone added to each process line at an affected source. For the purposes of determining compliance with the requirements of § 63.602(f) or § 63.603(f), the mass of methyl isobutyl ketone added to the process at any time shall be apportioned on the basis of tons of equivalent P2O5 feed, as determined under the requirements of §§ 63.604(a) and 63.604(b), for production occurring during the corresponding period of time.

§ 63.606 Notification requirements.

Each owner or operator subject to the requirements of this subpart shall comply with the notification requirements in § 63.9.

§ 63.607 Recordkeeping requirements.

Each owner or operator subject to the requirements of this subpart shall comply with the recordkeeping requirements in § 63.10.

§ 63.608 Reporting requirements.

(a) The owner or operator of an affected source shall comply with the reporting requirements specified in § 63.10 as follows:

(1) *Performance test report.* As required by § 63.10, the owner or operator shall report the results of the initial performance test as part of the notification of compliance status required in § 63.9.

(2) *Excess emissions report.* As required by § 63.10, the owner or operator of an affected source shall submit an excess emissions report for any event when an operating parameter limit is exceeded. The report shall contain the information specified in § 63.10. When no exceedances of a parameter have occurred, such information shall be included in the report. The report shall be submitted semiannually and shall be delivered or postmarked by the 30th day following the end of the calendar half. If excess emissions are reported, the owner or operator shall report quarterly until a request to reduce reporting frequency is approved as described in § 63.10.

(3) *Summary report.* If the total duration of control system exceedances for the reporting period is less than 1 percent of the total operating time for the reporting period, the owner or operator shall submit a summary report containing the information specified in § 63.10 rather than the full excess emissions report, unless required by the Administrator. The summary report shall be submitted semiannually and shall be delivered or postmarked by the 30th day following the end of the calendar half.

(4) If the total duration of control system parameter exceedances for the reporting period is 1 percent or greater of the total operating time for the reporting period, the owner or operator shall submit a summary report and the excess emissions report.

§ 63.609 Compliance dates.

(a) Each owner or operator of an existing phosphoric acid manufacturing plant shall achieve compliance with the requirements of this subpart no later than (Three Years After Date of Publication of Final Rule).

(b) Each owner or operator of a phosphoric acid manufacturing plant that commences construction or reconstruction after (Date of Publication of Final Rule) shall achieve compliance with the requirements of this subpart by (Date of Publication of Final Rule) or upon startup of operations, whichever is later.

§ 63.610 Exemption from new source performance standards.

Any process component subject to the provisions of this subpart is exempted from any otherwise applicable new source performance standard contained in 40 CFR Part 60.

3. Part 63 is amended by adding subpart BB consisting of §§ 63.620 through 63.630 to read as follows:

Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

Sec.

Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

§ 63.620 Applicability.

(a) Except as provided in paragraph (c) of this section, the requirements of this subpart apply to the owner or operator of each new or existing phosphate fertilizers production plant.

(b) The requirements of this subpart apply to emissions of hazardous air pollutants (HAPs) emitted from the following affected sources at a new or existing phosphate fertilizers production plant:

(1) Each diammonium and/or monoammonium phosphate plant. The requirements of this subpart apply to the following emission points which are components of a diammonium and/or monoammonium phosphate plant: reactors, granulators, dryers, coolers, screens, and mills.

(2) Each granular triple superphosphate plant. The requirements of this subpart apply to the following emission points which are components of a granular triple superphosphate plant: mixers, curing belts (dens), reactors, granulators, dryers, coolers, screens, and mills.

(3) Each granular triple superphosphate storage building located at a granular triple superphosphate plant. The requirements of this subpart apply to the following emission points which are components of a granular triple superphosphate storage building: storage or curing buildings, conveyors, elevators, screens, and mills.

(c) The requirements of this subpart do not apply to the owner or operator of a new or existing phosphate fertilizers production plant for which the owner or operator demonstrates, to the satisfaction of the Administrator, that the facility is not a major source as defined in § 63.2.

§ 63.621 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, or in this section as follows:

Diammonium and/or monoammonium phosphate plant means any plant manufacturing granular diammonium and/or monoammonium

phosphate by reacting phosphoric acid with ammonia.

Equivalent P_2O_5 feed means the quantity of phosphorus, expressed as phosphorous pentoxide, fed to the process.

Equivalent P_2O_5 stored means the quantity of phosphorus, expressed as phosphorus pentoxide, being cured or stored in the affected facility.

Fresh granular triple superphosphate means granular triple superphosphate produced no more than 10 days prior to the date of the performance test.

Granular triple superphosphate plant means any facility, not including storage buildings, manufacturing granular triple superphosphate by reacting phosphate rock with phosphoric acid.

Granular triple superphosphate storage building means any facility curing or storing fresh granular triple superphosphate.

Total fluorides means elemental fluorine and all fluoride compounds, including the HAP hydrogen fluoride, as measured by reference methods specified in 40 CFR Part 60, Appendix A, Method 13 A or B, or by equivalent or alternative methods approved by the Administrator pursuant to § 63.7(f).

§ 63.622 Standards for existing sources.

(a) *Diammonium and/or monoammonium phosphate plant.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.625 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 30 grams/metric ton of equivalent P_2O_5 feed (0.060 lb/ton).

(b) *Granular triple superphosphate plant.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.625 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 75 grams/metric ton of equivalent P_2O_5 feed (0.15 lb/ton).

(c) *Granular triple superphosphate storage building.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.625 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 0.250 grams/hr/metric ton of equivalent P_2O_5 stored (5.0 X 10-⁴ lb/hr/ton of equivalent P_2O_5 stored).

§ 63.623 Standards for new sources.

(a) *Diammonium and/or monoammonium phosphate plant.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.625 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 29.0 grams/metric ton of equivalent P_2O_5 feed (0.0580 lb/ton).

(b) *Granular triple superphosphate plant.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.625 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 61.50 grams/metric ton of equivalent P_2O_5 feed (0.1230 lb/ton).

(c) *Granular triple superphosphate storage building.* On and after the date on which the performance test required to be conducted by §§ 63.7 and 63.625 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain total fluorides in excess of 0.250 grams/hr/metric ton of equivalent P_2O_5 stored ($5\times10^{1-4}$ lb/hr/ton of equivalent P_2O_5 stored).

§ 63.624 Monitoring requirements.

(a) Each owner or operator of a new or existing diammonium and/or monoammonium phosphate plant or granular triple superphosphate plant subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring system which can be used to determine and permanently record the mass flow of phosphorus-bearing feed material to the process. The monitoring system shall have an accuracy of ±5 percent over its operating range.

(b) Each owner or operator of a new or existing diammonium and/or monoammonium phosphate plant or granular triple superphosphate plant subject to the provisions of this subpart shall maintain a daily record of equivalent P_2O_5 feed by first determining the total mass rate in metric ton/hour of phosphorus bearing feed using a monitoring system for measuring mass flowrate which meets the requirements of paragraph (a) of this section and then by proceeding according to § 63.625(c)(3).

(c) Each owner or operator of a new or existing diammonium and/or monoammonium phosphate plant, granular triple superphosphate plant, or granular triple superphosphate storage building using a wet scrubbing emission control system shall install, calibrate, maintain, and operate the following monitoring systems:

(1) A monitoring system which continuously measures and permanently records the total pressure drop across each scrubber in the process scrubbing system. The monitoring system shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

(2) A monitoring system which continuously measures and permanently records the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system. The monitoring system shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

(d) The owner or operator of any granular triple superphosphate storage building subject to the provisions of this subpart shall maintain an accurate account of granular triple superphosphate in storage to permit the determination of the amount of equivalent P_2O_5 stored.

(e) Each owner or operator of a new or existing granular triple superphosphate storage building subject to the provisions of this subpart shall maintain a daily record of total equivalent P_2O_5 stored by multiplying the percentage P_2O_5 content, as determined by § 63.625(d)(3)(C), times the total mass of granular triple superphosphate stored.

(f) Any new or existing source subject to emissions limitations for total fluorides or particulate matter contained in this subpart shall comply with either paragraph (f) (1) or (2) of this section:

(1) For a new or existing affected source, following the date on which the performance test required in § 63.625 is completed, any three-hour average of the total pressure drop across the scrubber(s) or of the flow rate of the scrubbing liquid to the scrubber(s) in the process scrubbing system which exceeds ± ten percent of the value determined as a requirement of § 63.625 (c)(4) or (d)(4) shall constitute a violation of the applicable emission limit contained in this subpart unless the affected source performs and passes a performance test as required in § 63.625 within thirty days following the exceedance. Any owner or operator who intends to conduct a performance test pursuant to this paragraph shall notify the Administrator of that intention within one business day of the parameter exceedance. Any owner or operator conducting a performance test pursuant to this paragraph shall establish and maintain during that test

the same operating conditions as were determined during the exceedance of the operating range.

(2) The owner or operator of any new or existing affected source shall establish operating ranges for the total pressure drop across or of the flow rate of the scrubbing liquid to each scrubber in the process scrubbing system for the purpose of assuring compliance with applicable emission limits required in this subpart. Operating ranges may be based upon values recorded during previous performance tests using the test methods required in this subpart and established in the manner required in § 63.625 (c)(4) or (d)(4). As an alternative the owner or operator can base the operating ranges upon the results of performance tests conducted specifically for the purposes of this paragraph using the test methods required in this subpart and established in the manner required in § 63.625 (c)(4) or (d)(4). The source shall certify that the control devices and processes have not been modified subsequent to the testing upon which the data used to establish the operating ranges were obtained. Following the approval by the permitting authority of operating ranges for the affected source, any three-hour average of the values of total pressure drop or flow rate of the scrubbing liquid which exceeds the approved operating ranges shall constitute a violation of the applicable emission limit contained in this subpart.

§ 63.625 Performance tests and procedures.

(a) Each owner or operator of a new or existing phosphate fertilizers production plant subject to the provisions of this subpart shall conduct a performance test to demonstrate compliance with the applicable emission standard for each diammonium and/or monoammonium phosphate plant, granular triple superphosphate plant, or granular triple superphosphate storage building. If the affected source has multiple control devices and/or emission points subject to the provisions of this subpart, those control devices and/or emission points shall be tested simultaneously. The owner or operator shall conduct the performance test according to the procedures in the General Provisions in subpart A of this part and in this section.

(b) In conducting performance tests, each owner or operator of an affected source shall use as reference methods and procedures the test methods in 40 CFR Part 60, Appendix A, or other methods and procedures as specified in this section, except as provided in § 63.7(f).

(c) Each owner or operator of a new or existing diammonium and/or monoammonium phosphate plant or granular triple superphosphate plant shall determine compliance with the applicable total fluorides standards in § 63.622 or § 63.623 as follows:

(1) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si} Q_{sdi} \right) / (PK)$$

Where:

E=emission rate of total fluorides, g/metric ton (lb/ton) of equivalent P_2O_5 feed.

C_{si}=concentration of total fluorides from emission point ''i,'' mg/dscm (mg/dscf).

Q_{sdi}=volumetric flow rate of effluent gas from emission point ''i,'' dscm/hr (dscf/hr).

N=number of emission points associated with the affected facility.

P=equivalent P_2O_5 feed rate, metric ton/hr (ton/hr).

K=conversion factor, 1000 mg/g (453,600 mg/lb).

(2) Method 13A or 13B (40 CFR part 60, appendix A) shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. If Method 13B is used, the fusion of the filtered material described in section 7.3.1.2 and the distillation of suitable aliquots of containers 1 and 2, described in sections 7.3.3 and 7.3.4 in Method 13A, may be omitted. The sampling time and sample volume for each run shall be at least one hour and 0.85 dscm (30 dscf).

(3) The equivalent P_2O_5 feed rate (P) shall be computed for each run using the following equation:

$$P = M_p R_p$$

Where:

M_p=total mass flow rate of phosphorus-bearing feed, metric ton/hr (ton/hr).

R_p=P_2O_5 content, decimal fraction.

(i) The accountability system of § 63.624 (a) and (b) shall be used to determine the mass flow rate (M_p) of the phosphorus-bearing feed.

(ii) The Association of Official Analytical Chemists (AOAC) Method 9 (incorporated by reference—see 40 CFR 60.17) shall be used to determine the P_2O_5 content (Rp) of the feed.

(4) To comply with § 63.624(f) (1) or (2), the owner or operator shall use the monitoring systems in § 63.624(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the total fluoride runs. The arithmetic averages of the three runs shall be used as the baseline average values for the purposes of § 63.624(f) (1) or (2).

(d) Each owner or operator of a new or existing granular triple superphosphate storage building shall determine compliance with the applicable total fluorides standards in § 63.622 or § 63.623 as follows:

(1) The owner or operator shall conduct performance tests only when the following quantities of product are being cured or stored in the facility.

(i) Total granular triple superphosphate is at least 10 percent of the building capacity, and

(ii) Fresh granular triple superphosphate is at least 20 percent of the total amount of triple superphosphate, or

(iii) If the provision in paragraph (d)(1)(ii) of this section exceeds production capabilities for fresh granular triple superphosphate, fresh granular triple superphosphate is equal to at least 5 days maximum production.

(2) In conducting the performance test, the owner or operator shall use as reference methods and procedures the test methods in Part 60, Appendix A, or other methods and procedures as specified in this section, except as provided in § 63.7(f).

(3) The owner or operator shall determine compliance with the total fluorides standard in §§ 63.622 and 63.623 as follows:

(i) The emission rate (E) of total fluorides shall be computed for each run using the following equation:

$$E = \left(\sum_{i=1}^{N} C_{si} Q_{sdi} \right) / (PK)$$

Where:

E=emission rate of total fluorides, g/hr/metric ton (lb/hr/ton) of equivalent P_2O_5 stored.

C_{si}=concentration of total fluorides from emission point ''i,'' mg/dscm (mg/dscf).

Q_{sdi}=volumetric flow rate of effluent gas from emission point ''i,'' dscm/hr (dscf/hr).

N=number of emission points in the affected facility.

P=equivalent P_2O_5 stored, metric tons (tons).

K=conversion factor, 1000 mg/g (453,600 mg/lb).

(ii) Method 13A or 13B (40 CFR part 60, appendix A) shall be used to determine the total fluorides concentration (C_{si}) and volumetric flow rate (Q_{sdi}) of the effluent gas from each of the emission points. If Method 13 B is used, the fusion of the filtered material described in section 7.3.1.2 and the distillation of suitable aliquots of containers 1 and 2, described in Sections 7.3.3 and 7.3.4 in Method 13 A,

may be omitted. The sampling time and sample volume for each run shall be at least one hour and 0.85 dscm (30 dscf).

(iii) The equivalent P_2O_5 feed rate (P) shall be computed for each run using the following equation:

$P=M_p R_p$

Where:

M_p=amount of product in storage, metric ton (ton).

R_p=P_2O_5 content of product in storage, weight fraction.

(A) The accountability system of § 63.624 (d) and (e) shall be used to determine the amount of product (M_p) in storage.

(B) The Association of Official Analytical Chemists (AOAC) Method 9 (incorporated by reference—see 40 CFR 60.17) shall be used to determine the P_2O_5 content (R_p) of the product in storage.

(4) To comply with § 63.624(f) (1) or (2), the owner or operator shall use the monitoring systems in § 63.624(c) to determine the average pressure loss of the gas stream across each scrubber in the process scrubbing system and to determine the average flow rate of the scrubber liquid to each scrubber in the process scrubbing system during each of the total fluoride runs. The arithmetic averages of the three runs shall be used as the baseline average values for the purposes of § 63.624(f) (1) or (2).

§ 63.626 Notification requirements.

Each owner or operator subject to the requirements of this subpart shall comply with the notification requirements in § 63.9.

§ 63.627 Recordkeeping requirements.

Each owner or operator subject to the requirements of this subpart shall comply with the recordkeeping requirements in § 63.10.

§ 63.628 Reporting requirements.

(a) The owner or operator of an affected source shall comply with the reporting requirements specified in § 63.10 as follows:

(1) *Performance test report.* As required by § 63.10, the owner or operator shall report the results of the initial performance test as part of the notification of compliance status required in § 63.9.

(2) *Excess emissions report.* As required by § 63.10, the owner or operator of an affected source shall submit an excess emissions report for any event when an operating parameter limit is exceeded. The report shall contain the information specified in § 63.10. When no exceedances of a parameter have occurred, such information shall be included in the report. The report shall be submitted semiannually and shall be delivered or postmarked by the 30th day following the end of the calendar half. If excess emissions are reported, the owner or operator shall report quarterly until a request to reduce reporting frequency is approved as described in § 63.10.

(3) *Summary report.* If the total duration of control system exceedances for the reporting period is less than 1 percent of the total operating time for the reporting period, the owner or operator shall submit a summary report containing the information specified in § 63.10 rather than the full excess emissions report, unless required by the Administrator. The summary report shall be submitted semiannually and shall be delivered or postmarked by the 30th day following the end of the calendar half.

(4) If the total duration of control system parameter exceedances for the reporting period is 1 percent or greater of the total operating time for the reporting period, the owner or operator shall submit a summary report and the excess emissions report.

(b) [Reserved]

§ 63.629 Compliance dates.

(a) Each owner or operator of an existing phosphate fertilizers production plant shall achieve compliance with the requirements of this subpart no later than (Three Years After Date of Publication of Final Rule).

(b) Each owner or operator of a phosphate fertilizers production plant that commences construction or reconstruction after (Date of Publication of Final Rule), shall achieve compliance with the requirements of this subpart by (Date of Publication of Final Rule) or upon startup of operations, whichever is later.

§ 63.630 Exemption from new source performance standards.

Any process component subject to the provisions of this subpart is exempted from any otherwise applicable new source performance standard contained in 40 CFR Part 60.

[FR Doc. 96–31706 Filed 12–26–96; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday
December 27, 1996

Part VI

Library of Congress

Copyright Office

Uruguay Round Agreements Act: List of Copyright Restoration of Certain Berne Convention and World Trade Organization Works; Notice

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–7]

Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent To Enforce Restored Copyrights Were Filed in the Copyright Office

AGENCY: Copyright Office, Library of Congress.

ACTION: Publication of third list of notices of intent to enforce copyrights restored under the Uruguay Round Agreements Act.

SUMMARY: The Copyright Office is publishing its third list of restored copyrights for which it has received and processed Notices of Intent to Enforce a copyright restored under the Uruguay Round Agreements Act. Publication of the lists creates a record for the public to identify copyright owners and works whose copyright has been restored for which Notices of Intent to Enforce have been filed with the Copyright Office.

EFFECTIVE DATE: December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or Charlotte Douglass, Principal Legal Advisor to the General Counsel, Copyright GC/I&R, Post Office Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

The Uruguay Round General Agreement on Tariffs and Trade and the Uruguay Round Agreements Act (URAA) (Public Law No. 103–465; 108 Stat. 4809 (1994)) provide for the restoration of copyright in certain works that were in the public domain in the United States. Under section 104A of title 17 [1] of the United States Code as provided by the URAA, copyright protection was restored on January 1, 1996, in certain works by foreign nationals or domiciliaries of World Trade Organization (WTO) or Berne countries that were not protected under the copyright law for the reasons listed below in (2). Specifically, for restoration of copyright, a work must be an original work of authorship that:

(1) Is not in the public domain in its source country through expiration of term of protection;

(2) Is in the public domain in the United States due to:

(i) Noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, publishing the work without a proper notice, or failure to comply with any manufacturing requirements;

(ii) Lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(iii) Lack of national eligibility (e.g., the work is from a country with which the United States did not have copyright relations at the time of the work's publication); and

(3) Has at least one author (or in the case of sound recordings, rightholder) who was, at the time the work was created, a national or domiciliary of an eligible country. If the work was published, it must have been first published in an eligible country and not published in the United States within 30 days of first publication.

See 17 U.S.C. 104A(h)(6). A work meeting these requirements is protected ''for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.'' 17 U.S.C. 104A(a)(1)(B).

Although the copyright owner may immediately enforce the restored copyright against individuals who infringe his or her rights on or after the effective date of restoration, the copyright owner's right to enforce the restored copyright is delayed against reliance parties. Typically, a reliance party is one who was already using the work before December 8, 1994, the date the URAA was enacted. *See* 17 U.S.C. 104A(h)(4). Before a copyright owner can enforce a restored copyright against a reliance party, the copyright owner must file a Notice of Intent (NIE) with the Copyright Office or serve an NIE on such a party.

An NIE may be filed in the Copyright Office within two years of the date of restoration of copyright. Alternatively, an NIE may be served on an individual reliance party at any time during the term of copyright; however, such notices are effective only against the party served and those who have actual knowledge of the notice and its contents. NIEs appropriately filed with the Copyright Office and published herein serve as constructive notice to all reliance parties.

Corrections Procedure

The Copyright Office has promulgated final regulations that provide for filing NIEs with the Office. 60 FR 50414 (Sept. 29, 1995). As required by section 104A(e)(1)(A)(iii), the Office's final regulation included provisions for the correction of minor errors or omissions. There have been requests for more detailed instructions for correcting all kinds of errors made in filing NIEs. The Office will publish these further instructions in early 1997.

II. Online Availability of NIE Lists

Pursuant to the URAA, the Office is publishing its third four-month list identifying restored works for notices of intent to enforce a restored copyright filed with the Office. 17 U.S.C. 104A(e)(1)(B). The earlier lists were published on May 1, 1996, and August 30, 1996. 61 FR 19372 (May 1, 1996) and 61 FR 46134 (Aug. 30, 1996). The NIEs listed herein are those entered into the public records of the Office between August 16, 1996, and December 6, 1996.

We have published only the names of the owners and the titles listed in the NIEs because that is all that is required by law. The funds needed to include any additional information are not available. Using the information provided herein, one may search the Office's database to obtain additional information about a particular NIE. NIEs are located in what is known as the Copyright Office History Documents (COHD) file. This file is available from computer terminals located in the Copyright Office itself or from terminals located in other parts of the Library of Congress through the Library of Congress Information System (LOCIS). Alternative ways to connect through Internet are (i) the World Wide Web (WWW), using the Copyright Office Home Page at: http://www.loc.gov/copyright; (ii) connect directly to LOCIS through the telnet address at locis.loc.gov; or (iii) use the Library of Congress gopher LC MARVEL at: marvel.loc.gov port 70. LC MARVEL and WWW are available 24 hours a day. LOCIS is available 24 hours a day Monday through Friday, Eastern Time; Saturday, until 5 p.m.; and Sunday after 11 a.m.[2] Information available online includes: the title or brief description if untitled; an English translation of the title; the alternative titles if any; the name of the copyright owner or owner of one or more exclusive rights, the date of receipt of the NIE in the Copyright Office; the date of publication in the

[1] The URAA's amendment of 17 U.S.C. 104A replaces section 104A under the North American Free Trade Agreement Implementation Act (Public Law No. 103–182, 107 Stat. 2057, 2115 (1993)). The Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, H.R. Doc. No. 316, 103d Cong., 2d Sess. 324 (1994). See 60 FR 50414 (Sept. 29, 1995).

[2] Not all files are available after 9:30 p.m. on weekdays. On Sundays, all files may not be available from 5 p.m.—8 p.m.

Federal Register; and the address, telephone and telefax number of the copyright owner. If given on the NIE, the online information will also include the author, the type of work, and the rights covered by the notice. *See* 37 CFR 201.33(f). For the purpose of researching the full Office record of NIEs on the Internet, the Office has made online searching instructions accessible through the Copyright Office Home Page. Researchers can access them through the Library of Congress Home Page on the World Wide Web by selecting the copyright link. Select the menu item ''Copyright Office Records'' and/or ''URAA, GATT Amends U.S. law.'' Finally, images of the complete NIEs as filed are on optical disc and available from the Copyright Office.

The following restored works are listed alphabetically by copyright owner; multiple works owned by a particular copyright owner are listed alphabetically by title. Works having more than one copyright proprietor are listed under the first owner and cross-referenced to the succeeding owner(s). A cross-reference to the composite owner (e.g., Title I owned by ''A B & C'') will state, ''SEE A B & C'' at the listing for each individual owner, (e.g., for Owner A, for Owner B and for Owner C).

III. Third List of Notices of Intent to Enforce

Antenne 2. See Fildebroc, Antenne 2 & Europe 1

Ariane. See Cogelda & Ariane

Ariane/Pathe, Films

Les parents terribles.

ARS, AG

Alleluja (Nr. 4439).
Alleluja (Nr. 4527).
Beim Christkindlein.
Christi Geburt.
Das Geget vor der Schlacht.
Du liebliche Mutter.
Engel mit Adventskranz.
Engel mit Kerze und Reh.
Engel mit Trompete und Laterne.
Flucht nach Aegypten.
Gebet in grossen Noten.
Gegrusset seist du, Maria.
Gluck auf zum neuen Jahr!
Ich gratuliere!
Ich hab mich ergeben mit Herz und mit Hand.
In Nazareth.
Ist mir alles eins.
Jes ist unser Bruder, das liebe Kindelein.
Jesu, Jesu, komm zu mir!
Karfreitag.
Kommt a Vogerl geflogen.
Krippenkind mit Engel und Stern.
Lieber Heiland, bleib bei mir.
Liebreich holdseligste himmlische Frau.
Maienkonigin.
Mein Laternlein sternlichtklar.
O Du liebes Jesulein, lass Dich vielmals grussen.
O Du mein Gott, singen Englein so fein.
Ostersonntag.
St. Franziskus.
Und viele, viele Jahre noch!
Was frag ich viel nach Geld und Gut.
Wem Gott will rechte Gunst erweisen.
Wie Du mir, so ich Dir.

Baron, Alexander, a.k.a. Joseph Alexander Baron

From the city, from the plough.
The human kind.
Rosie Hogarth.
There's no home.
With hope, farewell.

Baron, Joseph Alexander. See Baron, Alexander, a.k.a. Joseph Alexander Baron

Bixio Music Group, Ltd.

Cantate con me.
Chi e piu felice dime.
La mia cazone al vento.
Raccolta di canzoni Bixio 1943.

Button Fronts (London) Ltd.

Dolphus.
Ribbit.
Wacky.

Capac. See Fildebroc, France 2 & Capac

Chester Music, Ltd.

El amor brujo.
Asturiana no. 3 de ''Siete canciones populares espanolas.''
Cancion no. 6 de ''Siete canciones populares espanolas.''
Chanson de feu follet.
Dance of the miller de ''El sombrero de tres picos'' ballet.
Dance of the miller's wife de ''El sombrero de tres picos'' ballet.
Danse de la frayeur.
Danse rituelle du feu.
Jota no. 4 de ''Siete canciones poulares espanolas.''
Nana no. 5 de ''Siete canciones populares espanolas.''
El pano moruno, no. 1 de ''Siete canciones populares espanolas.''
Pantomime from ''El amor brujo.''
Pantomime, ballet in one act from ''El amor brujo.''
Polo no. 7 de ''Siete canciones populares espanolas.''
Polo: popular Spanish song for voice and piano.
Recit du pecheur de ''L'amour sorcier.''
Ritual fire dance.
Seguidilla murciana no. 2 de ''Siete canciones populares espanolas.''
El sombrero de tres picos.
Soneto a cordoba.
Two dances from ''The three-cornered hat.''

Cogelda & Ariane

Fanfan la tulipe.

Cogelda & Pathe

Le gorille vous salue bien.
La salaire de la peur.
Le valse du gorille.

Cogelda & Vera Films

Les diaboliques.

Cogelda

A nous la liberte.
Les bijoutiers du clair de lune.
Cela s'appelle l'aurore.
Le ciel est a vous.
La curee.
Les dames du bois de Boulogne.
Et Dieu crea la femme.
Les grandes manoeuvres.
Gueulle d'amour.
Histoires extraordinaries.
La kermesse heroique.
Les liaisons dangereuses 1960.
Le million.
Poil de carotte.
Quatorze Juillet.
Sous les toits de Paris.

Cooperativa Tacma. See Landeta, Matilde Soto & Cooperativa Tacma

Cranz, GmbH, Musikverlag

Symphonie concertante, op. 81.

DAISA. See Disenos Artisticos E. Industriales, SA, a.k.a. DAISA

DEG Sale Company, BV

Botta e riposta.
Le crime ne paie pas.
La decima vittima.
La donna scimmia.
Dov'e la liberta.
Il giudizio universale.
Ieri, Oggi, Domani.
James Tont, operazione UNO.
Maciste contro il vampiro.
Il mafioso.
Mambo.
La marcia su Roma.
Le mepris.
Le notti di Cabiria.
L'oro di Napoli.
Il processo de Verona.
Risate de gioia.
Thrilling.
Ultimo gladiatore.
Una vita difficile.

Disenos Artisticos E. Industriales, SA, a.k.a. DAISA

A gatas con tulipanes.
A la espera del marino.
Alce con su cria.
Aldeana con vespa.
Aldeanita de fiesta.
Aldeanita geranios.
Amor de madre.
Arlequin de la rosa.
Arlequin-A.
Arlequin-B.
Arlequin-C.
Arponero.
Bailarines en descanso.
Bajo la lluvia.
Ballet primer paso.
Ballet reverencia.
Ballet silfide.
Ballet tristeza.
El besito.
Beso a la madre.
Beso al padre.
Biberon a la muneca.
Biberon a su hija.
Blancanieves y la manzana.
Bordando el ajuar.
El botanico.
Burrito adornado.

Cabeza busto vernao.
Cabeza con flor.
Cabeza pendientes aros.
Cabeza pendientes borlas.
Cabeza pendientes plumas.
Cabeza pendientes telas.
Cabezas de caballos.
Candidez.
Canguro doliente.
Carmen.
Casita para la nena.
La castanera.
Chino agricultor.
Chismosas.
Chupete en la mano.
Chupetin desperezo.
Cierva con su cria.
Cobrando pieza.
Cogiendo el biberon.
Colegiala.
Colegiala E.
Colegiala I.
Colegiala O.
Colegiala U.
Comba florida.
Consolando a su hija.
Coqueteria.
Corazon de Jesus.
Cortando flores.
D. Quijote ensonador.
Dama con nina.
Dama Goyesca.
Damas junto el sauce.
Damatas platicando.
Damita atenta.
Damita rosa.
El Dante.
Danzarina.
Desnudo.
Don Quijote, alerta.
Doncella con dulzaina.
Durmiendo a la muneca.
Elefante de Siam.
Elefante doliente.
Eloisa.
En el estanque.
Faldas al viento.
Fantasia azul.
Fantasia rosa.
Flores a la maceta.
Flores a remolque.
Flores del campo.
Floristilla insistente.
Fumando espero.
Galan jugueton.
Galanteo precoz.
Gato Egipcio blanco.
Gato Egipcio negro.
Gitanos voladores.
Gran jefe.
Groupo palanquin.
Grumete con cestos.
Grupo Amazonas.
Hablando a la muneca.
Haciendose el lazo.
Hada madrina.
Hermanitas con flores.
Hermano Lobo.
Holandesa florista.
Holandesita brazo atras.
Holandesita con patos.
Holandesita con tulipanes.
Holandesita en jarras.
Holandesita trenzas.
Holandesitos.
Jarron Pekin aves y almen.
Jarron Pekin aves y junc.
Jinete saltando.
Jirafa doliente.
Joven madre.
Juegos de sirenas.
Juglar estanteria.
Lady Macbeth.
Lagarterana.
Lagarteranita.
Lagarteranita sentada.
Leccion de astronomia.
Lectura y sueno.
Leon doliente.
Lola.
Madre holandesa.
La maestra.
Mater amabilis.
Miguel de Cervantes.
Mini-ballet acostado.
Mini-ballet asombrado.
Mini-ballet gimnastica.
Mini-ballet pose.
Mini-ballet zapatillas.
Mirando a su perrito.
Mis poemas.
Monagillo dormido.
Mono doliente.
Motorista de antano.
Nana bailadora.
Nina andando.
Nina con escoba.
Nina de la mecedora.
Nina del turbante.
Nina festival conejita.
Nina festival gatita.
Nina Mimi.
Nina mimosa.
Nina Regando.
Nina reverencia.
Nina rubores.
Nina, perro y pelota.
Ninas con el columpio.
Ninas espigadoras.
Nini festival ratita.
Observando el caracol.
Oso doliente.
Otelo.
Pajaros de primavera.
Pareja de pajaros.
Paseando en Versaller.
Paseo fustrado.
Pastoral.
Payasito despertador.
Payasito pensativo.
Payasito plantado.
Payasito saxofon.
Payaso trompeta.
El payaso y la nina.
Perdiz grande.
Perrazo timido.
Perritos traviesos.
Pescador de regreso.
La pescadora.
Pintora alfarera.
Portando flores.
Presto a salir.
Presto a volar.
Primavera no. 2.
Princesita Estanteria.
Quijote-Sancho.
Reencuentro.
Regando las plantas.
Rosita.
Sacristan.
Sancho y su bota.
Sanson y Dalila.
El sereno.
Simpatia.
Sirena de la perla.
Sirenas sobre ola.
Somorjujos mimosos.
Somormujos con su cria.
Sueno y fantasia.
Susana y las palomas.
Tocador de zanfonia.
Torerito devoto.
Torerito triunfador.
Torso desnudo.
Tres bajo el paraguas.
Triciclo con flores.
Trio de pajaros.
Valencianito.
Vamos al colegio.
Vendedor de ceramica.
Vendedora de ceramica.

Documents Cinematographiques

Acera ou le bal des sorcieres.
Les amours de la pieuvre.
Assassins d'eau douce.
Barbe bleue.
Le bernard l'ermite.
Bryozoaires.
Calendal.
Caprelles.
Le chaudronnier.
Le club des sous-l'eau.
Comment naissent des meduses.
Crabes.
La crevette.
La crevette et son bopyre.
Crevettes.
Crevettes (Histoires de).
Cristaus liquides.
Cristaus liquides nematiques et cholesteriques.
Les danseuses de la mer.
La Daphnie.
Descente de la mer en acceleree.
Diatomees.
Docteur Claque.
L'economie des metaux.
L'ecriture du mouvement.
Electrolyse de nitrate d'argent.
Eleutheria.
Farrebique.
Les fetes de Roscoff.
Forbach et sarreguemines.
Le grand cirque de Calder.
Halammohydra.
Hemioniscus balani.
L'hippocampe.
Le homard.
Hyas et stenorinques.
Jeux d'enfants.
Limaille (essai de synchronisation pour etudiants).
Lourdes et ses miracles.
La lutte pour la vie.
Mathusalem.
Methode du Docteur Parrel.
Methode du Docteur Penchenat.
Miscellanees.
Mobiles de Calder.
Le monde estrange D'Axel Henricksen.
Montage des sequences filmees en 1925.
Notre planete la terre.
L'oeuf d'epinoche.
L'oeuvre scientifique de Pasteur.
L'oursin.
Les oursins.
Pantopodes.

La part de l'enfant.
La pieuvre.
Les pigeons du square.
Solutions Francaises.
Les tarets.
Le tonnelier.
Traitement experiemental d'une hemorragie chez le chien.
Le vampire.
Voyage dans le ciel.

Europe 1. See Fildebroc, Antenne 2 & Europe 1

Fiduciaire, Befac.

Il pleut sur Santiago.

Fildebroc & UGC DA

Ma femme s'appelle reviens.

Fildebroc, Antenne 2 & Europe 1

Allo Beatrice, episodes 1–6.

Fildebroc, FR3 & Renn Production

Les enrages.

Fildebroc, France 2 & Capac

Force majeure.

Fildebroc, UGC & Films A2

Le Leopard.

Filmadora Mexicana, SA

Arriba el norte.

Films A2. See Fildebroc, UGC & Films A2

Films ABC

Les demoniaques.
Le frisson des vampires.
Levres de sang.
Requiem pour un vampire.
La rose de fer.
Tout le monde il en a deux.
La vampire nue.
Le viol du vampire.

Films Ariane

L'aigle a deux tetes.

FR3. See Fildebroc, FR3 & Renn Production

France 2. See Fildebroc, France 2 & Capac

Friedrich Wilhelm-Murnau-Stiftung, Legal Successor of G.W. Pabst Film GmbH (Germany)

Das Tagebuch einer Verlorenen.

Friedrich Wilhelm-Murnau-Stiftung, Legal Successor of Terra-Filmkunst GmbH (Germany)

Adieu mascotte.
Am Rande der Welt.
Die Austreibung.
Bigamie.
Blitzzug der Liebe.
Bongare.
Die Boxerbraut.
Die Bruder Schellenberg.
Der Bund der Drei.
Carmen von St. Pauli.
Die Dame mit dem Tigerfell.
Dekameron-Nachte.
Dr. Monnier und die Frauen.
Die drei Kuckucksuhren.
Die drei Portiermadel.
Eifersucht.
Der Erzieher meiner Tochter.
Der Farmer aus Texas.
Die Frau, nach der man sich sehnt.
Fraulein Chauffeur.
Haus der Luge.
Der heilige Berg.
Heimkehr.
Hochverrat.
Hurrah! Ich lebe!
Ihr dunkler Punkt.
Insel der Traume.
Jacht der sieben Sunden.
Jugendrausch.
Der Kampf des Donald Westhof.
Kampf um die Scholle.
Konigin Luise.
Liebe macht blind.
Die Liebesbriefe der Baronin Von S.
Looping the loop.
Der Mann im Feuer.
Manon Lescaut.
Mein Freund, der Chauffeur.
Melodie der Welt.
Melodie des Herzens.
Michael.
Phantome des Glucks.
Schatten der Welstadt.
Die Schmugglerbraut von Mallorca.
Schuldig.
Die sieben Tochter der Frau Gyurkovics.
Die Siebzehnjahrigen.
Die Selige Exzellenz.
Spione.
Der Sprung ins Leben.
Der Strafling aus Stambul.
Svengali.
Tragodie eines Verlorenen.
Der verlorene Schuh.
Vom Tater fehlt jede Spur.
Ein Walzertraum.
Die Weber.
Wege zu Kraft und Schonheit.
Die wunderbare Luge der Nina Petrowna.
Zur Chronik von Grieshuus.

Friedrich Wilhelm-Murnau-Stiftung, Legal Successor of UFA (Germany)

Die blaue Maus.
Der fidele Bauer.
Die Flucht vor der Liebe.
Frau im Mond.
Die Frau mit dem schlechten Ruf.
Die Frauengasse von Algier.
Die geheime Macht.
Geheimnisse einer Seele.
Geheimnisse des Orients.
Der Geiger von Florenz.
Der grosse Sprung.
Komodie des Herzen.
Die letzte Droschke von Berlin.
Die Liebe der Jeanne Ney.
Milak, der Gronlandjager.
Mutter Krausens Fahrt ins Gluck.
Orlac's Hande.
Pietro, der Korsar.
Die Prinzessin und der Geiger.
Der rosa Diamant.
Sein grosse Fall.
Seine Frau, die Unbekannte.
Tartuff.
Tatjana.
Der Turm des Schweigens.
Uberfall.
Das unbekannte Morgen.
Ungarische Rhapsodie.
Vater und Sohn.
Vater werden ist nicht schwer.

Friedrich Wilhelm-Murnau-Stiftung

Der behexte Neptun.

Gaumont, SA

L'arpete.
L'atalante.
Dainah la metisse.
El Dorado.
Figaro.
Le journal tombe a cinq heures.
Taris et la natation.
Vautrin.
Zero de conduite.

Grands Films Classiques

L'affaire est dans le sac.
Drole de drame.
Voyage surprise.

L'Herbier, Marie-Ange

L'argent.
Autour de l'argent.
Le diable au coeur.
Fait divers.
La galerie des monstres.
L'inhumaine.
L'inondation.
Le vertige.

Landeta, Matilde Soto & Cooperativa Tacma

Lola Casanova.
La Negra Angustias.
Trotacalles.

Lathiere, Marcel. See Ploquin, Raoul, Represented by Marcel Lathiere

Minerva Film, AB

Fanny Hill.
Jorden runt med Fanny Hill.
Krigsforbrytare.

Music Sales Corporation

Alley cat.
Alley cat dance.
Alley cat song.
Omkring et flygel.

OB Invest

Sois belle et tais-toi.

Pabst (G.W.) Film GmbH (Germany). See Friedrich Wilhelm-Murnau-Stiftung, Legal Successor

Pathe Cinema

Boudu sauve des eaux.
Le orgueilleux.

Pathe. See Cogelda & Pathe

Ploquin, Raoul, Represented by Marcel Lathiere

L'etrange Monsieur Victor.

Procidis

La belle Americaine.

Renn Production. See Fildebroc, FR3 & Renn Production

Schirmer (G.), Inc

Adagio from Cinderella, op. 97b.
L'Admiral Ushakov.
Alexander Nevsky.
La Bataille de Stalingrad.
Betrothal in a monastery, op. 86.
Cinderella suite no. 3, op. 109.
Cinderella symphonic suite no. 1, op. 107.

