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Tuesday
May 6, 1997

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WASHINGTON, DC

WHEN: May 13, 1997 at 9:00 am
WHERE: Office of the Federal Register
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(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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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. 62, No. 87
Tuesday, May 6, 1997

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–97–01]

Tobacco Inspection; Grower's Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains the determination with respect to the referendum on the merger of Tabor City and Whiteville, North Carolina, to become the consolidated market of Tabor City-Whiteville. A mail referendum was conducted during the period of March 24–28, 1997, among tobacco growers who sold tobacco on these markets in 1996 to determine producer approval/disapproval of the designation of these markets as one consolidated market. Therefore, for the 1997 and succeeding flue-cured marketing seasons, the Tabor City and Whiteville, North Carolina, tobacco markets shall be designated as and called Tabor City-Whiteville. The regulations are amended to reflect this new designated market.

EFFECTIVE DATE: June 5, 1997.

FOR FURTHER INFORMATION CONTACT: William O. Coats, Deputy Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090–6456; telephone number (202) 205–0508.

SUPPLEMENTARY INFORMATION: A notice was published in the March 13, 1997, issue of the **Federal Register** (62 FR 11773) announcing that a referendum would be conducted among active flue-cured producers who sold tobacco on either Tabor City or Whiteville during the 1996 season to ascertain if such producers favored the consolidation.

The notice of referendum announced the determination by the Secretary that the consolidated market of Tabor City and Whiteville, North Carolina, would be designated as a flue-cured tobacco auction market and receive mandatory Federal grading of tobacco sold at auction for the 1997 and succeeding seasons, subject to the results of the referendum. The determination was based on the evidence and arguments presented at a public hearing held in Tabor City, North Carolina, on November 6, 1996, pursuant to applicable provisions of the regulations issued under the Tobacco Inspection Act, as amended. The referendum was held in accordance with the provisions of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations set forth in 7 CFR 29.74.

Ballots for the March 24–28 referendum were mailed to 211 producers. Approval required votes in favor of the proposal by two-thirds of the eligible voters who cast valid ballots. The Department received a total of 197 responses: 160 eligible producers voted in favor of the consolidation; 22 eligible producers voted against the consolidation; and 15 ballots were determined to be invalid.

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The final rule will not exempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. Most tobacco producers and many tobacco warehouses are small businesses as defined in the Regulatory Flexibility Act. This action will not substantially affect the normal movement of the commodity in the marketplace. It has been determined that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR Part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

1. The authority citation for 7 CFR Part 29, Subpart D, continues to read as follows:

Authority: Sec. 5, 49 Stat. 732, as amended, by Sec. 157(a)(1), 95 Stat. 374 (7 U.S.C. 511d).

Subpart D—Orders of Designation of Tobacco Markets

2. In § 29.8001, the table is amended by adding a new entry (ooo) to read as follows:

§ 29.8001 [Amended]

* * * * *

DESIGNATED TOBACCO MARKETS

Territory	Types of tobacco	Auction markets	Order of designation	Citation
*	*	*	*	*
(ooo) North Carolina	Flue-Cured	Tabor City-Whiteville	June 5, 1997	(insert FR citation).

Dated: April 30, 1997.

Lon Hatamiya,

Administrator.

[FR Doc. 97–11744 Filed 5–5–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1493 and 1494

Revised Definition of U.S. Agricultural Commodity for Commercial Export Programs

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is amending its commercial export program regulations to change the definition of the term ''U.S. agricultural commodity.'' These changes are to conform the applicable regulations with a provision of the Federal Agriculture Improvement and Reform Act of 1996. This final rule is applicable to the Export Enhancement Program (EEP), the Dairy Export Incentive Program (DEIP), CCC's Export Credit Guarantee Program (GSM–102), CCC's Intermediate Export Credit Guarantee Program (GSM–103), and the Supplier Credit Guarantee Program (SCGP). The revised definition contains two subparagraphs. The first subparagraph is similar to the current definition of U.S. agricultural commodity. The second subparagraph applies only to a product of an agricultural commodity that the Secretary designates as a high value product. Under the applicable statute and the revised definition, if this designation is made, to qualify as a U.S. agricultural commodity 90 percent or more of the agricultural components of the product (by weight, excluding packaging and water) must be entirely produced in the United States.

EFFECTIVE DATE: June 5, 1997.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1035, Washington D.C., 20250–1035; Fax (202) 720–2949; Telephone (202) 720–6211. The U.S. Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age disability, political beliefs and marital or familial status. Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720–5881 (voice) or (202) 720–7808 (TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. It has been determined to be neither significant nor economically significant for the purposes of E.O. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Executive Order 12372

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

The Foreign Agricultural Service (FAS) is excluded from the requirements of preparing procedures to implement the National Environmental Policy Act and is categorically excluded from the preparation of an Environmental Assessment or Environmental Impact Statement unless the Administrator of FAS determines that an action may have a significant environmental effect 7 CFR 1b.4(b)(7). The Administrator has made no such determination with respect to this action.

Paperwork Reduction Act

The amendments to 7 CFR parts 1493 and 1494 set forth in this final rule do not contain information collections that require clearance by the OMB under the provisions of 44 U.S.C. 35.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. The final rule would not have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations.

Background

The Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127) (''1996 Act'') became effective on April 4, 1996. Section 243 (c) of the 1996 Act amended the definition of ''United States agricultural commodity'' set forth in section 102(7) of the Agricultural Trade Act of 1978. The new definition of a United States agricultural commodity reads as follows: ''(A) an agricultural commodity or product entirely produced in the United States; or (B) a product of an agricultural commodity—(i) 90 percent, or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and (ii) that the Secretary determines to be a high value agricultural product.''

This amendment did not affect that part of the definition specifically concerning fish. As before, for purposes of Section 102(7), fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

The revised definition is applicable to the Export Enhancement Program (EEP), 7 CFR part 1494, subpart B; the Dairy Export Incentive Program (DEIP), 7 CFR part 1494, subpart D; CCC's Export Credit Guarantee Program (GSM–102), 7 CFR part 1493, subpart B; CCC's Intermediate Export Credit Guarantee Program (GSM–103), 7 CFR part 1493, subpart B; and the Supplier Credit Guarantee Program (SCGP), 7 CFR part 1493, subpart D. Pursuant to 7 CFR part 1494, subpart D, the operational regulations of the EEP found at 7 CFR 1493, subpart B, also apply to the DEIP. Therefore, the changes made by this final rule are applicable to the DEIP via a change to the EEP regulations.

This final rule amends each of the above regulations to include the revised statutory definition of a United States agricultural commodity and to make conforming changes to the applicable certifications made by exporters. Such certifications are made by exporters at

the time of making offers (in EEP and DEIP) and at the time of submitting applications for payment guarantees and evidence of export reports in the GSM–102/103 and SCGP. CCC is proceeding directly through a final rule because the regulatory amendments are required by the statutory change.

On the effective date of this rule, CCC's Notices to Participants Numbers GSM FY 96–2, EEP FY 96–4, DEIP FY 96–4, COAP/SOAP FY 96–3, and SCGP FY 96–1, issued on July 18, 1996, are superseded. Under these Notices to Participants, exporters of designated high value products were to make separate certifications that conformed to the new definition of United States Agricultural Commodity.

List of Subjects

7 CFR Part 1493

Administrative practice and procedures, Agricultural commodities, Credit, Exports, Financing, Guarantees, Reporting and recordkeeping requirements.

7 CFR Part 1494

Administrative practice and procedure, Agricultural commodities, Exports, Government contracts, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 1493 and 1494 are amended as follows:

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

Subpart B—CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103) Operations

1. The authority citation for 7 CFR part 1493 continues to read as follows:

Authority: 7 U.S.C. 5602, 5622, 5661, 5662, 5663, 5664, 5676; 15 U.S.C. 714b(d), 714c(f).

2. Section 1493.20 is amended by revising paragraph (z) to read as follows:

§ 1493.20 Definition of terms.

* * * * *

(z) U.S. agricultural commodity. (1) An agricultural commodity or product entirely produced in the United States; or

(2) A product of an agricultural commodity—

(i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(ii) That the Secretary determines to be a high value agricultural product. For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

* * * * *

3. Section 1493.50 is amended by revising paragraph (a) to read as follows:

§ 1493.50 Certification requirements for obtaining payment guarantee.

* * * * *

(a) The agricultural commodity or product to be exported under the payment guarantee is a U.S. agricultural commodity as defined by § 1493.20(z).

* * * * *

4. Section 1493.90 is amended by revising paragraph (a) to read as follows:

§ 1493.90 Certification requirements for the evidence of export.

* * * * *

(a) The agricultural commodity or product exported under the payment guarantee is a U.S. agricultural commodity as defined by § 1493.20(z).

* * * * *

5. Section 1493.410 is amended by revising paragraph (x) to read as follows:

§ 1493.410 Definition of terms.

* * * * *

(x) U.S. agricultural commodity.

(1) An agricultural commodity or product entirely produced in the United States; or

(2) A product of an agricultural commodity—

(i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(ii) That the Secretary determines to be a high value agricultural product. For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

* * * * *

6. Section 1493.440 is amended by revising paragraph (a) to read as follows:

§ 1493.440 Certification requirements for a payment guarantee.

(a) The agricultural commodity or product to be exported under the payment guarantee is a U.S. agricultural commodity as defined by § 1493.410(x).

7. Section 1493.480 is amended by revising paragraph (a) to read as follows:

§ 1493.480 Certification requirements for the evidence of export.

* * * * *

(a) The agricultural commodity or product exported under the payment guarantee is a U.S. agricultural commodity as defined by § 1493.410(x).

* * * * *

PART 1494—EXPORT BONUS PROGRAMS

Subpart B—Export Enhancement Program Operations

1. The authority citation for 7 CFR part 1994, subpart B, continues to read as follows:

Authority: 7 U.S.C. 5602, 5651, 5661, 5662, 5676; 15 U.S.C. 714c.

2. Section 1494.201 is amended by revising paragraph (gg) to read as follows:

§ 1494.201 Definition of terms.

* * * * *

(gg) U.S. agricultural commodity. (1) An agricultural commodity or product entirely produced in the United States; or

(2) A product of an agricultural commodity—

(i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(ii) That the Secretary determines to be a high value agricultural product. For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

3. Section 1494.501 is amended by revising paragraph (c)(20)(xi) to read as follows:

§ 1494.501 Submission of offers to CCC.

* * * * *

(c) * * *

(20) * * *

(xi) The agricultural commodity or product to be exported under an EEP Agreement is a U.S. agricultural commodity as defined by § 1494.201(gg).

* * * * *

Signed at Washington, DC, on April 10, 1997.

Christopher E. Goldthwait,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 97–11693 Filed 5–5–97; 8:45 am]

BILLING CODE 3410–10–M

FARM CREDIT ADMINISTRATION

12 CFR Part 617

RIN 3052–AB33

Referral of Known or Suspected Criminal Violations

AGENCY: Farm Credit Administration (FCA).

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by order of the FCA Board, issues a final rule amending its regulations governing the referral of known or suspected criminal violations. The objective of this final regulation is to promote consistency, efficiencies, and timeliness by Farm Credit System (FCS or System) institutions in reporting, investigating, and aiding in the prosecution of known or suspected criminal activities. Therefore, the final regulation requires System institutions to notify law enforcement agencies of known or suspected criminal violations that meet certain reporting thresholds. Generally, a criminal violation must be reported under this part if there is a reasonable basis to conclude that there was an intent to ''defraud'' a System institution and the amount of the actual or potential loss meets the reporting thresholds.

The final regulation mandates the continued use of the FCA Criminal Referral Form (hereinafter FCA Referral Form), which is located in the FCA *Examination Manual*, for making a criminal referral.

DATES: The regulation shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Jane Virga, Senior Attorney, Legal Counsel Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Farm Credit Act of 1971, as amended, the FCA regulates and examines FCS institutions for safety and soundness and for compliance with Federal laws and regulations. Violations of Federal laws and regulations could undermine public confidence in the FCS and affect the safety and soundness of FCS institutions. System institutions have the responsibility to establish and maintain safeguards to detect, deter, and report criminal activity involving the assets, operations, or affairs of the institution. Law enforcement agencies need to receive timely and specific information from FCS institutions on known or suspected criminal violations to determine whether investigations and prosecutions are warranted.

The Interagency Bank Fraud Working Group (BFWG) was formed to address concerns that financial institutions were becoming increasingly vulnerable to insider fraud and prosecutions were not keeping pace with criminality, and to promote cooperation toward the goal of improving the Federal Government's response to white-collar crime in the Nation's federally insured and/or regulated financial institutions. The BFWG consists of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Farm Credit Administration, the Federal Bureau of Investigation, the U.S. Secret Service, the Department of Justice, and the U.S. Department of the Treasury. The objectives of the BFWG were to facilitate the reporting of criminal activity by financial institutions and to enhance the law enforcement agencies' ability to investigate and prosecute the matters reported. To accomplish these objectives, the BFWG developed uniform reporting standards and processes for filing criminal referrals and developed a model regulation.

Following the BFWG's guidance, the FCA proposed a regulation that was published in the **Federal Register** on October 13, 1992 (57 FR 46819). The comment period for the proposed regulation amending part 617 closed on November 12, 1992. Pursuant to the commenters' request, the FCA Board agreed to republish the proposed regulation in order to afford the public another opportunity to comment. The reproposed regulation was published in the **Federal Register** on June 20, 1994 (59 FR 31562). The FCA considered and addressed all comments to the proposed regulation in the reproposed regulation.

Following the reproposal, there were several requests that FCA staff meet with the commenters to discuss issues and problems that arise in the area of criminal referrals. Commenters believed that it would provide a better opportunity for them to present their views on the reproposed regulation. Hence, after the comment period closed, FCA staff met with the commenters in Sacramento, California, on September 27, 1995. This meeting was held in compliance with the FCA Board's Policy Statement FCA–PS–37 published in the **Federal Register** on April 1, 1992 (57 FR 11083), which addresses communications with the public during the rulemaking process.

During the meeting, commenters expounded on their written comments. After the meeting, several attendees provided written confirmation of the meeting discussions. No new substantive comments were made at the meeting and, thus, comments made at the meeting are not separately described herein. These follow-up letters and minutes of the meeting are retained in the FCA's rulemaking file and are available for public review.

II. Analysis of Comments to the Reproposed Regulation and FCA Responses

A. The Need for a New Criminal Referral Regulation

Several commenters questioned the need for a new criminal referral regulation and argued that the existing regulation (found in 12 CFR part 617) is adequate to ensure the proper reporting of criminal referrals. The FCA disagrees and believes that the existing criminal referral regulation should be revised because it is out-of-date and fails to reflect the arms-length relationship between the FCA and the System.

The existing regulation, first promulgated in 1982, has no minimum reporting thresholds and requires the reporting of all criminal violations. Further, the existing regulation does not contain procedures adequate to ensure consistent System-wide reporting. A 1982 interpretative letter from the FCA to the President of each Farm Credit Bank introduced procedures not included in the regulation at part 617. The letter indicated that dollar-reporting thresholds could be applied in certain circumstances and emphasized the significant discretion District Bank counsel had in reviewing cases of suspected violations. At present, some institutions report all violations and some follow the 1982 interpretative letter and only report criminal violations exceeding certain thresholds, which in some cases is $50,000. This final rule supersedes the guidelines provided in the 1982 interpretative letter and the existing regulation. The final rule establishes reporting thresholds that all System institutions must follow.

The existing regulation established slightly different procedures for reporting violations allegedly committed by institution personnel and procedures for reporting violations allegedly committed by borrowers. The existing regulation specifically requires that criminal referrals concerning institution personnel be reported to the Chief Examiner of FCA's Office of Examination and that those concerning borrowers be reported to the FCA. The regulation also specifies that the Chief Examiner is to refer cases concerning criminal law violations by institution personnel to the U.S. Attorney, while the general counsel of the Farm Credit district is to refer criminal law violations by borrowers to the U.S. Attorney and report the referral to the FCA's General Counsel. The final regulation makes the reporting procedures for institution personnel and borrowers the same. It requires institutions to make these referrals directly to the appropriate Federal law enforcement authorities and to provide copies of all referrals to the FCA's Office of General Counsel. It is the Office of General Counsel that, in practice, monitors criminal referrals and has primary contact with Federal law enforcement authorities. The final regulation reflects that role in addition to bringing greater consistency to the referral process.

In addition, the existing regulation is not consistent with the BFWG's recommendations concerning reporting thresholds, which have been implemented by the other Federal financial regulatory agencies. The BFWG, which included the FCA, established the same thresholds for all Federal financial regulatory agencies. The BFWG believed that uniform thresholds would enhance the ability of the Federal financial regulatory agencies and the law enforcement agencies to detect, investigate, and prosecute known or suspected criminal violations. The Department of Justice, as a member of the BFWG and oversight agency for the Offices of the U.S. Attorneys, assisted in the establishment of the thresholds. Therefore, as a participant in the BFWG and in concurrence with the Department of Justice's judgment on this matter, the FCA is establishing the reporting thresholds as recommended by the BFWG.

Although the FCA's final regulation has been tailored, as appropriate, to address concerns raised by agricultural lending, it is patterned on the BFWG's model regulation and the rules promulgated by the other Federal financial regulatory agencies. The FCA continues to believe that the FCA criminal referral regulation should incorporate the core principles of the model regulation.

B. Reporting Threshold Limits

The dollar amount that would trigger the requirement to make a criminal referral has been a matter of some controversy. The proposed and reproposed regulation established reporting thresholds of $1,000 and $5,000 for known and unknown suspects, respectively, and $0 for institution personnel. (The term ''unknown suspect'' is used where a criminal violation has occurred but no reasonable basis exists for identifying the perpetrator.) Although commenters supported the $0 reporting threshold for institution personnel, they argued that the FCA should adopt higher reporting thresholds for borrowers. The commenters' principal objection to the $1,000 and $5,000 thresholds was that few investigations or prosecutions by Federal law enforcement authorities result from referrals unless the amount at issue is substantial. Several commenters suggested that a $50,000 reporting threshold for borrowers would be appropriate. One commenter suggested that reporting thresholds should be the same for borrowers and unknown suspects. Another commenter stated that if the FCA was not mandating the use of a Uniform Criminal Referral Form it should not mandate the use of uniform reporting thresholds.

The BFWG first recommended reporting thresholds of $1,000 for known suspects and $5,000 for unknown suspects. The BFWG subsequently revised the thresholds and recommended reporting thresholds at $5,000 for borrowers and $25,000 for unknown suspects. The BFWG has not changed its recommendation of $0 for institution personnel. The Federal law enforcement authorities that are part of the BFWG, including the Department of Justice, believe these revised reporting thresholds are appropriate and have specifically stated that they want to receive all criminal referrals meeting these thresholds.

In the final regulation reporting thresholds for institution personnel will remain at $0, so that any criminal act by institution personnel will be reported. After careful evaluation of the BFWG's recommendations and the commenters' concerns, the Agency also believes that the reporting thresholds should be increased for both known and unknown suspects. Thus, the FCA is increasing the threshold for known suspects from $1,000 to $5,000. The threshold for unknown suspects is also increased from $5,000 to $25,000. This action responds to the commenters' requests for higher thresholds. It also is consistent with the BFWG's revised recommendations on reporting thresholds, which the BFWG raised in response to commentary after the model regulation was first proposed.

The use of uniform reporting thresholds will enhance the ability of the Federal financial regulatory agencies and the law enforcement agencies to detect, investigate, and prosecute known or suspected criminal activities. Therefore, the final regulation establishes reporting thresholds of $0 for institution personnel, $5,000 for known suspects, and $25,000 for unknown suspects.

C. Compliance Costs

Many of the commenters expressed concern about the cost of compliance with the regulatory requirements for making a criminal referral. The commenters were concerned that criminal referrals are costly and time-consuming, yet rarely result in investigations, much less prosecutions. For example, one commenter indicated that it took 40 hours of an employee's time to investigate an allegation and complete a criminal referral form. Another commenter indicated that legal counsel was necessary to evaluate the sufficiency of evidence or the appropriateness of making certain criminal referrals.

The FCA recognizes that System institutions will incur costs to comply with the final regulation just as they currently incur costs to make a criminal referral. The FCA believes that the benefit of timely and consistent reporting of criminal referrals at the new, higher reporting thresholds will outweigh the expense of compliance. Also, the regulation will standardize the reporting process and ensure that institutions apply uniform standards to all affected parties (borrowers, employees, officers, and directors). However, compliance costs can be minimized. For instance, an institution is not required to conduct an exhaustive investigation of every reported violation. Rather, an institution is only required to conduct an inquiry sufficient to complete the FCA Referral Form.

D. Defining Potential Loss

Several commenters believed that the FCA's discussion of ''potential loss'' in the preamble to the reproposed regulation needed further clarification. The preamble indicated that potential loss would always equal the amount of the collateral conversion or financial

misstatement. A number of commenters disagreed with this interpretation. They pointed out that in some instances a lender may reasonably expect the potential loss to be smaller or even zero. This could occur, for example, if a financial misstatement, although in excess of $5,000, was insignificant in light of the borrower's overall financial position. Similarly, a lender might reasonably expect no loss on a loan, despite a conversion of collateral worth more than $5,000, if the remaining collateral well exceeded the lender's requirements and no other obstacle to full repayment existed. Finally, the commenters argued that if a lender discovered a financial misstatement or collateral conversion only after the loan was repaid as agreed, the absence of any actual loss should take precedence over any retrospective view of potential loss.