Dances of the dolls from Piano pieces for children.
Le duel.
Festive poem pieces ''Thirty years,'' for symphony orchestra, op. 113.
Les feux de l'immoralite.
Ils ont un pays natal.
Ivan the terrible, op. 116.
Le jardin.
Kotovsky.
Lermontov.
Man with the gun, op. 53 (Portrait of Lenin).
March in B flat for band, op. 99.
Mission secrete.
Otello.
Partisans in the Ukranian steppes.
Pepo.
Piano sonata no. 8, op. 84.
Piano sonata no. 9, op. 103.
Prisonnier no. 217.
Prosper our mighty land, op. 114.
Le question Russe.
Romeo and Juliet, op. 64b.
Romeo and Juliet, op. 64ter.
Romeo and Juliet, symphonic suite no. 3, op. 101.
Russian folksongs for voice and piano, op. 104.
Salavat Iulaev.
Saltanat.
Semyon Kotko symphonic suite for orchestra from opera ''Semyon Kotko,'' op. 81bis.
Seven songs for voice and piano, op. 79.
Six pieces from Cinderella, op. 102.
Six songs for voice & piano, op. 66.
Six songs for voice & piano, op. 66 (no. 3–6).
Sonata for cello and piano, op. 119.
Sonata for piano, no. 6, op. 82.
Sonata for piano, no. 7, op. 83.
Sonata for violin and piano, no. 2, op. 94bis.
The song of the forests, op. 81.
Songs of our days, op. 76.
String quartet no. 2 (on Kabarchnian themes), op. 92.
Ten pieces from Cinderella, op. 97.
Three children's songs for piano, op. 68 (no. 1 & 2).
Three children's songs for piano, op. 68, no. 3.
Three pieces for piano, op. 96.
Three pieces from Cinderella for piano, op. 95.
Three romances by A. Pushkin for voice and piano, op. 73.
Three songs from Alexander Nevsky, op. 78b.
Le tocsin de la paix.
Tonya.
Two Russian folksongs for tenor, baritone, and piano, op. 106.
Violin sonata no. 1, op. 80.
The Volga meets the Don, op. 130.
Waltz suite, 3 movements from ''Cinderella'' and ''War & Peace'' for symphony orchestra, op. 110.
Winter bonfire suite, for reciters, boys' choir, and orchestra, op. 122.
Zangezur.
Zdravitsa-Cantata for chorus and orchestra on folk texts, op. 85.

Schott Musik International

Lili Marleen.

Scott, Christina

The age of the gods.
The dynamics of world history.
Progress and religion.
Religion and culture.
Religion and the rise of Western culture.
The spirit of the Oxford movement.
Understanding Europe.

Screen Associates, SA

His and hers.

Sindicato de Trabajadores de la Produccion Cinematografica de la Republica Mexicana

Un amor extrano.
Angela Morante (crimen o suicidio).
Ante el cadaver de un lider.
Aventuras de un caballo blanco y un nino.
Barrio de campeones.
La bestia acorralada.
La casa del pelicano.
La casa del sur.
Chicano.
Cronica roja.
Cuatro contra el imperio.
Deseos.
Dias de combate.
Ensayo de un crimen.
Espejismo de la ciudad.
Esposa te doy.
Los fernandez de peralvillo.
El fin de un imperio.
Las grandes aguas.
El hombre del puente.
La India.
El jardin de los cerezos.
La leyenda de Rodrigo.
El llanto de la tortuga.
La lucha con la pantera.
Las lupitas.
El mar.
Mas negro que la noche.
El mas valiente del mundo.
Mexicano tu puedes.
El Mexicano.
La mujer perfecta.
Musica de siempre.
Musica en la noche.
Las noches de Paloma.
Oficio de tinieblas.
Orinoco.
Para usted jefa.
Paraiso escondido.
Pasajeros en transito.
El profeta Mimi.
Pueblo, canto y esperanza.
Que noche aquella.
Rapina.
Renuncia por motivos de salud.
El reventon.
Te quiero.
El testamento.
La trenza.
El tunel seis.
Vals sin fin.
La venida Del Rey Olmos.
Viaje al paraiso.
Vibora caliente.
La vida cambia.
Y la mujer hizo al hombre.
Yo amo, tu amas, nosotros amanos.
Zona roja.

Soyuzmultfilm Studios

25-perviy den.
Afrikanskaya skazka.
Aist.
Aktsioneri.
Ali-Baba i sorok razboinikov.
Alim i ego oslik.
Alioshkini skazki.
Allo vas slishu.
Antarktika.
Antoshka.
Argonauti.
Automobil, lubov i gorchitsa.
Ave Maria.
Avrora.
Avtomat.
Babochka.
Babushka udava.
Babushkin kozlik.
Ballada o stole.
Banalnaya istoriya.
Bania.
Baron Munhauzen.
Bednaya Lisa.
Bez etogo nelizia.
Bil-nebilitsa.
Bobri idut po sledu.
Bolshie nepriyatnosti.
Bratiya Lu.
Bremenskie muzikanti.
Bud zdorov zeleniy les.
Budilnik.
Chasi s kukushkoy.
Chasovie poley.
Chelovek stroit dom.
Chelovek v. ramke.
Cheloveka narisoval ya.
Chempion.
Chestnoe krokodilskoe.
Chetire moneti.
Chi v lesu shishki?
Chto eto za ptitsa.
Chto takoe horosho i chto takoe plouo.
Chudesa v reshete.
Chudesni koldkolchik.
Chudesniy kolodets.
Chudesniy sad.
Chudestnitsa.
Chudo sredi bela dnia.
Chudo-melnitsa.
Chunia.
Churidilo.
Chuzhoy golos.
Chetvero s odnogo dvora.
Daru tebe zvezdu.
Dedushka i vnuchek.
Den chudestniy.
Den rozhdeniya.
Desnia o sokole.
Detskiy albom.
Detstvo Ratibora.
Devochka i slon.
Devochka v tsirke.
Ditia solntsa.
Dobrinya Nikitich.
Dogada.
Dogoni veter.
Dom komoriy postroil dzhek.
Doodochka i kuvshinchik.
Dorogaya kopeika.
Dostat do neba.
Dozhd.
Druziya-Tovarischi.
Diadia Stepa-militsioner.
Dva zhadnih medvezhonka.
Dve skazki.
Dzhovanni.
Eto ne pro menia.
Eto v nashin silah.
Faeton-sin solntsa.
Fedia Zaitsev.
Fedorino gore.

Frantishek.
Funtik i ogurtsi.
Futbolinie zvezdi.
General Taptigin.
Glavniy zvezdniy.
Gordiy korablik.
Gribok-teremok.
Gunan bator.
Gusi-lebedi.
Hlopok.
Hochu bodatsia.
Hochu bit otvazhnim.
Hrabriy olenionok.
Hrabriy Pak.
Hrabriy zaits.
I mama menia prostit.
I smeh i greh.
Ibolit i Barmaley.
Ilia Moromets i Solovey Razboinik.
Ilya Mooromets (prolog).
Ispolnenie zhelaniy.
Istoriya odnogo prestuplenie.
Istoriya Vlasa lentaya i Lobotriasa.
Ivan Ivanovich zabolel.
Kak ded velikoe ravnovesie narushil.
Kak koziol zemlu derzhal.
Kak mi vesnu delali.
Kak odin muzhik dvuh generalov prokormil.
Kak oslik schastie iskal.
Kak stat bolshim.
Kaleidoskop 68.
Kaleidoskop 70.
Kaleidoskop 71 no. 2.
Kaleidoskop-71.
Karlson vernulsia.
Kartina.
Karuselniy lev.
Kashtan
Ka.
Kak Kotionku postroili dom.
Katerok.
Kem bit.
Kem bit?
Klubok.
Kogda zazhigautsia Yolki.
Kolia, Onia i Arhimed.
Kolobok.
Komarov.
Komediant.
Konets chernoy topi.
Koniok-Gorbunok.
Korablik.
Korolevskaya zubnaya schetka.
Koshkin dom.
Koziol-muzikant.
Kozlionok kotoriy schital do desiati.
Krai zemli.
Krasa nenagliadnaya.
Krasheniy lis.
Kray v kotorom ti zhivesh.
Kriliya Diadushki Marabu.
Krokodil gena.
Kto perviy?
Kto poedet na vistavku?
Kto samiy silniy?
Kto skazal miau?
Kto vinovat?
Kuda poshel slon?
Kukareku.
Kukushka.
Kuznits-koldun.
Kvartet.
Labirint.
Legenda o Grige.
Legenda o starom maike.
Lesnaya hronika.
Lesnaya istoriya.
Lesnoy kontsert.
Letauschiy proletariat.
Lev i zaits.
Levsha.
Liagushonok ischet papu.
Lisa bober i drugie.
Lisa i drozd.
Lisa i medved.
Lisa i zayats.
Lisa-stroite.
Losharik.
Loskutok.
Malchik i miachik.
Malchik s palchik.
Malish i Karlson.
Mama.
Mashenka i medved.
Mashenkin kontsert.
Mashina vremeni.
Master iz Klamsey.
Medvezhonok na doroge.
Melochi zhizni.
Metamoreoza.
Meteor na ringe.
Mi ischem kliaksu.
Mi risuem octiabr.
Mi takie mastera.
Mi za solnishkom idiom.
Millioner.
Mimoletnosti.
Mir domu tvoemu.
Mishka-zadira.
Mister Twister.
Mister Uolk.
Mitia i mikrobus.
Moi drug Martin.
Moi zeleniy krokodil.
Moidodir.
Moskovskie novosti.
Moskvichek.
Mozaika.
Mozhno i nelzia.
Muha tskotuha.
Muha-tsokotuha.
Multcrokodil no. 1.
Multkrokodil no. 2.
Multkrokodil no. 3.
Multkrokodil no. 4.
Multkrokodil no. 5.
Multkrokodil no. 6.
Muravishka-hvastunishka.
Murzilka i velikan.
Murzilka na sputnike.
Na dache.
Na krau taini.
Na lesnoi estrade.
Na perekriostke.
Na zadney parte 1.
Nargis.
Nash dobriy master.
Nash doktor.
Nash drug pishi-chitay.
Nash karandash.
Nashe solntse.
Ne lubo-ne slushay.
Ne v shliape schastie.
Nebesnaya istoriya.
Nebesnoye sozdanie.
Nemuhinskie musikanti.
Neobichniy drug.
Neobiknovenni match.
Neobitaemiy ostrov.
Nepiuschiy vorobei.
Neposlushniy kotionok.
Ni Bogu niChertu.
Nichto ne zabito.
No lesnoi trope.
Noch pered Rozhdestvom.
Noch vesni.
Novelli o kosmose.
Novichok.
Novie bolshie nepriyatnosti.
Noviy dom.
Novogodnaya noch.
Novogodnaya skazka.
Novogodniy ve ter.
Nu i rizhik.
Nu pogodi.
Obida.
Odna loshadka belaya.
Ogon.
Ograblenie po 1.
Oh i Ah idut v pohod.
Oh i Ah.
Ohotnichie ruzhie.
Okna satiri.
Okno.
Olen i volk.
Opiat dvoika.
Oranzhevoe gorlishko.
Orlinoe pero.
Orlionok.
Osel i solovey.
Ostorozhno s ogniom.
Ostorozhno schuka.
Ostrov oshibok.
Otvazhniy Robin Gud.
Palka-viruchalka.
Pavliniy hvost.
Pelo.
Peremenka 1.
Peresolil.
Persey.
Pervaya skripka.
Perviy urok.
Pes i kot.
Pesenka mishonka.
Pesenka radosti.
Pesni ognennih let.
Pesnia letit po svetu.
Pesnia o druzhbe.
Pesnia o unom barabanschike.
Petia i volk.
Petr-veseliy ormanschik.
Petuh i kraski.
Petushok-zolotoi grebeshok.
Pirozhok.
Pismo.
Pitachok.
Plastilinoviy yozhik.
Plus elektrifikatsiya.
Po sledam Bremenskih muzikantov.
Pochemu ushel kotionok.
Pochta.
Pochtoraya ribka.
Podi tuda ne znau kuda.
Podpis nerazborchiva.
Poezd pamiat.
Pohititel krasok.
Pohozhdenia Chichikova (Nozdrev).
Pohozhdeniya Chichikova (Manilov).
Poiga i lisa.
Poligon.
Poliot na lunu.
Polkan i Shavka.
Portret.
Poterialas vnuchka.
Prikluchenie neznaiki.
Prikluchenia Homi.
Prikluchenia krasnih galstukov.
Prikluchenia ogurechika.

Prikliucheniya tochki i zapiatoy.
Priklushenie moorzilki.
Privet druziya.
Privet martishke.
Pro begemota kotoriy boyalsia privivok.
Pro kozla.
Pro Petrushku.
Pro zluyu machehu.
Prochti i katai Parizh i Kitai.
Prodelki v shkole.
Proishozhdenie vida.
Proroki i uroki.
Proverte vashi chasi.
Puteshestvie v stranu Vevikanou.
R vdrug poluchitsia.
Raduga.
Rai v shalashe.
Risunok na peske.
Rovno v tri piatnadtsat.
Russkie napevi.
S boru po sosenke.
Sadko-bogatiy.
Samiy glavniy.
Samiy malenkiy gnom no. 1.
Samiy mladshiy dozhdik.
Sarmiko.
Secha pri kirzhentse.
Segodnia den rozhdeniya.
Sekret vospitaniya.
Semeinaya hronika.
Seraya sheika.
Serdtse hrabretsa.
Serdtse.
Sestritsa Alionushka i Bratets Ivanushko.
Shakalionok i verbliud.
Shel tramvai 10 nomer.
Shest Ivanov-shest kapitanov.
Shestomu festivalu.
Shkatulka s sekretom.
Shutki.
Siniaya ptitsa.
Sitsevaya ulitsa.
Skameika.
Skaz o Chapaeve.
Skazka dedushki Ai-Po.
Skazka dlia bolshim i malenkih.
Skazka o malchishe-kibalchishe.
Skazka o pope i rabotnike ego Balde.
Skazka o ribake i ribke.
Skazka o snegurochke.
Skazka o soldate.
Skazka o starom kedre.
Skazka o zhivom vremeni.
Skazka pro len.
Skazka skazivaetsia.
Skazka za skazkoi.
Skazki pro chuzhie kraski.
Skazki starogo duba.
Skripka pionera.
Sladka skazka.
Sledi na asfalte.
Sledopit.
Slon i murovei.
Slovo imeut kukli.
Slovo o hlebe.
Sluchay s hudozhnikom.
Sluchilos eto zimoy.
Slushaetsia delo o....
Snegurochka.
Snezhnie ludi.
Sokrovischa zatonuvshego korarblia.
Solntse na verevochke.
Solomenniy bichok.
Soperniki.
Spasibo aist.
Spasibo.
Sportlandiya.
Start.
Staraya fotografiya.
Staraya igrushka.
Starie zaveti.
Starie znakomie.
Starik i zhuravl.
Stariy dom.
Stekliannaya garmonika.
Stiopa-moriak.
Strana Orkestriya.
Stranichki kalendaria.
Strannaya ptitsa.
Strekoza i murovey.
Strela uletaet v skazku.
Stadion shivorot-navivorot.
Svetliachek no. 3.
Svetliachok no. 2.
Svetliachok no. 7.
Svetliachok no. 8.
Svetliachok.
Taina daliokogo ostrova.
Taina zapechnogo sverchka.
Tanusha, Tatiana Top i Nusha.
Tayozhnaya skaska.
Tebe Moskva.
Terem-teremok.
Tihaya polianka.
Timoshkina yolka.
Tolko dlia vzroslih 2.
Tolko dlia vzroslih 3.
Tolko dlia vzroslih 1.
Tolko ne seichas.
Toptizhka.
Tri banana.
Tri drovoseka.
Tri medvedia.
Tri meshka hitrosti.
Tri pingvina.
Tri tolstiaka.
Tri ziatia.
Tridtsat vosem popugaev.
Trinadtsatiy rei.
Troe is prostokvashino.
Trubka i medved.
Tsaplia i zhuravl.
Tsvetik-semitsvetik.
U straha glaza veliki.
Umka ischet druga.
Umoreski 2.
Umoreski 3.
Umoreski no. 1.
Upriamoe testo.
Urok ne v prok.
Uroki nashih predkov.
Use naoborot.
Ustupite mne dorogu.
V gostiah u gnomov.
V mire Basen.
V strane neviuchennih urokov.
Vagonchik.
Validub.
Vania Datskiy.
Vaselisa prekrasnaya.
Vashe zdorovie.
Vasiliok.
Vasilisa Mikulishna.
Velikie holoda.
Verlioka.
Vernulsia sluzhiviy domoi.
Vershki i koreshki.
Veselaya karusel no. 2.
Veselaya karusel no. 3.
Veselaya karusel no. 4.
Veselaya karusel no. 5.
Veselaya karusel no. 6.
Veselaya karusel no. 7.
Veselaya karusel no. 8.
Veselaya karusel no. 9.
Veselaya karusel no. 10.
Veseliy ohotnik-karandash i kliaksa.
Veseliy ogorod.
Vesennaya skazka.
Vesennie melodii.
Vini-puh i den zabot.
Vini-pwe.
Vinni puh idet v gosti.
Visokaya gorka.
Vlublennoe solnishko.
Vnimanie volkil.
Vodnoy storovoi.
Volk i semero kozliat.
Volshebnaya ptitsa.
Volshebnie fonariki.
Volshebniy klad.
Volshebniy magazin.
Vorona i lisa, kukushka i petukh.
Vot kakie chudesa.
Vot tak tigr.
Vovka v trideviatom tsarstve.
Vpered, vremia!
Vpervie na arene.
Vremena goda.
Ya k vam lechu vospominaniem.
Ya narisuyu solntse.
Ya vspominau.
Ya zhdu ptentsa.
Yantarni zamok.
Yulia-kaprizulia.
Yunosha Friderik Engels.
Za chas do svidaniya.
Zaichik.
Zaika-zaznaika.
Zaokeanski reporter.
Zavetnaya mechta.
Zayats Kosika i rodnichok.
Zdorovie nachinaetsia doma.
Zdravstvuy atom.
Zeleniy zmiy.
Zemlia moi.
Zerkaltse.
Zerkalo vremeni.
Zhadniy kuzia.
Zheleznie druziya.
Zheltiy aist.
Zhiharka.
Zhil-bil koziavin.
Zhila bila kurochka.
Zhivie tsifri.
Zhizn i stradaniya Ivana Semenova.
Zlodeika s nakleikoy.
Znakomie kartinki.
Znakomie litsa.
Zolotie kolosiya.
Zolotie lbi.
Zolotoy malchik.

Terra-Filmkunst GmbH (Germany). See Friedrich Wilhelm-Murnau-Stiftung, Legal Successor of

UFA (Germany). See Friedrich Wilhelm-Murnau-Stiftung, Legal Successor of UFA (Germany)

UGC DA International

La fille de l'eau.
La grande illusion.
Nana.
La petite marchande d'allumettes.

UGC DA. See Fildebroc & UGC DA

UGC. See Fildebroc, UGC & Films A2

Universal Edition, AG, Vienna

Das goldene Zeitalter, op. 22—ballet suite.

Vera Films. See Cogelda & Vera Films

Wallerstein W., Gregorio

Vivir del cuento.

Dated: December 20, 1996.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 96–32760 Filed 12–26–96; 8:45 am]

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Friday
December 27, 1996

Part VII

Federal Retirement Thrift Investment Board

5 CFR Part 1605

Correction of Administrative Errors; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1605

Correction of Administrative Errors

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a final rule revising the Board's existing Error Correction Regulations. The rule reorganizes the regulations to make them more concise and easier to read, reflects changes in Board policy and procedures adopted since publication of the regulations in 1987, and eliminates provisions that no longer apply.

EFFECTIVE DATE: These final rules are effective December 27, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Woodruff, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005. Telephone: (202) 942–1661.

SUPPLEMENTARY INFORMATION: Interim regulations governing error correction relating to the Thrift Savings Plan (TSP) were first published in the Federal Register on May 13, 1987 (52 FR 17919) and July 22, 1987 (52 FR 27527). The final regulations, found at 5 CFR Part 1605, were published in the Federal Register on December 4, 1987 (52 FR 46314). This rule revises these regulations. It includes several substantive changes in the procedures by which administrative errors are corrected, as well as non-substantive editorial changes in style and organization.

The final rule is divided into four subparts. Subpart A contains definitions of terms used in this part. The definition section has been expanded to encompass a wider range of terms than was included in the existing regulation. The expanded definition section is consistent with the definitions contained in 5 CFR Part 1606, and should eliminate potential confusion or conflict between the provisions of the two parts. In addition, the revision refers to Part 1606 where such references clarify the relationship between the two parts.

Subpart B applies to employing agency errors. The revision has been reorganized for clarity into separate subparts for employing agency errors and for Board or TSP recordkeeper errors. Board and TSP recordkeeper errors are addressed in Subpart C.

The existing regulations contain two largely duplicative sections: § 1605.2. Failure to participate or delay in participation, and § 1605.3, Insufficient contribution. The revision combines these sections in § 1605.2, makeup of missed or insufficient contributions, without substantive change in the essential rules of the existing regulation. Employing agencies are responsible for promptly making up employer contributions (agency automatic (1%) contributions and agency matching contributions) that they are obligated to make but have not made. If employee contributions have not been made due to an employing agency error, the participant may establish a schedule of makeup contributions to be deducted from current pay in addition to any regular TSP contributions the participant may be making. The employing agency is also responsible for contributing any applicable agency matching contributions on the missed employee contributions, but only when the participant makes up the employee contributions.

Section 1605.4 of the existing regulations, titled ''Excess deduction or contribution,'' addresses removal by employing agencies of contributions from participants' accounts. The revision deals with that subject in § 1605.3, which incorporates more detailed rules for removal of contributions than were included in § 1605.4 of the existing regulations. In particular, § 1605.3 describes information employing agencies must submit on negative adjustment records, the processing of negative adjustment records (including calculation of investment gains and losses on the money that is removed), and the manner in which the money will be removed from the participants' accounts. Different rules apply to investment gains or losses for employee contributions and employer contributions.

Sections 1605.9 and 1605.10 of the existing regulations address TSP contributions related to back pay awards or other retroactive pay adjustments. Those issues are addressed in § 1605.4 of the revision, which contains more detail about the types of elections a participant is entitled to make when he or she is reinstated without a break in service after reversal of a wrongful separation. The revision clarifies that, for purposes of computing lost earnings on makeup contributions that relate to the period of wrongful separation, the participant may not choose investment funds with the benefit of hindsight concerning the performance of the TSP investment funds. Earnings will be calculated at the G Fund rate of return up to the date of any interfund transfer that was made by the participant during the period of separation. From the date of the interfund transfer forward, the lost earnings will be calculated as if the money had been invested in accordance with the percentages elected for the interfund transfer.

This approach is consistent with, and reiterates, the rules established in Part 1606 (which addresses the payment of lost earnings attributable to employing agency errors), particularly § 1606.11(c). As in the existing regulations, the revision sets forth different rules for back pay awards or other retroactive pay adjustments for periods during which the participant remained employed by the Federal Government.

Section 1605.5 governs situations where employing agencies have erroneously classified participants' retirement coverage (e.g., FERS or CSRS). This issue was previously addressed in § 1605.11. The revision provides more detailed rules than the existing regulation. Under the revision, different rules apply for a FERS participant who has been misclassified as CSRS and a CSRS participant who has been misclassified as FERS.

Section 1605.6 of the revision provides for the employing agencies to establish procedures for processing claims for correction of agency errors. This section also provides time limits for filing such claims. The revision retains without substantive change the rules that apply to claims filed with employing agencies under existing § 1605.8.

Subpart C applies to errors committed by the Board or the TSP recordkeeper, not errors committed by employing agencies. Some Board or recordkeeper errors, as addressed in § 1605.7, must be corrected by crediting earnings (positive or negative) to a participant's account in order to make the participant whole with respect to earnings the account would have received had the error not occurred. Such payments of lost earnings are, in effect, paid by the rest of the TSP participants, as if they were administrative expenses of the Plan. Such lost earnings should not be confused with those payable under Part 1606, which are paid not by the Plan but by employing agencies that make errors relating to TSP accounts. Section 1605.7 also covers other errors that can be corrected by the TSP, such as reversal of taxable loan distributions caused by Board or TSP recordkeeper errors or erroneous processing of court orders.

Section 1605.8 of the revision contains rules for processing claims for correction made by Plan participants to the TSP recordkeeper or the Board. The rules adopt the informal claims process

that has evolved over the course of the Board's operations. Claims may be made in writing to the TSP recordkeeper or to the Board. There is no required format for presenting a claim; a letter setting forth the nature of the claim and the correction sought is sufficient. A participant may request review by the Board of a denial issued by the TSP recordkeeper. All decisions by the Board are final administrative decisions. Section 1605.8 also contains time limits for filing claims or requesting reconsideration of the denial of a claim by the TSP recordkeeper.

Subpart D contains miscellaneous provisions not addressed by other subparts of the revision.

On November 5, 1996, the Board published a proposed rule with a request for comments in the Federal Register (61 FR 56904). The Board received no comments on the proposed rule. Therefore, we are adopting the provisions of the proposed rule as a final rule with one change. The proposed rule contained, in the definition of basic pay (§ 1605.1), an incorrect reference to 5 U.S.C. 8431(3); the reference in the final rule has been corrected to 5 U.S.C. 8331(3).

Section-by-Section Analysis

Subpart A—Definitions

Section 1605.1 contains definitions of terms used in this part. Important additions to this section are the definitions of ''employing agency error,'' ''Board error,'' and ''recordkeeper error.'' These terms warrant definition because they describe the errors that give rise to corrections under this part.

The definitions are intentionally broad so that participants will be encouraged to seek correction whenever they are denied rights given in applicable statutes or regulations. When the Board, the TSP recordkeeper, or an employing agency fails to follow procedures provided in bulletins or other communication materials provided to participants or employing agencies, participants should be able to expect that those procedures will be followed, and to obtain correction under this part when they are not. However, other forms of relief, such as punitive damages or consequential damages, are not statutorily authorized.

Subpart B—Employing Agency Errors

Section 1605.2 applies whenever an employing agency error causes a participant's TSP account not to receive all of the contributions it should receive, whether employee contributions, employer contributions, or both.

Section 1605.2(b) applies to missed employer contributions. An employing agency's obligation to make agency automatic (1%) contributions is unrelated to any decision by the participant whether to make employee contributions. Under 5 U.S.C. 8432(c)(1)(A), if a FERS employee receives basic pay, he or she is entitled to receive agency automatic (1%) contributions. When an employing agency discovers that it has failed to provide them, it should promptly contribute the correct amount, in a lump sum, to the affected participant's account. The revision eliminates the requirement in the existing regulations that the contributions be made within 30 days of the agency's discovery of the error, in favor of a requirement that the contributions be submitted ''promptly.'' Although this requirement provides greater flexibility than the previous standard, experience shows that prompt action will rarely require more than 30 days; it is anticipated that in most cases much fewer than 30 days will be sufficient. The employing agency may also be required to submit lost earnings records under Part 1606.

Similarly, if an employing agency has made proper employee contributions on behalf of a FERS participant, but has failed to make all or any part of the agency matching contributions to which the participant is entitled, it must promptly make those contributions in a lump sum upon discovery of the error. Such contributions may also be subject to lost earnings under Part 1606.

Under no circumstances may an employing agency submit agency matching contributions associated with employee contributions that have not yet been made. For instance, if a participant makes up missed employee contributions under § 1605.2(c), then under § 1605.2(c)(7) any associated agency matching contributions must be made throughout the schedule of makeup contributions. In that situation, no lump sum deposit of agency matching contributions is permitted. If the schedule of makeup contributions is suspended or terminated, then the associated agency matching contributions will similarly be suspended or terminated.

Under §§ 1605.2(c)(1) and (2), in order to facilitate submission of any related lost earnings records by the employing agency, the Board has determined that the agency should have the flexibility to establish the schedule in a manner other than equal contributions. In some cases, this will enable the employing agency to avoid having to submit two or more lost earnings records (for agency matching contributions) having the same beginning date but different ending dates. Except to the extent necessary to accomplish that purpose, however, employing agencies are encouraged to work with participants to establish schedules providing for relatively equal makeup contributions.

The Board has established a ceiling on the number of pay periods over which the makeup contributions may extend. This was done to allow participants sufficient time to make up missed contributions without undue financial burden and, at the same time, avoid an undue administrative burden on the employing agencies resulting from extended schedules of makeup contributions. The limit is four times the number of pay periods over which the error(s) occurred. The agency may, however, shorten that maximum period to no less than twice the number of pay periods over which the error(s) occurred. It is expected that employing agencies will exercise their discretion to shorten the maximum schedule of makeup contributions only if there are compelling administrative reasons to do so.

Under § 1605.2(c)(4), the makeup employee contributions are not counted against the percentage limit on TSP contributions per pay period. Because the makeup contributions merely allow the participant to make contributions that should have been made in earlier pay periods, the additional contributions are statutorily authorized. However, the Internal Revenue Code annual limits on contributions found at 26 U.S.C. 402(g)(1) and 26 U.S.C. 415 contain no exceptions for contributions that should have been made in prior years. The Board has no authority to waive the Internal Revenue Code annual limits. Section 1605.2(c)(5) permits any makeup contributions that cannot be made in any year because of the Internal Revenue Code annual limits to be carried forward into subsequent years.

If application of the Internal Revenue Code annual limits is anticipated when the schedule of makeup contributions is established, the schedule can be designed to suspend contributions upon reaching the limit for any calendar year. Even if a schedule is not designed in this manner, the schedule may be suspended at the participant's request if necessary to avoid losing the opportunity to make regular TSP contributions. A similar suspension of the schedule is permitted when the participant does not have sufficient net pay to make the contribution called for by the schedule. A period of suspension does not count against the ceiling on the number of pay periods over which the schedule may extend.

Under § 1605.2(c)(6), a participant may elect to terminate a schedule of makeup contributions at will, but if he or she does so, that termination (as opposed to a suspension due to the Internal Revenue Code annual limits or insufficient net pay) is irrevocable. Also, once a schedule of payments begins, a participant may not make partial contributions under the schedule as an alternative to terminating the schedule.

If a participant separates from Federal service before completing the schedule of makeup contributions, the participant may elect to have the remaining makeup contributions contributed from his or her final paycheck, without regard to the percentage limits (5% or 10%) contained in FERSA (but still subject to the Internal Revenue Code annual limits). Contributions may only be deducted from pay that constitutes basic pay. For example, no contributions may be deducted from a lump-sum payment of annual leave, which is not basic pay.

If there are further makeup contributions remaining on the schedule after the final paycheck, they may not be made up through any other method of contribution to the TSP. The participant's only remedy in that situation would be a direct action against the employing agency under 5 U.S.C. 8477 for lost benefits caused by the employing agency error (this may include, for example, lost opportunity to receive matching contributions and lost tax advantages). The Board anticipates that, in most cases, the participant and employing agency will be able to reach an administrative settlement of the participant's claim without involving the TSP and without the need to resort to the Federal courts.

Under § 1605.2(c)(8), any makeup employee contributions and makeup employer contributions must be reported by the employing agency for investment among the TSP investment funds using the participant's investment fund allocation election, if any, that is in effect at the time the makeup contributions are made. If no such allocation election is in effect at that time, the makeup contributions must be reported by the employing agency for investment in the G Fund. The money will not, in other words, be reported by the employing agency for investment in the investment fund(s) to which it would have been contributed had the error not occurred.

The investment of the makeup contributions pursuant to the participant's current investment allocation does not, however, control any calculation of lost earnings on the makeup contributions. That calculation will be performed under the rules set forth in Part 1606, based on tracking by the TSP recordkeeper of the investment fund(s) in which the money would have been invested from the date it should have been contributed to the date the makeup contribution was actually made. In addition, under Part 1606, the processing of lost earnings records may cause money to be moved among the investment funds, in order to place the account in the position it would have attained had the error not occurred.

Section 1605.2(c)(10) provides that makeup employee contributions may only be made by payroll deduction. Moreover, those payroll deductions may only be made from pay that constitutes basic pay. Makeup contributions may not be deducted from a final lump-sum payment of annual leave or from any other pay that does not constitute basic pay, such as the pay of a temporary employee.

Section 1605.2(c)(11) serves as a reminder to employing agencies that correction under Part 1605 may not be sufficient to meet their obligation to correct agency contribution errors. It may also be necessary to submit lost earnings records under Part 1606.

Section 1605.3 governs removal of erroneous contributions. This can arise in a multitude of circumstances, such as where a participant elects to contribute 1% of basic pay and the agency erroneously contributes 10% because of a data entry error, where an agency erroneously contributes matching contributions to the account of a CSRS participant who was temporarily (and incorrectly) classified as FERS, or when a participant erroneously classified as FERS chooses, upon learning of the proper retirement classification, to obtain a refund of contributions made to his or her account.

Under § 1605.3(b)(1), the employing agency must submit a separate negative adjustment record for each pay period involved. Each record must indicate the pay date for which the contribution was made, the amount of the contribution, the source(s) of the contribution, and the investment fund(s) to which the contribution was reported for investment by the employing agency. This information allows the TSP recordkeeper to verify that the contribution was in fact made and to calculate the investment gains or losses on the money for the period it was erroneously invested in the TSP. The calculation is done by tracking the monthly earnings of the investment fund(s) in which the erroneous contribution was invested, including consideration of how such contributions were reallocated among the investment funds as a result of any interfund transfer processed for the account during the relevant period of time.

As referred to in § 1605.3(b)(2), the Board has distributed to employing agencies detailed instructions concerning the submission of negative adjustment records. The Board may, from time to time, issue additional guidance or may change guidance that has been issued. When this occurs, the new information will be circulated to employing agencies with sufficient time for them to implement any changes to their payroll or other administrative systems that may be required by the new information. Employing agencies are required to comply with all such instructions, including providing any additional information those instructions may require.

Section 1605.3(c) provides rules for processing negative adjustment records. Most of the processing responsibility is placed upon the TSP recordkeeper. Upon receipt of negative adjustment records, the TSP recordkeeper must edit them to ensure compliance with established conventions and to ensure that the records can be successfully processed. As soon as the edit process is completed, all acceptable adjustment records are placed in approved status for processing. If that occurs by the second-to last business day of a month, the records will be processed as of the end of that month. If they are not accepted until the last business day of a month, they will be processed as of the end of the following month. The TSP recordkeeper cannot guarantee how long the edit process will take, although it frequently takes only one to two days if there are no problems with the data. In order to ensure prompt processing, employing agencies are advised to submit negative adjustment records as early as possible during a month.

Under § 1605.3(c)(2), the TSP recordkeeper will separately compute the earnings attributable to the contributions for each pay date and source of contributions. The TSP recordkeeper will also determine the investment fund(s) in which the money being removed is invested. This requires applying the monthly earnings allocation factors for the relevant investment fund(s), as well as tracking the location of the money through any interfund transfers that occur after the erroneous contributions. Subject to the rules set forth in § 1605.3(c)(3), money will be removed from the investment fund to which it has been traced.

In determining investment gains and losses for erroneous contributions submitted on a given pay date, each source of contributions is treated separately. That is, investment gains

and losses for the different TSP investment funds within a source of contributions will be netted against each other, but net gains or losses for different sources of contributions will not be netted against each other. Any other treatment would be inconsistent with the different character of the funds attributable to the three sources of contributions. For example, employee contributions are eligible to be borrowed, whereas agency matching contributions are not. Thus, if gains on employee contributions were offset against losses on employer contributions, the participant would not have as much money available to be borrowed as without such netting. Similarly, because only agency automatic (1%) contributions (and attributable earnings) are subject to the vesting requirements of 5 U.S.C. 8432(g), netting gains or losses on those contributions against the other two sources would improperly state the amount of money subject to the vesting requirement.

For similar reasons, § 1605.3(c)(3)(ii) prohibits using money in one source of contributions to return funds to an agency in connection with a negative adjustment submitted for another source of contributions. For example, if a negative adjustment to employee contributions requires returning $300 to the employing agency, and the participant only has $200 of employee contributions in his or her account (e.g., because of a loan that reduced the balance of employee contributions to $200), the additional $100 will not be returned to the employing agency from employer contributions. Rather, the negative adjustment to employee contributions will be deleted (i.e., not processed) and the employing agency may resubmit the negative adjustment record at a later time when the participant has sufficient employee contributions to cover it (e.g., due to loan repayments or new contributions).

In contrast to netting across sources of contributions, § 1605.3(c)(3)(iii) provides that within a source of contributions, gains and losses will be netted across the TSP investment funds. This is appropriate because such netting does not involve monies that are of a different character. The legal requirements applicable to all agency automatic (1%) contributions, for example, are the same regardless of the investment fund in which those monies are invested. If a negative adjustment to one source of contributions is tracked by the TSP recordkeeper to one investment fund, but there is not sufficient money in that investment fund to cover the entire adjustment, the money will be taken *pro rata* from the other investment funds. All of the money from the same source of contributions is considered to be of the same character.

Sections 1605.3(d) and (e) explain, separately for employee contributions and employer contributions, the rules for determining how much money is returned to the employing agency in connection with a negative adjustment record. Under § 1605.3(d)(1), if there is a net investment gain on an employee contribution, the employing agency receives the full face value of the negative adjustment. With one exception described in § 1605.9(a) (relating to employees ineligible to have an account in the TSP), the earnings on the employee contributions remain in the participant's account. Leaving the earnings in the account compensates the participant for the fact that he or she did not otherwise have use of the money that the employing agency erroneously contributed. The earnings cannot be paid out of the Plan to the participant at the time the negative adjustment record is processed, however. This is because such a payment, as opposed to the refund of the erroneous contributions themselves, would be a taxable distribution from the TSP that is not permitted under FERSA prior to the participant's separation from Federal service. When the participant separates, he or she may withdraw the earnings, along with any other sums in the account, under the normal rules for withdrawal from the TSP.

Section 1605.3(d)(2) addresses investment losses on employee contributions. The employing agency receives only the amount of the erroneous contribution minus the amount of the investment loss. However, the investment loss does not change the agency's responsibility to refund to the participant the full face amount of the erroneous contribution, where appropriate. The net effect is that the employing agency is required to absorb the investment loss on money that was only contributed to the TSP on account of the agency's error. It would be inequitable to require the participant to absorb the risk of loss on the money. The revised rule, which comports with current practice, effectively prevents the employing agency from putting a participant's money at risk without proper authorization.

Section 1605.3(d)(3) makes it clear that if an employing agency removes erroneous employee contributions, it must also submit negative adjustment records for any associated agency matching contributions. This is an extension of the general principle that no agency matching contributions may be made unless and until associated employee contributions are actually made. This principle cannot be circumvented by an employing agency's removing the employee contributions after agency matching contributions are made, and leaving the agency matching contributions in the TSP.

Section 1605.3(e) addresses removal of erroneous employer contributions from participants' accounts. Section 1605.3(e)(1) provides that erroneous employer contributions may only be returned to the employing agency if the negative adjustment record is processed within one year of the processing of the contribution. This rule, which is contained in the existing regulations, is based on guidance issued by the Internal Revenue Service. If more than one year elapses, the employing agency must still submit any appropriate negative adjustment records to remove erroneous contributions from the participant's account. However, in this case, instead of the employing agency's receiving a refund of the erroneous contributions, the amount of the erroneous employer contribution (plus or minus investment gains or losses) is removed from the account and used to offset TSP administrative expenses, thereby benefitting the rest of the TSP participants. In order to avoid this result, employing agencies must identify and remove erroneous employer contributions within one year of their submission.

Section 1605.3(e)(2) provides that if there is an investment gain on erroneous employer contributions that are to be returned to the employing agency, the agency receives a refund of only the face value of the negative adjustment. The agency may not receive the benefit of the investment gain on the money. At the same time, the individual participant should not receive an earnings windfall due to the fortuity of an employing agency error. Thus, the earnings on erroneous employer contributions are removed from the account and used to offset TSP administrative expenses.

Under § 1605.3(e)(3), if there is an investment loss on the erroneous employer contributions that are either returned to the employing agency or removed from the account and used to offset TSP administrative expenses, the amount removed from the account will be the amount of the contribution less the investment loss. If the employing agency received the full amount of the erroneous contribution, then the amount of the loss would have to be made up out of the participant's money. The participant should not have to absorb an investment loss on employer money that

was erroneously placed in his or her account.

The TSP recordkeeper has issued three TSP bulletins containing detailed procedures and information concerning the submission, processing, and accounting for negative adjustment records. Those bulletins, Nos. 90–22, 90–23, and 90–28, can be obtained from the Board or TSP recordkeeper upon request.