The final rule continues to state that lenders must refer crimes when the ''actual or potential loss'' exceeds the applicable thresholds, but the parenthetical ''(before reimbursement or recovery)'' has been deleted. Nevertheless, the FCA continues to believe that when an institution experiences an actual loss, the reporting thresholds in § 617.2 govern whether a referral is required and are to be applied before reimbursement or recovery. The fact that a borrower reimburses the institution after the fact or that the converted collateral is recovered is irrelevant in determining whether a criminal referral is required. However, when the amount of any actual loss is not yet known, the FCA has concluded that the lender should make a reasonable assessment of the amount of the potential loss at the time of discovery of the criminal activity and use that amount to determine if a referral is required. The lender may base this assessment on the amount of the collateral conversion or financial misstatement, or on the reasonable estimate of loan loss attributable to the conversion or misstatement, or another method that is reasonable under the circumstances. When an estimate of potential loss is expressed as a range, a referral is required if any part of the range exceeds the applicable threshold.

To further clarify, System institutions are advised that where criminal intent is not suspected, no criminal referral need be made because, in most circumstances, there would be no criminal violation regardless of the actual or potential loss. If it is clear that an act was merely negligent and there was no criminal intent, a referral would be inappropriate. Nor is a criminal referral required if there is clear intent to defraud but no actual or potential loss results. A loss (or potential loss) over the threshold amount and the requisite intent must coincide before a criminal referral is required.

Some commenters suggested that extenuating circumstances might argue against prosecution in a situation where a criminal referral is required. An institution may always express its view on whether prosecution does or does not appear to be warranted to the Federal authorities, including a U.S. Attorney or investigatory agency. A well-reasoned recommendation against prosecution in appropriate cases should address any perceived inequities in the criminal referral process without undermining the uniformity that the criminal referral regulations seek to promote.

There may also be situations where a System institution wishes to refer a suspected criminal violation involving a dollar amount under the threshold amount. System institutions should be aware that the final regulation does not affect, in any way, an institution's discretion to make a criminal referral that is below the reporting thresholds to the appropriate law enforcement authorities. Indeed, a System institution should always bear in mind its obligation to uphold the integrity of the Farm Credit System and practice sound credit management. Thus, for example, the repeated conversion of collateral or the conversion of large amounts of collateral should be reported even where the actual or potential loss does not meet the threshold requirements.

E. Discretion To Make a Criminal Referral

The preamble to the reproposed regulation attempted to clarify the extent of an institution's discretion to make a criminal referral. Commenters requested that the substance of the preamble discussion on discretion or the language in the current § 617.7160 be included in the final regulation. Current § 617.7160 provides that ''it shall be the function of the general counsel of the Farm Credit district * * * to determine if there is substantial evidence that a violation * * * has occurred * * *.'' The commenters also believed that further discussion on discretion is necessary in the preamble to the final regulation to avoid unnecessary referrals.

In response to the commenters' request, the FCA has incorporated guidance on discretion in the regulatory text as well as in the preamble. The final regulation incorporates language on discretion in new § 617.1(d), which provides that a System institution is responsible for determining whether there appears to be a reasonable basis to believe that a criminal violation has occurred and, if so, to report the violation to the proper law enforcement authorities. The FCA did not adopt the language in current § 617.7160 because the term ''substantial evidence'' may suggest a higher evidentiary standard than may be warranted in determining whether a criminal violation may have occurred.

The FCA reiterates that, generally, a criminal violation that must be reported under this part involves a determination that there is a reasonable basis to believe that a borrower or institution personnel intended to ''defraud'' an institution through violation of a Federal criminal statute. Institutions, therefore, must seek to determine whether a misrepresentation of assets or a collateral conversion, for example, was done inadvertently or with the intent to defraud the institution. This determination involves the exercise of considerable discretion. In ascertaining whether a criminal referral is appropriate, an institution should consider all facts and circumstances, including those that go to the question of intent. If the institution is persuaded that there is no evidence of intent and, hence, no criminal violation, then it need not make a criminal referral. However, an institution should adequately document the basis for its determination that there was no criminal intent, especially when the institution suffers a loss. While System institutions are not required to consult legal counsel in determining whether an activity involved criminal intent, they may prefer to do so in close cases.

F. Probability of Prosecution

Several commenters urged the FCA to include in the final regulation a provision that would allow System institutions to make a referral determination based on the probability of prosecution of the subject of the criminal referral. Commenters asserted that some U.S. Attorneys have established informal dollar thresholds for prosecution that are much higher than the reporting thresholds established by the BFWG. The commenters stated that in their experience some U.S. Attorneys will not prosecute violations in amounts below these informal thresholds.

The Department of Justice, a participant in the BFWG and the oversight agency for the Office of the U.S. Attorneys, helped establish and fully supports the thresholds. While it is true that prosecution for low dollar amounts is rare, the FCA believes that the new reporting thresholds are

appropriate and that law enforcement agencies should have the chance to determine whether a criminal referral above these amounts is investigated and prosecuted. Thus, the FCA has decided not to incorporate this proposal in the final regulation.

G. Discovery of a Criminal Violation

Several commenters correctly noted an inconsistency in the language of reproposed § 617.2(a) and (b). Reproposed § 617.2(a) required System institutions to refer criminal activity after a ''determination'' that a violation has occurred. Reproposed § 617.2(b) required forwarding an FCA Referral Form to the FCA after a System institution ''has discovered (or should have discovered)'' a violation. Commenters also requested that the FCA limit its references to due diligence in the final regulation. Specifically, several commenters requested that the FCA delete the language ''(or should have discovered)'' from § 617.2(b).

The FCA agrees that the due diligence standard is already established in § 617.2(a) and therefore applies to all aspects of an institution's criminal referral process. Consequently, the FCA is deleting § 617.2(b) and moving the requirement that an FCA Referral Form be forwarded to the FCA's Office of General Counsel to § 617.2(a).

These changes make it clear that the obligation to make a criminal referral arises when management has determined that there is a known or suspected criminal activity, not when management ''has discovered (or should have discovered)'' a violation.

H. Time Limit To Make a Criminal Referral

Several commenters requested that the 30-day period during which a System institution must make a criminal referral be amended to reflect the varying complexity of some criminal referrals. Although the FCA recognizes System concerns, the Agency does not believe a change is warranted. The final regulation continues to provide that referrals must be made within 30 days of determining that a criminal violation appears to have occurred. The FCA believes that in the great majority of situations it is reasonable to expect that System institutions will be able to make a criminal referral within 30 days of determining that a violation has occurred. In unusual situations involving complicated facts, a System institution may need more than 30 days to make a complete criminal referral detailing all relevant information to law enforcement authorities. If so, System institutions should make a preliminary criminal referral to the appropriate law enforcement authorities and follow up as soon as possible to ensure that a complete accounting of the facts and circumstances are reported to the law enforcement authorities. Finally, a System institution should not delay making a complete and accurate criminal referral because it is involved in a sensitive workout with a borrower or the borrower is under bankruptcy protection.

I. Transferring Responsibility for Making Criminal Referrals

Several commenters queried whether the final regulation would allow System institutions that have primary responsibility for making criminal referrals to transfer this activity to their supervising bank. While the institution retains the ultimate accountability for exercising due diligence to ensure the discovery, appropriate investigation, and reporting of criminal activity as required by § 617.2(a) and for ensuring that the criminal referral is made, a criminal referral can be made on the institution's behalf by a supervising System bank. This may be done pursuant to a formal agreement whereby the System bank making the referral is acting as an agent for the institution with primary responsibility.

J. Referrals to State and Local Authorities

One commenter urged the FCA to amend the final regulation so that System institutions are merely encouraged to file copies of the FCA Referral Form with State and local authorities rather than be required to make such a criminal referral. The FCA never intended to require that System institutions use the FCA Referral Form to refer State and local violations to State and local authorities or to inform State and local authorities of Federal violations. Rather, § 617.2(b) (formerly § 617.2(c) in the reproposed regulation) requires a System institution to notify the appropriate State or local law enforcement authorities when there is a known or suspected violation of State or local criminal law. The FCA continues to believe that this is a reasonable requirement that will help ensure the safety and soundness of the institution and the System without imposing an undue burden. A System institution may use whatever means it deems appropriate to make the referral. If a System institution thinks it appropriate, it can recommend that the State or local authorities not pursue a criminal investigation and prosecution.

K. Adding a Section Incorporating the Language of Current § 617.7140

One commenter requested that the language of § 617.7140 of the existing regulation be incorporated in the final regulation. Section 617.7140 outlines the two most common types of malfeasance that System institutions encounter—conversion and false financial statements—and cites the statutory sources in the Federal criminal code. The FCA does not believe that this information needs to be included in the final regulation because it is included in the FCA Referral Form.

L. FCA Referral Form

Commenters expressed some general concern about whether System institutions would be using the FCA Referral Form found in the FCA *Examination Manual* or a Uniform Criminal Referral Form developed by the BFWG. System institutions were concerned that a Uniform Criminal Referral Form would not be appropriate for reporting violations arising from agricultural lending, such as collateral conversions of agricultural products.

The FCA concludes that System institutions should continue to use the FCA Referral Form found in the FCA *Examination Manual* rather than a Uniform Criminal Referral Form developed by the BFWG. The FCA believes that the FCA Referral Form is more closely tailored to the types of crimes most often encountered in agricultural lending. It has been designed to be easy to use and to ensure the proper reporting of all required information. The form itself contains instructions and a brief summary of statutory provisions pertaining to criminal violations that most often occur in the context of agricultural lending. Thus, the final regulation requires System institutions to continue to use the FCA Referral Form for all criminal referrals. The FCA will review the FCA Referral Form periodically as part of its ongoing effort to ensure that System institutions have access to the best guidance possible.

M. Civil Liability for Making a Criminal Referral

Several commenters expressed concern that System institutions and institution personnel did not have immunity from civil liability for making a criminal referral. The FCA's reproposed regulation did not address this issue and no provision has been provided in the final regulation as this matter has been addressed by a statutory amendment.

The Farm Credit System Reform Act of 1996 amended the Farm Credit Act of

1971 to provide System institutions and their personnel with immunity from civil liability for making a criminal referral. *See* 12 U.S.C. 2219e. Now, FCS institutions and their personnel who disclose to a government authority information proffered in good faith that may be relevant to a possible violation of any law or regulation are not liable to any person under any law of the United States or of any State for the disclosure or for any failure to notify the person involved in the possible violation.

As a result of this statutory change, FCS institutions and their personnel enjoy immunity similar to that of the other financial institutions and their personnel. *See* 12 U.S.C. 3401, 3403; 31 U.S.C. 5312, 5318. *See also* 31 CFR part 103, subpart B.

N. Miscellaneous Clarifications

1. Section 617.2(a) was amended to clarify the FCA's intent that, although in the exercise of due diligence it is the direct lender's responsibility to make a criminal referral involving a loan it has made, when a Federal land bank association services a loan made by a Farm Credit Bank, the association must notify the Bank of any known or suspected criminal violation involving that loan.

2. Section 617.2(c) was amended to specify that System institutions must notify both the appropriate Federal law enforcement authorities and the FCA offices in those instances requiring urgent attention.

3. Former § 617.3(a) and (b) were combined for brevity and renumbered as § 617.3(a). That section provides that if a criminal referral involves a member of the board of directors, discretion may be exercised in notifying such member of the criminal referral. The FCA intends the term ''exercise of discretion'' to mean that the institution must determine whether, under the circumstances, only those members of the board of directors not involved in the criminal violation should be notified of the criminal referral.

4. Former § 617.3(c) has been renumbered as § 617.3(b) and amended to provide that a System institution shall make all required notifications under a surety bond or other contract. A System institution is no longer required to make an initial determination of whether there is a loss prior to notification.

List of Subjects in 12 CFR Part 617

Banks, banking, Criminal referrals, Criminal transactions, Embezzlement, Insider abuse, Insvestigations, Money laundering, Theft.

For the reasons stated in the preamble, part 617 of chapter VI, title 12 of the Code of Federal Regulations is revised to read as follows:

PART 617—REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

Sec.
617.1 Purpose and scope.
617.2 Referrals.
617.3 Notification of board of directors and bonding company.
617.4 Institution responsibilities.

Authority: Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252).

§ 617.1 Purpose and scope.

(a) This part applies to all institutions of the Farm Credit System as defined in section 1.2(a) of the Farm Credit Act of 1971, as amended, (Act) (12 U.S.C. 2002(a)) including, but not limited to, associations, banks, service corporations chartered under section 4.25 of the Act, the Federal Farm Credit Banks Funding Corporation, the Farm Credit System Financial Assistance Corporation, the Farm Credit Leasing Services Corporation, and the Federal Agricultural Mortgage Corporation (hereinafter, institutions). The purposes of this part are to ensure public confidence in the Farm Credit System, to ensure the reporting of known or suspected criminal activity, to reduce potential losses to institutions, and to ensure the safety and soundness of institutions. This part requires that institutions use the Farm Credit Administration Criminal Referral Form (hereinafter FCA Referral Form) to notify the appropriate Federal authorities when any known or suspected Federal criminal violations of the type described in § 617.2 are discovered by institutions.

(b) The specific referral requirements of this part apply to known or suspected criminal violations of the United States Code involving the assets, operations, or affairs of an institution. This part prescribes procedures for referring those violations to the proper Federal authorities and the Farm Credit Administration. No specific procedural requirements apply to the referral of violations of State or local laws.

(c) Nothing in this part should be construed as reducing in any way an institution's ability to report known or suspected criminal activities to the appropriate investigatory or prosecuting authorities, whether Federal, State, or local, even when the circumstances in which a report is required under § 617.2 are not present.

(d) It shall be the responsibility of each System institution to determine whether there appears to be a reasonable basis to conclude that a criminal violation has been committed and, if so, to report the matter to the proper law enforcement authorities for consideration of prosecution.

(e) Each referral required by § 617.2(a) shall be made on the FCA Referral Form in accordance with the FCA Referral Form instructions relating to its filing and distribution.

§ 617.2 Referrals.

(a) Each institution and its board of directors shall exercise due diligence to ensure the discovery, appropriate investigation, and reporting of criminal activity. Within 30 calendar days of determining that there is a known or suspected criminal violation of the United States Code involving or affecting its assets, operations, or affairs, the institution shall refer such criminal violation to the appropriate regional offices of the United States Attorney, and the Federal Bureau of Investigation or the United States Secret Service or both, using the FCA Referral Form. A copy of the completed FCA Referral Form, accompanied by any relevant documentation, shall be provided at the same time to the Farm Credit Administration's Office of General Counsel. In the event that a Farm Credit bank makes a loan through a Federal land bank association which services the loan, the Federal land bank association must inform the Farm Credit bank of any known or suspected violation involving that loan and the Farm Credit bank shall refer the violation to Federal law enforcement authorities under this section. A report is required in circumstances where there is:

(1) Any known or suspected criminal activity (e.g., theft, embezzlement), mysterious disappearance, unexplained shortage, misapplication, or other defalcation of property and/or funds, regardless of amount, where an institution employee, officer, director, agent, or other person participating in the conduct of the affairs of such an institution is suspected;

(2) Any known or suspected criminal activity involving an actual or potential loss of $5,000 or more, through false statements or other fraudulent means, where the institution has a substantial basis for identifying a possible suspect or group of suspects and the suspect(s) is not an institution employee, officer, director, agent, or other person participating in the conduct of the affairs of such an institution;

(3) Any known or suspected criminal activity involving an actual or potential loss of $25,000 or more, through false

statements or other fraudulent means, where the institution has no substantial basis for identifying a possible suspect or group of suspects; or

(4) Any known or suspected criminal activity involving a financial transaction in which the institution was used as a conduit for such criminal activity (such as money laundering/structuring schemes).

(b) In circumstances where there is a known or suspected violation of State or local criminal law, the institution shall notify the appropriate State or local law enforcement authorities.

(c) In addition to the requirements of paragraph (a) of this section, the institution shall immediately notify by telephone the appropriate Federal law enforcement authorities and FCA offices specified on the FCA Referral Form upon determining that a known or suspected criminal violation of Federal law requiring urgent attention has occurred or is ongoing. Such cases include, but are not limited to, those where:

(1) There is a likelihood that the suspect(s) will flee;

(2) The magnitude or the continuation of the known or suspected criminal violation may imperil the institution's continued operation; or

(3) Key institution personnel are involved.

§ 617.3 Notification of board of directors and bonding company.

(a) The institution's board of directors shall be promptly notified of any criminal referral by the institution, except that if the criminal referral involves a member of the board of directors, discretion may be exercised in notifying such member of the referral.

(b) The institution involved shall promptly make all required notifications under any applicable surety bond or other contract for protection.

§ 617.4 Institution responsibilities.

Each institution shall establish effective policies and procedures designed to ensure compliance with this part, including, but not limited to, adequate internal controls.

Dated: April 25, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–11685 Filed 5–5–97; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–188–AD; Amendment 39–10015; AD 97–10–03]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, that requires repetitive ultrasonic inspections to detect cracking of the lugs of the engine mounting beams, and replacement of the beam with a serviceable part, if necessary. This amendment is prompted by reports of fatigue cracking of the lugs of the engine mounting beams. The actions specified by this AD are intended to detect and correct such cracking of the engine mounting lugs, which could result in reduced structural capability of the engine mount.

DATES: Effective June 10, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 10, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. 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 Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; 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 all British Aerospace Model BAC 1–11 200 and 400 series airplanes was published in the **Federal Register** on February 14, 1997 (62 FR 6892). That action proposed to require repetitive ultrasonic inspections to detect cracking of the lugs of the lower forward, lower rear, upper forward, and upper rear engine mounting beams, and replacement of the beam with a serviceable part, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

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 31 British Aerospace Model BAC 1–11 200 and 400 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, 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 $11,160, or $360 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:

97–10–03 British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39–10015. Docket 96–NM–188–AD.

Applicability: All Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 detect and correct cracking of the engine mounting lugs, which could result in reduced structural capability of the engine mount; accomplish the following:

(a) Perform an ultrasonic inspection to detect cracking of the lugs of the lower forward, lower rear, upper forward, and upper rear of the engine mounting beams in accordance with British Aerospace Alert Service Bulletin 53–A–PM6032, Issue No. 1, dated April 7, 1995, and at the earliest of the times specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD.

(1) Within 850 landings after the effective date of this AD. Or

(2) Within 1,700 flight hours after the effective date of this AD. Or

(3) Within 2 years after the effective date of this AD.

(b) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 1,700 flight hours or 850 landings, whichever occurs first.

(c) If any cracking is detected, prior to further flight, replace the engine mounting beam in accordance with British Aerospace Alert Service Bulletin 53–A–PM6032, Issue No. 1, dated April 7, 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.

(f) The inspections and replacement shall be done in accordance with British Aerospace Alert Service Bulletin 53–A–PM6032, Issue No. 1, dated April 7, 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 British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. 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 June 10, 1997.

Issued in Renton, Washington, on April 28, 1997.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–11522 Filed 5–5–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–60–AD; Amendment 39–10013; AD 97–10–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes, that requires repetitive inspections to detect discrepancies or damage of the steady bearing assemblies of the flap transmission system, and replacement of any discrepant or damaged assembly with a new, like assembly. This amendment also requires eventual replacement of all the steady bearing assemblies with new, improved assemblies, which terminates the repetitive inspection requirements. This amendment is prompted by reports of cracking of the hardened steel inner race, and broken or missing inner races of the steady bearing assemblies. The actions specified by this AD are intended to prevent such discrepancies and damage of the shafts of the steady bearing assemblies, which could cause the shafts to fail; failure of the steady bearing shafts during a subsequent assymetric stop could result in an uncommanded assymetric retraction of the flap, and subsequent reduced controllability of the airplane.

DATES: Effective June 10, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 10, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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: Tom Groves, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1503; 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 Airbus Model A310 series airplanes was published in the **Federal Register** on January 14, 1997 (62 FR 1859). That action proposed to require repetitive visual inspections to detect any discrepancy or damage to the steady bearing assemblies of the flap transmission system, and replacement of any damaged or discrepant assembly with a new, like assembly. That action also proposed to require eventual

replacement of all steady bearing assemblies with the new, improved assemblies, which terminates the repetitive inspection requirement.

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 26 Airbus Model A310 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 15 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 inspections required by this AD on U.S. operators is estimated to be $23,400, or $900 per airplane, per inspection cycle.

It will take approximately 8 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $16,872 per airplane. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $451,152, or $17,352 per 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.

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:

97–10–01 Airbus Industrie: Amendment 39–10013. Docket 96–NM–60–AD.

Applicability: Model A310 series airplanes, on which Airbus Modification 10962 has not been installed; 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 failure of the flap transmission shaft due to damaged steady bearing assemblies, which could cause an uncommanded asymmetric retraction of the flap, and result in reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 2,000 total landings or within 500 flight hours after the effective date of this AD, whichever occurs later: Perform a visual inspection to detect damage or any discrepancy of the steady bearing assemblies of the flap transmission system, in accordance with Airbus Service Bulletin A310–27–2067, Revision 1, dated January 5, 1995.

(1) If no damage or discrepancy is detected: Repeat the inspection thereafter at intervals not to exceed 2,000 landings, until the requirements of paragraph (b) of this AD are accomplished.