Section 1605.4 contains the rules for making up TSP contributions related to back pay awards or other retroactive pay adjustments. Section 1605.4(a) governs situations in which the participant was separated and subsequently reinstated with back pay. Under those circumstances, the participant could not have had a TSP contribution election in effect during the period of separation. Accordingly, under § 1605.4(a)(1), immediately upon reinstatement the employing agency must give the participant an opportunity to make a current TSP contribution election on Form TSP–1, regardless of whether the reinstatement occurs during a TSP open season or TSP election period.

Under § 1605.4(a)(1), the effective date of the current Form TSP–1 will be the first day of the first full pay period in the most recent TSP election period. If the participant is reinstated during a TSP open season but before the election period, he or she may also submit a Form TSP–1 that will become effective the first day of the first full pay period in the following election period. For example, if these rules had been in effect in 1995 and a participant was reinstated on January 2, 1995, the effec tive date of the current Form TSP–1 would have been January 15, 1995 (the first day of the first full pay period in the most recent election period). If the participant had been reinstated on March 22, 1995, the effective date of the current Form TSP–1 would have been January 15, 1995. If a participant had been reinstated on May 20, 1995, the effective date of the current Form TSP–1 would have been January 15, 1995. In addition, this participant could have submitted another Form TSP–1 to become effective on July 3, 1995 (the first day of the first full pay period in the following election period).

Under § 1605.4(a)(2), the participant has several choices concerning makeup contributions for the period of erroneous separation. If he or she had a contribution election on file at the time of separation, the contribution election will be reinstated for the period of separation unless the participant affirmatively elects not to have those contributions made up. Alternatively, the participant may also affirmatively elect not to make up those contributions that would have been made from the date of separation through the end of the next TSP open season after separation. Finally, the participant may, for any open season after the one during which the separation occurred, elect any amount of makeup contributions that he or she would have been eligible to make had the separation not occurred.

As provided in § 1605.4(a)(3), the decisions made by the participant after returning do not include decisions concerning the investment funds in which the money would have been invested had the separation not occurred, nor can the participant choose to receive lost earnings for the period of separation based on the investment funds elected on a Form TSP–1 that was in effect at the time of separation. The effectiveness of that election came to an end when the participant separated, even though the separation was involuntary and ultimately found to have been erroneous. Any decisions made after the participant was reinstated concerning the investment funds to use in the lost earnings calculation would be in direct violation of the principles set forth in Part 1606 (which applies to back pay awards and other retroactive pay adjustments, 5 CFR 1606.4(b)), in particular 5 CFR § 1606.11(c).

Thus, § 1605.4(a)(3) provides that all lost earnings will be calculated at the G Fund rate of return up to the date of any interfund transfer processed during the period of separation. From the effective date of the interfund transfer forward, the amount of the earnings will be calculated based on the allocations elected on the interfund transfer request. The earnings (and related contri butions) will also be moved among the investment funds to reflect the funds in which they would have been invested had the interfund transfer election been applied to them.

Under § 1605.4(b), if the participant remained employed by the Federal Government for the period covered by the back pay award or other retroactive pay adjustment, the participant is bound by the contribution election that was in effect during that period. Thus, if the participant received less pay as a result of the action that led to the back pay award or other retroactive pay adjustment, or was otherwise limited in his or her ability to make the contributions that had been previously elected, the participant must make up the missed contributions. In this situation, because any investment elections made by the participant would have remained in effect, the lost earnings are calculated based on the investment elections made by the participant for the applicable period. The employing agency is also responsible for making any agency matching contributions and agency automatic (1%) contributions that would have been required had the action that led to the payment of back pay or of another type of retroactive pay adjustment not occurred.

Section 1605.4(c)(1) provides that under both § 1605.4(a) and § 1605.4(b), any makeup employee contributions associated with the back pay award or other retroactive pay adjustment must be withheld from the award or adjustment and contributed to the participant's TSP account by the employing agency. It is not permissible for the employing agency to pay the back pay award or other retroactive pay adjustment to the participant and then accept a check or other form of payment from the participant for contribution to the TSP account. If the additional contributions associated with the back pay award or other retroactive pay adjustment would cause, or are anticipated to cause, a participant to exceed the Internal Revenue Code annual contribution limits, they may be carried forward (along with associated agency matching contributions) as makeup contributions to be deducted from pay in subsequent years.

Section 1605.4(c)(2)(i) requires employing agencies to submit agency matching contributions and agency automatic (1%) contributions associated with a back pay award or other retroactive pay adjustment.

Section 1605.4(c)(2)(ii) provides rules concerning the submission and processing of contributions associated with back pay awards and other retroactive pay adjustments. Although lost earnings on contributions associated with a back pay award or other retroactive pay adjustment are calculated based on the investment election in effect during the relevant period, the contributions must be reported by the employing agency for investment based upon the participant's investment allocation election in effect at the time of payment of the back pay award or other retroactive pay adjustment, rather than to the investment fund(s) previously elected. If there is no current election, the contributions must be reported by the employing agency for investment in the G Fund.

Section 1605.4(e) provides an opportunity for participants to restore funds to their TSP accounts if the separation upon which the withdrawal of the funds was based is reversed. This opportunity cannot be exercised by

participants who have elected to receive annuities. If a participant wishes to restore his or her account, he or she must so notify the Board within 90 days of reinstatement or lose that right.

Section 1605.5 governs employing agency misclassifications of retirement coverage. CSRS participants are not permitted to make contributions in excess of 5%. Under § 1605.5(a)(1), if a CSRS participant is erroneously classified as FERS, the employing agency must remove any employee contributions in excess of 5% of basic pay from the participant's account by submitting negative adjustment records in accordance with § 1605.3. In addition, it is recognized that for FERS employees the prospect of receiving agency matching contributions is often a significant inducement to make contributions to the TSP. A CSRS participant erroneously classified as FERS would have made any decision to contribute to the TSP with the expectation of receiving agency matching contributions on the first 5% of basic pay. When those agency contributions are removed from the account, it would be inequitable to deny the participant the option of removing all of the employee contributions. Accordingly, § 1605.5(a) provides that option.

Section 1605.5(a)(2) describes a routine procedure pursuant to which the TSP recordkeeper will remove employer contributions from a previously misclassified participant's account once the account no longer has employer contributions that have been in the account for less than one year. The employing agency may continue to submit negative adjustment records as long as there are contributions that can be returned to the employing agency under the one-year rule contained in § 1605.3(e)(1). Once all of the employer contributions have been in the account for one year or more, the employing agency cannot receive a refund of any of those contributions; submission of a negative adjustment record would cause the employer contributions (and associated earnings) to be removed from the account and be used to offset TSP administrative expenses. The TSP recordkeeper will, on its own initiative, remove the remaining employer contributions and associated earnings from the account.

In contrast to a CSRS participant misclassified as FERS, when a FERS participant is erroneously classified as CSRS, any election to contribute would have been made by the participant with the knowledge that he or she will receive no agency contributions. If the participant wished to contribute without receiving agency contributions, it follows that the participant would also have contributed at least the same amount if the added inducement of agency contributions were present. Thus, § 1605.5(b) does not allow such participants to elect to remove contributions made while misclassified as CSRS. However, because the participant has learned for the first time that the added inducement of agency contributions is available, the participant must be provided, as set forth in § 1605.5(b), an opportunity to elect makeup employee contributions in addition to those, if any, that were elected while misclassified as CSRS. Thus, for example, if the participant contributed 2% of basic pay while misclassified as CSRS, he or she must be provided the opportunity to make up an additional 8% that he or she would have been able to contribute if properly classified as FERS. If the participant did not contribute at all while misclassified, he or she may make up the full 10% contribution. The employing agency must promptly make, in a lump sum, all agency matching contributions attributable to any employee contributions that were made during the period of misclassification. In addition, the employing agency must, in accordance with § 1605.2(c)(7), make any applicable agency matching contributions attributable to the participant's makeup contributions, if any. Regardless of whether any employee contributions are made up, the employing agency must also contribute, in a lump sum, the appropriate agency automatic (1%) contributions.

Section 1605.6 adopts, without significant substantive change, the provisions of existing § 1605.8 concerning participants' claims for correction filed against their employing agencies. The rules for filing claims against the Board or the TSP recordkeeper are in a separate section of the revision, § 1605.8.

One change contained in the revision is elimination of existing § 1605.8(a)(1) relating to employing agencies' referral of participants' claims to the Board. Experience has proven this provision to be unnecessary. As a practical matter, participants are able to discern whether a claim is properly filed with the employing agency or the Board. In those rare cases in which the participant is not sure, he or she may wish to file a claim with both the employing agency and the Board. It does not appear that in such cases there is a substantial risk of inconsistent rulings that would leave the participant without relief, because the Board and the employing agency should consult to determine which, if either, is responsible for any error that may have occurred. Moreover, any inconsistent rulings would ultimately be subject to judicial review under 5 U.S.C. 8477.

Another change to the claim procedures is the provision in § 1605.6(a)(1) that the 30-day period for the employing agency to issue an initial decision on the participant's claim may be extended if the employing agency provides the participant with good cause for needing more time. Experience has shown that a full investigation of potential errors may legitimately take longer than 30 days.

Similarly, experience has shown that review of an employing agency's denial of a participant's claim can legitimately take longer than the 30 days provided in the regulations. Accordingly, § 1605.6(a)(3) also adopts a good cause provision for extending the time period for a decision.

As under the existing regulations, the burden to correct administrative errors lies, in the first instance, with the employing agency. If correction is not forthcoming, the participant may, within the time limits set forth under § 1605.6(b) of the revision, file a claim with his or her employing agency. If the participant fails to do so, he or she has not exhausted his or her administrative remedy and, therefore, is not eligible to file suit to compel the employing agency to correct the alleged error. However, regardless of whether the participant files a timely claim for correction, the employing agency may, within its discretion and otherwise in accordance with this part, correct any administrative errors it determines to have occurred. Experience has shown that most employing agencies, in a good faith effort to ensure that their employees receive all of the retirement benefits to which they are entitled, are willing to correct their errors, even after the time for filing a claim has passed. Although employing agencies are encouraged to continue to do so, participants are urged to be diligent in reviewing their earnings and leave statements and their semiannual TSP Participant Statements to promptly identify any errors, and to protect their rights by filing timely claims when necessary.

Section 1605.6(b)(1)(i)(B) clarifies when the one-year period for submitting a claim commences with respect to retirement code classifications. In particular, the revision states explicitly that mere notice to a participant of his or her retirement code classification is not sufficient to trigger the one-year claim period if that classification turns

out to be erroneous. For many partic ipants, the determination of proper retirement classification requires application of a complex set of rules. The Board has determined that it would be unjust to presume that all employees are capable of making this determination and therefore to hold them responsible for failing to immediately identify an erroneous classification. Similarly the Board is concerned that all participants may not appreciate the potential impact of a retirement classification change on their TSP accounts.

The rule adopted requires some other information that would indicate to the participant that he or she has been erroneously classified. In appropriate circumstances, the employing agency may determine that notice of a change in retirement classification constitutes sufficient notice that the earlier classification was erroneous. In addition, the rule requires that in order to trigger the one-year time limit the employing agency must provide the participant with a written notice that specifically mentions the TSP and that the retirement code classification could have implications for the participant's TSP account. Of greatest concern is that the employing agency should advise a FERS employee who was misclassified as CSRS that the employee should consider making makeup contributions for the period of misclassification. Unless and until the appropriate notice is provided, the one-year time limit will not commence.

Subpart C—Board or TSP Recordkeeper Errors

Under § 1605.5 of the existing regulations, the only Board or TSP recordkeeper error addressed is erroneous posting of contributions. Section 1605.7 of the revision addresses a broader range of potential Board or TSP recordkeeper error. The provisions of this section are derived from the experience of the Board in administering the TSP.

Section 1605.7(a) addresses situations in which a Board or TSP recordkeeper error causes a participant's account to receive credit for less earnings than it would have received had the error not occurred. Such lost earnings should not be confused with agency-paid lost earnings under Part 1606. Paragraph (a)(1) sets forth the general rule that the account should be made whole by crediting to it the difference between the credit the account received and that which it would have received had the error not occurred. Paragraph (a)(1) also describes the most common situations giving rise to lost earnings. As stated in the text, however, the situations described in paragraphs (a)(1)(i)-(iii) do not constitute an exhaustive list of the circumstances warranting payment of lost earnings attributable to Board or TSP recordkeeper error.

Section 1605.7(a)(1)(i) requires the TSP to calculate and post lost earnings (positive or negative, as the case may be) when Board or TSP recordkeeper error causes a delay in crediting money to a participant's account. Although such errors are relatively rare, given the large volume of transactions processed by the Plan, some situations have occurred more frequently than others. One is where there is a delay in crediting contributions to a participant's account. Most often this occurs because of a delay in processing an employing agency's payroll submission. Where the delay does not prevent the payroll tape from being processed in the month during which it should be processed, no lost earnings correction is required because, under the Board's earnings allocation algorithm, participants receive the same credit for the month of contribution regardless of when, during the month, the contributions are credited. Where the error does cause a delay that continues into one or more months after the one during which the contributions should have been credited, the participants should be made whole. Most of these cases affect more than one participant; all participants whose contributions are on a tape that was delayed must be credited (charged) with additional investment earnings (losses), depending on the investment experience of the funds involved. If the earnings are calculated to be positive (due to investment gains), then the additional amounts posted to the accounts of the affected participants are, in effect, charged to the rest of the TSP participants through the earnings allocation process. Conversely, if there are investment losses, the amounts deducted from the affected participants' accounts are, in effect, credited to the rest of the TSP participants through the earnings allocation process.

Other possible scenarios covered by § 1605.7(a)(1)(i) are delays in crediting loan payments or loan prepayments, or delays in reinvesting returned checks.

Section 1605.7(a)(1)(ii) covers situations in which loan or withdrawal checks are improperly issued. The error can take several forms, such as issuance to an address different from that provided to the TSP recordkeeper, issuance of a payment from the wrong account, or premature payment of a withdrawal. In all such cases, the partic ipant ceases to receive credit for earnings as of the end of the month for which the withdrawal is made effective. The participant does not again receive full credit for earnings on the improperly disbursed funds until the month after the money is redeposited in his or her account. Thus, the Plan must make up all earnings for the period of disinvestment.

Errors addressed under paragraph (a)(1)(ii) are, however, subject to the limitation contained in paragraph (a)(2). That is, if a participant receives funds that should not have been disbursed from his or her TSP account, he or she must promptly call the error to the Board's attention and return the funds for redeposit to the account. If the participant needlessly delays in returning the funds, or invests the funds before returning them to the TSP, then the participant may be deemed to have had the use of the funds during this period. If that occurs, the participant's account will not receive lost earnings for the period that he or she had use of the money. In general, determinations concerning whether a participant has had the use of money under paragraph (a)(2) must be made on a case-by-case basis, after an evaluation of all of the specific facts and circumstances. A standard of reasonableness will be applied by the Board.

Section 1605.7(a)(1)(iii) provides for payment of lost earnings in cases where a Board or TSP recordkeeper error causes a participant's account to receive earnings based on an incorrect investment fund allocation. This infrequent occurrence can take place when the TSP recordkeeper fails to process an interfund transfer request or processes it incorrectly. As described in paragraph (a)(3), par ticipants affected by this type of error will be given a choice whether they wish to have it corrected. If so, the correction will involve calculating and crediting lost earnings as well as reallocating the account balance as it would have been had the error not occurred. A participant cannot choose the former without the latter, or vice versa.

Section 1605.7(a)(4) establishes the investment funds for which the lost earnings calculations should be made. If the participant continued to have a TSP account during the period of the error, or would have had an account if the error had not occurred, then the rates of return the account would have earned during the relevant period will be used. For example, assume that separated Participant A requests a withdrawal, but the recordkeeper erroneously disburses Participant B's account as a result of a data entry error. Participant B promptly returns the erroneous disbursement, but his account loses earnings for a month.

If Participant B had his entire account invested in the C Fund just prior to the erroneous disbursement, then he will receive lost earnings based on the C Fund rates of return. The same would be true if the erroneous disbursement from Participant B's account was a loan.

In contrast, assume that separated Participant X requests a withdrawal of his entire account balance as of the end of November 1996. The entire account is properly disbursed as of the end of November 1996, but the TSP recordkeeper erroneously causes the check to be mailed to an outdated address which had been properly changed by the participant. The check is lost and the funds are uninvested for three months, at which time the account is recredited with the amount that was disbursed in November 1996. Because the account would properly have been closed as of the end of November 1996, the lost earnings will be calculated at the G Fund rate of return.

Finally, assume Participant L has an outstanding loan of $5,000 and decides to prepay it. The certified prepayment check is received in early October 1996 but due to TSP recordkeeper error is not credited to the account until December 1996. Since Participant L continued to have a TSP account during the period of the erroneous disinvestment, the lost earnings will be credited based on the investment funds in which the money would have been invested had the prepayment been properly credited in October. These rules are designed to approximate the earnings that the participant would have received if the error had not occurred. For periods when the TSP account would have been closed even if the error had not occurred, applying the G Fund rate provides the (former) participant with a reasonable positive rate of interest. It is not practicable for the Board to speculate on the earnings which the participant would have received on the money outside the Plan.

Section 1605.7(b) provides for reversal of erroneous declarations of taxable loan distributions.

Section 1605.7(c) makes explicit that the Executive Director has the discretion to make other corrections not specifically addressed elsewhere in § 1605.7. The specific types of corrections listed in § 1605.7 are not exclusive, and Board or TSP recordkeeper errors other than those addressed may properly give rise to lost earnings or other forms of corrective relief. Moreover, even if no Board or TSP recordkeeper error is involved, the Executive Director may determine that payment of lost earnings or other corrective relief is warranted under the circumstances. Such determinations must be made by the Executive Director on a case-by-case basis. In making these determinations, the Executive Director must comply with his fiduciary responsibilities under FERSA to all of the participants of the TSP. Thus, the Executive Director will consider factors such as the administrative cost of implementing the correction, the cost to the TSP as a whole of paying any lost earnings, and the harm to the affected participant if no correction is made.

Section 1605.8 contains the provisions for filing claims with respect to Board or TSP recordkeeper error. The primary change from the existing regulations is to adopt a more informal process than that originally contemplated. This decision is based on the Board's experience in handling claims for correction. It has been determined that a more informal, flexible process is beneficial to all parties concerned.

Under § 1605.8, claims may be made either to the TSP recordkeeper or to the Board. The revision provide flexibility regarding which of those parties will process the claim. If the claim is submitted to the TSP recordkeeper, it may either be processed by the record-keeper or sent to the Board to be processed. If the latter, or if the claim is initially submitted to the Board, the decision of the Board is final. If an initial decision is issued by the TSP recordkeeper, the participant may request review by the Board of any denial of all or any part of the claim. The decision by the Board on review is final.

Subpart D—Miscellaneous Provisions

Section 1605.9 contains miscellaneous provisions. Paragraph (a) addresses residual earnings. If all employee contributions to a participant's account are removed, but earnings on those contributions remain in the account under the rules of this part, the earnings will not necessarily be removed from the account merely because there are no longer any employee contributions. This will usually occur when an agency erroneously contributes money to the account of a CSRS participant who is eligible to contribute to the TSP but has not elected to do so. When the contributions are removed, the earnings on the employee contributions will remain in the account. Such a participant will, like all other TSP participants, be entitled to withdraw his or her account balance in full upon separating from the Federal Government under the same rules that apply to withdrawal of other money in a participant's account. In contrast, an employee who was never eligible to contribute to the TSP is not, by law, entitled to have a TSP account or to receive benefits from the TSP. If residual earnings remain in the account of such an employee after all contributions have been removed, they will be removed from the account and applied against TSP administrative expenses. Any remedy the employee may wish to pursue would be against his or her employing agency and would not involve the Board, which is not in a position to provide any relief to the employee.

Paragraph (b) provides for belated elections to contribute to the TSP because of circumstances beyond the participant's control (but not attributable to employing agency error). This belated election is currently found at 5 CFR 1605.2(b)(1) of the existing regulations. The revision adopts the rule of that provision without substantive change. No makeup contributions are permitted under the circumstances addressed in this provision.

Paragraph (c) contains a cross-reference to Part 1606 for correcting investment in an incorrect investment fund(s). Some employing agencies might be inclined to correct such an error by submitting a negative adjustment record to remove the money from the erroneous investment fund and then recontributing the money to the correct investment fund. However, the only permissible correction is through Part 1606.

Paragraph (d) provides addresses for the Board and TSP recordkeeper.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, sec. 201, Pub. L. 104–4, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, or tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA), as amended by the Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, tit. II, 110 Stat. 847, 857–875 (5 U.S.C. 801(a)(1)(A)), the Board 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 the publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined in section 804(2) of the APA as amended (5 U.S.C. 804(2)).

List of Subjects in 5 CFR Part 1605

Administrative practice and procedure, Employee benefit plan, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, Part 1605 of chapter VI, Title 5 of the Code of Federal Regulations is revised to read as follows:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

Subpart A—Definitions

Sec.

Subpart B—Employing Agency Errors

Subpart C—Board or TSP Recordkeeper Errors

Subpart D—Miscellaneous Provisions

Authority: 5 U.S.C. 8351 and 8474.

Subpart A—Definitions

§ 1605.1 Definitions.

The following definitions apply for purposes of this part:

Account or *TSP account* means a participant's account in the Thrift Savings Plan;

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432 (c)(1) or (c)(3);

Agency contributions means agency automatic (1%) contributions and agency matching contributions;

Agency matching contributions means any contributions made under 5 U.S.C. 8432(c)(2);

Basic pay means basic pay as defined in 5 U.S.C. 8331(3), and it is the rate of pay used in computing any amount the individual is required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in the CSRS or the FERS, as the case may be;

Board means the Federal Retirement Thrift Investment Board;

Board error means any act or omission by the Board that is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants (including, but not limited to, TSP communications materials and other publications);

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

CSRS means the Civil Service Retirement System established by Subchapter III of chapter 83 of title 5, U.S.C., and any equivalent Federal Government retirement plan;

CSRS employee or *CSRS participant* means any employee, member, or participant covered by CSRS, including employees authorized to contribute to the Thrift Savings Plan under 5 U.S.C. 8351, or 5 U.S.C. 8440a through 8440d;

Employee contributions means any contributions to the Thrift Savings Plan made under 5 U.S.C. 8432(a), 5 U.S.C. 8351 or 5 U.S.C. 8440a through 8440d;

Employer contributions means agency automatic (1%) contributions and agency matching contributions;

Employing agency means any entity that provides or has provided pay to an individual, thereby incurring responsibility for submitting to the Thrift Savings Fund contributions made by or on behalf of that individual; any entity responsible for submitting TSP loan payments on behalf of an individual; or any other entity that has employed an individual and has provided information that affects or has affected that individual's TSP account;

Employing agency error means any act or omission by an employing agency that is not in accordance with all applicable statutes, regulations, or administrative procedures, including internal procedures promulgated by the employing agency and TSP procedures provided to employing agencies by the Board or TSP recordkeeper;

Executive Director means the Executive Director of the Board under 5 U.S.C. 8474;

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

FERS means the Federal Employees' Retirement System established by chapter 84 of title 5, U.S.C., and any equivalent Federal Government retirement plans;

FERS employee or *FERS participant* means any employee, member, or participant covered by FERS;

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Interfund transfer means the movement of all or a portion of a participant's existing account balance among the TSP investment funds;

Investment fund means the C Fund, the F Fund, the G Fund, and any other TSP investment funds created subsequent to December 27, 1996.

Investment fund election means a choice by a participant concerning how TSP contributions shall be allocated among the TSP investment funds;

Lost earnings record means a data record containing information enabling the TSP system to compute lost earnings and to determine the investment fund in which money would have been invested had an error not occurred;

Makeup contributions means employee or employer contributions that are made for an earlier period during which they would have been made but for an employing agency error;

Negative adjustment record means a data record submitted by an employing agency to remove money from a participant's account;

Open season means the period during which participants may choose to begin making contributions to the TSP, to change or discontinue the amount currently being contributed to the TSP (without losing the right to recommence contributions the next open season), or to allocate prospective contributions to the TSP among the investment funds;

Participant means any person with an account in the TSP, or who would have an account in the TSP but for an employing agency error;

Recordkeeper error means any act or omission by the TSP recordkeeper that is not in accordance with applicable statutes, regulations, or administrative procedures made available to employing agencies and/or TSP participants (including, but not limited to, TSP communications materials and other publications);

Source of contributions means either employee contributions, agency automatic (1%) contributions, or agency matching contributions;

Thrift Savings Plan, TSP, or *Plan* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 100 Stat. 514, which has been codified, as amended, primarily at 5 U.S.C. 8401–8479; and

TSP Recordkeeper means the entity that is engaged by the Board to perform recordkeeping services for the TSP. As of the effective date of these regulations, the TSP recordkeeper is the National Finance Center, Office of the Chief Financial Officer, United States Department of Agriculture, located in New Orleans, Louisiana.

Subpart B—Employing Agency Errors

§ 1605.2 Makeup of missed or insufficient contributions.

(a) *Applicability.* This section applies whenever, as the result of an employing agency error, a participant does not receive all of the contributions to his or her account to which the participant is entitled. This includes, but is not limited to, situations in which an employing agency error prevents a participant from making an election to contribute to the TSP, the employing agency erroneously fails to implement a contribution election properly submitted by a participant, the employing agency fails to make agency automatic (1%) contributions or agency matching contributions that it is required to make, or the employing agency erroneously contributes less to the TSP than it would have contributed had the error not occurred. The corrections required by this section must be made in accordance with this part and procedures provided to employing agencies, from time to time, by the Board or the TSP recordkeeper in bulletins or other guidance. It is the responsibility of the employing agency to determine whether it has made an error that entitles a participant to correction under this section.

(b) *Missed employer contributions.* If an employing agency has failed to make agency automatic (1%) contributions that are required to be made under 5 U.S.C. 8432(c)(1)(A), agency matching contributions that are required to be made under 5 U.S.C. 8432(c)(2) based on employee contributions that have been made, or contributions required to be made under 5 U.S.C. 8432(c)(3), then:

(1) The employing agency must promptly submit, in a lump sum, all such missed contributions to the TSP record keeper on behalf of the affected participant. Makeup contributions must be allocated by the employing agency among the TSP investment fund(s) using the participant's current investment fund election at the time the makeup contributions are made. If no such election is on file, the contributions will be reported by the employing agency for investment in the G Fund.

(2) If applicable, the employing agency must also submit any lost earnings records required under 5 CFR Part 1606.

(c) *Missed employee contributions.* Within 30 days of receiving information from his or her employing agency that indicates that the employing agency acknowledges that an error has occurred that has caused less employee contributions to be made to the participant's account than would have been made had the error not occurred, a participant may elect to establish a schedule of makeup contributions to replace the missed contributions through future payroll deductions, in addition to any regular TSP contributions that the participant is entitled to make. The following rules apply to makeup contributions:

(1) The schedule of makeup contributions elected by the participant must establish the amount of contributions to be made each pay period over the duration of the schedule. The contribution amount per pay period may vary during the course of the schedule, but the amounts to be contributed should be established when the schedule is created. The schedule may not exceed four times the number of pay periods over which the errors occurred.

(2) The employing agency may, but need not, set a ceiling on the length of the schedule of makeup contributions which is less than four times the number of pay periods over which the errors being corrected occurred. The ceiling may not, however, be less than twice the number of pay periods over which the errors being corrected occurred.

(3) The employing agency must implement the schedule of makeup contributions as soon as practicable after the participant has made an election to implement a makeup schedule.

(4) Makeup contributions will not be considered in applying the maximum amount per pay period that a participant is permitted to contribute to the TSP (e.g., 5% of basic pay for CSRS participants, 10% of basic pay for FERS participants), but will be included for purposes of applying the annual limits contained in 26 U.S.C. 402(g)(1) and 26 U.S.C. 415.

(5) A participant's regular TSP contributions will always take precedence over makeup contributions. Thus, when establishing a schedule of makeup contributions, the employing agency must review any schedule proposed by the affected participant as well as the participant's current TSP contribution election, to determine whether the makeup contributions, when combined with regular TSP contributions, are expected to exceed the annual limits contained in 26 U.S.C. 402(g)(1) and 415. If so, the participant may elect to have the schedule of makeup contributions established in such a manner that the payments will, at an appropriate time, be suspended until the makeup contributions can be made within the annual limits. In any event, a schedule of makeup contributions may be suspended at any time in order to avoid a situation in which the participant is unable to make regular TSP contributions because of the annual limits. Similarly, a schedule of makeup contributions may be suspended if a participant has insufficient net pay to permit the makeup contributions. If a schedule of makeup contributions is suspended because of the annual limits or because of insufficient net pay, the period of suspension will not be counted against the maximum number of pay periods the participant has to complete the schedule of makeup contributions.

(6) A participant may elect to terminate a schedule of makeup contributions at any time, but may not elect to make partial payments under the schedule. Any such termination is irrevocable. If a participant separates from employment that makes the participant eligible to contribute to the TSP, the participant may elect to accelerate the payment schedule by a lump sum contribution from his or her final paycheck. No contributions may be made other than by payroll deduction from pay that constitutes basic pay.

(7) To the extent a participant makes up missed employee contributions, the employing agency must contribute any agency matching contributions that would have been made had the employing agency error that caused the missed employee contributions not been made. The agency matching contributions must be made in installments over the course of the schedule of makeup contributions. The participant may not receive matching contributions associated with any employee contributions that are not made up. If the makeup contributions are suspended in accordance with

paragraph (c)(5) of this section, the payment of agency matching contributions must also be suspended.

(8) Makeup contributions must be reported by the employing agency for investment among the TSP investment fund(s) using the participant's current investment fund election at the time the makeup contributions are made. If no such election is on file, the contributions must be reported by the employing agency for investment in the G Fund.

(9) Where a participant has transferred to a different employing agency from the one at which the participant was employed at the time of the missed contributions, it remains the responsibility of the former employing agency to determine whether an employing agency error is responsible for the missed contributions. If it is determined that such an error has occurred, the current agency must take any necessary steps to correct the error. The current agency may seek reimbursement from the former agency of any amount that would have been paid by the former agency had the error not occurred.

(10) Makeup employee contributions may be made only by payroll deduction from pay that constitutes basic pay. Contributions by check, money order, cash, or other form of payment, directly from the participant to the TSP, or from the participant to the employing agency for deposit to the TSP, are not permitted.

(11) If applicable, the employing agency must submit any lost earnings records required under 5 CFR Part 1606.

§ 1605.3 Removal of erroneous contributions.

(a) *Applicability.* This section applies whenever, as a result of an employing agency error, a TSP account contains money that should not have been contributed to the account and which, therefore, must be removed from the account. This includes, but is not limited to, situations in which, because of an employing agency error, employee contributions in excess of those elected by a participant are contributed to the participant's account, employee contributions (and any associated agency matching contributions) are made on behalf of a participant who did not elect to have any contributions made, excess employer contributions are made to a participant's account, or employee contributions are made in excess of the amount permissible because of an improper retirement classification that is subsequently corrected (e.g., a CSRS employee is permitted to make contributions in excess of 5% of basic pay during a temporary misclassification as FERS).

(b) *Negative adjustment records.* (1) In order to remove money from a participant's account, the employing agency must submit, for each pay date involved, a negative adjustment record indicating the amount of the contribution being removed, the pay date for which it was made, the source(s) of the contributions involved (i.e., employee contributions, agency automatic (1%) contributions or agency matching contributions), and the investment fund or funds to which the erroneous contribution was made. A negative adjustment record may be for all or a part of the contributions made for the applicable pay date, investment fund and source of contributions, but for each investment fund and source of contributions the negative adjustment may not exceed the amount of contributions made for that pay date.

(2) Negative adjustment records must be submitted in accordance with this part and with procedures provided to employing agencies from time to time by the Board or the TSP recordkeeper in bulletins or other guidance. Negative adjustment records must also include any additional information required in any such bulletins or other guidance.

(c) *Processing negative adjustment records.* Negative adjustment records will be processed in accordance with the following rules:

(1) Negative adjustment records received and accepted by the TSP recordkeeper by the second-to-last business day of a month will be processed effective as of the end of that month. Negative adjustment records accepted by the TSP recordkeeper on the last business day of a month will be processed effective as of the end of the following month.

(2) When negative adjustment records are processed, the TSP recordkeeper will determine separately, for each pay date and source of contributions involved, the amount of any investment gains or losses on the money the agency seeks to remove from the account and the investment fund or funds in which that money is currently invested. In making these determinations, investment gains and losses from the different TSP investment funds will be netted against each other. Investment gains and losses for different sources of contributions will be treated separately; gains and losses for different sources of contributions will not be netted against each other. The TSP recordkeeper will take into consideration any interfund transfers made effective on or after the date on which the erroneous contribution was processed.

(3)(i) Multiple negative adjustment records in the same processing cycle will be processed in the order of the applicable pay dates, starting with the earliest pay date.

(ii) If the participant's account does not have sufficient funds in the applicable source of contributions to pay the amount of a negative adjustment, the adjustment to that source of contributions will not be processed. Funds may not be taken from another source of contributions to cover the negative adjustment. The employing agency may, at a later date, resubmit the record that was not processed. It will be processed if, at that time, there are sufficient funds for the applicable source of contributions.

(iii) If there are sufficient funds in the applicable source of contributions to pay the amount required by a negative adjustment record, but any of the investment funds does not have sufficient money to pay the portion that is attributable to that investment fund (e.g., because of a loan), then the amount required will be removed from the other investment fund(s), *pro rata,* based on the participant's total account balance in each investment fund for that source of contributions.

(d) *Employee contributions.* The following rules apply to removal of employee contributions from a participant's account:

(1) If there is a net investment gain on the erroneous employee contribution made for a pay date, then the full amount of the erroneous contribution will be returned to the employing agency. Subject to § 1605.9(a), the investment earnings on the erroneous contribution will remain in the participant's account.

(2) If there is a net investment loss on the erroneous employee contribution made for a pay date, then the employing agency will receive only the amount of the erroneous contribution reduced by the investment loss. However, the investment loss does not affect the employing agency's obligation to refund to the participant the full amount of the erroneous contribution.

(3) If an employing agency removes erroneous employee contributions from a participant's account, it must also remove, under paragraph (e) of this section, any associated agency matching contributions.

(e) *Employer contributions.* The following rules apply to removal of employer contributions from a participant's account:

(1) Employer contributions will only be returned to the employing agency if the negative adjustment record submitted to remove the contributions is

processed within one year of the date the contribution was processed. If more than one year has elapsed when the negative adjustment record is processed, the amount of the employer contribution plus (or minus) any investment gains (or losses) will be removed from the participant's account and used to offset TSP administrative expenses rather than returned to the employing agency. The employing agency's obligation to submit negative adjustment records to remove erroneous contributions from a participant's account is not affected by whether the contribution has been in the account for more or less than one year at the time the negative adjustment record is to be processed.

(2) Subject to paragraph (e)(1) of this section, if there is a net investment gain within a source of contributions for an erroneous employer contribution, then the employing agency will receive the full amount of the negative adjustment submitted. The earnings attributable to the erroneous contributions in the applicable source of contributions will be removed from the participant's account and used to offset TSP administrative expenses.

(3) Subject to paragraph (e)(1) of this section, if there is a net investment loss within a source of contributions for an erroneous employer contribution, then the employing agency will receive only the amount of the erroneous contribution reduced by the investment loss.

§ 1605.4 Back pay awards and other retroactive pay adjustments.

(a) *Participant not employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was separated from Government employment:

(1) If the participant is reinstated to Government employment, then immediately upon reinstatement the employing agency must give the participant the opportunity to submit a contribution election form (Form TSP–1) to make current contributions. The effective date of the form will be the first day of the first full pay period in the most recent TSP election period. If the participant is reinstated during a TSP open season but before the election period, he or she can also submit an election form that will become effective the first day of the first full pay period in the following election period.

(2) The participant must be given the following options for electing makeup contributions:

(i) If the participant had a valid contribution election form (Form TSP–1) on file when he or she separated, upon the participant's reinstatement to Government employment that election form will be reinstated for purposes of makeup contributions, unless a new contri bution election form is submitted to terminate all makeup contributions or those contributions that would have been made from the date of separation through the end of the open season that occurred immediately after the separation.

(ii) Instead of making contributions for the period of separation under the reinstated contribution election form, the participant may submit a new election form for any open season that occurred during the period of separation. However, the investment allocation on each Form TSP–1 for the period of separation must be the same as the investment allocation on the current Form TSP–1.

(3) Lost earnings will be calculated and credited to the participant's account, in accordance with 5 CFR Part 1606, using the rates of return for the G Fund, unless the participant submitted one or more interfund transfer requests during the period of separation. In the case of interfund transfer requests, the earnings will be calculated using the G Fund rates of return until the first interfund transfer was processed. The contribution that is subject to lost earnings will be moved to the investment fund(s) the participant requested and lost earnings will be calculated based on the earnings for that fund(s). The amount of lost earnings calculated will be posted to the investment fund(s) to which the contribution was moved by the interfund transfer. If there were no interfund transfers processed during the lost earnings calculation period, the amount of lost earnings calculated will be posted to the employee's G Fund account.

(b) *Participant employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was not separated from Government employment:

(1) The participant will only be entitled to makeup contributions for the period covered by the back pay award or retroactive pay adjustment if, for that period, the participant had designated a percentage of basic pay to be contributed to the TSP or had designated a dollar amount of contributions each pay period which had to be reduced (because of an applicable 5% or 10% limit on contributions per pay period) as a result of the reduction in pay that is made up by the back pay award or other retroactive pay adjustment.

(2) The employing agency must compute the amount of additional employee contributions that would have been contributed to the participant's account had the action leading to the back pay award or other retroactive pay adjustment not occurred. The employing agency must also compute the amount of agency matching contributions and agency automatic (1%) contributions that would have been payable had that action not occurred.

(c)(1) Makeup employee contributions required under paragraphs (a) and (b) of this section must be computed prior to payment of the award of back pay or other retroactive pay adjustment. The makeup employee contributions must be deducted from the payment of the back pay award or other retroactive pay adjustment and contributed to the TSP, unless the payment of such contributions will cause the participant to exceed the annual contribution limits contained in 26 U.S.C. 402(g)(1) or 26 U.S.C. 415 (taking into consideration the expected regular TSP contributions the participant will make during the year in which the back pay award or other retroactive pay adjustment is paid). To the extent TSP contributions from the back pay award or other retroactive pay adjustment would cause the participant to exceed the elective deferral limits contained in 26 U.S.C. 402(g) or 415, such contributions may be carried forward into subsequent years and made (along with attributable agency matching contributions) pursuant to a schedule of makeup contributions established under the rules set forth in § 1605.3(c).

(2)(i) If employee contributions are deducted from a back pay award or other retroactive pay adjustment, the employing agency will be responsible for contributing the associated agency matching contributions at the same time the employee contributions are made. Regardless of whether a participant elects makeup employee contributions, the employing agency must make, in a lump sum payment, all appropriate agency automatic (1%) contributions associated with the back pay award or other retroactive pay adjustment.

(ii) Any makeup contributions (both employee and employer) associated with a back pay award or other retroactive pay adjustment must be reported by the employing agency for investment among the TSP investment fund(s) using the participant's investment fund election in effect at the

time the makeup contributions are made. If no such election is on file, the contributions must be reported by the employing agency for investment in the G Fund.

(d) The employing agency must pay any lost earnings on TSP contributions derived from back pay awards or other retroactive pay adjustments that are required to be paid under 5 CFR Part 1606.

(e) If a participant has withdrawn his or her TSP account other than by purchasing an annuity, and the separation from Government employment upon which the withdrawal was based is reversed, resulting in reinstatement of the participant without a break in service, then the participant will have the option, which must be exercised by notice to the Board within 90 days of reinstatement, to restore to his or her TSP account the amount withdrawn. The right to restore the withdrawn funds will expire if the notice is not provided to the Board within 90 days of reinstatement. No earnings will be paid on any restored funds.

§ 1605.5 Misclassification of retirement coverage.

(a) If a CSRS participant is misclassified by an employing agency as a FERS participant, when the misclassification is corrected—

(1) The employing agency must, under § 1605.3, remove all employee contributions that exceeded 5% of basic pay for the pay period(s) involved, and refund to the participant the amount contributed. In addition, the employing agency must submit negative adjustment records to remove all employer contributions made to the participant's account during the period of misclassification that have been in the account for less than one year. The participant may choose whether or not he or she wishes to have the remainder of the employee contributions made during the period of misclassification removed from his or her account and refunded to the participant; and

(2) If the participant's account at any time contains no employer contributions that have been in the account for less than one year, the TSP recordkeeper will remove from the account any employer contributions that have been in the account for one year or more (and associated earnings), and will use such amounts to offset TSP administrative expenses.