(2) If any damage or discrepancy is detected and the groove depth of the shaft is less than 1 mm (.04 inch): Prior to the accumulation of 50 landings after detection of this discrepancy, replace the steady bearing assembly with a new, like assembly in accordance with Airbus Service Bulletin A310–27–2067, Revision 1, dated January 5, 1995.

(3) If any damage or discrepancy is detected and the groove depth on the shaft is 1 mm or more: Prior to further flight, replace the steady bearing assembly with a new, like assembly, in accordance with Airbus Service Bulletin A310–27–2067, Revision 1, dated January 5, 1995.

(b) Within 5 years after the effective date of this AD, replace all steady bearing assemblies of the flap transmission system with new, improved assemblies, in accordance with Airbus A310–27–2074, dated November 18, 1994. Accomplishment of the replacement constitutes terminating action for the requirements of this AD.

Note 2: Airbus Service Bulletin A310–27–2074 references Lucas Liebherr Service Bulletin 551A–27–M551–03 as an additional source of service information for replacement of the steady bearing assemblies with the new, improved assemblies.

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(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 inspection and certain replacements shall be done in accordance with Airbus Service Bulletin A310–27–2067, Revision 1, dated January 5, 1995. Certain other replacements shall be done in accordance with Airbus Service Bulletin A310–27–2074, dated November 18, 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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.

(f) This amendment becomes effective on June 10, 1997.

Issued in Renton, Washington, on April 28, 1997.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–11525 Filed 5–5–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–67–AD; Amendment 39–10014; AD 97–10–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 777 series airplanes. This action requires repetitive corrosion/resistance inspections to measure the resistance of each wire bundle of the flight control system; and repair of the receptacle bond, repair of the bundle connector backshells, or replacement of the wire bundles with new components, if necessary. This amendment is prompted by reports of corroded connectors and numerous other discrepancies of the wire bundles, such as loose backshells and loose shield retention bands, due to the presence of moisture inside the wire bundles. The actions specified in this AD are intended to detect and correct such corrosion, which could reduce system protection against lightning strikes or high intensity radiated field (HIRF) events, and consequently could adversely affect wire bundles used for the flight control system. This situation could result in loss of function of certain flight control surface actuators in the event of a lightning strike.

DATES: Effective May 21, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 21, 1997.

Comments for inclusion in the Rules Docket must be received on or before July 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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 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.

FOR FURTHER INFORMATION CONTACT: Chris Hartonas, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2864; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of corrosion between the backshell and bundle shield, loose shield retention bands, and loose backshells of the wire bundles of the flight control system on Boeing Model 777 series airplanes. Investigation revealed wire bundles with higher than specified resistance (which is an indicator of corrosion) between the receptacles and mounting brackets and between the brackets and structure. The cause of such corrosion has been attributed to the existing design of the wire bundles, which allows moisture to collect inside the wire bundle connectors. Corrosion in the subject area, if not detected and corrected in a timely manner, could reduce system protection against lightning strikes or high intensity radiated field (HIRF) events, which could adversely affect wire bundles used for the flight control system, and consequently result in loss of function of certain flight control surface actuators in the event of a lightning strike.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–27A0019, dated April 3, 1997, which describes procedures for repetitive corrosion/resistance inspections to measure the resistance of each wire bundle of the flight control system; and, if any discrepancy is found, repair of the receptacle bond, repair of the bundle connector backshells, or replacement of the wire bundles with new components, if necessary. Accomplishment of the inspection will ensure that the wiring maintains shield continuity, which reduces system sensitivity to an lightning strike or a HIRF event.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 777 series airplanes of the same type design, this AD is being issued to detect and correct corrosion in the wire bundles of the flight control system, which could reduce the system protection against lightning strikes or HIRF events, which could adversely affect wire bundles used for the flight control system, and consequently result in loss of function of certain flight control surface actuators in the event of a lightning strike. This AD requires repetitive corrosion/resistance inspections to measure the resistance of each wire bundle of the flight control system; and, if any discrepancy is found, repair of the receptacle bond, repair of the bundle connector backshells, or replacement of wire bundles with new components, if necessary. These actions are required to be accomplished in accordance with the alert service bulletin described previously.

In addition, this AD provides for an optional terminating action that involves replacing existing wire bundle connectors with new overmolded connectors. The FAA has determined that this action will preclude the collection of moisture inside the wire bundles and consequent corrosion of the components. This option is to be accomplished in accordance with a method approved by the FAA, and constitutes terminating action for the repetitive inspection requirements of this AD.

The compliance times for accomplishing the inspections are dependent upon the time elapsed since the first production test flight of the airplane. Airplanes that have reached or exceeded 12 months from the time of the first production test flight of the airplane are to be inspected within 60 days after the effective date of the AD. For airplanes that have not yet reached or exceeded 12 months since the time of the first production test flight, the initial inspection is not required until the airplane reaches that threshold. The FAA notes that the required compliance time of within 12 months after the first production flight test is usually sufficient to allow for a brief comment period before adoption of a final rule. However, in this AD, the compliance time of 12 months was selected based on the following factors. The FAA considered not only the degree of

urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time; the fact that the unsafe condition involves corrosion, which is associated with passage of time; and the fact that the times the first production flight test occurs will significantly vary the date the compliance time must be met for these airplanes. The FAA considers that, by allowing airplanes to reach or exceed 12 months before performing the initial inspection, no undue burden is created for the operators; rather, this compliance time will enable operators to continue to operate for a time that does not adversely affect the operational safety of these airplanes.

Interim Action

This AD is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

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 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 Number 97–NM–67–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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it 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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

97–10–02 Boeing: Amendment 39–10014. Docket 97–NM–67–AD.

Applicability: All Model 777 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion, which could reduce system protection against lightning strikes or high intensity radiated field (HIRF) events, adversely affect wire bundles used for the flight control system, and result in loss of function of certain flight control surface actuators, accomplish the following:

(a) Within 12 months after first production test flight of the airplane, or within 60 days, whichever comes later, perform an inspection to determine the part number (P/N) of each wire bundle connector at the wheel well disconnects, as listed in the table in paragraph D. of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–27A0019, dated April 3, 1997; and to determine if the wire bundle has a molded backshell; in accordance with paragraph C. of the Accomplishment Instructions in the previously referenced alert service bulletin.

(1) If any wire bundle has P/N S280W655–( ) and has a molded backshell, no further action is required by paragraph (a) of this AD.

(2) If any wire bundle does not have a molded backshell, prior to further flight, perform a corrosion/resistance inspection to measure the resistance of each bundle in accordance with paragraph D. of the Accomplishment Instructions in the alert service bulletin.

(b) If, during any corrosion/resistance inspection required by this AD, the resistance of any wire bundle is found to be 150 milliohms or less, repeat the corrosion/resistance inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 7 months.

(c) If, during any corrosion/resistance inspection required by this AD, the resistance of any wire bundle is found to be greater than 150 milliohms, prior to further flight, repair the receptacle bond, repair the bundle connector backshells, or replace the wire bundles, in accordance with paragraph H. of the Accomplishment Instructions in Boeing Alert Service Bulletin 777–27A0019, dated April 3, 1997. Repeat the corrosion/resistance

inspection required by paragraph (a) of this AD at the time specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which any wire bundle has been replaced: Within 12 months after installation of the new wire bundle, accomplish the corrosion/resistance inspection required by paragraph (a) of this AD; and thereafter, repeat that inspection at intervals not to exceed 7 months.

(2) For airplanes on which any receptacle bond or bundle connector backshells have been repaired: Repeat the corrosion/resistance inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 7 months.

(d) Replacement of existing wire bundle connectors with new overmolded connectors, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, constitutes a terminating action for the repetitive inspection requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(g) Certain action(s) shall be done in accordance with Boeing Alert Service Bulletin 777–27A0019, dated April 3, 1997. 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.

(h) This amendment becomes effective on May 21, 1997.

Issued in Renton, Washington, on April 28, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–11524 Filed 5–5–97; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–7418; File Number S7–6–97]

RIN 3235–AH14

Definition of ''Prepared By or On Behalf of the Issuer'' for Purposes of Determining if an Offering Document is Subject to State Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The National Securities Markets Improvements Act of 1996 mandates that the Securities and Exchange Commission (''Commission'') adopt a definition of the phrase ''prepared by or on behalf of the issuer'' found in Section 18 of the Securities Act of 1933. The Commission today adopts this definition, thereby providing guidance as to when an offering document is subject to state regulation.

EFFECTIVE DATE: Rule 146 will be effective on May 6, 1997.

FOR FURTHER INFORMATION CONTACT: James R. Budge, Division of Corporation Finance, at (202) 942–2950, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today adds Rule 146[1] Under the Securities Act of 1933 (''Securities Act'' or ''the Act'').[2] The Rule defines the term ''prepared by or on behalf of the issuer,'' for purposes of recently revised Section 18 of the Act.[3]

I. Background

Congress enacted the National Securities Markets Improvement Act of 1996, which became effective on October 11, 1996.[4] The statute reallocates regulatory responsibility relating to securities offerings between the federal and state governments based on the nature of the security or offering. Among other things, it preempts state laws requiring or with respect to registration or qualification of covered securities as defined in the Act.[5] It also prohibits states from directly or indirectly prohibiting, limiting or imposing any conditions on the use of any offering document for a covered security if the offering document is ''prepared by or on behalf of the issuer.''[6]

II. Rule 146

The statute requires the Commission to define by rule the phrase ''prepared by or on behalf of the issuer,'' as used in connection with the prohibition on state regulation of offering documents for covered securities.[7] The Commission proposed a definition in February 1997[8] and received three comment letters. Today it adopts the definition, slightly modified from the proposed version.

The Commission continues to believe, as it stated in the proposing release, that the phrase is intended to cover offering documents prepared with the issuer's knowledge and consent. Thus, the definition encompasses offering documents authorized and approved by the issuer. Conversely, documents that are prepared and circulated without issuer involvement are not covered, and are subject to state regulation.

Like the proposal, the final rule requires a two-step approach to this process. First, the issuer must authorize the production of the document. This provision does not require a board of directors to act with respect to each document connected to a securities offering. A company may authorize agents or representatives to act in its stead. The final rule clarifies the proposed language by specifically acknowledging authorization by an agent or representative chosen by the issuer for that purpose.

The second step requires the issuer, or its agent or representative, to approve an authorized offering document before its use. The proposal reflected this concept in its requirement that an authorized document be prepared by ''a director, officer, general partner, employee, affiliate, underwriter, attorney, accountant or agent of the issuer.'' In light of the public comment, and upon further consideration, the Commission has recrafted this provision to clarify its intentions and make the rule simpler. In the final rule, an issuer-authorized offering document (including one

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[1] The rule is codified at 17 CFR 230.146.

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 77r.

[4] Pub.L. 104–290, 110 Stat. 3416 (1996).