(b) If a FERS participant is misclassified as a CSRS participant, when the misclassification is corrected he or she may not elect to have the contributions made while classified as CSRS removed from his or her account. The employing agency must make in a lump sum payment, pursuant to § 1605.2(b)(1), the appropriate agency automatic (1%) contributions and agency matching contributions on the employee contributions that were made while the participant was misclassified as CSRS. The participant may also elect to make, under § 1605.2(c), additional contributions that he or she would have been eligible to make as a FERS participant during the period of misclassification. If such contributions are made, the employing agency must also submit any associated agency matching contributions and any lost earnings records required under 5 CFR Part 1606.

§ 1605.6 Procedures for claims against employing agencies; time limitations.

(a) *Agency procedures.* Each employing agency must establish procedures for participants to submit claims for correction under this subpart. Each employing agency's procedures must include the following:

(1) The employing agency will provide the participant with a decision on any claim within 30 days of receipt of the claim unless the employing agency provides the participant with good cause for requiring a longer period to decide the claim. Any decision to deny a claim in whole or in part must be in writing and must include the reasons for the denial (including citations to any applicable statutes, regulations or procedures), a description of any additional material that would enable the participant to perfect his or her claim, and a statement of the steps to be taken to appeal the denial.

(2) The employing agency must permit a participant at least 30 days to appeal the employing agency's denial of all or any part of his or her claim for correction under this subpart. The appeal must be in writing and addressed to the agency official designated in the initial denial decision or in procedures promulgated by the agency. The participant may include with his or her appeal any documentation or comments that the participant deems relevant to the claim.

(3) The employing agency must issue a written decision on a timely filed appeal within 30 days of receipt of the appeal unless the employing agency provides the participant with good cause for taking a longer period to decide the appeal. The employing agency decision must include the reasons for the decision, as well as citations to any applicable statutes, regulations, or procedures.

(4) If the agency decision on the appeal is not issued in a timely manner, or if the appeal is denied in whole or in part, the participant will be deemed to have exhausted his or her administrative remedy and will be eligible to file suit against the employing agency under 5 U.S.C. 8477. There is no administrative appeal to the Board of a final agency decision.

(b) *Time limit for filing claims.* (1)(i) Upon discovery of administrative errors, employing agencies are required to promptly correct those errors under this subpart, regardless of whether a claim for correction is received from the affected participant. If an error has not been corrected by the employing agency, the affected participant may file a claim for correction with his or her employing agency. The claim must be filed within one year of the earlier of:

(A) Receipt of a pay stub, earnings and leave statement, or other document reflecting the error; or

(B) The close of the first TSP election period following the participant's receipt of a TSP Participant Statement reflecting the error.

(ii) For purposes of paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this section, in the case of a participant who has been improperly classified as to retirement coverage, the receipt of a document indicating the participant's retirement code classification is not, in and of itself, sufficient to notify the participant that his or her retirement classification is incorrect. However, receipt of a document indicating a change in retirement code classification, in addition to a written notice to the participant that the change may have implications for his or her TSP account, may be deemed by an employing agency to be sufficient to advise the participant that his or her retirement classification had been incorrect prior to the change. The one-year time limit will not commence with respect to retirement coverage misclassification errors unless and until the participant receives a written notice of the error that specifically mentions the TSP.

(2) If a participant fails to file a claim for correction of an administrative error in a timely manner (or fails to appeal a denial of a claim in a timely manner) under paragraph (b)(1) of this section, the agency may still correct any administrative error that is brought to or comes to its attention.

Subpart C—Board or TSP Recordkeeper Errors

§ 1605.7 Plan-paid lost earnings and other corrections.

(a) *Plan-paid lost earnings.* (1) Subject to paragraph (a)(2) of this section, if, because of an error committed by the Board or the TSP recordkeeper, a participant's account does not receive credit for earnings (which may be positive or negative) that it would have received had the error not occurred, the account will be credited with the difference between the earnings (if any) it actually received and the earnings it would have received had the error not occurred. The errors that warrant crediting of lost earnings under this paragraph (a) include, but are not limited to:

(i) Board or TSP recordkeeper delay in crediting contributions or other monies to a participant's account;

(ii) Improper issuance of a loan or withdrawal payment to a participant or beneficiary which requires the money to be restored to the participant's account; and

(iii) Investment of all or part of a participant's account in the wrong TSP investment fund(s) (e.g., improper processing or failure to process an interfund transfer request).

(2) A participant's TSP account will not be credited with earnings under paragraph (a)(1) of this section if, during the period the participant's account received credit for less earnings than it would have received but for the Board or recordkeeper error, the participant had the use of the money on which the earnings would have accrued.

(3) In the case of an error described in paragraph (a)(1)(iii) of this section, the affected participant will, upon discovery of the error, be given a choice whether or not to have the error corrected. If the participant chooses correction, the account will be placed in the position it would have attained had the error not occurred, including crediting of earnings (positive or negative as the case may be) that would have accrued had the error not occurred and reallocation of the account balance among the investment funds in the proportions that would have existed had the error not occurred.

(4) Where the participant continued to have a TSP account, or would have continued to have a TSP account but for the Board or TSP recordkeeper error, earnings under paragraph (a)(1) of this section will be computed for the relevant period based upon the investment funds in which the affected monies would have been invested had the error not occurred. If the period for which lost earnings are paid is a period for which the participant did not, and should not, have had an account in the TSP, then the earnings will be computed using the G Fund rate of return for the relevant period.

(b) *Reversal of loan distributions.* If, because of Board or TSP recordkeeper error, a TSP loan is declared a taxable distribution under circumstances that make such declaration inconsistent with FERSA, 5 CFR Part 1655, with the provisions of the documents (including instructions) signed by or provided to the participant in connection with the application for or issuance of the loan, or with other procedures established by the Board or TSP recordkeeper in connection with the TSP loan program, the taxable distribution will be reversed. The participant will be provided an opportunity to reinstate or repay in full the outstanding balance on the loan.

(c) *Other corrections.* The Executive Director may, in his discretion and consistent with the requirements of applicable law, correct any other errors not specifically addressed in this section or provide any other relief to a participant, including payment of lost earnings from the TSP, if the Executive Director determines that the correction or relief would serve the interests of justice, fairness, and equity among the participants of the TSP.

§ 1605.8 Claims for correction of Board or TSP Recordkeeper errors; time limitations.

(a) *Filing claims.* Claims for correction under this subpart may be submitted initially either to the TSP recordkeeper or the Board. The claim must be in writing and may be from the affected participant or beneficiary or from a representative of the participant or beneficiary. The written claim must state the basis for the claim.

(b) *Processing claims.* (1) If the initial claim is submitted to the TSP recordkeeper, the TSP recordkeeper may either respond directly to the participant or the person making the claim on behalf of the participant, or may forward the letter to the Board for response. The decision whether the TSP recordkeeper should respond directly or forward the claim to the Board will be made in accordance with guidance and procedures established by the Board or, if no such specific guidance is available, in consultation with the Board's staff. If the TSP recordkeeper responds to a participant's claim, and all or any part of the participant's claim is denied, the participant may request review by the Board within 90 days of the date of the recordkeeper's response.

(2) If the Board denies all or any part of a participant's claim (whether upon review of a TSP recordkeeper denial or upon an initial review by the Board), the participant will be deemed to have exhausted his or her administrative remedy and may file suit under 5 U.S.C. 8477. If the participant does not submit to the Board a request for review of a claim denial by the TSP Recordkeeper within the 90 days permitted under paragraph (b)(1) of this section, the participant shall not be deemed to have exhausted his or her administrative remedy.

(c) *Time limits for filing claims.* (1)(i) Upon discovery of errors subject to correction under this subpart, the Board or TSP recordkeeper will promptly correct such errors in accordance with this subpart, regardless of whether a claim for correction is received from the affected participant. If an error has not been corrected by the Board or TSP recordkeeper, the affected participant must file a claim for correction within one year of the earlier of:

(A) His or her receipt of a pay stub, earnings and leave statement, or other document reflecting the error; or

(B) The close of the first TSP election period following the participant's receipt of a TSP Participant Statement reflecting the error.

(ii) For purposes of paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) of this section, in the case of a participant whose retirement coverage has been improperly classified, the receipt of a document indicating the participant's retirement code classification is not, in and of itself, sufficient to notify the participant that his or her retirement code classification is incorrect.

(2) If a participant fails in a timely manner to file a claim for correction (or fails in a timely manner to request reconsideration of a claim) under paragraph (c)(1) of this section, the Board or TSP recordkeeper may still correct any administrative error that is brought to or comes to its attention.

Subpart D—Miscellaneous Provisions

§ 1605.9 Miscellaneous provisions.

(a)(1) If all employee contributions are removed from a participant's account under the rules set forth in this part, but earnings on any of those employee contributions or other residual amounts are left in the account, the earnings will remain in the account unless the participant was ineligible to have an account in the TSP at the time the earnings were credited to the account and remains ineligible. In that case, the earnings will be removed from the account and used to offset TSP administrative expenses. If earnings remain in the account under this

paragraph (a), they will be subject to withdrawal from the participant's account upon separation from Federal employment under the same withdrawal rules as apply to any other money in a participant's account.

(2) If any residual earnings on employer contributions remain in a participant's account after all employer have been removed from the account, those residual earnings will be removed from the account and used to offset TSP administrative expenses.

(b) If a participant fails to participate in the TSP due to circumstances beyond his or her control but not due to circumstances attributable to employing agency, Board, or TSP recordkeeper error, the participant will be entitled to elect to participate effective not later than the first pay period after the participant submits a contribution election form (Form TSP–1), regardless of whether the form is submitted during an election period. Such belated elections will be permitted on a prospective basis only; no makeup contributions will be permitted under this part.

(c) If TSP contributions are invested in the wrong investment fund(s) because of employing agency error, that error may be corrected only in accordance with 5 CFR 1606.7. Such errors may not be corrected under this part.

(d)(1) The address for the TSP recordkeeper is: National Finance Center, TSP Service Office, Post Office Box 61500, New Orleans, LA 70161–1500.

(2) The address for the Board is: Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, DC 20005.

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Federal Register

Friday
December 27, 1996

Part VIII

Securities and Exchange Commission

17 CFR Parts 275 and 279

Rules Implementing Amendments to the Investment Advisers Act of 1940; Proposed Rule and Suspension of Form ADV–S; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–1601, File No. S7–31–96]

RIN 3235–AH07

Rules Implementing Amendments to the Investment Advisers Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is publishing for comment new rules and rule amendments under the Investment Advisers Act of 1940 (''Advisers Act'') to implement provisions of the Investment Advisers Supervision Coordination Act (''Coordination Act'') that reallocate regulatory responsibilities for investment advisers between the Commission and the states. The proposed rules would establish the process by which certain advisers would withdraw from Commission registration, exempt certain advisers from the prohibition on Commission registration, and define certain terms. The Commission also is proposing amendments to several rules under the Advisers Act to reflect the changes made by the Coordination Act. The proposed rules and rule amendments are intended to clarify provisions of the Coordination Act and assist investment advisers in ascertaining their regulatory status.

DATES: Comments must be received on or before February 10, 1997.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–31–96; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Catherine M. Saadeh, Staff Attorney, or Cynthia G. Pugh, Staff Attorney, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Stop 10–2, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on new rules 203A–1, 203A–2, 203A–3, 203A–4, 203A–5, 222–1, and 222–2 [17 CFR 275.203A–1, 275.203A–2, 275.203A–3, 275.203A–4, 275.203A–5, 275.222–1, and 275.222–2], and proposed amendments to rules 204–1, 204–2, 205–3, 206(4)–1, 206(4)–2, and 206(4)–4 [17 CFR 275.204–1, 275.204–2, 275.205–3, 275.206(4)–1, 275.206(4)–2, and 275.206(4)–4], and Form ADV and Form ADV–S [17 CFR 279.1 and 279.3] under the Investment Advisers Act of 1940 [15 USC 80b–1 *et seq.*] (the ''Advisers Act'' or the ''Act'').

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Executive Summary

The Commission is proposing rules and rule amendments to implement certain provisions of the Investment Advisers Supervision Coordination Act (''Coordination Act''). The Coordination Act amended the Advisers Act to, among other things, reallocate the responsibilities for regulating investment advisers (''investment advisers'' or ''advisers'') between the Commission and the securities regulatory authorities of the states. Generally, the Coordination Act requires advisers with $25 million or more of assets under management to register with the Commission; advisers with less than $25 million of assets under management that are registered with a state may not register with the Commission. The proposed rules and rule amendments would:

- Establish the process by which advisers that are currently registered with the Commission will determine their status as Commission- or state-registered advisers after the effective date of the Coordination Act;
- Amend Form ADV to require advisers to report information relevant to their status as Commission-registered advisers annually to the Commission;
- Relieve advisers from the burden of having to frequently register and then de-register with the Commission as a result of changes in the amount of their assets under management;
- Provide certain exemptions from the prohibition on registration with the Commission;
- Define certain terms used in the Coordination Act, including ''investment adviser representative,'' ''principal office and place of business,'' and ''place of business;'' and
- Clarify how advisers should count clients for purposes of the new national de minimis standard.

I. Background

On October 11, 1996 President Clinton signed into law the National Securities Markets Improvement Act of 1996 (''1996 Act'').[1] Title III of the 1996 Act, the Coordination Act, makes several amendments to the Advisers Act. The most significant of these amendments reallocates federal and state responsibilities for the regulation of the approximately 22,500 investment advisers currently registered with the

[1] National Securities Markets Improvement Act of 1996, Pub. L. 104–290, 110 Stat. 3416 (1996) (to be codified in scattered sections of 15 U.S.C.).

Commission.[2] These amendments will become effective on April 9, 1997.[3]

The reallocation of regulatory responsibilities primarily grew out of Congress' concern that the Commission's resources are inadequate to supervise the activities of the growing number of investment advisers registered with the Commission, many of which are small, locally operated, financial planning firms.[4] Congress concluded that if the overlapping regulatory responsibilities of the Commission and the states were divided by making the states primarily responsible for smaller advisory firms and the Commission primarily responsible for larger firms, the regulatory resources of the Commission and the states could be put to better, more efficient use.[5]

Congress also was concerned with the cost imposed on investment advisers and their clients by overlapping, and in some cases, duplicative, regulation.[6] In addition to the Commission, forty-six states regulate the activities of investment advisers under state investment adviser statutes.[7] States generally have asserted jurisdiction over investment advisers that ''transact business'' in their state.[8] Consequently, many large advisers operating nationally have been subject to the differing laws of many states. Compliance with differing state laws has imposed significant regulatory burdens on these large advisers.[9] Congress intended to reduce these burdens by subjecting large advisers to a single regulatory program administered by the Commission.

The Coordination Act reallocates regulatory responsibilities over advisers by limiting the application of federal law and preempting certain state laws. Under new section 203A(a) of the Advisers Act,[10] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless the adviser (i) has assets under management of not less than $25 million (or such higher amount as the Commission may, by rule, deem appropriate), or (ii) is an adviser to an investment company registered under the Investment Company Act of 1940 (the ''Investment Company Act'').[11] The Commission is authorized to deny registration to any applicant that does not meet the criteria for Commission registration,[12] and is directed to cancel the registration of any adviser that no longer meets the criteria for registration.[13]

The requirement that an adviser have assets under management of at least $25 million in order to register with the Commission was designed to limit Commission regulation to advisers likely to be subject to multiple state registration requirements and whose activities affect national markets.[14] Congress recognized, however, that some advisers that do not have $25 million of assets under management may still have national businesses.[15] Therefore, the Commission was given the authority to exempt advisers from the prohibition on Commission registration if the application of the prohibition would be ''unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes'' of section 203A.[16]

By prohibiting certain state-regulated advisers from registering with the Commission, section 203A(a) gives the states the primary, although not exclusive, responsibility to regulate those advisers. Section 206 of the Advisers Act, which contains the anti-fraud provisions of the Act, will continue to apply to state-registered advisers,[17] and the Commission retains the authority in section 209 of the Advisers Act to investigate and bring enforcement actions against state-registered advisers for violating applicable provisions of the Act.[18]

The Coordination Act gives the Commission primary responsibility to regulate advisers that remain registered with the Commission by preempting certain state laws with respect to those advisers. New section 203A(b) of the Advisers Act[19] provides that state laws requiring the ''registration, licensing, or qualification as an investment adviser'' do not apply to any adviser registered with the Commission or excepted from the definition of investment adviser under section 202(a)(11) of the Advisers Act. Section 203A(b) preempts not only a state's specific registration, licensing, or qualification requirements, but all regulatory requirements imposed by state law on such investment advisers

[2] Other amendments made by the 1996 Act to the Advisers Act include revisions to (i) section 205 [15 U.S.C. 80b–5] to create additional exceptions to the Advisers Act's limitations on performance fee arrangements, (ii) section 222 [15 U.S.C. 80b–18a] to impose certain uniformity requirements on state investment adviser laws (see section ii. G. of this Release), (iii) section 203(e) [15 U.S.C. 80b–3(e)] to permit the Commission to deny or revoke the registration of any person convicted of any felony (or of any adviser associated with such a person), and (iv) section 203(b) [15 U.S.C. 80b–3(b)] to exempt from registration certain advisers to church-sponsored employee pension plans. See 1996 Act sections 210, 304, 305(a), and 508(d).

[3] See Coordination Act section 308(a).

[4] The number of investment advisers registered with the Commission increased dramatically from 5,680 in 1980 to approximately 22,500 today. By 1995, the Commission was able to examine smaller advisers on a routine basis on average only once every forty-four years. See Testimony of Arthur Levitt, Chairman, SEC, Concerning S. 1815, the ''Securities Investment Promotion Act of 1996,'' Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs (June 5, 1996) (hereinafter Senate Hearing), app. at 2.

[5] See S. Rep. No. 293, 104th Cong., 2d Sess. 3–4 (1996) (hereinafter Senate Report).

[6] *Id.* at 2.

[7] The District of Columbia, Guam, and Puerto Rico also have enacted statutes regulating investment advisers. See D.C. Code Ann. sections 2–2631 *et seq.* (1994); Guam Gov't Code section 45201 (1996); P.R. Laws Ann. tit. 10, sections 861 *et seq.* (1992). The four states that currently do not have investment adviser statutes are Colorado, Iowa, Ohio, and Wyoming.

[8] See, e.g., Unif. Sec. Act section 203 (1985); Ark. Stat. Ann. section 23–42–301(c) (1996); Md. Code Ann., Corps & Ass'ns section 11–401(b) (1993).

[9] See Testimony of Mark D. Tomasko, Executive Vice President, Investment Counsel Association of America, Inc., Senate Hearing, at 3 (''In some [advisory] firms, there are one or more persons whose sole job is to work on state registrations and requirements.'').

[10] 15 USC 80b–3A(a).

[11] 15 USC 80a–1 *et seq.* The definition of ''investment adviser'' in the Investment Company Act includes any person who, pursuant to contract, regularly performs investment advisory services on behalf of an adviser. See section 2(a)(20) of the Investment Company Act [15 USC 80a–2(a)(20)]. Thus, any adviser that provides advisory services to a registered investment company pursuant to a contract (including a ''sub-adviser'') would be eligible to register with the Commission, regardless of the amount of assets under management.

[12] Section 203(c) of the Advisers Act [15 USC 80b–3(c)] (as amended by section 303(b)(1) of the Coordination Act).

[13] Section 203(h) of the Advisers Act [15 USC 80b–3(h)] (as amended by section 303(b)(2) of the Coordination Act).

[14] Congress has recognized that securities offerings of investment companies are ''inherently national in nature.'' See H.R. Conf. Rep. No. 864, 104th Cong., 2d Sess. 40 (1996). Therefore, advisers to registered investment companies are permitted to (and, in fact, must) register with the Commission, regardless of the amount of their assets under management.

[15] See Senate Report at 5.

[16] Section 203A(c) of the Advisers Act [15 USC 80b–3A(c)]. The exercise of this exemptive authority would not only permit registration with the Commission, but would preempt state law with respect to the exempted advisers. See section II.D. of this Release.

[17] 15 USC 80b–6. By its terms, section 206 applies to all persons who meet the definition of ''investment adviser'' in section 202(a)(11) of the Advisers Act [15 USC 80b–2(a)(11)], regardless of whether they are registered with the Commission.

[18] 15 USC 80b–9. Paragraphs (a) and (d) of section 209 of the Advisers Act [15 USC 80b–9(a),(d)] give the Commission authority to investigate all persons who violate provisions of the Advisers Act, to bring actions in federal court to enforce compliance with the Advisers Act, and, if proper showings are made, to obtain permanent or temporary restraining orders or injunctions with respect to these persons. The Commission may bring administrative actions against ''any investment adviser'' under section 203(e) of the Advisers Act, and has cease-and-desist authority under section 203(k) of the Advisers Act [15 USC 80b–3(k)] against any person who ''is violating, has violated, or is about to violate'' any provision of the Act, or who ''is, was, or would be a cause'' of such violation.

[19] 15 USC 80b–3A(b).

relating to their advisory activities or services, except those provisions that are specifically preserved by the Coordination Act.[20] After April 9, 1997, state investment adviser laws that, for example, establish recordkeeping, disclosure, and capital requirements will no longer apply to advisers registered with the Commission.[21]

The Coordination Act preserves state authority over Commission-registered advisers in three areas.[22] First, states may investigate and bring enforcement actions against Commission-registered advisers with respect to fraud and deceit.[23] States may not, however, indirectly regulate activities of Commission-registered advisers by enforcing state requirements that define ''dishonest'' or ''unethical'' business practices unless the prohibited practices would be fraudulent absent the requirements.[24] Second, states may require Commission-registered advisers to file, for notice purposes only, documents filed with the Commission.[25] Thus, for example, a state could require a Commission-registered adviser to file its Form ADV with the state, but could not require the adviser to provide any information on the state filing other than the information that is required by the Commission. Third, states may require Commission-registered advisers to continue to pay state filing, registration, and licensing fees.[26]

II. Discussion

The Commission is proposing several rules implementing the provisions of the Coordination Act designed to reallocate the regulatory responsibilities for investment advisers between the Commission and the states.

A. Form ADV–T

Approximately 22,500 investment advisers are currently registered with the Commission. Based on information provided by these advisers, the Commission estimates that more than two-thirds of them would not be eligible to register with the Commission after April 9, 1997. These advisers must withdraw from registration or their registrations will be subject to cancellation. To help determine each adviser's status under the Advisers Act, as amended by the Coordination Act, and to provide for the orderly withdrawal from Commission registration for advisers that are no longer eligible, the Commission is proposing a transition rule, rule 203A–5, and Form ADV–T. Under proposed rule 203A–5, all advisers registered with the Commission on April 9, 1997 would be required to file a completed Form ADV–T with the Commission no later than that date.

Form ADV–T would enable an adviser to determine whether it meets the criteria set forth in the Coordination Act for Commission registration, as well as the criteria in the exemptive rules being proposed by the Commission.[27] Form ADV–T would require each adviser to declare whether or not it remains eligible for Commission registration. For an adviser that declares itself not eligible for Commission registration, Form ADV–T would serve as the adviser's request for withdrawal from registration as of April 9, 1997.[28]

Proposed rule 203A–5 would require every currently registered adviser to complete, sign, and return Form ADV–T by April 9, 1997. Failure to return the form would be a violation of a Commission rule. Advisers that do not return the form or that fail to voluntarily withdraw from Commission registration despite no longer being eligible would be subject to a cancellation proceeding under section 203(h) of the Advisers Act.

Proposed Form ADV–T is attached as an appendix to this release. Comment is requested on proposed Form ADV–T, proposed rule 203A–5, and the proposed process to de-register advisers that are no longer eligible for Commission registration.

B. Assets Under Management

In most cases, the amount of assets an adviser has under management will determine whether the adviser will be registered with the Commission or the states. The Commission recognizes that it is important that advisers understand how to determine the amount of assets under management and is proposing instructions to Form ADV–T that would provide guidance in this area.

1. Securities Portfolios

Section 203A(a)(2) of the Advisers Act defines ''assets under management'' as the ''securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.'' [29] Proposed instruction 7(a) to Form ADV–T would provide that a ''securities portfolio'' means any account at least fifty percent of the total value of which consists of securities. Real estate, commodities, and collectibles are not securities and would not be included. In order to prevent an account in which the adviser has taken a defensive position in cash from being excluded as a ''securities portfolio,'' the instruction would require an adviser to exclude cash and cash equivalents (*e.g.*, demand deposits) in determining whether an account is a securities portfolio.[30]

Instruction 7(b) would require that, once the adviser has determined that an account is a ''securities portfolio,'' the entire value of the account, including cash and any non-securities positions, be included in the value of the adviser's assets under management. Exclusion of any component of a securities portfolio is not expressly required by section 203A(a)(2), and would be inconsistent with the manner in which the value of client portfolios is traditionally calculated. Comment is requested whether there are types of assets that

[20] If Congress had intended section 203A(b) to preempt only the specific registration, licensing, and qualification requirements of state investment adviser statutes, it would not have had to preserve the authority of states to investigate fraud, require notice filings, and collect fees. *See infra* notes 22–26 and accompanying text.

[21] See, e.g., Unif. Sec. Act Model Rules 202(d)–1 (minimum financial requirements), 202(e)–1 (bonding requirements), 203(a)–1 (recordkeeping requirements), 203(b)–1 (brochure rule), and 203(c)–1 (financial reporting requirements); N.C. Admin. Code tit. 18 r. 18.1704 (1995) (minimum financial requirements); N.J. Admin. Code tit. 13, section 13:47A–2.3 (1992) (bonding requirements); Conn. Agencies Regs. section 36b–31–14b (1995) (recordkeeping requirements); Md. Regs. Code tit. 2, ch. 5 r. .05 (1994) (brochure rule); Ga. Comp. R. & Regs. r. 590–4–8.14 (1989) (financial reporting requirements).

[22] The Coordination Act also preserves state authority over certain persons who act on behalf of Commission-registered advisers. See section II.F. of this Release.

[23] Section 203A(b)(2) of the Advisers Act [15 U.S.C. 80b–3A(b)(2)].

[24] While there is no legislative history addressing the scope of section 203A(b)(2), Congress used similar language to preserve state anti-fraud laws when it preempted state regulation of securities offerings in Title I of the 1996 Act. See section 18(c)(1) of the Securities Act of 1933 [15 U.S.C. 77r(c)(1)] (''the [state] securities commission[s] * * * shall retain jurisdiction under the laws of such [s]tate[s] to investigate and bring enforcement actions with respect to fraud or deceit * * *.''). The House report discussing that section explained that ''[i]n preserving [s]tate laws against fraud and deceit * * * the Committee intends to prevent the [s]tates from indirectly doing what they have been prohibited from doing directly * * *. The legislation preempts authority that would allow the [s]tates to employ the regulatory authority they retain to reconstruct in a different form the regulatory regime * * * that [s]ection 18 has preempted.'' H.R. Rep. No. 622, 104th Cong., 2d Sess. 34 (1996) (hereinafter House Report).

[25] Coordination Act section 307(a).

[26] Coordination Act section 307(b).

[27] See section II.D. of this Release.

[28] An adviser that declares itself not eligible for Commission registration on Form ADV–T would not be required to separately file a Form ADV–W [17 CFR 279.2] in order to withdraw from registration with the Commission.

[29] 15 U.S.C. 80b–3A(a)(2).

[30] Instruction 7(a) also would explain that the following securities portfolios should be included in the determination of the amount of assets under management: (i) Family or proprietary accounts (except the personal assets of a sole proprietor), (ii) accounts for which the adviser receives no compensation, and (iii) accounts of foreign clients.

nonetheless should be excluded from a securities portfolio, and therefore from the amount of assets under management.

2. Valuation and Reporting of Securities Portfolios

Instruction 7(d) to proposed Form ADV–T would address the method and timing of the valuation of an adviser's securities portfolios.[31] The value of a securities portfolio would be required to be determined as of a date no more than ten business days before the filing of Form ADV–T.[32] The instruction would require that the methodology by which the securities are valued be the same as that used to value the securities for purposes of client reporting or to determine fees for investment advisory services.

3. Continuous and Regular Supervisory or Management Services

Instruction 7(c) to proposed Form ADV–T would provide guidance for determining whether an adviser provides an account with ''continuous and regular supervisory or management services'' within the meaning of section 203A(a)(2). The Commission would consider accounts over which advisers have discretionary authority and for which they provide ongoing management services to receive continuous and regular supervisory or management services (and therefore the assets of such accounts to be ''assets under management''). In addition, the Commission believes that a limited number of non-discretionary advisory arrangements involve such services.

Whether an adviser that does not have discretionary authority will be considered to provide continuous and regular management or supervisory services with respect to an account would depend upon the nature of the adviser's responsibilities. The greater the amount of day-to-day responsibility an adviser has, the more likely the adviser would be providing continuous and regular supervisory or management services. For example, an adviser that has traditional portfolio management responsibilities but must obtain client consent before executing a trade would provide continuous and regular management or supervisory services with respect to the account.[33]

The Commission believes that Congress intended to exclude from Commission registration most advisers that do not engage in traditional ongoing portfolio management, including most financial planners and consultants. Under the proposed instructions, a financial planner that merely undertakes to monitor the markets and advise its clients as to the advisability of changes to their portfolios would not be providing continuous and regular management or supervisory services.[34] A financial planner that otherwise would be regulated by the states could not ''opt'' to be regulated by the Commission by revising its financial planning agreements to include the statutory language or similar language unless such a revision materially changes the nature of the services being provided.[35]

In evaluating the effect that the $25 million threshold would have on the number of investment advisers registered with the Commission, Congress relied on data provided by the Commission that was derived from responses on Form ADV.[36] Thus, the Commission believes that Congress intended to include as assets under management the types of assets advisers have reported on Form ADV. The Commission is proposing to require advisers to report on Form ADV–T the amount of assets under management reported on Form ADV.[37] An adviser that reports substantially more assets under management on its Form ADV–T than on its Form ADV could be asked to explain the difference.

Comment is requested on the Commission's proposed interpretation of ''assets under management'' and the related proposed instructions to Form ADV–T. Comment also is requested on the proposed examples provided on Form ADV–T of accounts that receive continuous and regular supervisory or management services. Commenters are requested to provide additional examples. The Commission is also interested in commenters' views whether the proposed form and instructions would allow manipulation of the amount of an adviser's assets under management in order to evade the eligibility requirements and, if so, whether there are any alternative methods to address that potential problem.

4. Proposed Safe Harbor for State-Registered Investment Advisers

The Commission recognizes that section 203A(a)(2) does not, and proposed Form ADV–T would not, provide a bright-line test by which an adviser that does not have discretionary authority over client assets may determine whether it is eligible to register with the Commission. The Commission therefore is proposing rule 203A–4 to provide a safe harbor from Commission registration for an adviser that is registered with state securities authorities (rather than the Commission) based on a reasonable belief that it is prohibited from registering with the Commission because it has insufficient assets under management.

Under proposed rule 203A–4, the Commission would not assert a violation of the Advisers Act for failure to register with the Commission (or to comply with the provisions of the Advisers Act to which an adviser is subject if required to register) if the adviser reasonably believes that it does not have sufficient assets under management (at least $30 million) and is therefore not required to register with the Commission.[38] This safe harbor would be available only to an adviser that is registered with the state in which it has its principal office and place of business.

C. Transitions Between State and Commission Registration

The Coordination Act contemplates that a state-registered adviser whose assets under management increase to

[31] In general, the value of assets under management would be required to be included on Form ADV–T only if the amount of assets under management is the sole basis upon which the adviser is eligible for Commission registration. See Part III of proposed Form ADV–T.

[32] See Instruction 7(d) to proposed Form ADV–T.

[33] The frequency with which an adviser initiates trades, provides reports to clients, or has contacts with clients would not necessarily determine whether the adviser provides continuous and regular supervisory or management services.

[34] To enable the Commission to evaluate the claims of advisers relying on the non-discretionary management of assets as the basis of eligibility to remain registered with the Commission, proposed Form ADV–T would require these advisers to append a written statement explaining the nature of the non-discretionary supervisory or management services. See Part III, Item (c) of proposed Form ADV–T.

[35] The Commission is concerned that, if financial planners were permitted to treat assets they ''monitor'' as assets under management and therefore remain registered with the Commission, the intent of Congress to reallocate regulatory responsibilities by making ''almost 72 [percent] of Commission [investment adviser] registrants'' subject primarily to state regulation would not be effected. See Senate Report at 4.

[36] See Testimony of Arthur Levitt, Chairman, SEC, Senate Hearing, app. at 2 (providing data reflected in Senate Report). The Form ADV data provided in the Commission's testimony was extracted from responses to Items 18 and 19 of Part I of Form ADV, which require information on the market value of client securities portfolios managed on a discretionary basis and managed or supervised on a non-discretionary basis.

[37] See Part III, Item (b) of proposed Form ADV–T.

[38] As discussed *infra*, the Commission is proposing to increase the $25 million threshold for Commission registration to $30 million, and to provide an optional exemption from the prohibition on registering with the Commission for advisers having between $25 and $30 million of assets under management. See section II.C.1. of this Release.

over $25 million will withdraw its state registration and register with the Commission. Conversely, an adviser whose assets under management decline below $25 million will withdraw its Commission registration and register with a state (or states).

The Coordination Act could require an adviser that has close to $25 million of assets under management to register with the Commission only to de-register and re-register with a state shortly thereafter. This could occur because of a small decrease in the value of client assets (as a result of a market decline) or the departure of one or a few clients. The Commission recognizes that this process would be burdensome and costly to advisers and therefore is proposing to use the authority provided to it in the Coordination Act to adopt a new rule, rule 203A–1, that would create a more flexible regime to avoid ''transient'' registration problems.

1. Transition from State to Commission Registration

Section 203A(a)(1)(A) of the Advisers Act authorizes the Commission to adopt a rule to increase the $25 million of assets under management threshold for Commission registration.[39] In addition, as discussed above, the Commission has authority to exempt persons not meeting the threshold from the prohibition on registering with the Commission.[40] The Commission is proposing to use these grants of authority to increase the $25 million threshold to $30 million, and to provide an optional exemption from the prohibition on registering with the Commission for advisers having between $25 and $30 million of assets under management.[41]

Proposed rule 203A–1 would permit advisers having between $25 and $30 million of assets under management to determine whether and when to change from state to Commission registration. In order to avoid having to de-register shortly after registering with the Commission, an adviser reaching the $25 million of assets under management threshold could defer registration with the Commission. An adviser would not be required to register with the Commission until its assets under management reached $30 million, and would not be subject to Commission cancellation of its registration until its assets had fallen below $25 million. A state-registered adviser whose assets under management grew to $30 million or more would be required to register with the Commission promptly when the assets reached $30 million (not when the adviser subsequently reported its assets under management to the state). Comment is requested whether the proposed $5 million ''window'' would provide advisers with sufficient flexibility to avoid the costly process of periodically registering and de-registering with the Commission and the states. Comment is also requested on other alternatives that could meet the needs of such advisers, for example, by providing a grace period for the transition from state to Commission registration, or by determining whether Commission registration is required on an annual basis.

2. Transition from Commission to State Registration

The Commission is proposing to amend Form ADV by adding new Schedule I (''eye'') that would require advisers to report information necessary to determine continued eligibility for Commission registration similar to that required by Form ADV–T.[42] The information on Schedule I would be used to determine whether the Commission should cancel the registration of an adviser because the adviser no longer meets the criteria for Commission registration. Schedule I would be required to be updated annually, within 90 days after the end of the adviser's fiscal year. An adviser whose assets under management fell below $25 million would not be required to report this event until after the end of its fiscal year (and not at all unless its assets under management remained below $25 million at the time of filing its Schedule I). Thus, eligibility for Commission registration would be determined annually based upon the value of assets under management at a single point in time. Comment is requested whether the Commission should measure assets under management more frequently, or based on the average value of assets at the end of certain periods (*e.g.*, calendar quarters).

Section 203A(b) of the Advisers Act, together with most state investment adviser statutes, will cause state registration requirements to be triggered by either a withdrawal from, or by the Commission's cancellation of, registration with the Commission. To allow an adviser facing potential cancellation of its Commission registration sufficient time to register under applicable state statutes, the Commission is proposing to provide a ''grace period'' of 90 days after the date the adviser files its Schedule I indicating that it would not be eligible for Commission registration.[43] Upon the expiration of this period, the Commission would institute proceedings to cancel the adviser's registration if the adviser had not withdrawn its registration on its own. As provided under the Advisers Act, an adviser would be given notice and an opportunity to show why its registration should not be cancelled (*i.e.*, because since the time the adviser had filed its Schedule I to Form ADV, its amount of assets under management had grown).[44] Comment is requested whether a 90-day grace period would allow sufficient time for an adviser to register with the states.

D. Exemptions from Prohibition on Registration with the Commission

As discussed above, the Coordination Act gives the Commission authority to exempt advisers from the prohibition on Commission registration if the prohibition would be ''unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes'' of section 203A.[45] Congress intended the Commission to grant these exemptions to advisers having ''a national or multistate practice.''[46] The Commission is proposing a new rule, rule 203A–2, that would exempt four types of advisers from the prohibition on Commission registration. The effect of the first three exemptions would be to make section 203 of the Advisers Act applicable to exempted advisers and, thus, require them to register with the Commission (unless exempted from Commission registration under section 203(b) of the Act). The fourth exemption would enable newly formed advisers to register with the Commission if they have a reasonable expectation that they will be eligible for Commission registration within 90 days.

1. Nationally Recognized Statistical Rating Organizations

''Nationally recognized statistical rating organization'' (''NRSRO'') is a term used in several Commission rules

[39] 15 USC 80b-3A(a)(1)(A).

[40] See supra note and accompanying text.

[41] Paragraphs (a) and (b) of proposed rule 203A–1.

[42] See section II. A of this Release.

[43] Paragraph (c) of proposed rule 203A–1. The Commission is not proposing a similar grace period after the filing of Form ADV–T. The Commission presumes that an adviser not eligible to maintain its registration with the Commission on April 9, 1997 would already be registered with the appropriate state(s) at the time of filing Form ADV–T.

[44] Section 211(c) of the Advisers Act [15 USC 80b-11(c)].

[45] Section 203A(c). See supra notes and accompanying text. As discussed above, the exercise of this exemptive authority would not only permit registration with the Commission, but would preempt state law with respect to the exempted advisers. See supra notes 19–21 and accompanying text.

[46] Senate Report at 5.

to identify a type of entity, often referred to as a ''rating agency,'' that provides ratings of securities, on the basis of which the securities receive special treatment under Commission rules.[47] All of the entities currently designated as NRSROs are registered with the Commission as investment advisers.[48] While NRSROs do not have assets under management, their activities have a significant effect on the national securities markets and the operation of federal securities laws.[49] The Commission believes that it would be inconsistent with the purposes of the Coordination Act for this type of entity to be regulated by the states rather than by the Commission, and is proposing to exempt NRSROs from the prohibition on registering with the Commission.[50]

2. Pension Consultants

Pension consultants provide various advisory services to fiduciaries of pension plans, including assistance in selecting and monitoring investment advisers that manage assets of such plans.[51] Pension consultants may not have assets under management, but their activities have a direct effect on the management of billions of dollars of pension plan assets. The Commission believes that it would be inconsistent with the purposes of the Coordination Act for these advisers to be regulated by the states rather than by the Commission, and is proposing to exempt certain pension consultants, as defined under the proposed rule, from the prohibition on registering with the Commission.

Not all pension consultants, however, are engaged in activities that substantially affect national markets. Under paragraph (b) of proposed rule 203A–2, a pension consultant would be defined as an investment adviser that provides investment advice to certain employee benefit plans with respect to assets having an aggregate value of at least $50 million during the adviser's last fiscal year.[52] Comment is requested as to the appropriateness of the proposed exemption, and the proposed criteria for determining whether a pension consultant's activities warrant exemption.

3. Certain Affiliated Investment Advisers

Some firms conduct their advisory activities through separately registered advisers, not all of which may meet the criteria for Commission registration. For example, a firm may conduct its portfolio management activities in Subsidiary A, while conducting its financial planning activities in Subsidiary B, each of which is separately registered as an investment adviser. As a result, Subsidiary B may have no assets under management and, unless another exemption is available, would be regulated by the states rather than by the Commission.

This result may be appropriate for affiliated advisers that are related only by ownership.[53] The activities of affiliated advisers, however, may be centrally managed, and the effect of the Coordination Act's prohibition on registration would be either to subject an advisory firm to different schemes of regulation or force it to reorganize its operations. The Commission believes that either result could be unfair to the adviser and a burden on interstate commerce and is therefore proposing to exempt from the prohibition on Commission registration any adviser that directly or indirectly controls, is controlled by, or is under common control with an investment adviser that is eligible to register (and is, in fact, registered) with the Commission.[54] ''Control'' would be defined, for purposes of the rule, as the power to direct or cause the direction of the management or policies of an adviser, whether through ownership of securities, by contract, or otherwise.[55] The exemption would be available only if the principal office and place of business of the adviser is the same as that of the affiliated registered adviser.[56]

Affiliated advisers having the same principal office and place of business are likely to have overlapping operations, similar books and records, and integrated compliance systems. Compliance with separate schemes of regulation may not permit the integration of such systems and therefore would be burdensome for these advisers. Moreover, the Commission has found that it is more efficient to examine all of the activities of such affiliated advisers at the same time. Comment is requested whether the proposed conditions for exempting an affiliated adviser from the prohibition on registering with the Commission are appropriate. Is having the same principal office and place of business an appropriate criterion by which to assume the integration of operations of affiliated advisers? If not, commenters are requested to provide alternative criteria.

4. Investment Advisers With Reasonable Expectation of Eligibility

A newly formed adviser may not be eligible to register with the Commission at the time of its formation, but may have a reasonable expectation that within a short period of time it will become eligible to register. For example, an adviser may not initially have assets under management, but may anticipate an inflow of assets shortly after commencing operations. The Commission recognizes that requiring a newly formed adviser to register with the states, only to de-register and

[47] See, e.g., rule 15c3–1 under the Securities Exchange Act of 1934 (''Exchange Act'') [17 CFR 240.15c3–1] (broker-dealer net capital); rule 2a-7 under the Investment Company Act [17 CFR 270.2a-7] (money market funds).

[48] The Commission's Division of Market Regulation responds to requests for NRSRO designation through no-action letters, and has designated six rating agencies as NRSROs for purposes of the net capital rule (rule 15c3–1 under the Exchange Act).

[49] See Exchange Act Rel. No. 34616 (Aug. 31, 1994) [59 FR 46314 (Sept. 7, 1994)] (describing the use of NRSRO ratings by Congress and the Commission).

[50] Paragraph (a) of proposed rule 203A–2.

[51] See Investment Advisers Act Rel. No. 1092 (Oct. 8, 1987) [52 FR 38400, 38401 (Oct. 16, 1987)].

[52] In determining the aggregate value of advised assets, the adviser would be able to include only that portion of a plan's assets for which the adviser provided investment advice (including any advice with respect to the selection of an investment adviser to manage the assets). The value of assets would be determined as of the date during the adviser's most recently completed fiscal year that the adviser was last employed or retained by contract to provide investment advice to the plan with respect to those assets. See paragraph (b)(3) of proposed rule 203A–2.

[53] The Commission does not believe that Congress intended to permit an adviser to register with the Commission merely because it is an affiliate of a Commission-registered adviser. In section 203A(b)(1)(A) of the Advisers Act [15 USC 80b-3A(b)(1)(A)], Congress preempted state regulation of advisers and certain ''supervised persons.'' Congress defined supervised persons as persons who provide investment advice on behalf of the adviser. See section 202(a)(25) of the Advisers Act [15 USC 80b-2(a)(25)]. The principal effect of using this new defined term, rather than the term ''persons associated with an investment adviser,'' which is defined in section 202(a)(17) of the Advisers Act [15 USC 80b-2(a)(17)], is to exclude any person controlling or controlled by the adviser unless the person provides investment advice on behalf of the adviser. See section F.1. of this Release.

[54] Paragraph (c) of proposed rule 203A–2. By proposing rule 203A–2(c), the Commission is not suggesting that an advisory firm may reorganize its operations in order to circumvent the requirements of the Advisers Act. See section 208(d) of the Advisers Act [15 USC 80b–8(d)] (making unlawful for any person ''indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly'' under the Advisers Act). *Cf.* Preliminary Note 2 to rule 203(b)(3)–1 [17 CFR 275.203(b)(3)–1] under the Advisers Act.

[55] Under this definition, any person that directly or indirectly has the right to vote 25 percent or more of the voting securities or is entitled to 25 percent or more of the profits of an adviser would be presumed to control that adviser.

[56] The definition of ''principal office and place of business'' in proposed rule 203A–3(c) would also apply to this rule. See section II.E.2. of this Release.

register with the Commission shortly thereafter, would be unfair, burdensome, and inconsistent with the purposes of section 203A. Therefore, the Commission is proposing to exempt certain newly formed advisers from the prohibition on Commission registration.

Under proposed rule 203A–2(d), an adviser with a reasonable expectation that it will be eligible for Commission registration within 90 days after the date the adviser's registration becomes effective would be permitted to register with the Commission. At the end of the 90-day period, the adviser would be required to file an amended Schedule I. If the adviser indicates on the amended Schedule I that it has not become eligible to register with the Commission, the adviser would be required to file a Form ADV-W concurrently with the Schedule I, thereby withdrawing from registration with the Commission. The proposed exemption would be available only to advisers that are not registered or required to be registered with either the states or the Commission.

The Commission requests comment on the utility, scope, and conditions of the proposed exemptions, including whether the exemptions should require Commission registration for advisers meeting the exemptive criteria. Are there other classes of advisers that the Commission should exempt because their prohibition from registering with the Commission would be unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of section 203A? Comment is also requested whether the 90-day period is adequate or whether it should be longer.

E. Investment Advisers Not Regulated or Required To Be Regulated by States

Under section 203A(a)(1) of the Advisers Act, advisers that are not regulated or required to be regulated as investment advisers in the state [57] in which they have their principal office and place of business must register with the Commission regardless of the amount of assets they have under management.[58] This provision makes clear that the Commission will retain regulatory responsibility for advisers with a principal office and place of business in states that have not enacted investment adviser statutes, and for foreign advisers doing business in the United States. The Coordination Act does not, however, provide an explanation of when an adviser is ''regulated or required to be regulated'' as an investment adviser, nor does it define ''principal office or place of business.''

1. ''Regulated or Required To Be Regulated''

Although the phrase ''regulated or required to be regulated'' is used in section 203A(a)(1), the legislative history of this provision suggests that Congress equated regulation by a state with registration with the state.[59] This interpretation seems appropriate since an adviser exempt from registering under a state statute typically is subject only to the anti-fraud provisions of the state statute and not to substantive regulatory provisions. Accordingly, the Commission proposes to interpret section 203A(a)(1) as requiring any person who meets the definition of investment adviser in section 202(a)(11) of the Advisers Act (and that is not otherwise exempt from registration by section 203(b) of the Act) [60] to register with the Commission if the person has a principal office and place of business in a state that has an investment adviser statute, but is not required to be registered (and, in fact, is not registered) under that statute. The person may not be required to register with the state as a result of an exemption from registration or an exception from the definition of ''investment adviser'' in that state's statute.[61]

One effect of this proposed interpretation would be that all advisers will be regulated either by the Commission or the states, except for advisers that are exempt from registration under both the Advisers Act and state statutes. Another effect would be that some advisers a state has determined not to regulate would be registered with the Commission even though their operations may be very limited. The Commission requests comment whether it should recommend that Congress amend section 203A(a)(1) to prohibit an adviser from registering with the Commission if it has its principal office and place of business in a state that has enacted an investment adviser statute (regardless of whether that statute requires the adviser to register).

''Principal Office and Place of Business''

Currently, advisers are required to identify their principal place of business in response to Item 2A of Form ADV. Form ADV does not, however, define the term principal place of business. Because of the added regulatory significance of the determination of the state in which the adviser has its principal place of business, the Commission is proposing to define the term ''principal office and place of business'' to mean the ''executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.'' [62]

2. F. Persons Who Act on Behalf of Investment Advisers

In addition to preempting state law with respect to investment advisers that are registered with the Commission, the Coordination Act preempts state law with respect to ''supervised persons'' of Commission-registered advisers.[63] The Coordination Act defines a supervised person as any ''partner, officer, director * * *, or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.'' [64] Thus, the definition of supervised person parallels the traditional Commission view that persons performing advisory services on behalf of an adviser are not required to

[57] The term ''state'' is defined in section 202(a)(19) of the Advisers Act [15 USC 80b–2(a)(19)] to include the District of Columbia, Puerto Rico, the Virgin Islands, and any other possession of the United States.

[58] 15 USC 80b–3A(a)(1).

[59] Senate Report at 4 (''The Commission will continue to supervise all advisers that are based in a state that does not register investment advisers.'').

[60] 15 USC 80b–3(b). Section 203(b) exempts from registration (i) any adviser whose clients are all residents of the state within which the adviser maintains its principal office and place of business, and that does not furnish advice or issue reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange (the ''intrastate'' exemption); (ii) any adviser whose only clients are insurance companies (the ''insurance company'' exemption); (iii) any adviser that, among other things, does not hold itself out generally to the public as an adviser and during the course of the preceding twelve months had fewer than fifteen clients (the ''small adviser'' exemption); (iv) any adviser that is a charitable organization and that provides advice only to other charitable organizations (the ''charitable adviser'' exemption, added by section 5 of the Philanthropy Protection Act of 1995, Pub. L. 104–62, 109 Stat. 682, 685 (1995) (codified in scattered sections of 15 U.S.C.)); and (v) any adviser that provides advice solely to church plans (the ''church plan adviser'' exemption, added by section 508(d) of the 1996 Act).

[61] For example, a lawyer who provides discretionary advisory services as a ''bona fide fiduciary'' may not be required to register as an investment adviser under Massachusetts law. Unless the lawyer's performance of such services is solely incidental to the practice of law (within the meaning of section 202(a)(11)(B) of the Advisers Act), the lawyer would likely be required to register under the Advisers Act even if the lawyer provides such services with respect to less than $25 million of assets. Compare Mass. Ann. Laws ch. 110A, section 401(m) (1996) with section 202(a)(11)(B) of the Advisers Act [15 USC 80b–2(a)(11)(B)].

[62] Paragraph (c) of proposed rule 203A–3.

[63] Section 203A(b).

[64] Section 202(a)(25).

separately register.[65] The definition of supervised person includes a person whose status is an ''employee,'' as well as a person who provides advice on behalf of the adviser pursuant to a contract, as long as the person is under the supervision and control of the adviser.[66]

The Coordination Act, however, does preserve certain state laws with respect to certain supervised persons of Commission-registered advisers by providing that a ''[s]tate may license, register, or otherwise qualify any investment adviser representative who has a place of business located within that [s]tate.'' [67] The Coordination Act does not define ''investment adviser representative,'' nor does it describe what constitutes a ''place of business.'' In order to clarify these terms and thus the scope of state preemption under the Coordination Act, the Commission is proposing a rule defining these terms.

1. ''Investment Adviser Representative''

The Congressional committee reports provide no indication as to which persons providing investment advice on behalf of Commission-registered advisers Congress intended states to continue to register. Testimony in support of preserving state authority over investment adviser representatives, however, suggests that Congress intended to permit state securities authorities to establish qualification standards for investment adviser representatives in order to protect individual, or ''retail,'' investors.[68]

While the term ''investment adviser representative'' is used in many states' laws, the Commission believes that it would be inconsistent with the policies underlying the 1996 Act to be guided by individual state's investment adviser statutes. Many states define ''investment adviser representative'' differently,[69] and in ways that reach persons who do not provide advice to retail investors (e.g., portfolio managers of mutual funds).[70] In light of the many provisions in the Coordination Act designed to promote uniformity of regulation, and the decision of Congress to preempt state laws regulating the offering of shares of investment companies,[71] the Commission does not believe that Congress intended the definition of ''investment adviser representative'' to incorporate state law. The Commission thus concludes that Congress used the undefined term ''investment adviser representative'' with the expectation that the Commission would use its existing rulemaking authority to define it.[72] The Commission is proposing to adopt a rule defining the term ''investment adviser representative'' in a manner consistent with the policy concerns that appear to have given rise to the exception from the provisions of the Coordination Act that preempt state law with respect to Commission-registered advisers and their supervised persons.

Proposed rule 203A–3(a) would define ''investment adviser representative'' to be a ''supervised person'' of an investment adviser, if a substantial portion of the business of the supervised person is providing investment advice to clients who are natural persons. The term therefore would exclude (and thereby preclude states from registering) supervised persons who provide advice to investment companies, businesses, educational institutions, charitable institutions and other entities that are not natural persons. Supervised persons who provide advice to natural persons, but who do not ''on a regular basis solicit, meet with, or otherwise communicate to clients'' also would be excepted from the definition.[73] This exception is intended to exclude personnel of an adviser who may be involved in the formulation of investment advice given to natural persons, but who are not directly involved in providing advice to (or soliciting) clients. In addition, supervised persons who give only impersonal advice would be excepted.[74] This provision is intended to exclude personnel who may be involved, for example, in preparing a newsletter, providing general market timing advice, or preparing a list of recommended purchases for inclusion on a web site.

As discussed above, the definition of ''investment adviser representative'' would include only those supervised persons a ''substantial portion'' of whose business is providing advice to natural persons. A substantial portion of a supervised person's business would be providing advice to natural persons if, during the preceding twelve months, more than ten percent of the supervised person's clients consisted of natural persons, or more than ten percent of the assets under management by the adviser attributable to the supervised person were assets of clients who are natural persons.[75] This provision is intended to permit representatives who provide advisory services primarily to clients that are not natural persons to accept so-called ''accommodation clients'' without being required to register as investment adviser representatives

[65] Persons who perform investment advisory services on behalf of, and under the supervision and control of, a registered adviser are not required to separately register as investment advisers. See, *e.g.*, Abid Mansoor (pub. avail. Feb. 5, 1992); Corinne E. Wood (pub. avail. Apr. 17, 1986); The Burney Company (pub. avail. Feb. 7, 1977). Persons who provide advice on behalf of persons excepted from the definition of investment adviser in section 202(a)(11) are likewise excepted from the definition of investment adviser. See Robert S. Strevell (pub. avail. Apr. 29, 1985).

[66] Senate Report at 4.

[67] Section 203A(b)(1)(A).

[68] The North American Securities Administrators Association (''NASAA'') addressed this matter in its testimony before the Senate committee.

Of particular concern to the states is the potential loss of licensing authority over [investment adviser representatives] associated with [advisory] firms operating out of small branch offices nationwide. Typically, a small number of [investment adviser representatives] operate out of each office providing, almost exclusively, retail investment advisory services * * *. Because of the local nature and retail clientele of these [representatives], the states have a strong interest in maintaining oversight of them.

See Testimony of Dee R. Harris, President, NASAA, Senate Hearing at 6–7.

NASAA recommends * * * requiring all supervised persons that provide advice to retail clients to be licensed with the states regardless of the size of their [advisory] firm. Supervised persons would be exempt from state licensure if they do not solicit retail business nor hold themselves out as providing investment advice to a retail clientele.

See NASAA Recommendations Relating to S. 1815 and H.R. 3005 (July 8, 1996), at 1–2.

[69] The investment adviser statutes of New Hampshire and New Jersey define ''investment adviser representative'' to include any person who is authorized to represent an investment adviser in providing investment advice. See N.H. Rev. Stat. Ann. section 421–B:2(II) (1991 & Supp. 1996). The investment adviser statutes of Oklahoma, Oregon, and Virginia define ''investment adviser representatives'' to include persons who prepare reports or analyses concerning securities. See Okla. Stat Ann. tit. 71 section 2(l) (Supp. 1997); Or. Rev. Stat. section 59.015(16)(a)(B) (1995); Va. Code Ann. section 13.1–501(A) (1993).

[70] See Unif. Sec. Act section 401(g) (1986 amendments) (defining ''investment adviser representative'' to include any person employed by or associated with an investment adviser, other than clerical or ministerial personnel, who manages accounts or portfolios of clients, or who determines which recommendations or advice regarding securities should be given); *Definitions and Procedures for Investment Adviser Representatives and Branch Offices* (Order of West Virginia Deputy Commissioner of Securities, amended eff. Oct. 11, 1995) (defining ''investment adviser representative'' to include clerical and ministerial employees).

[71] See 1996 Act section 102 (amending section 18(b)(2) of the Securities Act of 1933 [15 USC 77r(b)(2)] to preempt state law requiring registration of securities issued by investment companies that are registered or that have filed a registration statement with the Commission); see also Senate Report at 6–7; House Report at 30–31.

[72] This conclusion is also suggested by the fact that, although the drafters of section 203A had available to them two terms—''person associated with an investment adviser'' and ''supervised person''—that could have been used to describe persons the states would have authority to register, the drafters chose to use neither term. ''Person associated with an investment adviser'' is defined in section 202(a)(17), and ''supervised person'' is defined in section 202(a)(25) of the Advisers Act.

[73] Paragraph (a)(1)(i) of proposed rule 203A–3.

[74] Paragraph (a)(1)(ii) of proposed rule 203A–3.

[75] Paragraph (a)(2)(ii) of proposed rule 203A–3.

under state law.[76] Comment is requested whether the criteria for determining whether a substantial portion of an investment adviser representative's business is providing advice to retail persons are workable. If not, commenters are requested to provide alternatives.

The Commission notes that persons not falling within the definition of ''investment adviser representative,'' while not subject to state registration and qualification standards, would not be ''unregulated.'' Although the Commission does not separately register persons associated with investment advisers, the Commission regulates their activities in connection with the regulation of investment advisers. These persons are subject to most of the provisions of the Advisers Act, either directly, as persons associated with investment advisers, or indirectly, as aiders and abettors.[77]

Comment is requested on the proposed definition of ''investment adviser representative,'' and whether the exclusions from the term (and thus state registration requirements) are appropriate. Comment is requested whether supervised persons a substantial portion of whose business is providing services to natural persons who have a high net worth or meet other indicia of financial sophistication should be excepted from the definition.[78] Should an investment adviser representative that is dually-registered as a broker-dealer agent in a state be excepted from the definition of ''investment adviser representative''?

2. ''Place of Business''

While section 203A(b)(1)(A) preserves the ability of a state to register and regulate ''investment adviser representatives'' of Commission-registered advisers, the section limits a state's authority to only those investment adviser representatives who have a ''place of business'' within the state. The Coordination Act does not define the phrase ''place of business.''

The Commission is proposing new rule 203A–3(b) to clarify that, for purposes of section 203A(b)(1)(A), a place of business is any ''place or office from which the investment adviser representative regularly provides advisory services or otherwise solicits, meets with, or communicates to clients.'' Under section 203A(b)(1)(A) and proposed rule 203A–3(b), an investment adviser representative may be required to register in multiple states if the adviser representative has multiple places of business. A place of business need not be a formal office, but it cannot be merely an office of an agent for service of process or a mail box. A place of business may, however, include a hotel room, temporarily rented office space, or even the home of a client, if the adviser representative regularly provides advisory services or solicits, meets with, or otherwise communicates to the client at that location.

If, however, an investment adviser representative does not regularly provide advisory services or otherwise solicit, meet with, or communicate to clients at any place or office, proposed rule 203A–3(b) would define the place of business of such investment adviser representative to be the residence of each client. This provision is designed to prevent itinerant investment adviser representatives from claiming that they have no place of business and thus are not subject to any state's registration or qualification requirements. As a practical matter, therefore, an investment adviser representative likely will designate at least one place or office in a state in which he or she regularly communicates to clients as a place of business.

Comment is requested whether the proposed rule will provide clear guidance for determining whether an investment adviser representative has a place of business in a particular state. Comment is specifically requested whether additional guidance or criteria would be appropriate to address investment adviser representatives that provide services to clients through electronic media.[79]

The Commission is aware that some have suggested that section 203A(b)(1)(A) could be interpreted to permit a state to require every investment adviser representative to establish a place of business in the state (such as the office of the Secretary of State) as a condition of doing business in that state. Under this interpretation, every investment adviser representative doing business in a state would be potentially subject to the state's registration and qualification requirements. The Commission does not believe that the place of business clause should be interpreted in this manner. Interpreting ''place of business'' as the equivalent of ''doing business'' would have the effect of nullifying the restriction that the inclusion of the phrase ''place of business'' places on a state's authority to regulate investment adviser representatives. In the Commission's view, Congress could not have intended this result, or it would not have included the place of business clause in section 203A(b)(1)(A).[80]

Moreover, this interpretation would nullify restrictions imposed by Congress in the Coordination Act on the applicability of state adviser laws to out-of-state advisers. In the Coordination Act, Congress amended section 222 of the Advisers Act to create a national de minimis standard that makes state investment adviser laws (other than provisions prohibiting fraud) inapplicable to an adviser that has fewer than six clients who are residents of the state and that does not have a place of business in the state.[81] Requiring an adviser to have a place of business in any state in which the adviser has even a single client (because it is doing business in the state), would render the new national de minimis standard meaningless.

3. Solicitors

Investment advisers frequently engage others to solicit clients on their behalf. A solicitor is a ''person associated with an investment adviser'' with respect to the adviser for which it solicits.[82] An adviser has an obligation to supervise its solicitors with respect to activities performed on its behalf.[83] Solicitation of clients, however, may not involve providing investment advice on behalf

[76] The proposed exception would be available to all investment adviser representatives, regardless of whether they hold themselves out as providing advisory services to natural persons. Limiting this exception to representatives that do not hold themselves out as providing advisory services to natural persons would be a difficult standard to apply, as representatives may not specify the type of client to whom their advertisements and other communications are directed.

[77] See sections 203 (d)–(f) of the Advisers Act [15 U.S.C. 80b–3 (d)–(f)].

[78] *E.g.*, clients with whom an adviser may enter into an advisory contract providing performance-based compensation under rule 205–3 of the Advisers Act [17 CFR 275.205–3].

[79] An investment adviser representative that provides investment advisory services through a web site generally would be considered to have its place of business at the physical location where the representative typically conducts his or her web site-related advisory business. For example, a representative works on a computer at home in State X where he or she designs a web site that solicits information from clients and evaluates the information provided by clients in response to the site. The representative e-mails its materials to a web server in State Y for posting on the web. Under the rule, as proposed, the representative's place of business would be considered to be in State X.

[80] This interpretation would, therefore, violate the principal of statutory interpretation that a statute is to be construed so as to give effect to all its language. See, *e.g., United States* v. *Menasche*, 348 U.S. 528, 538–39 (1955).

[81] Section 222(d) of the Advisers Act [15 U.S.C. 80b–18a(d)]; see section II.G. of this Release.

[82] Investment Advisers Act Release No. 688 (July 12, 1979) [44 FR 42126 (July 18, 1979)] (adopting rule 206(4)–3). The release noted that a solicitor for an adviser providing solely impersonal advice is not necessarily a ''person associated with an investment adviser.'' *Id.* at 42129 n.20.

[83] *Id.* at 42129.

of the adviser, in which case the solicitor would not be a ''supervised person'' of the adviser within the meaning of section 202(a)(25) of the Advisers Act. The Commission believes, therefore, that section 203A(b) of the Advisers Act does not generally preempt state regulation of a solicitor for a Commission-registered adviser, unless the solicitor is independently registered with the Commission as an investment adviser, or is excepted from the definition of investment adviser in section 202(a)(11) of the Advisers Act.[84]

G. National De Minimis Standard

The Coordination Act also amends the Advisers Act to add new section 222(d), which makes state investment adviser statutes inapplicable to advisers that (i) do not have a place of business in the state and (ii) have fewer than six clients who are residents of that state (''national de minimis standard'').[85] The Commission believes that the national de minimis standard was intended to ease the regulatory burdens on advisers who may be uncertain as to when they are subject to state registration requirements as a result, for example, of a client moving to another state.[86]

Most, but not all, state investment adviser statutes exempt advisers that do not have a place of business in, and have a limited number of clients that are residents of, the state.[87] The maximum number of clients an adviser may have before state registration is required varies from state to state.[88] Section 222(d) establishes a national de minimis standard of five clients; a state may have a higher, but not a lower, de minimis threshold.[89]

The term ''client'' is not defined in the Advisers Act, nor is it generally defined in state investment adviser statutes or regulations.[90] The scope of a de minimis exemption or exclusion may be broadened or narrowed, depending on who is determined to be a ''client.''[91] In order to effect the intent of Congress to create a uniform minimum de minimis threshold, the Commission is proposing a new rule, rule 222–2, defining the term ''client'' for purposes of section 222(d).[92]

Proposed rule 222–2 would treat as a single client a natural person and (i) any relative or spouse of the natural person sharing the same principal residence, and (ii) all accounts of which such persons are the sole primary beneficiaries.[93] The proposed rule also would treat as a single client a corporation, general partnership, trust[94] or other legal organization (other than a limited partnership) that receives investment advice based on its investment objectives rather than the objectives of its shareholders, partners, members, or beneficial owners. A limited partnership would be counted as a single client if it would be counted as a single client under rule 203(b)(3)–1 of the Advisers Act.[95] Comment is requested on this definition of ''client.'' Are there other typical client relationships that the proposed rule fails to address?

The Commission notes that the manner in which clients are counted has significance under section 203(b)(3), which exempts from registration with the Commission certain advisers having fewer than fifteen clients during the course of the preceding twelve months. Should the Commission adopt a single rule regarding the counting of clients under both sections 203(b)(3) and 222(d)? If so, should the Commission reconsider some of the provisions of rule 203(b)(3)–1, *e.g,* the requirement that limited partnership interests be securities?[96] Since clients include foreign clients of an adviser,[97] should the rule specifically address the status of foreign clients?

H. Other Amendments to Advisers Act Rules

The Commission is proposing amendments to several rules under the Advisers Act to reflect changes made by the Coordination Act.

1. Amendments to Form ADV; Elimination of Form ADV–S

As discussed above,[98] the Commission is proposing to amend Form ADV to add a new Schedule I, which would be substantially similar to Form ADV–T.[99] Pending future revisions of Form ADV, Schedule I would be used by the Commission to screen applicants as to eligibility for Commission registration. Schedule I would be required to be included with all new registrations filed on or after April 9, 1997.

The Commission is also proposing amendments to rule 204–1 to require an adviser to file an amended Schedule I annually within 90 days of the end of the adviser's fiscal year.[100] Like Form ADV–T, Schedule I would require an adviser to declare whether it remains eligible for Commission registration. Unlike Form ADV–T, however,

[84] Rule 206(4)–3 under the Advisers Act [17 CFR 275.206(4)–3] would, however, continue to govern cash payments by a Commission-registered adviser to a solicitor.

[85] Because state investment adviser statutes, including state registration requirements, will be preempted with respect to advisers registered with the Commission or excluded from the definition of investment adviser under the Advisers Act, the national de minimis standard affects only advisers subject to state registration.

[86] The legislative history of the Coordination Act does not explain Congress' intent in adopting this national standard.

[87] See, e.g., Unif. Sec. Act section 204(1)(iii) (1985). Delaware, Massachusetts, and Texas, for example, do not have de minimis provisions.

[88] Compare N.Y. Gen. Bus. Law section 359–eee(1)(a)(5) (1996) (forty clients) with Pa. Stat. Ann. tit. 70 section 1–102(j)(vii) (1994) (four clients).

[89] In this sense, although section 222(d) is entitled the ''national de minimis standard,'' the section actually establishes a minimum threshold for state de minimis provisions, rather than a uniform standard that must be applied by each state.

[90] Several states have addressed the issue of whether a limited partnership should be treated as a single client of an adviser for purposes of their state de minimis provisions. See, e.g., D.C. Mun. Regs. tit. 17 section 1822 (1996); Ga. Comp. R. & Regs. r. 590–4–8–.11 (1989); Pa. Bull., Miscellaneous Interpretations—June 1986. Connecticut, however, appears to be the only state that has adopted a detailed definition of ''client'' for purposes of its de minimis provision. See Conn. Agencies Regs. section 36b–31–3(d)(2)–(4) (1995).

[91] For example, one state may treat a family as a single client while another may require an adviser to count each family member. Although both states may have a five client threshold for registration, the actual thresholds are substantially different.

[92] In addition, the Commission is proposing to adopt a rule defining the terms ''place of business'' and ''principal place of business'' for purposes of section 222. Proposed rule 222–1(a) would define place of business in the same manner as proposed rule 203A–3(b), except the term is applied to the adviser rather than the supervised persons of the adviser. Proposed rule 222–1(b) would define principal place of business in the same manner that proposed rule 203A–3(c) would define ''principal office and place of business.''

[93] A joint account thus would be treated as a separate client under the proposed rule unless the primary beneficiaries are family members who share the natural person's principal residence. See paragraphs (a)(1) and (a)(2) of proposed rule 222–2.

[94] The Division of Investment Management has stated that where several trusts share a common trustee, each trust generally should be treated as a separate client for purposes of section 203(b)(3) of the Advisers Act [15 USC 80b–3(b)(3)]. See OSIRIS Management (pub. avail. Feb. 17, 1984); Philip Eiseman (pub. avail. July 22, 1976). The Division also has stated that trusts with identical beneficiaries could be treated as a single client. See OSIRIS Management, *supra*; First Security Investment Management (pub. avail. Mar. 25, 1985). Should the rule address these circumstances by treating multiple legal entities with identical shareholders, partners, members or beneficiaries as a single client?

[95] 17 CFR 275.203(b)(3)–1 (providing a safe harbor to count a limited partnership, as opposed to each limited partner, as a client for purposes of section 203(b)(3) of the Advisers Act).

[96] Rule 203(b)(3)–1(b)(2)(i) [17 CFR 203(b)(3)–1(b)(2)(i)].

[97] Vocor International Holding S.A. (pub. avail. Apr. 9, 1990); Walter L. Stephens (pub. avail. Nov. 18, 1985).

[98] See section II.C.2. of this Release.

[99] Schedule I is not attached to this Release.

[100] 17 CFR 275.204–1. These amendments also establish uniform updating requirements for Commission and state adviser registrations. The Commission is proposing these updating requirements in concurrence with NASAA.

Schedule I would not operate as a request for withdrawal of the adviser's registration from the Commission; rather, an adviser that declares itself not eligible for Commission registration on Schedule I would be required to withdraw from Commission registration by accompanying the Schedule I with a Form ADV–W.[101]

If an annual amendment requirement to Form ADV is adopted, the Commission will have no regulatory need for advisers to file Form ADV–S, the annual report for advisers registered under the Advisers Act. The Commission is therefore proposing to amend rule 204–1 to delete references to Form ADV–S, and proposing to repeal Form ADV–S and amend rule 279.3 to refer to Form ADV–T. Because the Commission expects to require Form ADV–T to be filed on or before April 9, 1997, and that filing will achieve the same purpose as Form ADV–S, the Commission is issuing a separate release staying rule 204–1(c) and suspending the requirement to file Form ADV–S.[102]

2. Rule 204–2—Books and Records

In light of the Congressional determination not to subject advisers registered with the states to substantive federal regulatory requirements after April 9, 1997, the Commission is proposing to amend rule 204–2 to make the books and recordkeeping requirements of that rule applicable only to advisers registered with the Commission. Additionally, the Commission is proposing to amend rule 204–2 to require advisers that register with the Commission after April 9, 1997 to preserve any books and records the adviser was previously required to maintain under state law.[103] These books and records would be required to be maintained in the manner and for the period of time as the other books and records required to be maintained under rule 204–2(a).[104]

3. Rule 205–3—Performance Fee Arrangements

By its terms, section 205 prohibits all advisers, except those exempt from registration under section 203(b), from entering into advisory contracts in which the adviser would be compensated on the basis of performance of client accounts.[105] Therefore, advisers prohibited from registering with the Commission after April 9, 1997 would still be subject to the limitations of section 205. Rule 205–3 provides an exemption from these limitations, but applies only to advisers registered with the Commission. The Commission is proposing to amend rule 205–3 to make this exemption available to all advisers, including those registered only under state law after April 9, 1997.

4. Rules 206(4)–1, 206(4)–2, and 206(4)–4—Anti-Fraud Rules

The Commission has adopted four rules pursuant to its authority under section 206(4) to ''define, and prescribe means reasonably designed to prevent * * * acts, practices, and courses of business [that] are fraudulent, deceptive, or manipulative.'' [106] These rules prohibit certain abusive advertising practices, govern the adviser's custody of funds and securities of clients, address the payment of cash to persons soliciting on behalf of the adviser, and require certain disclosure to clients regarding the adviser's financial condition and disciplinary history.[107] Each of these rules, other than the cash solicitation rule, applies to all advisers, regardless of whether they are registered with the Commission. The Commission is proposing to amend these rules to make them applicable only to advisers registered (or required to be registered) with the Commission. By proposing to exclude advisers not registered with the Commission from these rules, the Commission is not suggesting that the practices prohibited by these rules would not be prohibited by section 206 if they were engaged in by an adviser not registered with the Commission.[108] Rather, the Commission recognizes that these rules contain prophylactic provisions, and that the application of these provisions to state-registered advisers may be more appropriately a matter for state law.

I. Provisions of the Advisers Act that Continue to Apply to State-Registered Investment Advisers

Several provisions of the Advisers Act would continue to apply to advisers no longer registered with the Commission after April 9, 1997. These include the Act's prohibitions on advisory contracts that (i) contain certain performance fee arrangements, (ii) permit an assignment of the advisory contract to be made without the consent of the client, and (iii) fail to require an adviser that is a partnership to notify clients of a change in the membership of the partnership.[109] In addition, advisers subject to state registration would continue to be subject to the Advisers Act's requirement to establish, maintain, and enforce written procedures reasonably designed to prevent the misuse of material nonpublic information.[110] Comment is requested whether the Commission should recommend that Congress amend the Act in order to make all or some of these provisions inapplicable to advisers either (i) not registered with the Commission, or (ii) prohibited from registering with the Commission pursuant to section 203A(a)(1) of the Advisers Act.

III. General Request for Comments

Any interested persons wishing to submit written comments on the rule and form changes that are the subject of this Release, to suggest additional changes, or to submit comments on other matters that might have an effect on the proposals contained in this Release, are requested to do so.

IV. Cost/Benefit Analysis

The proposed rules would implement Congressional intent to reallocate regulatory responsibilities for investment advisers between the Commission and state securities authorities. The proposed rules would impose some incidental burdens on investment advisers that would be required to file Form ADV–T, and those advisers that would, on an ongoing basis, be required to file Schedule I. Such burdens appear necessary, however, in order to implement the Coordination Act.

Many of the proposed rules clarify provisions of the Coordination Act and thereby permit investment advisers to more readily ascertain their regulatory status and that of their supervised

[101] A separate Form ADV–W would continue to be required, in order to assure that the Commission staff is able to act promptly on the withdrawal from registration. Subject to the proposed grace period under rule 203A–1(c), failure to file the completed Form ADV–W would subject an adviser to the commencement of proceedings to cancel its registration.

[102] 17 CFR 275.204–1(c); see Investment Advisers Act Rel. No. 1602 (Dec. 20, 1996).

[103] Proposed paragraph (k) of rule 204–2.

[104] Under the proposed revisions, an adviser changing from state to federal registration would count the period during which the books and records were maintained under state law.

[105] Section 205(a)(1) [15 U.S.C. 80b–5(a)(1)]. Section 205(a) states that ''[n]o investment adviser, unless exempt from registration pursuant to section 203(b)'' may enter into, extend, or renew any investment advisory contract that provides for performance-based compensation. See Section . of this Release.

[106] 15 USC 80b–6(4).

[107] See rules 206(4)–1 to –4 [17 CFR 275.206(4)–1 to –4].

[108] The anti-fraud provisions of the Advisers Act will still apply to state-registered advisers after April 9, 1997. See supra note 17 and accompanying text.

[109] Section 205(a)(1)–(3) of the Act [15 U.S.C. 80b–5(a)(1)–(3)].

[110] Section 204A of the Act [15 USC 80b–4A].

persons. Other provisions grant exemptions and thereby reduce regulatory burdens by (i) relieving advisers from the burden of having to frequently register and then de-register with the Commission as a result of changes in the amount of assets under management; and (ii) exempting certain advisers from the prohibition against registration and thereby preempting state law, the application of which would be unfair, a burden on interstate commerce, and inconsistent with Congressional intent in enacting the Coordination Act. The Commission also is proposing to revise several of its rules that currently apply to all investment advisers to make such rules applicable only to advisers registered or required to be registered with the Commission.

The Commission anticipates that the implementation of the Coordination Act will reduce the aggregate regulatory burden borne by the investment advisory industry, but that the proposed rules themselves are not expected to significantly affect compliance costs. The Commission believes that the proposed rules would not impose significant additional costs on investment advisers.

Comment is requested on the impact of the proposed rules on individual investment advisers and the industry as a whole. Commenters should submit data indicating the expected dollar impact of the proposed rules on the revenues and expenses of investment advisers. Comment is requested on the cost of filing Form ADV-T and Schedule I of Form ADV. Commenters should submit data indicating the cost of filing Form ADV-T and Schedule I of Form ADV. Commenters also should submit data on the expected effects of the proposed rules on the customers of investment advisers (such as the amount of fees paid).

For purposes of making determinations required by the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is requesting information regarding the potential impact of the proposed rules on the economy on an annual basis. Commenters should provide empirical data to support their views.

Comment is requested on this cost/benefit analysis. Commenters are requested to provide views and empirical data relating to any costs and benefits associated with the proposed rules.

V. Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 USC 603 regarding proposed rules 203A–1, 203A–2, 203A–3, 203A–4, 203A–5, 222–1, 222–2, and proposed amendment to rules 204–1, 204–2, 205–3, 206(4)–1, 206(4)–2, 206(4)–4, and 279.3 under the Advisers Act. The following summarizes the IRFA.

As set forth in greater detail in the IRFA, the Coordination Act makes several amendments to the Advisers Act. The most significant of these amendments reallocates federal and state responsibilities for the regulation of investment advisers currently registered with the Commission by limiting the application of federal law and preempting certain state laws. The proposed rules and rule amendments are intended to clarify these provisions of the Coordination Act and thereby assist investment advisers in ascertaining their regulatory status as of April 9, 1997.

The proposed rules and rule amendments would reduce substantially regulatory burdens on investment advisers that are small entities by effecting the intent of Congress to reduce significantly the number of small advisers that are subject to Commission regulation. The IRFA indicates that the proposals would minimize certain regulatory burdens for investment advisers, including small-entity investment advisers, by, among other things, preventing advisers from being required to frequently register and deregister with the Commission as a result of changes in the amount of their assets under management.

An investment adviser generally is a small entity if it manages assets of $50 million or less, in discretionary or non-discretionary accounts, as of the end of its most recent fiscal year and does not render other advisory services.[111] The Commission estimates that approximately 17,000 of the 22,500 advisers currently registered with the Commission are small entities. Of these small-entity advisers, the Commission estimates that approximately 800 will remain eligible for Commission registration after April 9, 1997.[112]

The proposed rules would require all Commission-registered investment advisers to file new Form ADV-T no later than April 9, 1997. The IRFA notes, however, that the Commission anticipates that as a consequence of this one-time filing, approximately 72 percent of the investment advisers currently registered with the Commission would no longer be subject to federal investment adviser regulatory requirements, including reporting and recordkeeping requirements. The Commission believes that the incidental burden imposed by this one-time filing requirement would be necessary in order to implement the Coordination Act. The proposed amendments to rule 204–1 would require all Commission-registered investment advisers to annually update new Schedule I. The IRFA explains that because the Commission, by separate release, is staying rule 204–1(c) under the Advisers Act and suspending the current requirement that Commission-registered advisers annually file Form ADV-S (and will eliminate this requirement if the proposed rules and amendments are adopted), this new annual reporting requirement should not be a significant additional burden on any small-entity investment advisers that remain eligible for Commission registration.

The IRFA further indicates that the proposed amendments to rule 204–2 would make the books and recordkeeping requirements of this rule applicable only to advisers registered with the Commission, and so would eliminate these recordkeeping requirements with respect to small entities and other advisers that are not eligible for Commission registration after April 9, 1997. The proposed amendments to this rule would require advisers that register with the Commission after April 9, 1997 to preserve any books and records the adviser was previously required to maintain under state law, but this requirement is not expected to be a significant additional burden on advisers that register with the Commission after April 9, 1997.

As explained further in the IRFA, the Commission has considered significant alternatives to the proposed rules that would accomplish the stated objective of implementing the provisions of the Coordination Act that reallocate regulatory responsibility for investment advisers between the Commission and the states. As a result, the Commission has proposed to increase the threshold for Commission registration from $25 to $30 million of assets under management, and to provide an optional exemption from the prohibition on registering with the Commission for advisers having assets under management of between $25 and $30 million. This optional exemption would give such advisers, including many small entities, the flexibility to decide

[111] Rule 275.0–7 [17 CFR 275.07].

[112] The Commission estimates that most of the 16,200 (72 percent) advisers currently registered with the Commission that will be ineligible for Commission registration after April 9, 1997 will be small entities. Based on that estimate, the Commission anticipates that approximately 800 small-entity advisers will remain eligible for Commission registration after that date.

when it would be best for them to transition between state and Commission registration, and *vise versa*. The IRFA concludes that the Commission believes that the rules and rule amendments, as proposed, will not adversely affect small entities. Finally, the IRFA addresses each of the other requirements set forth under 5 U.S.C. § 603.