[5] The term ''covered security'' is defined in new section 18(b) [15 U.S.C. 77r(b)].

[6] The term ''offering document'' is defined in new section 18(d)(1) [15 U.S.C. 77r(d)(1)], as follows:

(1) Offering Document.—The term ''offering document''—

(A) has the meaning given the term ''prospectus'' in section 2(10), but without regard to the provisions of subparagraphs (A) and (B) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

[7] Section 18(d)(2) requires the Commission to adopt this definition not later than six months after the section's enactment.

[8] Release No. 33–7388 (February 11, 1997) [62 FR 7186] (''Proposing Release'').

authorized by the issuer's agent or representative) is within the definition if the issuer or its agent or representative approves a prepared document before its use. The rule does not require the same person who authorized the document's production to be responsible for approving the prepared document. It is intended that this agent or representative will have reviewed the document in advance.

Of course, state law controls how a company authorizes activities. For example, if under state law the board of directors or other governing body may delegate authorization or approval authority for all offering documents to an individual, committee, or even an outside entity such as an underwriter, then the authorization or approval of that person would be sufficient for Rule 146.[9]

III. Cost-Benefit Analysis

There were no responses to the Commission's solicitation of comment regarding the costs and benefits of this definition. The Commission, at Congress' behest, crafted Rule 146 to provide guidance with respect to how to interpret the language of the statute. Therefore, the economic burdens and benefits relating to state preemption generally will be attributable to the statute. While the Commission expects the economic effects of this rule to be minimal, the definition will allow greater certainty about when an offering document is subject to state review.

IV. Summary of Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604 concerning this definition. The analysis notes that the rulemaking relates to a Congressional mandate to define the term ''prepared by or on behalf of the issuer'' for purposes of Section 18 of the Act and describes the reasons for and purposes of the definition.

The analysis states that no comments were received in response to Commission solicitation with respect to the Initial Regulatory Flexibility Analysis. The analysis goes on to state that there are approximately 1100 reporting companies that satisfy the definition of ''small business'' under Exchange Act Rule 0–10, but there is no reliable way to determine the impact of the rule on these entities, because it cannot be determined how many of these entities may raise capital, thereby benefiting from the rule. The Commission does not expect that significant changes to reporting, recordkeeping and compliance burdens will result from the rule, inasmuch as the substantive effects of the changes to Section 18 are controlled primarily by the terms of the legislation, and not by the terms of this definition. The purpose of the definition is to give guidance with regard to the meaning of a statutory term.

The Commission considered whether there are any appropriate steps available to minimize the economic impact of rule on small businesses and determined that establishing different requirements for small entities or exempting them from all or part of the definition would not serve the public interest, nor would it aid small businesses. The definition is purposefully crafted to give small entities equal footing with large companies with respect to the benefits of state preemption that Congress envisioned when it enacted revised Section 18.

V. Effective Date

The effective date for Rule 146 is May 6, 1997, the **Federal Register** publication date. In accordance with the Administrative Procedure Act 5 U.S.C. 553(d)(3), the Commission finds that the statutory mandate to adopt a rule within six months of the statute's effective date provides good cause to establish an effective date less than 30 days after publication of these rules. The early effective date will also allow affected persons to begin relying on the new definition immediately by eliminating confusion in the marketplace over whether a document is ''prepared by or on behalf of the issuer'' for purposes of the statute. Finally, because the definition does not impose any new burdens, the public would derive no benefit from the time provided by a delayed implementation date.

VI. Statutory Basis

Rule 146 is being adopted pursuant to Sections 18 and 19 of the Securities Act.

List of Subjects in Part 230

Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. By adding § 230.146, to read as follows:

§ 230.146 Definition of ''prepared by or on behalf of the issuer'' for purposes of Section 18 of the Act.

Prepared by or on behalf of the issuer. An offering document (as defined in Section 18(d)(1) of the Act [15 U.S.C. 77r(d)(1)]) is ''prepared by or on behalf of the issuer'' for purposes of Section 18 of the Act, if the issuer or an agent or representative:

(a) Authorizes the document's production, and

(b) Approves the document before its use.

Dated: April 30, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11692 Filed 5–5–97; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 573

[Docket No. FR–4108–C–06]

RIN 2506–AB87

Loan Guarantee Recovery Fund; Technical Amendment to Final Rule

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Technical amendment to final rule.

SUMMARY: On September 6, 1996 (61 FR 47404), HUD published a final rule implementing section 4 of the Church Arson Prevention Act of 1996. Specifically, the September 26, 1996 final rule established the procedures, terms, and conditions by which HUD will guarantee loans to assist nonprofit organizations in financing activities designed to rebuild and rehabilitate structures, to replace and restore personal property, and to finance other eligible activities as provided for in the final rule. The September 6, 1996 final rule inadvertently omitted from the list of eligible activities the refinancing of

[9] As provided by statute, the definition is applicable only to Section 18 of the Securities Act. As noted in the Proposing Release, in the case of a registered investment company, an agent of the issuer would include, without limitation, the issuer's investment adviser, attorney, underwriter, depositor or any other agent that performs administrative functions on behalf of the company.

existing indebtedness secured by a property which has been constructed, rehabilitated, or reconstructed. The purpose of this document is to make the necessary correction.

EFFECTIVE DATE: October 7, 1996.

SUPPLEMENTARY INFORMATION: On July 3, 1996, President Clinton signed into law the ''Church Arson Prevention Act of 1996'' (Pub. L. 104–155) (the Act). The Act provides Federal, State and local law-enforcement agencies with the needed additional tools to address violent crimes against places of worship, strengthens the penalties for these crimes, and authorizes Federal assistance for rebuilding efforts. Section 4 of the Act, entitled ''Loan Guarantee Recovery Fund,'' authorizes the Secretary of HUD to guarantee loans made by financial institutions to assist certain nonprofit organizations (organizations described in section 501(c)(3) of the Internal Revenue Code of 1986) that have been damaged as a result of acts of arson or terrorism.

On September 6, 1996 (61 FR 47404), HUD published a final rule implementing section 4 of the Act by establishing a new 24 CFR part 573. Part 573 describes the procedures, terms, and conditions by which HUD will guarantee loans to assist eligible nonprofit organizations. Under § 573.3, eligible borrowers may use guaranteed loan funds for a wide range of activities. Paragraph (i) of § 573.3 permits the use of guaranteed loan funds to refinance existing indebtedness secured by a property to be constructed, rehabilitated, or reconstructed.

Unfortunately, § 573.3(i) inadvertently omitted to include the refinancing of existing indebtedness secured by a property for which construction, rehabilitation, or reconstruction has already begun. As evidenced by the preamble to the September 6, 1996 final rule, HUD intended to include such refinancings in the list of eligible activities. For example, the summary of eligible activities set forth in the preamble provided that guaranteed loan funds may be used for the ''refinancing of existing indebtedness'' (61 FR 47404). The summary did not limit such refinancings to indebtedness secured by properties where rebuilding was a future event.

Further, in justifying the need for final rulemaking without prior public comment, HUD noted that the Department of Justice had identified more than 40 eligible organizations whose properties had been damaged or destroyed by acts of arson or terrorism and that those organizations were in immediate need of loan guarantee assistance (61 FR 47404). It was known to HUD that some of these organizations had already rebuilt their damaged properties with loans carrying interest rates that might have been lower with HUD loan guarantee assistance.

List of Subjects in 24 CFR Part 573

Loan programs—housing and community development, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, in title 24 of the Code of Federal Regulations, part 573 is amended as follows:

1. The authority citation for part 573 continues to read as follows:

Authority: Pub. L. 104–155, 110 Stat. 1392, 18 U.S.C. 241 note; 42 U.S.C. 3535(d).

2. In § 573.3, paragraph (i) is revised to read, as follows:

§ 573.3 Eligible activities.

* * * * *

(i) Loans for refinancing existing indebtedness secured by a property which has been or will be acquired, constructed, rehabilitated or reconstructed, if such financing is determined to be appropriate to achieve the objectives of the Act and this part.

* * * * *

Dated: May 1, 1997.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 97–11729 Filed 5–5–97; 8:45 am]

BILLING CODE 4210–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 192–0037a; FRL–5816–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action granting limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP). The revisions concern two rules from the South Coast Air Quality Management District (SCAQMD). This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control VOC emissions from active and inactive landfills. Thus, EPA is finalizing a simultaneous limited approval and limited disapproval of the rules under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because the rules, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and plan requirements for nonattainment areas.

DATES: This action is effective on July 7, 1997 unless adverse or critical comments are received by June 5, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1188.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being incorporated into the California SIP are SCAQMD Rule 1150.1, Control of Gaseous Emissions from Active Landfills, and SCAQMD Rule 1150.2, Control of Gaseous Emissions from Inactive Landfills. The rules were submitted by the California Air Resources Board (CARB) to EPA on October 16, 1985 and February 10, 1986, respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in l977 (1977 Act or pre-amended Act), that included the Los Angeles-South Coast Air Basin Area. 43 FR 8964, 40 CFR 81.305. The 1977 Act required that nonattainment areas adopt, at a minimum, reasonably available control technology (RACT) for all significant sources of emissions.

The State of California submitted many RACT rules for incorporation into its SIP on October 16, 1985 and February 10, 1986, including the rules being acted on in this document. This document addresses EPA's direct-final action for SCAQMD Rule 1150.1, Control of Gaseous Emissions from Active Landfills, and SCAQMD Rule 1150.2, Control of Gaseous Emissions from Inactive Landfills. SCAQMD adopted Rule 1150.1 on April 5, 1985 and Rule 1150.2 on October 18, 1985. These submitted rules are being finalized for limited approval and limited disapproval into the SIP.

Rule 1150.1 and Rule 1150.2 control the emissions of VOCs from active and inactive landfills, respectively. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following is EPA's evaluation and final action for these rules.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents.[1] Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. For source categories that do not have an applicable CTG (such as landfills), state and local agencies may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas.

Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, the EPA policy guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD's Rule 1150.1, Control of Gaseous Emissions from Active Landfills, and Rule 1150.2, Control of Gaseous Emissions from Inactive Landfills are new rules for inclusion in the SIP. The submitted rules contain the following requirements to control VOC emissions at active and inactive landfills:

- Installation of landfill gas control systems
- Monitoring of off-site gas migration
- Landfill surface monitoring
- Periodic sampling of periphery subsurface gas and ambient air
- Periodic sampling of collected landfill gas
- Disposal of collected landfill gas
- Periodic evaluation of the efficiency of the gas disposal system

Although SCAQMD Rules 1150.1 and 1150.2 will strengthen the SIP, the rules contain the following deficiencies:

- Numerous Director's discretion provisions
- No specified criteria for granting exemptions
- No specified control device efficiency
- No test methods or monitoring protocol
- Inadequate recordkeeping provisions

A detailed discussion of rule deficiencies can be found in the Technical Support Document for Rules 1150.1 and 1150.2 (3/97), which is available from the U.S. EPA's Region IX office. Because of these deficiencies, the rules are not approvable because the deficiencies are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and Part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is finalizing a limited approval of SCAQMD's submitted Rules 1150.1 and 1150.2 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also finalizing a limited disapproval of these rules because they contain deficiencies and, as such, the rules do not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of this final limited disapproval. Moreover, this final limited disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this direct final rulemaking have been adopted by the SCAQMD and are currently in effect in the District. EPA's final limited disapproval action will not prevent the District or EPA from enforcing these rules.