The Commission encourages the submission of comments with respect to any aspect of the IRFA. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules themselves. Cost-benefit information reflected in the ''Cost/Benefit Analysis'' section of this Release also is reflected in the IRFA. A copy of the IRFA may be obtained by contacting Cynthia G. Pugh, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 10–2, Washington, D.C. 20549.

VI. Paperwork Reduction Act

Certain provisions of the proposed rules and rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 USC 3501 *et seq.*), and the Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collections of information are: ''Rule 203A–2(d),'' ''Rule 203A–5 and Form ADV–T,'' ''Rule 203–1 and Form ADV,'' ''Rule 204–1,'' and ''Rule 204–2,'' all under the Advisers Act. Form ADV, rule 204–1, and rule 204–2, which the Commission is proposing to amend, contain currently approved collections of information under OMB control numbers 3235–0049, 3235–0048, and 3235–0278, respectively. The proposed rules and rule amendments are necessary to implement recent changes to the Advisers Act. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

Rule 203A–2(d)

Proposed rule 203A–2(d) contains two related collection of information requirements. The collection of information would be necessary to determine the eligibility of certain investment advisers to rely on the proposed ''reasonable expectation'' exemption from the prohibition on Commission registration, and to implement that exemption. It is anticipated that this collection of information would be found at 17 CFR 275.203A–2(d). An adviser relying on the exemption provided by proposed rule 203A–2(d) would be required to file a short written undertaking on Schedule E to Form ADV, indicating that the adviser will withdraw from registration if on the 90th day after registering with the Commission the adviser does not meet the eligibility requirements for registration under section 203A of the Advisers Act and rules thereunder. At the end of the 90-day period, the adviser also would be required to file an amended Schedule I to Form ADV. If the adviser indicates on the amended Schedule I that it has not become eligible to register with the Commission, the adviser would be required to file a Form ADV–W concurrently with the Schedule I, thereby withdrawing its registration with the Commission. The likely respondents to this information collection are newly formed investment advisers that are not currently registered with the Commission or with the states. The Commission estimates that there would be 100 such respondents per year, and that each respondent would respond one time per year. The weighted average total annual time burden for each respondent is estimated to be 57.5 minutes. This figure is based upon the following estimates: (i) 45 minutes for the approximately 90 advisers that advise registered investment companies, that do not need to calculate assets under management to complete Schedule I, or that need to calculate assets under management but do so as part of their normal business operations; (ii) 2 hours for the approximately 10 advisers that must calculate assets under management for the sole purpose of filing Schedule I; and (iii) 5 minutes for all respondents to prepare the undertaking required on Schedule E to Form ADV. The Commission estimates that the aggregate annual burden for all respondents would be 95.83 hours. Providing this information would be mandatory to qualify for the exemption under proposed rule 203A–2(d), and responses would not be kept confidential.

Rule 203A–5 and Form ADV–T

Proposed rule 203A–5 and Form ADV–T contain collection of information requirements. This collection of information is necessary for the Commission to determine whether advisers meet the proposed eligibility criteria for Commission registration set forth in section 203A of the Advisers Act and rules thereunder, and to provide for the orderly withdrawal from Commission registration for advisers that are no longer eligible. It is anticipated that this collection of information would be found at 17 CFR 275.203A–5 and 17 CFR 279.3. Under proposed rule 203A–5, all advisers registered with the Commission on April 9, 1997 would be required to file a completed Form ADV–T no later than that date. Form ADV–T would require each adviser to declare whether it remains eligible for Commission registration. For an adviser that declares itself not eligible for Commission registration, Form ADV–T would serve as a request for withdrawal of the adviser's registration as of April 9, 1997. The likely respondents to this information collection are all investment advisers registered with the Commission on April 9, 1997. The Commission estimates that there would be 22,500 such respondents to this collection of information. Each respondent would respond once. The weighted average annual time burden for each respondent is estimated to be 53.33 minutes. This figure is based upon the following estimates: (i) 45 minutes for the approximately 20,000 advisers that advise registered investment companies, that do not need to calculate assets under management to complete Form ADV–T, or that need to calculate assets under management but do so as part of their normal business operations; (ii) 2 hours for the approximately 2,500 advisers that must calculate assets under management for the sole purpose of filing Form ADV–T. The aggregate annual burden for all 22,500 advisers is estimated to be 19,998 hours. Providing the information would be mandatory, and responses would not be kept confidential.

Rule 203–1 and Form ADV

Rule 203–1 and Form ADV, including the proposed new Schedule I to Form ADV, contain information collection requirements. Form ADV is required by rule 203–1 to be filed by every applicant for registration with the Commission as an investment adviser, is mandatory, and responses are not kept confidential. This collection of information is found at 17 CFR 275.203–1 and 17 CFR 279.1. The Commission in the past received approximately 3,500 applications for registration on Form ADV in one year. The weighted average burden hours for completing Form ADV is currently 9.0063, and the total annual burden hours currently approved by OMB for this form is 31,522 hours.

The Commission is proposing to amend Form ADV to include a new Schedule I. The Commission is not proposing to amend rule 203–1. Schedule I would require an applicant

to declare whether it is eligible for Commission registration. This new requirement is necessary for the Commission to determine whether advisers meet the eligibility criteria for Commission registration set forth in section 203A of the Advisers Act and rules thereunder. The likely respondents to this information collection would be all applicants for registration with the Commission after April 9, 1997. Based on the Commission's experience in processing adviser applications, and the percentage of applicants in the past without assets under management, the Commission estimates that after April 9, 1997 the number of applicants for registration will decrease from approximately 3,500 to between 500 and 1,000 annually. The weighted average total annual time burden for each applicant to complete Schedule I on average is estimated to be 52.5 minutes. This figure is based upon the following estimates. Compliance with the requirement to complete Schedule I imposes a total burden per applicant of approximately 45 minutes for the approximately 90 percent of the applicants that advise registered investment companies, that do not need to calculate assets under management to complete Schedule I, or that need to calculate assets under management but do so as a part of their normal business operations. For the approximately 10 percent of the applicants that must calculate assets under management for Schedule I, however, this burden would be 2 hours. Providing this information would be mandatory. Amending Form ADV to include new Schedule I is estimated to increase the weighted average burden hours for applicants completing Form ADV to 9.8813 hours. As a result of the new Schedule I, together with the reduction of the number of investment advisers registered with the Commission, the annual aggregate burden for all respondents for completing amended Form ADV is estimated to be between 4,940.65 and 9,881.3 hours.

Rule 204–1

Rule 204–1, including the proposed amendment to the rule, includes collection of information requirements. Rule 204–1 sets forth the circumstances requiring the filing of an amendment to Form ADV, the form that must be filed with the Commission to register as an investment adviser. This collection of information is found at 17 CFR 275.204–1, is mandatory, and responses are not kept confidential. The total annual burden currently approved by OMB for rule 204–1 is approximately 21,438 hours for the 20,088 advisers registered with the Commission in 1994.

The proposed amendments to rule 204–1 would require an adviser to file an amended Schedule I to Form ADV annually within 90 days of the end of the adviser's fiscal year. Schedule I would require an adviser to declare whether it remains eligible for Commission registration. The new requirement is necessary for the Commission to determine whether advisers continue to meet the eligibility criteria for Commission registration set forth in section 203A of the Advisers Act and rules thereunder. The likely respondents to this information collection are all investment advisers registered with the Commission after April 9, 1997. The Commission estimates that there would be 6,300 such respondents to this collection of information (28% of the approximately 22,500 registered investment advisers as of April 9, 1997). Each respondent would respond one time per year. The total annual time burden for each respondent is estimated to be 52.14 minutes. This figure is based upon the following estimates. Compliance with the requirement to file an amended Schedule I would impose a total annual burden per adviser of approximately 45 minutes for the approximately 5,700 advisers that advise registered investment companies, that do not need to calculate assets under management to complete Schedule I, or that need to calculate assets under management but do so as part of their normal business operations. For the approximately 600 advisers that must calculate assets under management for Schedule I, however, this burden would be 2 hours. Providing the information would be mandatory and responses would not be kept confidential. Based on the Commission's experience under rule 204–1, and taking into account the proposed new requirement to annually amend Schedule I, the Commission estimates that each adviser eligible for Commission registration after April 9, 1997 will respond to the information collection requirements of rule 204–1, as proposed to be amended, an average of 1.5 times annually. The Commission estimates that the annual aggregate burden for all respondents to rule 204–1 will be 18,297.09 hours.

Rule 204–2

Section 204 of the Advisers Act provides that investment advisers required to register with the Commission must make and keep for prescribed periods such records, and furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204–2 sets forth requirements for keeping, maintaining and preserving specified books and records by investment advisers. This collection of information is found at 17 CFR 275.204–2, is mandatory, is used by the Commission staff in its oversight program, and generally is kept confidential. See section 210(b) of the Advisers Act [15 U.S.C. 80b–10(b)]. Currently, compliance with the rule requires approximately 235.47 hours each year per Commission-registered investment adviser, for a total of 5,180,340 hours for all 22,000 advisers registered last year.

The proposed amendments to rule 204–2 would clarify the application of the rule's recordkeeping requirements to advisers that register with the Commission after having been registered with the states. The proposed amendments are necessary (i) to make the books and recordkeeping requirements of that rule applicable only to advisers registered with the Commission, and (ii) to clarify the rule's application to investment advisers that transfer from state to Commission registration after April 9, 1997. The Commission is proposing to amend rule 204–2 to make the rule's books and recordkeeping requirements applicable only to advisers registered with the Commission after the Coordination Act's effective date. This amendment would relieve the approximately 16,200 of the 22,500 advisers currently registered that will not be eligible for Commission registration after April 9, 1997 from the recordkeeping burdens imposed by this rule.

The Commission is also proposing to amend rule 204–2 to require an adviser that registers with the Commission after April 9, 1997 to preserve any books and records that the adviser was previously required to maintain under state law. These books and records would be required to be maintained in the manner and for the period of time as the other books and records required to be maintained under rule 204–2(a). This collection of information would be found at 17 CFR 275.204–2. The likely respondents to this information collection are all investment advisers registered with the Commission after April 9, 1997. The Commission estimates that there would be 6,300 such respondents to this collection of information. Each respondent would retain records on an ongoing basis. The total annual time burden for each respondent is estimated to be 235.47 hours. The proposed amendments

would not change the burden last reported to the OMB. As a result of the reduction of the number of investment advisers registered with the Commission, the annual aggregate burden for all respondents to the recordkeeping requirements under rule 204–2 is estimated to be 1,483,461 hours.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to—

(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected;

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549 with reference to File No. S7–31–96. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full affect if OMB receives it within 30 days of publication.

VII. Statutory Authority

The Commission is proposing new rule 203A–1 pursuant to the authority set forth in section 203A(a)(1)(A) [15 U.S.C. 80b–3A(a)(1)(A)]; section 203A(c) [15 U.S.C. 80b–3A(c)]; and section 211(a) [15 U.S.C. 80b–11(a))] of the Investment Advisers Act of 1940.

The Commission is proposing new rule 203A–2 pursuant to the authority set forth in section 203A(c) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3A(c)].

The Commission is proposing new rules 203A–3 and 203A–4 pursuant to the authority set forth in section 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–11(a)].

The Commission is proposing new rule 203A–5 pursuant to the authority set forth in sections 203(c)(1) and 204 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1) and 80b–4].

The Commission is proposing amendments to rule 204–1 pursuant to the authority set forth in section 204 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4].

The Commission is proposing amendments to rule 204–2 pursuant to the authority set forth in sections 204 and 206(4) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4 and 80b–6(4)].

The Commission is proposing amendments to rule 205–3 pursuant to the authority set forth in section 206A of the Investment Advisers Act of 1940 [15 U.S.C. 80b–6A].

The Commission is proposing amendments to rules 206(4)–1, 206(4)–2, and 206(4)–4 pursuant to the authority set forth in section 206(4) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–6(4)].

The Commission is proposing new rules 222–1 and 222–2 pursuant to the authority set forth in section 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–11(a)].

The Commission is proposing amendments to rule 279.3, new Form ADV–T, and amendments to Form ADV pursuant to the authority set forth in sections 203(c)(1) and 204 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1) and 80b–4].

Text of Proposed Rules and Form

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

The authority citation for Part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b–3, 80b–4, 80b–6(4), 80b–6A, 80b–11, unless otherwise noted.

Section 275.203A–1 is also issued under 15 U.S.C. 80b–3A.

Section 275.203A–2 is also issued under 15 U.S.C. 80b–3A.

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

2. Sections 275.203A–1 through 275.203A–5 are added to read as follows:

§ 275.203A–1 Eligibility for Commission registration.

(a) *Threshold Increased to $30 Million of Assets Under Management.* No investment adviser that is registered or required to be registered as an investment adviser in the State in which it maintains its principal office and place of business shall register with the Commission under section 203 of the Act (15 U.S.C. 80b–3), unless the investment adviser:

(1) Has assets under management of not less than $30,000,000, as reported on the Form ADV (17 CFR 279.1) of the investment adviser; or

(2) Is an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(b) *Exemption for Investment Advisers Having Between $25 and $30 Million of Assets Under Management.* Notwithstanding paragraph (a) of this section, an investment adviser that is registered or required to be registered as an investment adviser in the State in which it maintains its principal office and place of business may register with the Commission if the investment adviser has assets under management of not less than $25,000,000 but not more than $30,000,000, as reported on the Form ADV (17 CFR 279.1) of the investment adviser. This paragraph (b) shall not apply to an investment adviser:

(1) To an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or

(2) That is exempted by § 275.203A–2 from the prohibition in section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) on registering with the Commission.

Note to paragraphs (a) and (b). Paragraphs (a) and (b) together make registration with the Commission optional for certain investment advisers that have between $25 and $30 million of assets under management. This option is not available to an investment adviser that (1) is not registered or required to be registered in the State in which it maintains its principal office and place of business, (2) is an investment adviser to a registered investment company, or (3) is exempted by § 275.203A–2 from the prohibition on registering with the Commission.

(c) *Grace Period.* An investment adviser registered with the Commission, upon filing an amendment to Form ADV (17 CFR 279.1) that indicates that it would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) from registering with the Commission shall be subject to having its registration cancelled pursuant to section 203(h) of the Act (15 U.S.C. 80b–3(h)), *Provided,*

That the Commission shall not commence any cancellation proceeding on the basis of the amendment until the expiration of a period of not less than 90 days from the date the amendment is received by the Commission.

§ 275.203A–2 Exemptions from prohibition on Commission registration.

The prohibition of section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) shall not apply to:

(a) *Nationally Recognized Statistical Rating Organizations.* An investment adviser that is a nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of § 240.15c3–1 of this chapter.

(b)(1) *Pension Consultants.* An investment adviser that is a pension consultant with respect to assets of plans having an aggregate value of at least $50,000,000.

(2) An investment adviser is a pension consultant if the investment adviser provides investment advice to:

(i) Any employee benefit plan described in section 1002(2) of the Employee Retirement Income Security Act of 1974 (''ERISA'') (29 U.S.C. 1002(2));

(ii) Any governmental plan described in section 1002(32) of ERISA (29 U.S.C. 1002(32));

(iii) Any church plan described in section 1002(33) of ERISA (29 U.S.C. 1002(33)); or

(iv) Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees.

(3) In determining the aggregate value of assets of plans, only that portion of a plan's assets for which the investment adviser provided investment advice (including any advice with respect to the selection of an investment adviser to manage such assets) may be included. The value of assets shall be determined as of the date during its most recent fiscal year that the investment adviser was last engaged to provide investment advice to the plan with respect to those assets.

(c) *Investment Advisers Controlling, Controlled By or Under Common Control with a Investment Adviser Registered with the Commission.* An investment adviser that controls, is controlled by, or is under common control with, an investment adviser eligible to register, and registered with, the Commission (''registered adviser''), provided that the principal office and place of business of the adviser is the same as that of the registered adviser. For purposes of this paragraph, control means the power to direct or cause the direction of the management or policies of an adviser, whether through ownership of securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote 25 percent or more of the voting securities or is entitled to 25 percent or more of the profits of an adviser is presumed to control that adviser.

(d) *Investment Advisers Expecting to Be Eligible for Commission Registration Within 90 Days.* An investment adviser that:

(1) Is not registered or required to be registered with the Commission or a securities commissioner (or any agency or officer performing like functions) of any State and has a reasonable expectation that it would be eligible to register with the Commission within 90 days after the date the investment adviser's registration with the Commission becomes effective;

(2) Includes in Schedule E to its Form ADV (17 CFR 279.1) an undertaking to withdraw from registration with the Commission if, on the 90th day after the date the investment adviser's registration with the Commission becomes effective, the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) from registering with the Commission; and

(3) Within 90 days after the date the investment adviser's registration with the Commission becomes effective, files an amendment to Form ADV (17 CFR 279.1) revising Schedule I thereto and, if the amendment indicates that the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) from registering with the Commission, the amendment is accompanied by a completed Form ADV–W (17 CFR 279.2) whereby it withdraws from registration with the Commission.

§ 275.203A–3 Definitions.

For purposes of section 203A of the Act (15 U.S.C. 80b–3A) and rules thereunder:

(a)(1) *Investment adviser representative* of an investment adviser means a supervised person of the investment adviser if a substantial portion of the business of the supervised person is providing investment advice to clients who are natural persons. Notwithstanding this paragraph, a supervised person is not an investment adviser representative if the supervised person:

(i) Does not on a regular basis solicit, meet with, or otherwise communicate to clients of the investment adviser; or

(ii) Provides only impersonal investment advice.

(2) For purposes of paragraph (a)(1) of this section:

(i) *Impersonal investment advice* means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts; and

(ii) *A substantial portion of the business* of a supervised person is providing investment advice to clients who are natural persons if, during the course of the preceding 12 months:

(A) Clients who are natural persons represented more than 10 percent of the clients of the supervised person; or

(B) Assets of clients who are natural persons represented more than 10 percent of the assets under management attributable to the supervised person.

(b) *Place of business* of an investment adviser representative means a place or office from which the investment adviser representative regularly provides advisory services or otherwise solicits, meets with, or communicates to clients, unless the investment adviser representative does not regularly provide advisory services or otherwise solicit, meet with, or communicate to clients at any place or office, in which case the place of business of such investment adviser representative will be the residence of each client.

(c) *Principal office and place of business* of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

§ 275.203A–4 Investment advisers registered with a State securities commission.

The Commission shall not assert a violation of section 203 of the Act (15 U.S.C. 80b–3) (or any provision of the Act to which an investment adviser becomes subject upon registration under section 203 of the Act) for the failure of an investment adviser registered with the securities commission (or any agency or office performing like functions) in the State in which it has its principal office and place of business to register with the Commission if the investment adviser reasonably believes that it does not have assets under management of at least $30,000,000 and is therefore prohibited from registering with the Commission.

§ 275.203A–5 Transition rules.

(a) Every investment adviser registered with the Commission on

April 9, 1997 shall file a completed Form ADV–T (17 CFR 279.3) no later than April 9, 1997.

(b) If an investment adviser registered with the Commission on April 9, 1997 would be prohibited from registering with the Commission under section 203A of the Act (15 U.S.C. 80b–3A), and is not otherwise exempt from such prohibition, such investment adviser shall withdraw from registration with the Commission on Form ADV–T (17 CFR 279.3).

(c)(1) Except as provided in paragraph (c)(2) of this section, an investment adviser that indicates on Form ADV–T (17 CFR 279.3) that the investment adviser withdraws from registration with the Commission shall be deemed to have withdrawn from registration as of the later of:

(i) April 9, 1997; or

(ii) The date the investment adviser first files with the Commission Form ADV–T or any amendment to Form ADV–T (17 CFR 279.3) that indicates that the investment adviser withdraws from registration with the Commission.

(2) If, prior to the effective date of the withdrawal from registration of an investment adviser on Form ADV–T (17 CFR 279.3), the Commission has instituted a proceeding pursuant to section 203(e) of the Act (15 U.S.C. 80b–3(e)) to suspend or revoke registration, or a proceeding pursuant to section 203(h) of the Act (15 U.S.C. 80b–3(h)) to impose terms or conditions upon withdrawal, the withdrawal from registration shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

3. Section 275.204–1 is revised to read as follows:

§ 275.204–1 Amendments to application for registration.

(a) Every investment adviser whose registration with the Commission is effective on the last day of its fiscal year shall, within 90 days of the end of its fiscal year, unless its registration has been withdrawn, cancelled or revoked prior to that day, file:

(1) Schedule I of Form ADV (17 CFR 279.1);

(2) A balance sheet if the balance sheet is required by Item 14 of Part II of Form ADV (17 CFR 279.1); and

(3) An executed page one of Part I of Form ADV (17 CFR 279.1).

(b) If the information contained in the response to Items 1, 2, 3, 4, 5, 8, 11, 13A, 13B, 14A and 14B of Part I of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate for any reason, or if the information contained in response to any question in Items 9 and 10 of Part I, all of Part II (except Item 14), and all of Schedule H of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate in a material manner, the investment adviser shall promptly file an amendment on Form ADV (17 CFR 279.1) correcting the information.

(c) For all other changes not designated in paragraph (b)(2) of this section, an investment adviser shall file an amendment on Form ADV (17 CFR 279.1) updating the information together with the amendments required by paragraph (a) of this section.

4. Section 275.204–2 is amended by revising the introductory text of paragraph (a) and adding paragraph (k) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) Every investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) shall make and keep true, accurate and current the following books and records relating to its investment advisory business:

* * * * *

(k) Every investment adviser that registers under section 203 of the Act (15 U.S.C. 80b–3) after April 9, 1997 shall be required to preserve in accordance with this section the books and records the investment adviser had been required to maintain by the State in which the investment adviser had its principal office and place of business prior to registering with the Commission.

5. Section 275.205–3 is amended by revising the section heading and paragraph (a) to read as follows:

§ 275.205–3 Exemption from the compensation prohibition of section 205(a)(1) for registered investment advisers.

(a) *General.* The provisions of section 205(a)(1) of the Act (15 U.S.C. 80b–5(a)(1)) shall not prohibit any investment adviser from entering into, performing, renewing or extending an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, *Provided,* That all the conditions in this section are satisfied.

* * * * *

6. Section 275.206(4)–1 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 275.206(4)–1 Advertisements by investment advisers.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)), for any investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), directly or indirectly, to publish, circulate or distribute any advertisement:

* * * * *

7. Section 275.206(4)–2 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 275.206(4)–2 Custody or possession of funds or securities of clients.

(a) It shall constitute a fraudulent, deceptive or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for any investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) who has custody or possession of any funds or securities in which any client has any beneficial interest, to do any act or take any action, directly or indirectly, with respect to any such funds or securities, unless:

* * * * *

8. Section 275.206(4)–4 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 275.206(4)–4 Financial and disciplinary information that investment advisers must disclose to clients.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for any investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) to fail to disclose to any client or prospective client all material facts with respect to:

* * * * *

9. Sections 275.222–1 and 222–2 are added to read as follows:

§ 275.222–1 Definitions.

For purposes of section 222 (15 U.S.C. 80b–18a) of the Act:

(a) *Place of business* of an investment adviser means a place or office from which the investment adviser regularly provides advisory services or otherwise solicits, meets with, or communicates to clients, but does not include a motor vehicle unless the motor vehicle is the only place of business of the investment adviser; and

(b) *Principal place of business* of an investment adviser means the executive office of the investment adviser from

which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

§ 275.222–2 Definition of ''client'' for purposes of the national de minimis standard.

For purposes of section 222(d)(2) of the Act (15 U.S.C. 80b–18a(d)(2)), the following shall be deemed a single client:

(a) A natural person, and:

(1) Any relative, spouse, or relative of the spouse of that person who has the same principal residence; and

(2) All accounts of which the natural person and the persons referred to in paragraph (a)(1) of this section are the sole primary beneficiaries;

(b) A corporation, general partnership, limited liability company, trust, or any legal organization (other than a limited partnership) that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, members, or beneficial owners; and

(c) A limited partnership that would be counted as a single client under § 275.203(b)(3)–1.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

10. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

11. Section 279.3 and Form ADV–S are revised to read as follows:

§ 279.3 Form ADV–T, transition form for determining eligibility for Commission registration.

This form shall be filed pursuant to § 275.203A–5(a) of this chapter by every investment adviser registered with the Commission on April 9, 1997.

Note: The text of Form ADV–T (17 CFR 279.3) will not appear in the Code of Federal Regulations.

12. By revising Instructions 2 and 7 of Form ADV (referenced in § 279.1), and by adding Instruction 10 to read as follows:

Note: The text of Form ADV (17 CFR 279.1) does not and the amendments will not appear in the Code of Federal Regulations.

Form ADV

* * * * *

Form ADV Instructions

* * * * *

2. Organization

This Form contains two parts. Parts I and II are filed with the SEC and the jurisdictions; Part II can generally be given to clients to satisfy the brochure rule. The Form also contains the following schedules:

- Schedule A—for corporations;
- Schedule B—for partnerships;
- Schedule C—for entities that are not sole proprietorships, partnerships or corporations (*e.g.*, limited liability companies and limited liability partnerships);
- Schedule D—for reporting information about individuals under Part I Item 12;
- Schedule E—for continuing responses to Part I items;
- Schedule F—for continuing responses to Part II items;
- Schedule G—for the balance sheet required by Part II Item 14;
- Schedule H—for satisfaction of the brochure rule by sponsors of wrap fee programs; and
- Schedule I—for reporting information related to eligibility for SEC registration.

* * * * *

7. SEC Filings

- Submit filings in triplicate to the Securities and Exchange Commission, Washington, D.C. 20549. There is no fee for amendments.
- Non-residents—Rule 0–2 under the Investment Advisers Act of 1940 (17 CFR 275.0–2) covers those non-resident persons named anywhere in Form ADV that must file a consent to service of process and a power of attorney. Rule 204–2(j) under the Investment Advisers Act of 1940 (17 CFR 275.204–2(j)) covers the notice of undertaking on books and records non-residents must file with Form ADV.
- Federal Information Law and Requirements—Investment Advisers Act of 1940 Sections 203(c), 204, 206, and 211(a) authorize the SEC to collect the information on this Form from applicants for investment adviser registration. The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this Form and makes it publicly available. Only the Social Security Number, which aids in identifying the applicant, is voluntary. The SEC may return as unacceptable Forms that do not include all other information. By accepting this Form, however, the SEC does not make a finding that it has been filled out or submitted correctly. Intentional misstatements or omissions constitute Federal criminal violations under 18 USC 1001 and 15 USC 80b–17.

* * * * *

10. Updating

Amendments to this form should be filed:

—Promptly for any changes in: Part I—Items 1, 2, 3, 4, 5, 8, 11, 13A, 13B, 14A, and 14B;

—Promptly for material changes in: Part I—Items 9 and 10, all items of Part II except Item 14, and all Items of Schedule H;

—Within 90 days of the end of the fiscal year for the filing of Schedule I and any other changes.

Note: Every investment adviser is required to file Schedule I no later than 90 days after the end of its fiscal year.

* * * *

Dated: December 20, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 8010–01–P

APPENDIX [NOTE: The text of Form ADV-T will not appear in the Code of Federal Regulations.]

FORM ADV-T

Form for Declaring Eligibility for SEC Registration After Effective Date Of Amendments to Investment Advisers Act of 1940

OMB APPROVAL
OMB Number:
Expires:
Estimated average burden hours per response:

This is an	[ ] Initial Filing of Form ADV-T [ ] Amendment to Previously Filed Form ADV-T	Registrant's investment adviser SEC file number: 801-

PART I General Information About Registrant

(a) Full name of registrant (if individual, state last, first, and middle name):

(b) Name under which business is conducted, if different:

(c) If business name is being amended, give previous name:

(d) Address of principal office and place of business: (*See Instruction 2*)

(e) Mailing address, if different:

(f) Is the address in items (d) or (e) being amended in this filing? ☐ Yes ☐ No

(g) Telephone number at principal place of business:

(h) Person to contact for further information about this Form:

_____
(name) (title)

_____
(telephone number)

(i) Current State Registration

Check the state(s) in which registrant is registered as an investment adviser as of the date of this Form:

AL ___ AK ___ AZ ___ AR ___ CA ___ CT ___ DE ___ DC ___ FL ___ GA ___ HI ___ ID ___

IL ___ IN ___ KS ___ KY ___ LA ___ ME ___ MD ___ MA ___ MI ___ MN ___ MS ___ MO ___

MT ___ NE ___ NV ___ NH ___ NJ ___ NM ___ NY ___ NC ___ ND ___ OK ___ OR ___ PA ___

RI ___ SC ___ SD ___ TN ___ TX ___ UT ___ VT ___ VA ___ WA ___ WV ___ WI ___

Puerto Rico ___ Other (specify): _____

PART II Eligibility for SEC Registration

The Investment Advisers Supervision Coordination Act, P.L. 104-290, authorizes the Commission to cancel the registration of any investment adviser that does not meet the criteria for SEC registration set forth in new section 203A of the Investment Advisers Act of 1940, as amended ("Advisers Act"). This legislation will become effective on April 9, 1997. This Part II requires the registrant to declare what its status under the Advisers Act will be after April 9, 1997.

Check either (a), (b), or (c):

(a) ☐ After April 9, 1997, registrant will not be subject to having its SEC registration cancelled.

In order for a registrant to be eligible to maintain its registration with the Commission, registrant must respond affirmatively (by checking the appropriate box or boxes) to at least one of the items (i) through (vii) below:

Registrant:

(i) ☐ has assets under management of $25 million or more;

Complete the Assets Under Management Worksheet in Part III if "assets under management" is the sole basis of registrant's eligibility for SEC registration (i.e., this item (i) is checked, and none of items (ii) through (vii) below are checked).

(ii) ☐ is not registered (or required to be registered) as an investment adviser in the State in which it maintains its principal office and place of business (*See Instruction 3*);

(iii) ☐ is an investment adviser to an investment company registered under the Investment Company Act of 1940;

(iv) ☐ is a nationally recognized statistical rating organization;

(v) ☐ is a pension consultant (as that term is used in rule 203A-2(b));

(vi) ☐ is an investment adviser that controls, is controlled by, or is under common control with, an investment adviser eligible to maintain its registration with the Commission, and whose principal office and place of business is the same as that adviser (*See Instruction 4*);

(vii) ☐ has received an order of the Commission exempting registrant from the prohibition on registration with the Commission. A copy of the Commission order is attached.

(b) ☐ After April 9, 1997, registrant will be subject to having its SEC registration cancelled. Registrant hereby withdraws its registration. *See Instruction 5.*

(c) ☐ After April 9, 1997, registrant will not be subject to having its SEC registration cancelled, but nonetheless hereby withdraws its registration. This option is available only to certain registrants reporting between $25 and $30 million in assets under management. *See Instruction 6.*
If this item (c) is checked, complete the Assets Under Management Worksheet in Part III.

Registrants are reminded that it is a violation of section 207 of the Advisers Act to make any untrue statement of a material fact in any report filed with the Commission, or willfully to omit to state in any such report any material fact which is required to be stated therein.

PART III Assets Under Management Worksheet

Complete this worksheet if required by Part II.

(a) State the amount of registrant's assets under management: *See Instruction 7.* $_____ as of _____, 1997
(b) State the amount reported on registrant's current Form ADV, Part I for: Item 18(B): _____ (aggregate market value of client securities portfolios managed on a discretionary basis) Item 19(B): _____ (aggregate market value of client securities portfolios managed or supervised on a non-discretionary basis)
(c) If, but for the inclusion of client accounts that registrant manages on a non-discretionary basis, registrant would not have $25 million of assets under management, attach a written statement describing the nature of the supervisory or management services provided to such accounts. *See Instruction 8.*

PART IV Execution

The undersigned represents that he or she has executed this Form on behalf of, and with the authority of, said registrant. **The undersigned and registrant represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true, and complete.**
Date:
Name of Registrant:
By:
Typed Name and Title:

BILLING CODE 8010–01–C

Form ADV–T Instructions

Instruction 1

(a) This Form must be executed and filed in triplicate with the Securities and Exchange Commission, Mail Stop A–2, Registrations and Examinations, 450 Fifth Street, N.W., Washington, D.C. 20549. An exact copy should be retained by the registrant. There is no fee for filing this Form.

(b) All copies of the Form filed with the Commission shall be executed with a manual signature in Part IV. One of the filed copies must contain an original signature, the other two copies may contain photocopied signatures. If the Form is filed by a sole proprietor, it must be signed by the proprietor; if it is filed by a partnership, it must be signed in the name of the partnership by a general partner; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of the organization or association by a duly authorized person who directs or manages or who participates in the directing or managing or its affairs; if filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized. If signed by an officer of a corporation, organization, or associations his or her title must be given.

(c) When amending this Form, complete the entire document and circle the number or letter of any items being amended (*i.e.*, if a box is no longer being checked, circle the box to indicate that it previously had been checked).

(d) A Form that is not prepared and executed in compliance with applicable requirements may be returned as not acceptable for filing. Acceptance of this Form, however, shall not constitute any finding that it has been filed as required or that the information submitted is true, correct, or complete.

(e) Failure to file this Form is a violation of rule 203A–5(a) under the Investment Advisers Act of 1940, as amended (''Advisers Act''). Additionally, failure to file this Form will result in the taking of appropriate steps by the Commission to determine whether a registrant is still in existence and is still engaged in business as an investment adviser and may, therefore, lead the Commission to order cancellation of a registrant's registration, pursuant to section 203(h) of the Advisers Act.

(f) Unless the context clearly indicates otherwise, all terms used in this Form have the same meaning as in the Advisers Act and in the General Rules and Regulations of the Commission thereunder.

(g) Sections 203(c)(1) and 204 of the Advisers Act authorize the Commission to collect the information on this Form from registrants. The Commission will maintain files of the information on this Form and will make the information publicly available.

Instruction 2

Registrant's principal office and place of business is the executive office from which the officers, partners, or managers of the registrant direct, control, and coordinate registrant's activities. *See* rule 203A–3(c).

Instruction 3

Under the Advisers Act, a registrant whose principal office and place of business (*see* Instruction 2) is in a State that does not regulate the registrant as an investment adviser is eligible to maintain its registration with the Commission, even if none of the other criteria for SEC registration (*e.g.*, $25 million of assets under management) are met. Currently, these States are Colorado, Iowa, Ohio, and Wyoming. In addition, a registrant whose principal office and place of business is located in a country other than the United States is eligible to maintain its registration with the Commission. These registrants should check the box in item (a)(ii) of Part II.

A registrant whose principal office and place of business is in a State that regulates investment advisers, but that is excepted from regulation or exempted from registration under that State's investment adviser statute, is not ''registered'' as an investment adviser in that State. Such a registrant is eligible to maintain its registration with the Commission, and therefore should check the box in item (a)(ii) of Party II.

Instruction 4

A registrant that controls, is controlled by, or is under common control with, an investment adviser that is eligible to maintain its registration with the Commission after April 9, 1997 (the ''eligible adviser'') is eligible to maintain its registration with the Commission if the principal office and place of business of the registrant is the same as that of the eligible adviser. *See* rule 203A–2(c).

Instruction 5

If item (b) of Part II is checked, registrant's investment adviser registration with the SEC will be withdrawn effective as of the later of (i) April 9, 1997 or (ii) the date the registrant first files this Form or any amendment to the Form that indicates that registrant withdraws its registration.

Instruction 6

Under rule 203A–1(b), certain investment advisers that have assets under management of not less than $25 million but nor more than $30 million may (but are not required to) register with the Commission. An adviser wishing (and eligible) to take advantage of this option should check item (c) of Part II. This option is *not* available to an adviser that is required to be registered with the Commission regardless of the amount of its assets under management, *i.e.*, an adviser (i) to a registered investment company, (ii) that is not registered (or required to be registered) as an investment adviser in the State in which it maintains its principal office and place of business (see Instruction 3), or (iii) that is exempted by rule 203A–2 from the prohibition on registering with the Commission (NRSROs, pension consultants, and certain advisers controlling, controlled by, or under common control with SEC-registered advisers).

Registrants wishing to withdraw their SEC registration by checking item (c) of Part II must report their assets under management in the Assets Under Management Worksheet in Part III. If item (c) of part II is checked, registrant's investment adviser registration with the SEC will be withdrawn effective as of the later of (i) April 9, 1997 or (ii) the date registrant first files this Form or any amendment to the Form that indicates that registrant withdraws its registration.

Instruction 7

In determining the amount of assets the registrant has under management, include the total value of securities portfolios with respect to which the registrant provides continuous and regular supervisory or management services.

(a) An account is a securities portfolio if at least 50% of the total value of the account (less cash and cash equivalents) consists of securities. Include securities portfolios that are: (i) family or proprietary accounts (unless the registrant is a sole proprietor, in which case the personal assets of the sole proprietor should be excluded); (ii) accounts for which the registrant receives no compensation for its services; and (iii) accounts of clients who are not U.S. residents.

(b) Include the entire value of each securities portfolio for which the registrant provides ''continuous and regular supervisory or management services.''

(c) A registrant provides continuous and regular supervisory or management services with respect to a securities portfolio if the registrant (i) has discretionary authority over and (ii) provides ongoing management or supervisory services with respect to the portfolio.

Whether a registrant that provides ongoing management or supervisory services on a *non-discretionary* basis provides continuous and regular supervisory or management services is a question of fact. The greater the registrant's ongoing responsibilities, the more likely the adviser will be providing continuous and regular supervisory or management services.

To assist registrants, the Commission is providing examples of accounts that receive continuous and regular supervisory and management services. These examples are not exclusive.

Accounts That Receive Continuous and Regular Supervisory and Management Services

- Accounts for which the adviser provides traditional portfolio management services on a discretionary basis;
- Accounts for which the adviser provides ongoing management services, (*i.e.*, is responsible for the selection of which securities to buy and sell and when to buy and sell them) without a grant of discretionary authority;
- Accounts managed by other advisers (i) that the adviser has been given a grant of discretionary authority to hire and discharge on behalf of the client, and (ii) among which the adviser has the authority to allocate and reallocate account assets; and
- Accounts for which the adviser provides asset allocation services by (i) continuously monitoring the needs of the clients and the markets in which account assets are invested, and (ii) allocating and reallocating account

assets to meet client objectives under a grant of discretionary authority.

Accounts That do Not Receive Continuous and Regular Supervisory and Management Services

- Accounts for which the adviser provides only periodic advice (no matter how frequent), *e.g.*, an account for which the adviser has prepared a financial plan which is periodically reviewed and updated;
- Accounts for which the adviser provides advice only on a periodic basis or as a result of some market event or change in client circumstances (even if the adviser has discretionary authority), *e.g.*, an account that is reviewed and adjusted on a quarterly basis or upon client request;
- Accounts for which adviser provides market timing recommendations (to buy or sell) but does not manage on an ongoing basis;
- Accounts for which adviser provides impersonal advice, *e.g.*, market newsletter;
- Accounts for which adviser provides only an initial asset allocation, without continuous and regular monitoring and reallocation; and
- Accounts for which the registrant undertakes to monitor the markets and apprise the client of any developments, or make recommendations as to the reallocation of client assets upon any developments.

(d) Determine the total amount of assets under management based on the current market value as determined within 10 business days prior to the date of filing this Form. Current market value should be determined using the same methodology as the account value reported to clients or calculated to determine fees for investment advisory services

(e) Include only those accounts for which registrant provides continuous and regular supervisory and management services as of the date of filing this Form.

Instruction 8

The written statement required by item (c) of Part III should be attached only if registrant does not have at least $25 million in discretionary assets under management. For example, a registrant that has $30 million of discretionary and $5 million of non-discretionary assets under management would not be required to attach the statement. A registrant that has $20 million of discretionary and $5 million of non-discretionary assets under management would attach a statement, but the statement would only be required to describe the nature of the supervisory and management services. provided to the $5 million of non-discretionary assets. A registrant that has $20 million of discretionary and $5 million of non-discretionary assets under management, but that is an adviser to a registered investment company (and therefore has an additional basis of eligibility for SEC registration) would not be required to attach the statement.

[FR Doc. 96–32799 Filed 12–26–96; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–1602]

RIN 3235–AH08

Suspension of Form ADV–S

AGENCY: Securities and Exchange Commission.

ACTION: Stay of rules and suspension of form.

SUMMARY: The Commission is staying a rule and a provision in a rule under the Investment Advisers Act of 1940 that require the filing of Form ADV–S, the annual report filed by all investment advisers registered with the Commission. The Commission is also suspending the use of Form ADV–S indefinitely, pending the outcome of a related rulemaking.