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

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing a limited approval and limited disapproval of the SIP revision should adverse or critical comments be filed. This action will be effective July 7, 1997, unless, by June 5, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 7, 1997.

Regulatory Process

Regulatory Flexibility

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

Limited approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. Under the CAA, EPA may not base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's limited disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 7, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. This rule may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being incorporated into the SIP by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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).

Executive Order 12866

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 13, 1997.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(164)(i)(E) and (c)(168)(i)(H)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(164) * * *

(i) * * *

(E) South Coast Air Quality Management District.

(*1*) Rule 1150.1, adopted on April 5, 1985.

* * * * *

(168) * * *

(i) * * *

(H) * * *

(*2*) Rule 1150.2, adopted on October 18, 1985.

* * * * *

[FR Doc. 97–11911 Filed 5–6–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 101

[ET Docket No. 97–99; FCC 97–95]

Reallocation of Digital Electronic Messaging Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules and policies to amend its Table of Frequency Allocations and its rules regarding Fixed Microwave Services to permit Fixed Service use of the 24.25–24.45 GHz and 25.05–25.25 GHz bands (24 GHz band). This action facilitates the relocation of the digital electronic message service (DEMS) from the 18.82–18.92 GHz and 19.16–19.26 GHz bands (18 GHz band) to the 24 GHz band and to prohibit certain new low power operations in the Washington, D.C., and Denver, Colorado, areas. This action is being taken to advance, support, and accommodate the national defense. In order to accommodate this relocation, the Commission establishes rules to govern DEMS operations in the 24 GHz band.

EFFECTIVE DATE: June 5, 1997.

FOR FURTHER INFORMATION CONTACT: Meribeth McCarrick, News Media Contact, (202) 418–0256; Fred Thomas at (202) 418–2449 or Rodney Small at (202) 418–2452, Office of Engineering and Technology; Chris Murphy, International Bureau, Satellite Policy Branch, (202) 418–2373; or Ron Netro, Wireless Telecommunications Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION:

I. Introduction

By this action, the Commission amends its Table of Frequency Allocations and Part 101 of its rules regarding Fixed Microwave Services to permit Fixed Service use of the 24.25–24.45 GHz and 25.05–25.25 GHz bands (''24 GHz band''). This action will facilitate relocation of the digital electronic message service (''DEMS'') from the 18.82–18.92 GHz and 19.16–19.26 GHz bands (''18 GHz band'') to the 24 GHz band. This action is being taken to advance, support and accommodate the national defense.[1] In order to accommodate this relocation, the Commission establishes rules to govern DEMS operations in the 24 GHz band.

II. Background

2. In a July 1995 *Memorandum Opinion and Order*, FCC 95–316, 60 FR 39657 (''*MO&O*''), we amended our Table of Frequency Allocations by adding footnote US334 to permit use of the 17.8–20.2 GHz band for Government space-to-Earth fixed satellite transmissions and by modifying footnote G117 to limit Government use of this band to military systems.[2] This action was taken at the request of the National Telecommunications and Information Administration (''NTIA'') because, according to NTIA, the

> reallocation is essential to fulfill requirements for Government space systems to perform satisfactorily [and] current Department of Defense (DoD) requirements cannot be accommodated in frequency bands currently allocated for Government use. * * * ''[3]

In the *MO&O*, we stated that this band is allocated on a worldwide basis for Fixed Satellite Service (''FSS'') downlinks and domestically is predominantly exclusive non-Government spectrum. We further stated that the 17.8–19.7 GHz band is used by a variety of fixed services, including auxiliary broadcast, common carrier, private, cable television, digital termination systems, and, the main service addressed in this *Order*, DEMS.[4]

3. Subsequently, the Commission discussed various coordination alternatives with NTIA and put in place interim coordination procedures for services in this band. In Maryland, Virginia, the District of Columbia and Colorado (''Washington, D.C. and Denver areas''), fixed service licensees may not begin operation until their applications are approved.[5] These interim measures have permitted licensing of non-Government facilities while preserving protection of the Government operations and providing an opportunity to evaluate longer term solutions that are acceptable to both the NTIA and the Commission.

4. Since adoption of footnote US334, the NTIA and the Commission have explored various methods of protecting the Government Earth stations while minimizing the impact on non-Government services. Because of the variety of non-Government terrestrial services in the 17.8–20.2 GHz band, it was determined that the optimum solution differs depending on the characteristics of the service. For instance, the highly directional nature of fixed point-to-point operations allows individual point-to-point links to be coordinated with Government operations at much closer distances than is possible with point-to-multipoint operations. In the case of DEMS, based on typical system parameters, NTIA determined that it would not be possible for DEMS to be provided within 40 km of the Government Earth stations.[6] Considering the maximum system parameters permitted under our rules for DEMS, a potential for interference extends well beyond 40 km. Licenses for DEMS have already been granted in the vicinity of the Government facilities and operations under these licenses would not be compatible with Government operations.

5. Considering the extent of the area in which DEMS operations would be excluded, NTIA, on behalf of the Department of Defense, sent a letter dated January 7, 1997, stating that co-frequency, co-coverage operation of DEMS and the Government Earth stations is not possible and that steps should be taken to ensure protection of the Government Earth stations. Further, recognizing the Commission's desire to ensure the viability of DEMS and that this would require that spectrum for DEMS be available on a nationwide basis, NTIA proposed to make spectrum from the 24.25—24.65 GHz band available nationwide for DEMS. In addition, NTIA requested that accommodation of the Government Earth stations and relocation of DEMS be undertaken on an expedited basis because of the essential nature of these actions to military functions and sensitive national security interests of the United States.[7] NTIA also stated that there are a limited number of Government radionavigation assignments in portions of the 24.25—24.65 GHz band and that coordination between NTIA and the Commission may be necessary to determine any sharing arrangements or transition plans for these stations.

6. On March 5, 1997, we received a second letter from NTIA making the 24.25—24.45 and 25.05—25.25 GHz bands available for non-Government uses (''Second NTIA Letter'').[8] The Second NTIA Letter reiterates the Government's determination that existing DEMS licensees must relocate to minimize potential interference to Government Earth stations in the 18 GHz band pursuant to footnote US334 and national security interests. To this end, NTIA has withdrawn the allocation for the Government radionavigation service in the 24.25—24.45 GHz and 25.05—25.25 GHz bands to permit relocation of DEMS from the 18 GHz band. In addition, NTIA requires that the Commission limit future FCC licensees from using the 17.8–20.2 GHz

[1] *See* 47 U.S.C. § 151.

[2] *See* 10 FCC Rcd 9931 (1995).

[3] *Id.* at ¶ 3.

[4] *Id.* at ¶ 2.

[5] 11 FCC Rcd 13449, 13462 (1996) at ¶ 29. In all other parts of the U.S. licensees may begin conditional operations upon filing an application for a license to operate. *See* 47 CFR 101.5(d).

[6] *See* Letter from Richard Parlow, Associate Administrator, Office of Spectrum Management, NTIA to Richard Smith, Chief, Office of Engineering and Technology, FCC, dated January 7, 1997.

[7] *Id.*

[8] *See* Letter from Richard Parlow, Associate Administrator, Office of Spectrum Management, NTIA to Richard Smith, Chief, Office of Engineering and Technology, FCC, dated March 5, 1997.

band for operations in the Washington, D.C. and Denver areas based on criteria discussed below.

7. In addition to Government satellite use, in July 1996, we set forth a plan for non-Government satellite downlink use of the 17.7—20.2 GHz band and for paired GSO and non-GSO (''NGSO'') satellite uplinks, as well as Local Multipoint Distribution Service, in the 27.5—30 GHz band (''*28 GHz Order*'') *See First Report and Order and Fourth Notice of Proposed Rule Making to Amend Part 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* CC Docket No. 92–297, FCC 96–311, rel. July 22, 1996, 61 FR 44177, at ¶ 77. Specifically, of relevance to this decision, we designated the 18.8—19.3 GHz segment for NGSO/FSS uses. That designation raised the issue of coordination with terrestrial services.

8. As part of the 28 GHz proceeding, a great deal of effort, over several years, was put into determining whether ubiquitous satellite services could share spectrum with ubiquitous terrestrial services. In the *28 GHz Order* we concluded, based on the entire record before us, that co-frequency sharing between NGSO/FSS uplinks from ubiquitously deployed terminals (satellite services) and Local Multipoint Distribution Service (''LMDS'') (a high density point-to-multipoint terrestrial service) with its ubiquitously deployed subscriber terminals, was not feasible. We also concluded, however, that there was no indication in the record that sharing between NGSO/FSS downlinks and terrestrial services in the 18.8—19.3 GHz range would be infeasible, and indicated that we would rely on traditional coordination methods to address potential incompatibility between the satellite and terrestrial services in the absence of such evidence.[9] However, subsequent developments, such as the availability of equipment to provide point-to-multipoint service in this band, have raised substantial questions concerning the feasibility of traditional coordination methods for DEMS and NGSO/FSS in the 18 GHz band.