EFFECTIVE DATE: Effective December 27, 1996 paragraph (c) of § 275.204–1 and § 279.3 are stayed, and the use of Form ADV–S is suspended.

FOR FURTHER INFORMATION CONTACT: Catherine M. Saadeh, Staff Attorney, or Cynthia G. Pugh, Staff Attorney, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Mail Stop 10–2, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is staying paragraph (c) of rule 204–1 [17 CFR 275.204–1(c)] and section 279.3 of Part 279 [17 CFR 279.3] under the Investment Advisers Act of 1940 [15 USC 80b–1 *et seq.*] (the ''Advisers Act''), which require investment advisers registered with the Commission to annually file Form ADV–S. The Commission is also suspending the use of Form ADV–S.

In a separate release, the Commission today is proposing new Form ADV–T, amendments to Form ADV, and related rules and rule amendments.[1] The proposed rules and form would, among other things, require each investment adviser registered with the Commission to: (i) File a report with the Commission by April 9, 1997 indicating the adviser's continued status under the Advisers Act; [2] and (ii) provide similar information in a new schedule to Form ADV annually thereafter. These proposed new requirements would make unnecessary the reporting requirements of Form ADV–S. Because the new requirements would either duplicate or replace the ADV–S reporting requirements, the Commission believes requiring advisers to file Form ADV–S prior to a final decision whether to adopt the proposed rules would be unduly burdensome. The Commission is therefore staying paragraph (c) of rule 204–1 and rule 279.3, and is suspending the use of Form ADV–S. If proposed new Form ADV–T and the related proposed rules and amendments are adopted, the Commission plans to eliminate the reporting requirements of Form ADV–S. Persons interested in commenting on the proposed elimination of Form ADV–S are encouraged to respond to the request for comments in Investment Advisers Act Rel. No. 1601, File No. S7–31–96.

Statutory Authority

The Commission is staying rule 204–1(c) and rule 279.3, and is suspending the use of Form ADV–S pursuant to the authority set forth in sections 204 and 211(a) of the Investment Advisers Act of 1940 [15 USC 80b–4 and 80b–11(a)].

Text of Stayed Rules

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–3, 80b–4, 80b–6A, 80b–11, unless otherwise noted.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

2. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

3. Effective December 27, 1996 § 275.204–1(c) and § 279.3 are stayed, and the use of Form ADV–S is suspended.

Note: Form ADV–S does not appear in the Code of Federal Regulations.

Dated: December 20, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–32800 Filed 12–26–96; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* Investment Advisers Act Rel. No. 1601 (Dec. 20, 1996). Form ADV [17 CFR 279.1] is the form used by investment advisers to apply for registration as an investment adviser with the Commission, or amend an existing registration. *See* Investment Advisers Act Rel. No. 1601 at Section II.H.

[2] See Investment Advisers Act Rel. No. 1601 at Section II.B.

Federal Register

Friday
December 27, 1996

Part IX

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Reclamation Requirements Extension; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5670–2]

RIN 2060–AF36

Protection of Stratospheric Ozone: Extension of The Existing Reclamation Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Through this action EPA is amending the Clean Air Act Section 608 refrigerant recycling regulations to extend the effectiveness of the refrigerant purity requirements of § 82.154(g) and (h), which are currently scheduled to expire on December 31, 1996, until EPA adopts revised purity requirements. EPA initially extended these requirements in response to requests from the air-conditioning and refrigeration industry to avoid widespread contamination of the stock of chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants that could result from the lapse of the purity standard. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases.

EPA proposed a more flexible approach to ensuring the purity of refrigerants on February 29, 1996, and solicited public comment. EPA received significant comments regarding a potential delegation of authority and an unintentional creation of a monopoly. EPA believes prior to adopting a more flexible approach EPA must further consider these comments. EPA intends to issue a supplemental action that would revise several aspects of the February 29, 1996 proposal.

To prevent any lapse in the purity standards, on November 1, 1996, EPA proposed to extend the current reclamation requirements indefinitely until EPA adopts revised requirements. Today EPA is extending the current reclamation requirements. This continuation will not result in any additional burden on the regulated community. Moreover, the retention of the reclamation requirement will protect the environment, public health, and consumers by ensuring that contaminated refrigerants are not vented or charged into equipment.

EFFECTIVE DATE: January 1, 1997.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A–92–01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 in room M–1500. Dockets may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, D.C. 20460, (202) 233–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Regulated Entities

Entities potentially regulated by this action are those that wish to recover, recycle, reclaim, sell, or distribute in interstate commerce refrigerants that contain chlorofluorocarbons (CFCs) and/or hydrochlorofluorocarbons (HCFCs). Regulated categories and entities include:

Category	Example of regulated entities
Industry	Reclaimers. Equipment manufacturers. Air-conditioning and refrigeration contractors and technicians. Owners and operators of industrial process refrigeration equipment. Laboratories. Plumbing, heating and cooling contractors.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria contained in Section 608 of the Clean Air Amendments of 1990; discussed in regulations published on May 14, 1993 (59 FR 28660); and discussed below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background and Notice of Proposed Rulemaking

Paragraphs 82.154 (g) and (h) of 40 CFR part 82, subpart F, set requirements for sale of used refrigerant, mandating that it meet certain purity standards. As discussed in the Notice of Proposed Rulemaking (NPRM) issued November 1, 1996 (61 FR 56493), these requirements will expire on December 31, 1996. EPA proposed extending these requirements beyond the end of 1996.

EPA is in the process of considering whether it is appropriate to promulgate new, more flexible, reclamation requirements based on industry guidelines. To that end, EPA issued a separate NPRM on February 29, 1996 (61 FR 7858). The February 29, 1996 NPRM was an omnibus notice that addressed many aspects of 40 CFR Part 82, Subpart F. Among the various issues raised in that NPRM was the adoption of a more flexible approach to reclamation with the related adoption of third-party certification for laboratories and reclaimers. Other issues addressed in that NPRM include changes to the recordkeeping and reporting requirements for technician certification programs, the adoption of an updated industry standard, amending the definitions of motor vehicle air-conditioning-like appliances and small appliances, the adoption of formal revocation procedures for approved certification programs, transfers of refrigerant between subsidiaries, and clarifying the distinction between major and minor repairs. EPA has analyzed the public comments concerning the February 29, 1996 NPRM, and will issue a final rulemaking soon; however, EPA has decided not to complete promulgation of all the proposed changes discussed in that NPRM as part of one final package. The decision to delay action on specific issues proposed in the February 29, 1996 NPRM and to extend the current reclamation requirements was discussed in the November 1, 1996 NPRM (61 FR 56493).

III. Response to Comments

EPA requested and received nine comments regarding the November 1, 1996 NPRM. All the comments

supported EPA's proposed extension of the current requirements beyond December 31, 1996.

Of these nine comments received, six commenters raised similar points. These commenters stated that it is important to extend the reclamation requirements for both environmental and consumer protection needs. The commenters stated that the reclamation requirements ensure that used refrigerant sold in the marketplace meets the ARI Standard 700 levels of purity. The commenters indicated that avoiding contamination of the refrigerant supply is paramount. The commenters highlighted concerns that a lapse in the requirements could lead to widespread contamination of the stock of used CFC- and HCFC-refrigerants leading to increased equipment failures and potential venting of refrigerants. These commenters also indicated that EPA should continue the evaluation of a more flexible approach to reclamation and implement such an approach as soon as possible. EPA agrees with these commenters.

EPA received one comment from a company that operates many older air-conditioning and refrigeration systems. This commenter, a supporter of the extension, indicated that contamination of refrigerant stock could damage parts, leading to a shortage of replacement parts and resulting in a consequent cost increases for replacement parts. EPA understands this commenter's concerns for readily available, fairly priced replacement parts.

While the last two commenters supported the proposed decision, they requested that EPA adopt a more flexible approach within a short timeframe. One commenter stated that their organization would continue to support the use of the current reclamation requirements as an interim measure and that EPA should adopt a more flexible approach with due speed. The other commenter stated that there was no choice but to support the extension because the alternative of permitting the requirements to lapse would be worse. This commenter requested that EPA set a specific deadline for the adoption of a more flexible reclamation requirement and that this deadline should be no later than a date within the next three calendar months. The commenter further stated that EPA should do everything within its power to meet such a deadline. EPA understands the concerns raised by this commenter. EPA had intended to adopt a more flexible approach to reclamation before December 31, 1996, therefore, avoiding the need for today's action. However, as discussed above and in the NPRM, central to the proposed adoption of a more flexible approach to reclamation is the proposed adoption of third-party certification programs for both laboratories and reclaimers. Commenters submitting information regarding the February 29, 1996 NPRM identified several specific concerns regarding the appropriateness of delegating various functions to third-parties and whether EPA may unintentionally create a monopoly. These comments have led to the need for additional research and consultation by EPA. EPA did not propose in the November 1, 1996 NPRM any specific date to sunset the reclamation requirements since such a date could occur prior to the completion of EPA's analysis. Instead, EPA indicated that the Agency would work to expedite the adoption of a more flexible approach and would extend the current requirements only until such action is completed.

EPA did not propose a date-certain sunset partly because EPA does not believe a date-certain approach is necessary at this juncture. EPA established sunsets for these requirements in the past based on EPA's estimation of the time required for industry representatives to develop an alternative to traditional reclamation that permits flexibility without compromising the goals of environmental protection and the time necessary for the Agency to adopt that approach. Initially, EPA anticipated that the industry standard would be a recycling standard similar to the standard used to recycle CFC–12 recovered from motor vehicle air conditioners. However, the standard developed by industry, known as *Industry Recycling Guide -2* (IRG–2) is significantly different from what EPA had initially envisioned. IRG–2 establishes a method for contractors and technicians to evaluate used refrigerant based on the history of that refrigerant, to use recycling devices where appropriate, and to ultimately rely on the testing of representative refrigerant samples by off-site laboratories prior to permitting the refrigerant to change ownership. IRG–2 could not be adopted by EPA without the further development of procedures for adequately testing representative samples by capable laboratories. The need to develop such a program and the concerns raised by commenters were not initially anticipated by EPA. EPA also did not predict other factors that slowed the rulemaking process, such as budgetary events beyond EPA's control.

These unforseen circumstances have led to today's action. While EPA anticipates the adoption of the more flexible reclamation approach in early 1997, EPA does not wish to ignore the possibility that other unforseen circumstances could arise resulting in a further delay. If such unforeseen circumstances did arise, it is likely that EPA would pursue another extension, thus diverting resources from the more important endeavor of ultimately replacing the current requirements with a more flexible approach. Therefore, EPA did not propose and today is not adding a sunset date.

IV. Today's Action

EPA is extending the effectiveness of the current reclamation requirements until the Agency can adopt replacement requirements. It was never EPA's intent to leave air-conditioning and refrigeration equipment and refrigerant supplies unprotected by a purity standard, but only to replace the existing standard with a more flexible standard when that was developed. As discussed previously, EPA is currently undertaking rulemaking to adopt a more flexible standard.

V. Effective Date

Today's action will be effective starting January 1, 1997. This expedited effective date is necessary to avoid a lapse in the current reclamation requirements. Section 553 of the Administrative Procedures Act (APA) authorizes agencies to dispense with certain procedures for rules when there exists ''good cause'' to do so. Given the lack of burden upon affected parties, the need to ensure that no regulatory lapse occurs, and in accordance with section 553(b), the Agency finds that there is good cause to accelerate the effective date of this rulemaking because to delay the effective date would be ''impracticable, unnecessary, or contrary to the public interest.''

The retention of the current reclamation requirements will protect the environment, public health, and consumers by ensuring that contaminated refrigerants are not vented or charged into equipment. Therefore, the effective date for this rulemaking will be January 1, 1997.

VI. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order.

The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this action to amend the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this rulemaking is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, this rule merely extends the current reclamation requirements during consideration of a more flexible approach that may result in reducing the burden of part 82 Subpart F of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

C. Paperwork Reduction Act

There is no additional information collection requirements associated with this rulemaking. Therefore, EPA has determined that the Paperwork Reduction Act does not apply. The initial § 608 final rulemaking did address all recordkeeping associated with the refrigerant purity provisions. An Information Collection Request (ICR) document was prepared by EPA and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This ICR is contained in the public docket A–92–01.

D. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule because it continues existing requirements. EPA would like to clarify that there was a misstatement in the NPRM regarding the potential impact that this rule would have on small entities. This rule does not make any change to the current regulatory situation. It does not provide relief or any increase from current regulatory burdens. Thus the regulatory flexibility analysis discussed in the initial final rule (May 14, 1996, 58 FR 28660) is still applicable.

VII. 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 (SBREFA), 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).

List of Subjects in 40 CFR Part 82

Environmental protection, Aerosols, Air pollution control, Chlorofluorocarbons, Chemicals, Hydrochlorofluorocarbons, Stratospheric ozone layer.

Dated: December 20, 1996.

Carol M. Browner,

Administrator.

Part 82, chapter I, title 40, of the Code of Federal Regulations, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.154 is amended by revising paragraphs (g) and (h) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) No person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed as defined at § 82.152;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

(h) No person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.164;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

* * * * *

[FR Doc. 96–32969 Filed 12–26–96; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday
December 27, 1996

Part X

Department of Transportation

Coast Guard

46 CFR Parts 8, 31, 71, 91, and 107
Vessel Inspection Alternatives; Classification Procedures; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 8, 31, 71, 91 and 107

[CGD 95–010]

RIN 2115–AF11

Alternative Compliance via Recognized Classification Society and U.S. Supplement to Rules

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is issuing regulations to provide owners of U.S. tank vessels, passenger vessels, cargo vessels, miscellaneous vessels and mobile offshore drilling units an alternative method to fulfill the requirements for vessel design, inspection and certification. Under this interim rule, the Coast Guard can issue a certificate of inspection based upon reports by a recognized, authorized classification society that the vessel complies with the International Convention for the Safety of Life at Sea, the International Convention for the Prevention of Pollution from Ships, other applicable international conventions, classification society rules and other specified requirements. This new procedure will reduce the burden on vessel owners and operators by establishing an alternative to the current Coast Guard inspection system that results in plan reviews and inspections by the vessel's classification society as well as by the Coast Guard.

DATES: This interim rule is effective on December 27, 1997. Section 8.440 applies to existing vessels as of July 31, 1997. Comments on this interim rule must be received on or before March 27, 1997. The Director of the Federal Register approves the incorporation by reference of certain publications listed in the regulations as of December 27, 1997.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–010), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. A copy of the material listed in ''Incorporation by Reference'' of this preamble is available for inspection at room 1304, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LCDR George P. Cummings, Marine Safety and Environmental Protection (G–MSE–1), telephone (202) 267–2997, fax (202) 267–4816.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553(d), the provisions of this interim rule relating to foreign classification societies are issued without a prior notice of proposed rulemaking and become effective immediately. The Coast Guard Authorization Act of 1996 (Pub. L. 104–324) removed a restriction that had been imposed on foreign classification societies that were interested in participating in the Coast Guard Alternate Compliance Program (ACP). To remove this restriction in a timely fashion, the Coast Guard is omitting prior notice and comment under the exception permitted by 5 U.S.C. 553(d)(1).

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 95–010) and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Regulatory Information

This rule is being published as an interim rule and is being made effective on the date of publication with the exception of enrollment of existing vessels in the ACP. The rule is effective on July 31, 1997, for enrollment of existing vessels in the ACP. This delay is intended to allow the time necessary for completion of the ACP pilot program and the required training of Coast Guard personnel. Because the number of vessel owners seeking to have vessels constructed under the ACP is expected to be low, the rule will be effective on the date of publication for new vessel enrollment in the ACP.

Background and Regulatory History

Alternate Compliance Pilot Program

In response to a solicitation for comments regarding regulatory reform, members of the U.S. maritime industry noted the continuing economic pressure on the U.S. oceangoing merchant fleet and commercial shipbuilding industry. Comments were submitted calling for reduction of the cost disadvantage attributed to Coast Guard inspection and certification of U.S. merchant vessels in order to improve the international competitiveness of the U.S. merchant fleet.

In order to address these concerns, the Coast Guard sought a means to alleviate the cost burdens on the maritime industry that resulted from the Coast Guard inspection program. The Coast Guard has had authority under 46 U.S.C. 3116 to rely on reports, documents and certificates issued by the American Bureau of Shipping (ABS) in carrying out its responsibilities for safety of U.S. merchant vessels and to delegate to ABS the inspection or examination of these vessels. The Coast Guard had in fact delegated to ABS the authority to issue certain certificates required by international conventions such as the International Convention for the Safety of Life at Sea, as amended, (SOLAS) Cargo Ship Safety Construction Certificate. Compliance with these standards is required for oceangoing vessels, i.e. vessels engaged in trading with foreign countries. Additionally, insurance companies require that, before a vessel is insured, it be classed. This means that a classification society must survey a vessel for compliance with its class rules. Class rules are rules developed by the particular classification society to

cover design, construction and safety of vessels. To ensure compliance with these class rules and with international standards, classification societies perform surveys on vessels using qualified marine surveyors. Many of the items examined by the classification society surveyors are the same as those examined by Coast Guard marine inspectors in their inspections for certification.

Thus, there is duplication of effort involving safety of vessels between the Coast Guard and the ABS that results in extra costs to U.S. vessel owners. In light of the authority in 46 U.S.C. 3316 to delegate to ABS, the Coast Guard, in order to address the concerns of the vessel owners regarding these costs, examined the feasibility of an alternative to the current situation that would avoid the duplication involved between ABS and the Coast Guard. A joint Coast Guard/ABS task force compared the Coast Guard requirements in the Code of Federal Regulations (CFR) to the class requirements in ABS class rules, SOLAS, and the International Convention for the Prevention of Pollution from Ships, as amended, (MARPOL 73/78) concerning the design, construction and safety systems for oceangoing merchant vessels. The purpose of this comparison was to identify redundancies between the requirements and to determine if the class and international requirements, which U.S. vessels must currently comply with, could be used in place of Coast Guard regulatory requirements. The standard used was whether compliance with the class and international standards would achieve a level of safety equivalent to compliance with Coast Guard regulatory requirements.

The task force determined that many Coast Guard regulatory requirements could be satisfied by certification of compliance with ABS classification rules, SOLAS, MARPOL 73/78, or combination of the three. This led to the development of a U.S. Supplement to the ABS classification rules. This supplement addresses those areas where current Coast Guard requirements are not embodied by either ABS classification rules or international conventions.

The Coast Guard concluded that the design requirements and survey provisions of ABS classification rules, applicable international conventions and the U.S. Supplement to the ABS classification rules provide a level of safety equivalent to corresponding Federal regulations.

As a result of this effort, the ACP was developed to reduce redundant regulatory efforts without jeopardizing safety. The Coast Guard expects that, under the ACP, vessel owners and operators will have reduced vessel down time, greater flexibility in scheduling inspections, and greater flexibility in meeting required standards.

The Coast Guard is conducting an ACP pilot program, which was announced by the Federal Register notice of February 3, 1995 (60 FR 6687). The purpose of the pilot program is to test and evaluate the standards and procedures that have been developed for the ACP. The Coast Guard plans to conclude this pilot program and fully implement the ACP on July 31, 1997.

Notice of Proposed Rulemaking

On June 22, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Alternate compliance via Recognized Classification Society and U.S. Supplement to Rules'' in the Federal Register (60 FR 32478). The NPRM proposed regulatory changes to allow owners, operators, shipbuilders, and designers of U.S. flagged tank vessels, passenger vessels, cargo vessels, miscellaneous vessels and mobile offshore drilling units to use the services of a recognized classification society to conduct inspection and plan review functions now performed by the Coast Guard.

The NPRM proposed establishment of the ACP through addition of new sections in 46 CFR parts 31 (31.01–3), 71 (71.15–5), 91 (91.15–5), and 107 (107.205). These sections would allow the owner or operator of a vessel to submit the vessel for inspection by a recognized classification society. The classification society would survey the vessel and document compliance with applicable international requirements, class rules and its U.S. supplement. The cognizant Coast Guard Officer-in-Charge, Marine Inspection could then issue a certificate of inspection based upon the classification society's reports documenting that the vessel is classed and that it complies with all applicable requirements.

Additionally, the NPRM proposed new sections in 46 CFR parts 30 (30.01–4), 70(70.01–10) and 90 (90.01–10) to incorporate by reference the ABS Class Rules for Building and Classing Steel Vessels, 1996, and the ABS U.S. Supplement to Class Rules for Building and Classing Steel Vessels, 1996. When developed, the ABW U.S. Supplement to Class Rules for Building and Classing Mobile Offshore Drilling Units will be added to the existing incorporation by reference provisions in 46 CFR 107.115.

Overview of Interim Rule

This rule is published as an interim rule and is effective on the date of publication except for enrollment of existing vessels into the ACP. The effective date for application of the ACP to existing vessels, except for those currently involved in the pilot program, will be delayed until July 31, 1997 in order to allow the time necessary for completion of the ACP pilot program and the required training of Coast Guard personnel.

This interim rule modifies the NPRM in several areas. Changes to the NPRM are based on public comments received and recent changes to U.S. law allowing delegation of U.S. statutory authority to inspect and conduct plan approval to foreign classification societies. Changes to the NPRM are explained in this preamble.

Additionally, this interim rule establishes a new Part 8 in 46 CFR. This new part, entitled, ''Vessel Inspection Alternatives'', contains regulations regarding the ACP, recognition of classification societies, and future regulations regarding other vessel inspection alternatives.

Coast Guard Recognition and Authorization of a Classification Society

Until the passage of the 1996 Coast Guard Authorization Act (Pub. L. 104–324, 110 Stat. 3901), the Coast Guard could only delegate marine safety functions related to vessel plan review and inspection to the ABS or a similar U.S. classification society. Section 607 of Pub. L. 104–324 amended 46 U.S.C. 3316 to allow delegation of these functions to a classification society based in a foreign country. This new authority increases the number of classification societies that may be authorized to review and approve plans and to conduct vessel inspections and examinations on behalf of the Coast Guard. This also means that other classification societies may be utilized in a manner similar to the ABS under the ACP. But before any classification society can be delegated authority under this amendment to act on behalf of the Coast Guard for any purpose, the statute requires that the classification society be recognized by the Coast Guard. Thus, the Coast Guard is adopting a structured process to recognize classification societies other than the ABS for the delegation of marine safety functions.

Ship structural design has traditionally been covered by classification society rules. The fundamental motivation for the creation of classification societies was to meet

the need of hull underwriters to determine structural fitness before providing insurance coverage. Over time, and primarily based on service experience, some classification societies have developed, and continued to refine, the ''rules'' that address hull structural design.

Classification societies have expanded their services beyond ship structural design, analysis, and inspection to include various functions delegated to them on behalf of maritime administrations to document compliance with international regulations pertaining to other aspects of ship design and operations. Currently, most classification societies provide documentation of vessel's structural and mechanical ''fitness-for-service'', a service used by owners in obtaining insurance.

The Coast Guard will use the term ''recognized'' to indicate that a classification society has met minimum standards which address general characteristics and performance of a classification society. Achieving the status of ''recognized classification society'' will not, in itself, indicate any specific delegation of authority to the classification society by the Coast Guard. The Coast Guard will use the term ''authorized'' to indicate that a recognized classification society has been delegated the authority to conduct a specific marine safety function such as plan review, vessel inspection, or insurance of an international convention certificate. This approach will provide the necessary flexibility to accommodate determinations of reciprocity and individual classification society capabilities.

The terms used in the NPRM regarding classification society status have been modified to reflect this approach. A new section 8.100 defines these terms to clarify that a recognized classification society must receive authorization to conduct specific delegated functions.

Reciprocity (Section 8.120)

Section 607 of the 1996 Coast Guard Authorization Act amends 46 U.S.C. § 3316 by stating that delegations may be made to foreign classification societies only to the extent that the foreign country in which the society is headquartered delegates authority to the ABS and provides access to ABS to inspect, certify and provide related services to vessels flagged by that country. Thus, the Coast Guard will not consider any request to delegate authority until the conditions of reciprocity have been demonstrated and verified. Additionally, the Coast Guard may not evaluate a classification society for recognition until the conditions of reciprocity have been demonstrated and verified for at lest one of the delegations of authority being sought by the classification society.

There is no reciprocity clause associated with delegation of Load Line certification under 46 U.S.C. 5107 or Tonnage certification under 46 U.S.C. 14103.

Recognition of a Classification Society (Section 8.220)

A classification society must be recognized by the Coast Guard in order to be eligible to receive statutory authority delegated by the Coast Guard. This includes authority delegated under the ACP.

A classification society that applies for recognition, and is found to meet the criteria for recognition, will be notified in writing by the Commandant.

If the Coast Guard determines that a classification society does not meet the criteria for recognition, the reasons for this determination will be provided. A classification society may reapply for recognition when it complies with the criteria for recognition set forth in the regulation.

Minimum Standards for a Recognized Classification Society (Section 8.230)

In order to become recognized, a classification society must meet the Coast Guard's minimum standards for a recognized classification society established in this rule. In developing these minimum standards, the Coast Guard reviewed several international standards which address the quality and capability of a classification society. The standards evaluated by the Coast Guard for this purpose were: International Maritime Organization (IMO) Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration; European Communities Council Directive 94/57/EC; and the membership conditions of the International Association of Classification Societies. The Coast Guard's options were to either invoke the requirements of these standards through an Incorporation by Reference citation or include selected portions in the text of this rule. The Coast Guard decided that the existing criteria were not completely satisfactory and chose to include selected portions, with some modification, in the rule.

The Coast Guard has incorporated classification society performance, as indicated by its record under the Coast Guard Port State Control Program, as an element of the minimum standards for classification society recognition under this rulemaking. The record of a particular classification society regarding detention of vessels classed or certificated by the society is one of the factors considered in determining boarding priorities for vessels calling in the U.S. This record represents a key measurement of the current performance of a classification society. Evaluation of classification society performance under the Coast Guard Port State Control Program is deceived in a report to the U.S. Congress entitled Port State Control, Evaluation of Classification Society Performance, dated May 13, 1996. A copy of this report is available in the docket for inspection or copying where indicated under ''ADDRESSES.''

It should be noted that there is a fundamental difference between the Coast Guard's recognition of a classification society for the delegation of authority under this rulemaking and any recognition issued previously under the Coast Guard's Port State Control Program indicating that the society met the requirements of IMO Resolution A.739(18). Classification societies found to meet this standard for the purposes of the Port State Control Program were sent letters indicating this. The Coast Guard's recognition of a classification society as meeting IMO Resolution A.739(18) for the purposes of the Port State Control targeting scheme does not constitute recognition for the purpose of delegation of Coast Guard vessel safety authorities.

Application for Recognition (Section 8.240)

A classification society must apply for recognition in writing to the Commandant (G–MSE). Applications should indicate which specific authority the classification society seeks to have delegated to it by the Coast Guard. The classification society must provide documentation with this application to establish that the conditions of reciprocity have been met for the authority sought to be delegated. Upon certification from the Coast Guard that the conditions of reciprocity have been met, the requesting classification society must submit documentation to establish that they meet the Coast Guard's minimum standards for a recognized classification society.

Revocation of Recognition (Section 8.260)

A recognized classification society which fails to maintain the minimum standards will be reevaluated for revocation of its recognized status.

Authorization to Perform Delegated Functions

The Coast Guard may authorize a recognized classification society to perform delegated functions after it has determined that the classification society is fully capable of conducting that function. This determination will include a review of applicable classification society rules and survey procedures. The Coats Guard will review the submitted material in order to determine whether delegation of authority to the particular classification society will result in the equivalent level of safety as that achieved through traditional Coast Guard performance of that function. When the classification society seeks ACP delegation, the classification society's class rules will be reviewed, and a U.S. Supplement to the classification society's class rules developed, as has been done with the ABS.

If the Coast Guard determines that the classification society's rules or procedures are not satisfactory, the requested delegation will not be granted. The Coast Guard will provide information to the applicant on deficiencies identified in rules or procedures. A classification society may reapply for the requested authorization after correction of any deficiencies in its rules or procedures.

Classification society authorization to perform delegated functions will be promulgated through an authorization agreement.

Existing Outlines of Cooperation between the Coast Guard and classification societies regarding passenger ship control verification are not affected by this rulemaking.

Authorization to Issue International Certificates (Section 8.320)

A recognized classification society will be eligible to receive authorization to issue certain international convention certificates on behalf of the Coast Guard. The Coast Guard may delegate the following international convention certifications to a recognized classification society: International Load Line Certificate; International Tonnage Certificate; SOLAS Cargo Ship Safety Construction Certificate; SOLAS Cargo Ship Safety Equipment Certificate; SOLAS Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk; SOLAS Certificate of Fitness for the Carriage of Liquefied Gasses in Bulk; SOLAS Mobile Offshore Drilling Unit Safety Certificate; MARPOL 73/78 International Oil Pollution Prevention Certificate; and MARPOL 73/78 International Oil Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.

The Coast Guard Authorization Act of 1996 authorizes the Coast Guard to delegate International Safety Management (ISM) Code certification to organizations including classification societies. The procedures for this delegation will be established in separate rulemaking.

Authorization for Participation in the Alternate Compliance Program (Section 8.420)

Because of the comprehensive nature of ACP delegation, the Coast Guard must ensure that a recognized classification society has adequate experience with exercising delegated authority on behalf of the Coast Guard. A classification society will be eligible to participate in the ACP only after it has performed a delegated function related to general vessel safety assessment for a period of two years. For the purposes of this interim rule, a delegated function related to general vessel safety assessment is issuance of the SOLAS Cargo Ship Safety Construction Certificate or issuance of the SOLAS Cargo Ship Safety Equipment Certificate. The Coast Guard believes this evaluation period is necessary to assess the capabilities and performance of a classification society. The Coast Guard requests comments on the requirement for this evaluation period.

If, after this evaluation period, the Coast Guard finds that the classification society has not performed satisfactorily or lacks adequate experience, the classification society will not be eligible to receive ACP delegation. The Coast Guard will provide the reason for this determination to the classification society.

U.S. Supplement to Class Rules (Section 8.430)

If the Coast Guard finds that a classification society is eligible to receive ACP delegation, the classification society will be required to prepare a U.S. Supplement to its rules. This supplement will address areas in which U.S. marine safety regulations are not adequately covered by the classification society's rules and applicable international regulations.

Agreement conditions (Section 8.130)

The Coast Guard will enter into a written authorization agreement with a recognized classification society that meets the standards necessary to receive delegation of authority. The agreement will define the scope, terms, conditions and requirements of that delegation.

Any authorization agreement between the Coast Guard and a recognized classification society must include the agreement conditions established in this rule. Development of these conditions included review of Appendix 2 of IMO Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, and the Model Agreement for the Authorization of Recognized Organizations Acting on Behalf of the Administration, developed by the IMO Flag State Implementation Subcommittee.

Termination of Authorizations (Sections 8.330 and 8.450)

Loss of recognized status for a classification society will result in termination of any authorization agreement with the Coast Guard.

A certificate issued by a classification society that has had its authorization agreement terminated will remain valid until the next classification society survey associated with that certificate is required or until the certificate expires.

An owner of any vessel enrolled in the ACP and classed by a classification society which loses its authority to participate in the ACP will either have to reclass the vessel with a different classification society that is authorized to participate in the ACP, or disenroll the vessel from the ACP.

Acceptance of Plan Review and Inspection Tasks Performed by a Recognized Classification Society

The Coast Guard may modify Navigation and Vessel Inspection Circuit (NVIC) 10–82, Acceptance of Plan Review and Inspection Tasks Performed by the American Bureau of Shipping for New Construction or Major Modification of U.S. Flag Vessels, to include other recognized classification societies. This determination will be based on a classification society's authorization to perform plan review and inspection functions, delegated under this rulemaking, that are similar to the tasks addressed in NVIC 10–82.

Acceptance of Standards and Functions Delegated Under Existing Regulations (Section 8.250)

Existing Coast Guard regulations contain provisions for acceptance of the standards of recognized classification societies, and for the delegation of some marine safety functions to recognized classification societies. Classification society rules will only be accepted as Coast Guard standards when that classification society has received authorization to conduct the related function. A recognized classification society is not permitted to conduct any

delegated function until it receives a separate written authorization from the Commandant to conduct that function.

Discussion of comments and changes

The Coast Guard received nine comment letters to the NPRM published on June 22, 1995. No public hearing was requested and none was held. The following discussion contains an analysis of comments received and an explanation of any changes made in the rule.

Regulatory Reform

Three comments indicated the NPRM does not go far enough toward eliminating the gap between U.S. regulatory standards and those of other flag states. One comment stated that, in development of the U.S. Supplement, the Coast Guard did not purge the current regulations of unique requirements in areas in which adequate international standards exist. One comment expressed concern that recent regulatory action and legislation leave U.S. flag operators at a significant cost disadvantage with respect to vessel rules.

The ACP is one of several elements of the Coast Guard's regulatory reform initiative. The intent of this rulemaking on the ACP and recognition of classification societies is to provide a compliance option to owners and operators of vessels which are classed by recognized classification societies and that have SOLAS, MARPOL 73/78, and other applicable international certificates. The ACP will reduce the current regulatory burden by eliminating the requirement for duplicative plan review and inspection for certain vessels by both a classification society and the Coast Guard.

Reducing and eventually eliminating the gap between U.S. requirements and international standards is a primary goal of Coast Guard regulatory reform. There are a series of ongoing and recently completed rulemaking projects which work toward this goal. These projects eliminate obsolete or unnecessary Coast Guard regulations and harmonize Coast Guard regulations with international standards.

Because these regulatory reform projects focus on elimination of many regulations which are unique to U.S. flag vessels, they will likely reduce the areas in which gaps exist that need to be covered by U.S. supplements to classification society class rules under the ACP. However, the U.S. supplement to class rules also contains U.S. interpretations of international convention regulations. This portion of the supplement is affected by the proceedings of the IMO as well as by the Coast Guard regulatory reform initiative. It is, therefore, unlikely that the need for a U.S. supplement under the ACP will be entirely eliminated.

Two comments questioned the use of U.S. standards for vessel equipment as the basis for equivalency determinations under the ACP. One comment stated that this could result in rejection of equipment for vessels participating in the ACP that would otherwise be acceptable for foreign flag vessels under SOLAS, MARPOL 73/78, and ABS class rules. The ACP is based on a determination of vessel equivalency between the standards that apply to a vessel enrolled in the ACP and those that apply to other similar vessels certificated by the Coast Guard. As discussed above, harmonization with international standards is a principle goal of the Coast Guard regulatory reform initiative. Completion of this initiative should eliminate the adverse consequences raised by this comment.

One comment suggested that consideration be given to elimination of the requirement for a Certificate of Inspection (COI). The Coast Guard considered this during the initial development of the ACP and decided against it. The COI serves an important purpose in addition to serving as evidence of compliance with vessel inspection requirements because it also establishes specific vessel manning requirements and operational restrictions.

One comment stated this rulemaking was consistent with the goals of the President's National Performance Review and should reduce the inspection burden on owners and operators. The Coast Guard agrees with this comment. Goals expressed in the President's National Performance Review served as a basis for development of the ACP, which will reduce the burden of compliance with Coast Guard regulations.

Authorization of Classification Societies

Four comments supported Coast Guard delegation to classification societies other than the ABS under the ACP and, thereby, broaden the choices of classification societies that would be available to a participating vessel owner. One comment noted that the criteria for classification society eligibility for this program has not been published, and suggested stringent parameters to include criteria covering size, rules, international network, documented quality, and technical competence in general.

The Coast Guard Authorization Act of 1996, Pub. L. 104–324, 110 Stat. 3901, broadens Coast Guard authority to delegate by including foreign classification societies. This allows the Coast Guard to expand the ACP to include foreign classification societies which meet the criteria for recognized classification societies and the requirements for authorization of the delegations necessary to participate in the ACP. The Coast Guard agrees with the comment that criteria for recognition should be very stringent and agrees with the suggested parameters. This rulemking establishes the criteria as suggested.

Conducting the Program

One comment stated that the success of the program is highly dependent on the Coast Guard's role as auditor. The Coast Guard agrees with this comment and recognizes that the role of the Coast Guard auditor under the ACP is substantially different from the traditional role of the Coast Guard marine inspector. The Coast Guard is redefining the role of the marine inspector in order to address major changes such as the ACP. These changes will be reflected in new Coast Guard procedures and training for marine inspectors.

One comment stated that older U.S. flag ships, which are not required to meet all of the provisions of SOLAS, are not addressed in the proposed rulemaking and questioned if this meant that only recently built ships or future new buildings will be able to enroll in the ACP. Nonapplicability of specific SOLAS regulations based on vessel age does not preclude vessel enrollment in the ACP. SOLAS regulations which do not apply to a vessel due to its age will not be applied to that vessel by virtue of the fact that it is enrolled in the ACP.

One comment stated that further information on the program should be distributed to candidates through seminars or meetings. The Coast Guard has disseminated information on the ACP through several major marine industry publications, the Federal Register, and Coast Guard publications. In addition, the Coast Guard is conducting a pilot program for the ACP. For these reasons, the Coast Guard does not see a need for a seminar or public meeting to publicize the ACP.

One comment stated that the Coast Guard should not totally remove itself from vessel inspections, and that the ACP should remain an option and not a requirement. The ACP is an optional program designed to provide an alternative means for vessel certification. The traditional process of

Coast Guard plan review and vessel inspection will remain available to all vessel owners and operators.

Two comments addressed Coast Guard oversight of this program and of classification society performance. An oversight program was developed as part of the ACP and published in COMMANDANT INSTRUCTION 16711.17, Oversight of the U.S. Coast Guard's ABS Based Alternate Compliance Program. Coast Guard oversight ensures that the classification societies perform their duties and responsibilities in accordance with the terms and conditions of their authorization agreement, and provides a means to monitor the performance of plan review and vessel inspection conducted on behalf of the Coast Guard. The Coast Guard will continue to board vessels participating in the ACP to conduct annual inspections. Coast Guard boardings will cover those requirements and activities not delegated to the classification societies. For example, boardings will be conducted by the Coast Guard to verify crew competency in emergency drills and to assess the vessel's condition. Additionally, Coast Guard oversight will ensure that the vessels participating in the ACP do not experience any degradation in the level of safety demonstrated by comparable vessels that continue to be inspected by the Coast Guard under vessel inspection regulations. Upon completion of the ACP pilot program, the oversight program will be evaluated and modified as necessary.

One comment recommended that more flexibility be given to the Coast Guard Officer in Charge, Marine Inspection (OCMI) concerning evaluation of the severity of inspection deficiencies that would preclude issuance of a COI under the ACP. The Coast Guard agrees with this comment and has modified the regulation to give greater discretion to the OCMI to evaluate the severity of deficiencies that may allow issuance of a COI. The revised text is in Section 8.440(d). Guidance is provided to Coast Guard OCMIs in COMMANDANT INSTRUCTION 16711.18, Procedures for Issuing COIs to vessels enrolled in the U.S. Coast Guard's ABS Based Alternate Compliance Program. This guidance allows OCMIs to accept the terms and conditions of classification society outstanding requirements leading to issuance of a COI unless they conflict with applicable U.S. law, or they present a direct and immediate threat to the vessel's crew, the safety of navigation, or the marine environment.

One comment suggested the Coast Guard add the IMO Mobile Offshore Drilling Unit (MODU) Safety Certificate to the list of the international certificates authorized to be issued under the ACP. The Coast Guard agrees with this comment and has included issuance of the IMO MODU Safety Certificate on the list of functions which may be delegated to a recognized classification society. Additionally, the ABS is currently developing a U.S. MODU Supplement to ABS Class Rules. Upon completion and Coast Guard acceptance of this supplement and related survey procedures, the ABS will be authorized to conduct ACP functions on MODUs.

One comment questioned whether the Coast Guard could maintain the technical expertise necessary to provide adequate oversight of classification societies under the ACP considering the reduction in field level training and vessel inspections opportunities that will likely result from the ACP. The Coast Guard recognizes the need to maintain the technical expertise of those individuals who will be charged with performing this oversight role, its marine inspectors. The Coast Guard will maintain its capabilities to perform all of the functions it now performs related to vessel inspection and certification. In addition to certification of U.S. flag vessels, marine inspectors with technical expertise are also currently required for an effective Port State Control Program. The importance of Coast Guard Port State Control responsibilities ensures a continuing need for training of, and technical expertise on the part of, Coast Guard marine inspectors.

One comment questioned the process for obtaining an equivalency determination for foreign equipment from the ABS under the ACP. The procedure for ABS equivalency determinations for vessels enrolled in the ACP is discussed in NVIC 2–95, U.S. Coast Guard's ABS Based Alternate Compliance Program.

User Fees

Two comments addressed reduction of user fees for vessels participating in the program. One comment recommended that information obtained from the pilot program be used to promulgate new user fees because the anticipated reduction in Coast Guard inspection involvement for vessels under the ACP should reduce user fees proportionately.

The Coast Guard will modify current vessel inspection user fees based on information gathered during the ACP pilot program. Any changes to user fee regulations for vessels enrolled in the ACP will be promulgated in a separate rulemaking.

The Pilot Program

Two comments recommended that information obtained from the pilot program be published and used to identify required changes to the program. The Coast Guard agrees with these comments. The Coast Guard is collecting data on the ACP pilot program in order to assess the impact and effectiveness of the ACP. Results of the pilot program will be compiled in a final report which will be published in the Federal Register.

Economic Impact

One comment stated that if the rule were implemented and the surveys were properly planned, the overall cost of inspections and certification for U.S. shipowners should decrease. The Coast Guard agrees with this comment. One of the benefits intended to be provided through the ACP is the reduction of vessel down-time necessary to accommodate both Coast Guard inspections for certification and classification society surveys.

One comment stated that this program could have a positive economic effect for those operators who choose to participate. One comment questioned the economic benefit to the shipbuilder and ship owner during the ship acquisition phase and contended that the increase in ABS involvement would be at an increased cost to the shipbuilder. This comment also stated that a benefit of the ACP would be an improvement in the review process response time. The ACP is intended to be a voluntary alternative compliance method available to the U.S. maritime industry. Individual operators must evaluate their individual benefits of participation in this program.

One comment stated that the additional cost for the classification society surveyor to conduct inspections for the Coast Guard should be substantially less than the $5,000 estimated in the NPRM, and requested specific information on the projected additional effort and fees anticipated by the classification society. The Coast Guard is not involved with the setting of fees for ACP or any other functions delegated to classification societies. Classification society fee information is available from each classification society.

One comment stated that if there were no U.S. Supplement then, theoretically, there should be no additional cost. As discussed above, other, ongoing and recently completed regulatory reform

rulemaking projects work toward eliminating unique Coast Guard regulations. These regulatory reform rulemakings that harmonize U.S. vessel regulations with international standards will remove the need to cover some of the areas that would currently be required to be included in the supplements to classification society class rules under the ACP. U.S. interpretations to international conventions, however, will continue to be covered in classification society supplements. Additionally, unique U.S. requirements required by U.S. statute will also be included in classification society supplements.

Specific Provisions

One comment noted that Section 91.15–5(b) of the NPRM prohibited vessels subject to Coast Guard intervention or enforcement action for violations of 46 CFR, Chapter I, from participating in the ACP and that this prohibition was not included in similar sections for other vessel types. This comment urged removal of this restriction. The Coast Guard agrees with this comment and has removed the restriction.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 8.110: ABS Rules for Building and Classing Steel Vessels, 1996, U.S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, October 21, 1996, and ANSI/ASQC Q9001–1994, Quality Systems—Model for Quality Assurance in Design, Development, Production, Installation, and Servicing, 1994. Copies of the material area available for inspection at Commandant (G–MSE–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. Copies of the material are available from the sources listed in § 8.110.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The Coast Guard expects this rule to provide an economic benefit to the owners and operators of U.S. flagged vessels. Currently, 549 U.S. vessels may be eligible to participate in this optional ACP. The Coast Guard estimates that while a vessel owner may have to pay an additional $5,000 in classification society fees for functions presently preformed by the Coast Guard, the savings in design, construction and operating costs will recover this expense many times over during the lifetime of the vessel. Moreover, ships built and maintained to SOLAS, MARPOL 73/78, recognized classification society rules and accepted U.S. supplement are expected to experience greater competitiveness in the worldwide shipping market.

Additionally, streamlining the certification process will reduce time frames for Coast Guard involvement in the Certificate of Inspection process from an average of over 50 hours to 10 hours or less. Because the vessel is already inspected by the classification society, this program will reduce duplication of effort, decrease vessel ''down time'' and permit greater scheduling flexibility. Lower construction and operating costs, greater flexibility for the vessel in the global market and additional availability for vessel hire will offset the costs incurred through the alternate plan review and inspection process utilizing a recognized classification society. The Coast Guard specifically solicits comments on potential costs, savings and benefits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule change provides an alternative to complying with existing regulations. The Coast Guard believes this rulemaking will have a positive economic impact if the owner chooses to participate in the ACP. Because of the current structure of the industry, it is not expected that any small businesses will be affected by the rule. However, under Section 601 of the Regulatory Flexibility Act, the Coast Guard has provided a flexible approach which could benefit any small businesses which choose to enter this industry. This rulemaking will have no impact on vessel owners who do not choose to participate in this program. Therefore, the Coast Guard certifies that under 5 U.S.C. 605(b) this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) reviews each rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification and other similar requirements.

This rule contains collection of information requirements in the following sections: §§ 31.01–3, 71.15–5, 91.15–5, and 107.205. The following particulars apply:

DOT No.: 2115–0626.

OMB Control No.: 2115–0626.

Administration: U.S. Coast Guard.

Title: Alternate Compliance via Recognized Classification Society and U.S. Supplement to Rules.

Need for Information: Vessel inspection reports are needed to document the compliance of a vessel with recognized classification society rules, the accepted U.S. supplement to rules, and applicable international maritime safety and marine environmental conventions. Classification societies recognized to participate in this program will submit copies of reports they routinely prepare to the Coast Guard. PROPOSED USE OF INFORMATION: The information will be used by the Coast Guard to determine if the vessel is in compliance with the requirements necessary for issuance of a Certificate of Inspection.

Frequency of Response: Reports are required whenever the recognized classification society inspects a vessel on behalf of the Coast Guard. This is generally for the initial issuance of the Certificate of Inspection (COI) and whenever the COI must be renewed. Renewal periods for vessel Certificates of Inspection are not being changed by this proposal. For tank, cargo, and miscellaneous vessels this period is two years; for passenger vessels over 100 gross tons the renewal period is one year; and for mobile offshore drilling units the renewal period is two years. A separate legislative proposal currently exists that would harmonize inspection intervals with international requirements.

Burden Estimate: There is no additional burden created by this

rulemaking. The required reports (120) are already being prepared in the course of business between the classification society and the vessel owner or operator. RESPONDENTS: The recognized classification societies. (60 vessels) FORM(S): None.

Average Burden Hours Per Respondent: No additional burden is created by this rulemaking. The required reports (2 hours per vessel) are already being prepared in the course of business between the classification society and the vessel owner or operator.

The Coast Guard has submitted the requirements to the OMB for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and OMB has approved them. The OMB approval number is OMB Control Number 2115–0626. Persons submitting comments on the requirements should submit their comments both to OMB and the Coast Guard where indicated under ''ADDRESSES.''

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant a Federalism Assessment.

The authority to regulate safety requirements of U.S. vessels is committed to the Coast Guard by statute. Furthermore, since these vessels tend to move from port to port in the national market place, these safety requirements need to be national in scope to avoid numerous, unreasonable and burdensome variances. Therefore, this action will preempt State action addressing the same matter.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule is excluded based on its inspection and equipment aspects. A categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Since the combination of classification society rules, applicable international conventions and the U.S. supplement to the rules have been determined to provide a level of safety equivalent to current Coast Guard regulations, the Coast Guard expects that this rulemaking will have no adverse environmental impact.

List of Subjects

46 CFR Part 8

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Incorporation by reference.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements, Incorporation by reference.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements, Incorporation by reference.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements, Incorporation by reference.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels, Incorporation by reference.

For the reasons set out in the preamble, under the authority of 46 U.S.C. 3306, the Coast Guard amends 46 CFR chapter I as follows:

PART 8—[ADDED]

1. Part 8 is added to read as follows:

PART 8—VESSEL INSPECTION ALTERNATIVES

Subpart A—General

Sec.
8.100 Definitions.
8.110 Incorporation by reference.
8.120 Reciprocity.
8.130 Agreement conditions.

Subpart B—Recognition of a Classification Society

8.200 Purpose.
8.210 Applicability.
8.220 Recognition of a classification society.
8.230 Minimum standards for a recognized classification society.
8.240 Application for recognition.
8.250 Acceptance of standards and functions delegated under existing regulations.
8.260 Revocation of classification society recognition.

Subpart C—International Convention Certificate Issuance.

8.300 Purpose.
8.310 Applicability.
8.320 Classification society authorization to issue international certificates.
8.330 Termination of classification society authority.

Subpart D—Alternate Compliance Program.

8.400 Purpose.
8.410 Applicability.
8.420 Classification society authorization to participate in the Alternate Compliance Program.
8.430 U.S. Supplement to class rules.
8.440 Vessel enrollment in the Alternate Compliance Program.
8.450 Termination of classification society authority.

Authority: 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703; 49 CFR 1.45, 1.46.

Subpart A—General

§ 8.100 Definitions.

Authorized Classification Society means a recognized classification society that has been delegated the authority to conduct certain functions and certifications on behalf of the Coast Guard.

Class Rules means the standards developed and published by a classification society regarding the design, construction and certification of commercial vessels.

Commandant means the Commandant of the Coast Guard.

Delegated Function means a function related to Coast Guard commercial vessel inspection which has been delegated to a classification society. Delegated functions may include issuance of international convention certificates and participation in the Alternate Compliance Program under this part.

Delegated Function Related to General Vessel Safety Assessment means issuance of the SOLAS Cargo Ship Safety Construction Certificate or issuance of the SOLAS Cargo Ship Safety Equipment Certificate.

Gross Tons means vessel tonnage measured in accordance with the International Convention on Tonnage Measurement of Ships, 1969. Vessels not measured by this convention must be measured in accordance with the method utilized by the flag state administration of that vessel.

MARPOL 73/78 means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended.

Officer in Charge, Marine Inspection (OCMI) means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the superintendence and direction of the Coast Guard District Commander, is in charge of an inspection zone for the performance of duties with respect to the inspection, enforcement, and

administration of title 46, Revised Statutes, and acts amendatory thereof of supplemental thereto, and rules and regulations thereunder.

Recognized Classification Society means the American Bureau of Shipping or other classification society recognized by the Commandant under this part.

SOLAS means International Convention for the Safety of Life at Sea, 1974, as amended.

§ 8.110 Incorporated by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the Federal Register and the material must be available to the public. All material is available for inspection at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC and at the U.S. Coast Guard, Office of Design and Engineering Standards, 2100 Second St., SW., Washington, DC 20593–0001, and is available from the source listed in paragraph (b) of this section.

(b) The material incorporated by reference in this subchapter and the sections affected are as follows:

American Bureau of Shipping (ABS)

Two World Trade Center, 106th Floor, New York, NY 10048.

Rules for Building and Classing Steel Vessels, 1996—31.01–3(b), 71.15–5(b), 91.15–5(b).

U.S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, 21 October 1996—31.01–3(b), 71.15–5(b), 91.15–5(b).

American National Standards Institute (ANSI)

11 West 42nd St., New York, NY 10036.

ANSI/ASQC Q9001–1994, Quality Systems-Model for Quality Assurance in Design, Development, Production, Installation, and Servicing, 1994—8.230.

§ 8.120 Reciprocity.

(a) The Commandant may delegate authority to a classification society that has its headquarters in a country other than the United States only to the extent that the flag state administration of that country delegates authority and provides access to the American Bureau of Shipping to inspect, certify and provide related services to vessels flagged by that country.

(b) In order to demonstrate that the conditions described in paragraph (a) of this section are satisfied, a classification society must provide to the Coast Guard an affidavit from the government of the country that the classification society is headquartered in listing the authorizes delegated by the flag state administration of that country to the American Bureau of Shipping, and indicating any conditions related to the delegated authority.

(c) The Commandant will not consider an application for authorization to perform a delegated function submitted under this part until the conditions described in paragraph (a) of this section are satisfied.

(d) The Commandant will not evaluate a classification society for recognition until the conditions described in paragraph (a) of this section are satisfied for at least one of the authorized delegations being sought.

(e) The Commandant may make a delegation regarding load lines under 46 U.S.C. 5107 or measurement of vessels under 46 U.S.C. 14103 without regard to the conditions described in paragraph (a) of this section.

§ 8.130 Agreement conditions.

(a) Delegated functions performed by, and statutory certificates issued by, an authorized classification society will be accepted as functions performed by, or certificates issued by, the Coast Guard, provided that the classification society maintains compliance with all provisions of its agreement with the Commandant. Any agreement between the Commandant and a recognized classification society authorizing the performance of delegated functions will be written and will require the classification society to comply with each of the following:

(1) Issue any certificates related to a delegated function in the English language.

(2) Maintain a corporate office in the United States that has adequate resources and staff to support all delegated functions and to maintain required associated records.

(3) Maintain all records in the United States related to delegated functions conducted on behalf of the Coast Guard.

(4) Make available to appropriate Coast Guard representatives vessel status information and records, including outstanding vessel deficiencies or classification society recommendations, in the English language, on all vessels for which the classification society has performed any delegated function on behalf of the coast Guard.

(5) Report to the commandant (G-MOC) the names and official numbers of any vessels removed from class for which the classification society has performed any delegated function on behalf of the Coast Guard and include a description of the reason for the removal.

(6) Report to the Commandant (G-MOC) all port state detentions on all vessels for which the classification society has performed any delegated function on behalf of the Coast Guard.

(7) Annually provide the Commandant (G-MOC) with its register of classed vessels.

(8) Ensure vessels meet all requirements for class of the accepting classification society prior to accepting vessels transferred from another classification society.

(9) Suspend class for vessels that are overdue for special renewal or annual survey.

(10) Attend any vessel for which the classification society has performed any delegated function on behalf of the Coast Guard at the request of the appropriate Coast Guard officials.

(11) Honor appeal decisions made by the Commandant (G-MSE) or Commandant (G-MOC) on issues related to delegated functions.

(12) Apply U.S. flag administration interpretations, when they exist, to international conventions for which the classification society has been delegated authority to certificate or perform other functions on behalf of the Coast Guard.

(13) Obtain approval from the Commandant (G-MSE) prior to granting exemptions from the requirements of international conventions, class rules, and the U.S. supplement to class rules.

(14) Make available to the Coast Guard all records, in the English language, related to equivalency determinations or approvals made in the course of delegated functions conducted on behalf of the Coast Guard.

(15) Report to the Coast Guard all information specified in the agreement at the specified frequency and to the specified Coast Guard office or official.

(16) Grant the Coast Guard access to all plans and documents, including reports on surveys, on the basis of which certificates are issued or endorsed by the classification society.

(17) Identify a liaison representative to the Coast Guard.

(18) Provide regulations, rules, instructions and report forms in the English language.

(19) Allow the Commandant (G-M) to participate in the development of class rules.

(20) Inform the Commandant (G-M) of all proposed changes to class rules.

(21) Provide the Commandant (G-M) the opportunity to comment on any proposed changes to class rules and to respond to the classification society's disposition of the comments made by the Coast Guard.

(22) Furnish information and required access to the Coast Guard to conduct oversight of the classification society's activities related to delegated functions conducted on behalf of the Coast Guard.

(23) Allow the Coast Guard to accompany internal and external quality audits and provide written results of such audits to appropriate Coast Guard representatives.

(24) Provide the Coast Guard access necessary to audit the authorized classification society to ensure that it continues to comply with the minimum standards for a recognized classification society.

(25) Use only exclusive surveyors of that classification society to accomplish all work done on behalf of, or pursuant to any delegation from, the Coast Guard.

(26) Allow its surveyors to participate in training with the Coast Guard regarding delegated functions.

(b) Amendments to an agreement between the Coast Guard and an authorized classification society will become effective only after consultation and written agreement between parties.

(c) Agreements may be terminated by one party only upon written notice to the other party. Termination will occur sixty days after written notice is given.

Subpart B—Recognition of a Classification Society

§ 8.200 Purpose.

This subpart establishes criteria and procedures for vessel classification societies to obtain recognition from the Coast Guard. This recognition is necessary in order for a classification society to become authorized to perform vessel inspection and certification functions delegated by the Coast Guard as described in this part.

§ 8.210 Applicability.

This subpart applies to all vessel classification societies seeking recognition by the Coast Guard.

§ 8.220 Recognition of a classification society.

(a) A classification society must be recognized by the Commandant before it may receive statutory authority delegated by the Coast Guard.

(b) In order to become recognized, a classification society must meet the requirements of § 8.230.

(c) A classification society found to meet the criteria for recognition will be notified in writing by the Commandant.

(d) If the Coast Guard determines that a classification society does not meet the criteria for recognition, the Coast Guard will provide the reason for this determination.

(e) A classification society may reapply for recognition upon correction of the deficiencies identified by the Coast Guard.

§ 8.230 Minimum standards for a recognized classification society.

(a) In order to receive recognition by the Coast Guard a classification society must:

(1) Establish that it has functioned as an international classification society for at least 30 years with its own class rules;

(2) Establish that it has a history of appropriate corrective actions in addressing vessel casualties and cases of nonconformity with class rules;

(3) Establish that it has a history of appropriate changes to class rules based on their application and the overall performance of its classed fleet;

(4) Have a total classed tonnage of at least 10 million gross tons;

(5) Have a classed fleet of at least 1,500 ocean-going vessels over 100 gross tons;

(6) Have a total classed tonnage of ocean-going vessels over 100 gross tons totaling no less than 8 million gross tons;

(7) Publish and maintain class rules in the English language for the design, construction and certification of ships and their associated essential engineering systems;

(8) Maintain written survey procedures in the English language;

(9) Have adequate resources, including research, technical, and managerial staff, to ensure appropriate updating and maintaining of class rules and procedures;

(10) Have adequate resources and geographical coverage to carry out all plan review and vessel survey activities associated with delegated functions as well as classification society requirements;

(11) Employ a minimum of 150 exclusive surveyors;

(12) Have adequate criteria for hiring and qualifying surveyors and technical staff;

(13) Have an adequate program for continued training of surveyors and technical staff;

(14) Have a corporate office in the United States that provides a continuous management and administrative presence;

(15) Maintain an internal quality system based on ANSI/ASQC Q9001 or an equivalent quality standard;

(16) Ensure classed vessels comply with class rules;

(17) Ensure serviced vessels comply with all statutory requirements related to delegated functions;

(18) Monitor all activities related to delegated functions for consistency and required end-results;

(19) Maintain and ensure compliance with a Code of Ethics that recognizes the inherent responsibility associated with delegation of authority;

(20) Not be under the financial control of shipowners or shipbuilders, or of others engaged commercially in the manufacture, equipping, repair or operation of ships;

(21) Not be financially dependent on a single commercial enterprise for its revenue;

(22) Not have any business interest in, or share of ownership of, any vessel in its classed fleet; and

(23) Not be involved in any activities which could result in a conflict of interest.

(b) Recognition will be granted when it is established that the classification society has an acceptable record of vessel detentions attributed to classification society performance under the Coast Guard Port State Control Program.

§ 8.240 Application for recognition.

(a) A classification society must apply for recognition in writing to the Commandant (G–MSE).

(b) An application must indicate which specific authority the classification society seeks to have delegated.

(c) Upon verification from the Coast Guard that the conditions of reciprocity have been met in accordance with § 8.120, the requesting classification society must submit documentation to establish that it meets the requirements of § 8.230.

§ 8.250 Acceptance of standards and functions delegated under existing regulations.

(a) Classification society class rules will only be accepted as equivalent to Coast Guard regulatory standards when that classification society has received authorization to conduct a related delegated function.

(b) A recognized classification society may not conduct any delegated function under this title until it receives a separate written authorization from the Commandant to conduct that specific function.

§ 8.260 Revocation of classification society recognition.

A recognized classification society which fails to maintain the minimum

standards established in this part will be reevaluated for possible revocation of its recognized status.

Subpart C—International Convention Certificate Issuance

§ 8.300 Purpose.

This subpart establishes options for vessel owners and operators to obtain required international convention certification through means other than those prescribed elsewhere in this chapter.

§ 8.310 Applicability.

This subpart applies to:

(a) Recognized classification societies; and

(b) All U.S. flag vessels that engage in international voyages and are classed by a recognized classification society that is authorized by the Coast Guard to issue the applicable international certificate as specified in this subpart.

§ 8.320 Classification society authorization to issue international certificates.

(a) The Commandant may authorize a recognized classification society to issue certain international convention certificates. Authorization will be based on review of:

(1) Applicable class rules; and

(2) Applicable classification society procedures.

(b) The Coast Guard may delegate issuance of the following international convention certificates to a recognized classification society:

(1) International Load Line Certificate;

(2) International Tonnage Certificate;

(3) SOLAS Cargo Ship Safety Construction Certificate;

(4) SOLAS Cargo Ship Safety Equipment Certificate;

(5) SOLAS Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;

(6) SOLAS Certificate of Fitness for the Carriage of Liquefied Gasses in Bulk;

(7) SOLAS Mobile Offshore Drilling Unit Safety Certificate;

(8) MARPOL 73/78 International Oil Pollution Prevention Certificate; and

(9) MORPOL 73/78 International Oil Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.

(c) The Coast Guard will enter into a written agreement with a recognized classification society authorized to issue international convention certificates. This agreement will define the scope, terms, conditions and requirements of that delegation. Conditions of these agreements are presented in § 8.130.

§ 8.330 Termination of classification society authority.

(a) The Coast Guard may terminate an authorization agreement with a classification society if:

(1) The Commandant revokes the classification society's recognition, as specified in § 8.260; or

(2) The classification society fails to comply with the conditions of the authorization agreement as specified in § 8.130.

(b) Certificates issued by a classification society which has had its authorization terminated will remain valid until the next classification society survey associated with that certificate is required or until the certificate expires, whichever occurs first.

Subpart D—Alternate Compliance Program

§ 8.400 Purpose.

This subpart establishes an alternative to subpart 2.01 of this chapter for certification of United States vessels.

§ 8.410 Applicability.

This section applies to:

(a) Recognized classification societies; and

(b) All U.S. flag vessels that engage in international voyages and are classed by a recognized classification society that is authorized by the Coast Guard to participate in the Alternate Compliance Program (ACP) as specified in this subpart.

§ 8.420 Classification society authorization to participate in the Alternate Compliance Program.

(a) The Commandant may authorize a recognized classification society to participate in the ACP. Authorization will be based on a satisfactory review of:

(1) Applicable class rules; and

(2) Applicable classification society procedures.

(b) Authorization for a recognized classification society to participate in the ACP will require development of a U.S. Supplement to the society's class rules that meets the requirements of § 8.430 of this part, which must be accepted by the Coast Guard.

(c) A recognized classification society will be eligible to receive authorization to participate in the ACP only after it has performed a delegated function related to general vessel safety assessment, as defined in § 8.100, for a two-year period.

(d) If, after this two-year period, the Coast Guard finds that the recognized classification society has not demonstrated the necessary satisfactory performance or lacks adequate experience, the recognized classification society will not be eligible to participate in the ACP. The Coast Guard will provide the reason for this determination to the recognized classification society.

(e) The Coast Guard will enter into a written agreement with a recognized classification society authorized to participate in the ACP. This agreement will define the scope, terms, conditions and requirements of the necessary delegation. Conditions of this agreement are presented in § 8.130.

§ 8.430 U.S. Supplement to class rules.

Prior to receiving authorization to participate in the ACP, a recognized classification society must prepare, and receive Commandant (G–MSE) approval of, a U.S. Supplement to the recognized classification society's class rules. This supplement must include all regulations applicable for issuance of a Certificate of Inspection (COI) which are not, in the opinion of the Commandant, adequately established by either the class rules of that classification society or applicable international regulations.

§ 8.440 Vessel enrollment in the Alternate Compliance Program.

(a) In place of compliance with other applicable provisions of this title, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a COI may submit the vessel for classification, plan review and inspection by a recognized classification society authorized by the Coast Guard to determine compliance with applicable international treaties and agreements, the classification society's class rules, and the U.S. Supplement prepared by the classification society and accepted by the Coast Guard.

(b) A vessel owner or operator wishing to have a vessel inspected under paragraph (a) of this section shall submit an Application for Inspection of U.S. Vessel (CG–3752) to the cognizant OCMI, and indicate on the form that the inspection will be conducted by an authorized classification society.

(c) Based on reports from an authorized classification society that a vessel complies with applicable international treaties and agreements, the classification society's class rules, and the U.S. Supplement prepared by the classification society and accepted by the Coast Guard, the cognizant OCMI may issue a certificate of inspection to the vessel. If the OCMI declines to issue a certificate of inspection even though the reports made by the authorized classification society indicate that the vessel meets applicable standards, the vessel owner or operator may appeal the

OCMI decision as provided in subpart 1.03 of this chapter.

(d) If reports from an authorized classification society indicate that a vessel does not comply with applicable international treaties and agreements, the classification society's class rules, and the U.S. Supplement prepared by the classification society and accepted by the Coast Guard, the cognizant OCMI may decline to issue a certificate of inspection. If the OCMI declines to issue a certificate of inspection, the vessel owner or operator may:

(1) Correct the reported deficiencies and make arrangements with the classification society for an additional inspection;

(2) Request inspection by the Coast Guard under other provisions of this subchapter; or

(3) Appeal via the authorized classification society to the Chief, Office of Compliance, Commandant (G–MOC), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593–0001.

§ 8.450 Termination of classification society authority.

(a) The Coast Guard may terminate an authorization agreement with a classification society if:

(1) The Commandant revokes the classification society's recognition, as specified in § 8.260; or

(2) The classification society fails to comply with the conditions of the authorization agreement as specified in § 8.130.

(b) Owners or operators of vessels enrolled in the ACP and classed by a classification society that has its authority to participate in the ACP terminated must either:

(1) Change the classification society for the vessel to a classification society that is authorized to participate in the ACP; or

(2) Disenroll the vessel from the ACP.

PART 31—INSPECTION AND CERTIFICATION

2. The authority citation for part 31 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703, 5115, 8105; 49 U.S.C. App 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

§ 31.01–3 [Added]

3. Section 31.01–3 is added to read as follows:

§ 31.01–3 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection may comply with the Alternate Compliance Program provisions of part 8 of this chapter.

(b) For the purposes of this section, the following classification societies are authorized by the Coast Guard, and their class rules and supplements are accepted:

American Bureau of Shipping

Two World Trade Center, 106th Floor, New York, NY 10048.

Accepted Class Rules: Rules for Building and Classing Steel Vessels, 1996.

Accepted U.S. Supplements: U.S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, October 21, 1996.

PART 71—INSPECTION AND CERTIFICATION

4. The authority citation for part 71 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; 49 CFR 1.46.

§ 71.15–5 [Added]

5. Section 71.15–5 is added to read as follows:

§ 71.15–5 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection may comply with the Alternate Compliance Program provisions of part 8 of this chapter.

(b) For the purposes of this section, the following classification societies are authorized by the Coast Guard, and their class rules and supplements are accepted:

American Bureau of Shipping

Two World Trade Center, 106th Floor, New York, NY 10048.

Accepted Class Rules: Rules for Building and Classing Steel Vessels, 1996.

Accepted U.S. Supplements: U.S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, October 21, 1996.

PART 91—INSPECTION AND CERTIFICATION

6. The authority citation for part 91 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

§ 91.15–5 [Added]

7. Section 91.15–5 is added to read as follows:

§ 91.15–5 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection may comply with the Alternate Compliance Program provisions of part 8 of this chapter.

(b) For the purposes of this section, the following classification societies are authorized by the Coast Guard, and their class rules and supplements are accepted:

American Bureau of Shipping

Two World Trade Center, 106th Floor, New York, NY 10048.

Accepted Class Rules: Rules for Building and Classing Steel Vessels, 1996.

Accepted U.S. Supplements: U.S. Supplement to ABS Rules for Steel Vessels for Vessels on International Voyages, October 21, 1996.

PART 107—INSPECTION AND CERTIFICATION

8. The authority citation for part 107 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 46 U.S.C. 5115; 49 CFR 1.45, 1.46; § 107.05 also issued under authority of 44 U.S.C. 3507.

§ 107.205 [Added]

9. Section 107.205 is added to read as follows:

§ 107.205 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection may comply with the Alternate Compliance Program provisions of part 8 of this chapter.

(b) For the purposes of this section, the following classification societies are authorized by the Coast Guard, and their class rules and supplements are accepted:

(No classification societies are authorized at this time)

Dated: December 11, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 96–32801 Filed 12–26–96; 8:45 am]

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Part XI

Department of Education

Parental Assistance Program; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 1997 and 1998 Funds; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.310A]

Parental Assistance Program; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 1997 and 1998 Funds

NOTE TO APPLICANTS: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

PURPOSE OF PROGRAM: To assist nonprofit organizations, and nonprofit organizations in consortia with local educational agencies (LEAs), in establishing parental information and resource centers that would (1) increase parents' knowledge of and confidence in child-rearing activities, such as teaching and nurturing their young children; (2) strengthen partnerships between parents and professionals in meeting the educational needs of children aged birth through five years and the working relationship between home and school; and (3) enhance the developmental progress of the children assisted under the program.

ELIGIBLE APPLICANTS: Nonprofit organizations, and nonprofit organizations in consortia with LEAs, in the following States are eligible to apply for funding: Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Idaho, Illinois, Indiana, Kansas, Louisiana, Mississippi, Montana, Nebraska, New Mexico, North Dakota, Oregon, Rhode Island, South Carolina, Utah, Virginia, West Virginia, and Wyoming. In addition, nonprofit organizations in Puerto Rico and in the outlying areas may apply for funding. Eligible outlying areas include the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

The statute requires the Secretary to ensure that grants are distributed, to the greatest extent possible, to all geographic regions of the United States. In the initial competition, nonprofit organizations (either individually or in consortia with LEAs) in 27 States and in the District of Columbia were awarded grants. This competition is for eligible applicants in the remaining States, as previously identified, Puerto Rico, and the outlying areas.

An LEA, by itself, is not eligible for an award. However, an LEA may be part of a consortium with a nonprofit organization that applies. In those instances, the award would be made to the nonprofit organization, which would serve as the fiscal agent.

For purposes of this competition, nonprofit organizations do not include institutions of higher education, State educational agencies, LEAs, intermediate school districts, government entities, or hospitals.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: February 21, 1997.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: April 25, 1997.

AVAILABLE FUNDS: $5,000,000 in FY 1997 funds.

The Secretary does not intend to conduct a separate competition using FY 1998 funds if funds are appropriated for this program for FY 1998. Instead, pursuant to 34 CFR 75.253, from the FY 1998 funds that may be available, the Secretary intends first to make continuation awards to successful applicants under this notice and to the grantees that were initially funded from the FY 1995 appropriation. If the FY 1998 funding level for this program exceeds the FY 1997 level, the Secretary intends to use the excess FY 1998 funds to make awards, on the basis of the selection criteria in this notice, to eligible entities that applied under this competition but failed to receive FY 1997 funding. Thus, in order to be considered for either FY 1997 or FY 1998 funding, an eligible entity must apply for funding by the application deadline announced in this notice.

ESTIMATED RANGE OF AWARDS: $50,000 to $500,000 per year.

(Note: Due to anticipated variances in the scope of proposed activities, the estimated range is very broad. Higher award amounts are for broad-based programs that would serve a substantial number of persons in large geographic regions.)

ESTIMATED NUMBER OF AWARDS: 14.

Note: These estimates are projections for the guidance of potential applicants. The Department of Education is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 48 months.

APPLICABLE REGULATIONS: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, and 85.

Note: The regulations in 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) apply to an LEA that is part of a consortium receiving assistance.

DESCRIPTION OF PROGRAM: Increased parental involvement and participation in the social, emotional, and academic growth of children are an essential part of comprehensive education reform. Title IV of the Goals 2000: Educate America Act (Pub. L. 103–227) (20 U.S.C 5801 *et seq.*) (the Act) helps foster parental involvement by authorizing grants to nonprofit organizations, and nonprofit organizations in consortia with LEAs, to establish and fund parent information and resource centers. These centers will provide training, information, and support to (a) parents of children aged birth through five years; (b) parents of children enrolled in elementary and secondary schools; and (c) individuals who work with these parents.

Grant funds received under this program may be used—

(a) For parent training, information, and support programs that assist parents to—

(1) Better understand their children's educational needs;

(2) Provide follow-up for their children's educational achievement;

(3) Communicate more effectively with teachers, counselors, administrators, and other professional educators and support staff;

(4) Participate in the design and provision of assistance to students who are not making adequate educational progress;

(5) Obtain information about the range of options, programs, services, and resources available at the national, State, and local levels to assist parents of children aged birth through five years and parents of children in elementary and secondary schools;

(6) Seek technical assistance regarding compliance with the requirements of title IV and of other Federal programs relevant to achieving the National Education Goals;

(7) Participate in State and local decisionmaking;

(8) Train other parents; and

(9) Plan, implement, and fund activities that coordinate the education of their children with other Federal programs that serve their children or their families; and

(b) To include State or local educational personnel if that participation will further the activities assisted under the grant.

Entities are encouraged to develop and implement their projects through broad-based outreach and collaborative processes that reflect the diverse needs of parents to be served. The proposed project may not be a narrow activity that benefits parents in only a small portion of the State. Rather, it must provide a mix of direct training services and statewide information and support services. These projects must facilitate and support opportunities for broad-

based participation of communities and parents in the project from throughout the State or throughout a large area of the State, including—

(a) Areas with high concentrations of low-income families;

(b) Urban and rural areas; and

(c) Parents of children who are low-income, minority, or have limited English proficiency.

A meritorious proposal might also describe how the applicant would coordinate project activities with the activities being conducted by other organizations and agencies, parent centers, and parent groups. Particularly appropriate, for example, would be applications from eligible entities that would provide training, information, and support to parents who reside in communities that are developing or implementing a comprehensive education reform plan in which family involvement is an integral strategy, such as those communities that include LEAs supported by a subgrant under section 309(a) of the Goals 2000 Act or by other funds.

Applicants should be aware that section 1118(g) of the Elementary and Secondary Education Act, as amended by the Improving America's Schools Act of 1994, requires schools and districts receiving Title I funds to assist parents and parent organizations by informing them of the existence and purpose of the parent information and resource center in their State, providing them with a description of the services and programs provided by the center, advising parents on how to use the center, and helping them contact the center. Consequently, applicants should be prepared to address the demand for their services created by this requirement.

In developing proposals for increasing the involvement of parents in their children's learning and for strengthening partnerships between parents and educational professionals, applicants might consider issues such as the following:

(1) How the participating communities have assessed or propose to assess the interests and needs of parents in these communities, particularly the interests and needs of parents of low-income, minority, and limited English proficient children, in order to provide services that meet their needs.

(2) How parent groups, schools, and organizations and agencies in the local communities would collaborate to initiate or expand opportunities for parents to be involved in their children's learning and to strengthen their relationships in order to meet the educational needs of children.

(3) How the applicant organization and participating communities would use information currently available concerning best practices in parent and family involvement activities to meet parents' information, training, and support needs.

(4) How participating communities would implement activities that enable parents to engage in learning activities with their children at home and at school.

(5) How the applicant organization would establish, expand, or otherwise participate in a broad-based statewide or areawide network of parents, school personnel, business and community leaders, organizations that work with parents and their children, and others as appropriate, that helps the communities participating in the project as well as other communities learn from and support each other.

PROGRAM REQUIREMENTS: Each application must include assurances that the grantee will—

(a)(1) Be governed by a board of directors the membership of which includes parents; or

(2) Be an organization that represents the interests of parents;

(b) Establish a special advisory committee the membership of which includes—

(1) Parents of children aged birth through five years and parents of children enrolled in elementary and secondary schools; and

(2) Representatives of educational professionals with expertise in improving services for disadvantaged children; and

(3) A broad representation of minority, low-income, and other individuals and groups that have an interest in compensatory education and family literacy;

(c) Use at least one-half the funds provided in the grant in each fiscal year to serve areas with high concentrations of low-income families in order to serve parents who are severely educationally or economically disadvantaged;

(d) Operate a center of sufficient size, scope, and quality to ensure that the center is adequate to serve the parents in the area;

(e) Serve both urban and rural areas;

(f) Design a center that meets the unique training, information, and support needs of parents of children aged birth through five years and of parents of children enrolled in elementary and secondary schools, particularly parents who are economically or educationally disadvantaged;

(g) Demonstrate the capacity and expertise to conduct the effective training information and support activities for which assistance is sought;

(h) Network with—

(1) Clearinghouses;

(2) Parent centers for the parents of infants, toddlers, children, and youth with disabilities served under section 631(e) of the Individuals with Disabilities Act;

(3) Other organizations and agencies;

(4) Established national, State, and local parent groups representing the full range of parents of children aged birth through five years; and

(5) Parents of children enrolled in elementary and secondary schools;

(i) Focus on serving parents of children aged birth through five years and parents of children enrolled in elementary and secondary schools, who are parents of low-income, minority, and limited English proficient children; and

(j) Use part of the funds received under this program to establish, expand, or operate Parents as Teachers (PAT) programs or Home Instruction Programs for Preschool Youngsters (HIPPY) programs, as defined in section 405 of the Act.

The statute does not require a specific amount or percentage of funds to be spent on PAT or HIPPY programs. However, the PAT and HIPPY programs, like the other components of the center, should be integrated with the center's overall activities.

For further information on PAT programs, contact: Sue Sheehan, Training Director, or Joy Rouse, Deputy Director, PAT National Center, Inc., 10176 Corporate Square Drive, St. Louis, MO 63132, (314) 432–4330, (314) 432–8963 (FAX).

For further information on HIPPY programs, contact: Alice Smothers, Director of Policy and Program Development, HIPPY USA, c/o Teachers College, Box 113, 525 W. 120th Street, New York, NY 10027, (212) 678–3500, (212) 678–4136 (FAX).

In the initial competition that was conducted with FY 1995 funds, certain applicants were ineligible for funding because they failed to meet or address one or more of the above requirements. For example, certain applicants failed to describe in their applications how they would serve both urban and rural areas. *To be eligible for funding, an applicant must meet each of the statutory requirements referenced in the* **PROGRAM REQUIREMENTS** *section of this notice.*

Each application for assistance must include assurances that the grantee will comply with these requirements.

NON-FEDERAL CONTRIBUTION: To be eligible for a continuation award, in

each fiscal year after the first fiscal year a grantee receives assistance under this program, the grantee must demonstrate that a portion of the services provided by the grantee will be supported through non-Federal contributions. Those contributions may be in cash or in kind.

SELECTION CRITERIA: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria—*

(1) *Meeting the purposes of the authorizing statute.* (25 points) The Secretary reviews each application to determine how well the project will meet the purpose of the authorizing statute (i.e., title IV of the Goals 2000: Educate America Act), including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590, Evaluation by the recipient.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS:

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on August 20, 1996 (61 FR 43133 through 43135).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.310A, U.S. Department of Education, Room 6213, 600 Independence Avenue, S.W., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a grant, the applicant shall-(1) Mail the original and two copies of the application on or before the deadline date to: U. S. Department of Education, Application Control Center; Attention: (CFDA # 84.310A), Washington, D.C. 20202–4725; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center; Attention: (CFDA # 84.310A), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

APPLICATION INSTRUCTIONS AND FORMS:

The appendix to this application contains forms and instructions plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, and various assurances and certifications. In preparing your application for submission to the Department, please organize the parts and additional materials in the following order:

Application for Federal Assistance (Standard Form 424 (Rev. 4–88)).

Budget Information—Non-Construction Programs (ED Form 524).

Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013–6/90).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the Federal Register (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Elizabeth O'Driscoll, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington, D.C. 20202–6135. Telephone: (202) 401–0039. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register. Abstracts of currently-funded parental assistance center programs are available at these sites or by contacting Elizabeth O'Driscoll at (202) 401–0039.

Program Authority: 20 U.S.C. 5911 *et seq.*

Dated: December 23,1996.

Gerald N. Tirozzi,

Assistant Secretary Elementary and Secondary Education.

Instructions for Estimated Public Reporting Burden

According to 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 for this collection of information is 1810–0578. Expiration date: 5/31/98. The time required to complete this collection of information is estimated to average 48 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202–4651.

If you have any comments or concerns regarding the status of your individual submission of this form, write directly to: Elizabeth O'Driscoll, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington, D.C. 20202–2110.

Instructions for Application Narrative

Before preparing the Application Narrative an applicant should read carefully the authorizing statute and the information in this notice, including the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

Notice to all Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its

federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information my be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to 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 for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 3 1 0A

TITLE: Parental Assistance Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

---

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

---

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report ____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying ~~Entity~~ Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

~~11. Amount of Payment *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. Type of Payment *(Check all that apply):*~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~○ e. deferred~~ ~~☐ f. other; specify: _____~~
~~12. Form of Payment *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in kind; specify: nature _____ value _____~~	

~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~

~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~

~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

[FR Doc. 96–32942 Filed 12–26–96; 8:45 am]
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