9. After the release of the *28 GHz Order* on August 23, 1996, an NGSO/FSS applicant, Teledesic Corporation, seeking to use the 18 GHz band, filed a written request seeking an administrative freeze on acceptance and processing of applications for DEMS licenses in the 18 GHz band, due to concerns about frequency sharing with DEMS operations. There were many DEMS applications at various stages at that time.[10] Recognizing the need to maintain the existing environment and study the spectrum sharing issue, the Wireless Telecommunications and International Bureaus granted Teledesic's request and ordered an administrative freeze on new applications, amendments to pending applications, renewals, modifications, or extensions for either terrestrial fixed services or NGSO/FSS earth stations in the 18 GHz band (''*18 GHz Freeze Order*''). *Freeze on the Filing of Applications for New Licenses, Amendments, and Modifications in the 18.8–19.3 GHz Frequency Band,* DA 96–1481 (rel. Aug. 30, 1996), ¶ 3. The Bureaus also ordered that already-filed applications for new markets in the 18 GHz band be held in abeyance.[11] In the interim, Teledesic and DEMS operators have been involved in private negotiations to resolve the issues that gave rise to the *18 GHz Freeze Order.*

10. Teledesic has a separate interest in relocating DEMS from the 18 GHz band due to interference with its Earth station downlinks in the 18 GHz band. Even if the DEMS licensees in the Washington, D.C. and Denver areas had ceased service due to interference with Government Earth stations, Teledesic determined that it was unable to share the 18 GHz band with point-to-multipoint operations in other geographic areas as well. In order to facilitate the relocation of DEMS, and eliminate sharing concerns with the DEMS licensees, Teledesic has now agreed to reimburse licensees which are required to modify existing equipment in order to operate in the 24 GHz band being offered by the Government.[12]

III. Discussion

11. In order to give effect to NTIA's request, we implement changes to our rules, as described below, without notice and comment procedures. These rule changes provide for the relocation of DEMS interests from the 18 GHz band to the 24 GHz band. This is necessary because we are required to relocate DEMS in the Washington, D.C. and Denver, Colorado, regions in the interests of national security. Although this goal might be accomplished by moving the Washington, D.C. and Denver, Colorado operations only, doing so would effectively preclude these areas from getting DEMS service, since it is unlikely that 24 GHz equipment could be manufactured at economic prices solely for these two markets. We believe that the public interest is served by ensuring that services are deployed so that consumers are not disadvantaged by greater complexity in providing service to their geographic location. Accordingly, we seek to maintain the DEMS on a unified frequency band nationwide.[13] Therefore, rather than license DEMS using a second band of frequencies solely for the Washington, D.C. and Denver areas, NTIA has offered to make Government spectrum available in the 24 GHz band to relocate the entire DEMS service for continued nationwide deployment.

12. Specifically, NTIA has made available 400 megahertz of spectrum in the 24.25—24.45 GHz and 25.05—25.25 GHz bands in order to accommodate DEMS and will delete its Radionavigation Service allocation in those bands. Based on a very narrow set of parameters that arise from the need to move DEMS as quickly and with as little impact as possible, we find that 400 megahertz of spectrum in the 24 GHz band will provide DEMS with service equivalent to that at 18 GHz. The 24 GHz band will accommodate existing licensees using four times the channel-width and sufficient transmit/receive frequency separation to permit DEMS systems to maintain equivalent information capacity to similarly engineered systems at 18 GHz. For a more detailed technical explanation, attached hereto.

13. Therefore, in order to accommodate the Government's needs in the 18 GHz band, by this Order, we are allocating, for Fixed Service use, the 24.25–24.45 GHz and 25.05–25.25 GHz bands and are relocating DEMS to those bands from the 18 GHz band. In addition, NTIA has included, in the Second NTIA Letter, a request that we replace our current interim coordination procedures for non-DEMS fixed services in the 18 GHz band with permanent coordination requirements developed by the Government user.[14] These

[9] *Id.* at ¶ 79.

[10] These included applications for additional nodal sites within already-licensed exclusive defined areas and for new exclusive geographic areas. *Id.*, ¶ 2.

[11] *Id.*, ¶ 12.

[12] *See* Letter dated February 27, 1997, from Russell Daggatt, President, Teledesic Corporation, and Laurence Harris, Counsel for Associated Communications, L.L.C., to Michele C. Farquhar, Chief, Wireless Telecommunications Bureau, and Donald H. Gips, Chief, International Bureau.

[13] *See Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules to Allocate Spectrum at 18 GHz,* 54 RR2d 1091, 1100 (1983) at ¶ 40 (describing the Commission's policy that DEMS should be treated uniformly in Alaska and the contiguous 48 states and that service allocation applies equally to all areas of Commission jurisdiction).

[14] *See* Letter from Richard Parlow, Associate Administrator, Office of Spectrum Management, NTIA to Richard Smith, Chief, Office of Engineering

permanent coordination procedures include exclusion zones around the Government Earth stations in which no new DEMS or low power non-Government operations will be permitted in the 18 GHz band. We will adopt rules consistent with the exclusion and coordination requirements requested by NTIA in a future order, except that by this Order we are modifying our rules with regard to low power operations at 18 GHz. Because these low power operations are licensed on an area basis, it is very difficult to ensure that individual transmitters are properly coordinated with the Government operations in the band. Accordingly, to help ensure the protection of the Government operations, we are prohibiting any new low power operations within 55 km when used outdoor and 20 km when used indoor of the coordinates 38°48′ N and 76°52′ W (Washington, D.C., area) and 39°43′ N and 104°46′ W (Denver, Colorado, area).[15] Pending adoption of a future order consistent with NTIA's request, we will continue to protect Government operations in the 18 GHz band from other non-Government operations by using the interim procedures currently in place.[16]

14. To effectuate the transition of DEMS licensees from 18 GHz to 24 GHz, we are amending our rules to require incumbent DEMS licensees to cease operations using the 18 GHz band in the Denver and Washington areas immediately upon the effective date of our amended rules.[17] In all other areas, incumbent DEMS licensees must cease operations not later than January 1, 2001. The amended rules reflect the current provisions of Part 101 governing existing DEMS licensing and operations with certain revisions necessary to effect the relocation of these licensees to 24 GHz, for example, frequency band and channel bandwidth. The purpose of these revisions is to ensure that, to the fullest extent practicable, incumbent DEMS operations are able to provide service using frequencies in the 24 GHz band in a manner equivalent to their operations in the 18 GHz band. To implement these changes, we are also exercising our authority under section 316 of the Communications Act to modify licenses.[18] All DEMS licenses for the 18 GHz band will be modified as described above as well as to authorize operations in the 24 GHz band. These modifications will be effected by separate action by the Wireless Telecommunications Bureau. None of these revisions is intended otherwise to alter, modify, expand, or change in any material way the authorizations provided to incumbent DEMS licensees under the terms of their current licenses.

15. The only current operations in the United States in the 24 GHz band are two radionavigation radar facilities operated by the FAA. These are located near Washington, D.C. and Newark, New Jersey. These facilities are scheduled to be decommissioned as of January 1, 1998 and January 1, 2000, respectively. Accordingly, DEMS operations at 24 GHz will be required to protect these facilities until the decommissioning dates. The FAA, NTIA, FCC, and affected licensees will coordinate to assure compatible operations in these areas. However, we do not anticipate the protection criteria as to unduly limit DEMS operations, especially in view of near term decommissioning.[19] We also note that there are NASA operations in the adjacent band that must be considered.[20] Also, operations in United States border areas will be subject to coordination with Canada and Mexico, as necessary.

16. In that this *Order* resolves conflicts surrounding the use of the 18 GHz band, we believe that we can now rescind our action in the *18 GHz Freeze Order* and substitute the following. We will grant the pending applications that have passed both the 30-day Public Notice period and the 60 day competing application cut-off period and for which there are no mutually exclusive competing applications. We will also grant the pending applications for nodal stations within markets for which a license exists. The licenses granted will permit operations at 18 GHz until the year 2001 and at 24 GHz for the term of the license. New facilities will be permitted only to the extent they are consistent with current authorizations, except that in the Denver and Washington areas, no new facilities, or modifications to existing facilities, will be permitted. No applications for new 18 GHz DEMS facilities will be accepted for filing. Future licensing in the 24 GHz band will be addressed in a subsequent rulemaking.

17. With regard to the applications that were pending at the time of the 18 GHz freeze but had not passed the 60-day cut-off period for competing applications because of the freeze on the filing of new applications, we believe that it is appropriate and equitable to dismiss them. These applications are not ripe for processing because we cannot predict whether competing applications would have been filed. Furthermore, in view of our decision to move DEMS operations to the 24 GHz band, it is unnecessary to retain these applications in a pending status in that we are not in the process of establishing new rules for the continued operation of DEMS at 18 GHz.

IV. Procedural Matters

18. Based on the representations of NTIA that the relocation is essential to fulfill requirements for Government military space systems to perform satisfactorily,[21] we are amending the Table of Allocations in Part 2 of the rules to include the Fixed service in the 24.25–24.45 and 25.05–25.25 GHz bands and making other changes in our rules necessary to relocate DEMS systems to the 24 GHz band on a nationwide basis. The rules adopted in this order therefore involve the exercise of military functions of the United States in that they ensure the Government's current and future ability to operate military space systems in the 18 GHz frequency band. In addition, to the extent that any additional frequencies are being reallocated, these measures are necessary to ensure that DEMS service providers continue to be able to provide nationwide service. We believe that it would not be practical to have DEMS operating in two bands on a long term basis because of the complications involved with coordinating with the Government Earth stations, inconvenience to subscribers, and coordination with NGSO/FSS

and Technology, FCC, dated March 5, 1997, at ¶ iv, v.

[15] *See* Appendix A, amended rule 47 CFR 101.147(r)(10).

[16] *Supra* ¶ 3.

[17] These areas are defined by a circle with a radius of 150 km from 38°48′ N and 76°52′ W (Washington, D.C., area) and a circle with a radius of 150 km from 39°43′ N and 104°46′ W (Denver, Colorado, area).

[18] Licensees will be afforded the 30 day protest period, pursuant to the statute. However, due to the consensual nature of this relocation, we do not anticipate any objections to the proposed license modifications.

[19] *See* Letter from Richard Parlow, Associate Administrator, Office of Spectrum Management, NTIA to Richard Smith, Chief, Office of Engineering and Technology, FCC, dated March 5, 1997.

[20] We have adopted limitations on out-of-band emissions which we believe are sufficient to afford any necessary protection. *See also* Letter from Richard Parlow, Associate Administrator, Office of Spectrum Management, NTIA, to Richard Smith, Chief, Office of Engineering and Technology, FCC, dated May 14, 1996 (NTIA making certain changes in the Table of Frequency Allocations concerning these services and suggesting that the FCC do the same). We intend to consider such changes to the Table of Frequency Allocations in a future proceeding.

[21] *See* Letter from Richard Parlow, Associate Administrator, Office of Spectrum Management, NTIA, to Richard Smith, Chief, Office of Engineering and Technology, FCC, dated January 7, 1997.

operations. Therefore, based on national security needs and because notice and public comment and procedures are otherwise, for good cause shown, unnecessary and contrary to the public interest, notice and comment procedures need not be followed prior to adoption of these rules. *See* 5 U.S.C. 553 (a)(1), (b)(3)(B); *Bendix Aviation Corp.* v. *F.C.C.*, 272 F.2d 533 (D.C. Cir. 1959), *cert. denied sub nom. Aeronautical Radio, Inc.* v. *U.S.*, 361 U.S. 965 (1960).

V. Ordering Clauses

19. Accordingly, *it is ordered* that Parts 1, 2, and 101 of the Commission's Rules ARE AMENDED as specified below, effective June 5, 1997. This action is authorized by Sections 4(i), 303(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), 303(c), 303(f), and 303(r).

20. *It is further ordered* that all DEMS licenses for the 18 GHz band that include service in an area within 150 km of the coordinates 38°48′ N/76°52′ W (Washington, D.C area) and 39°43′ N/104°46′ W (Denver, CO area) will be modified so as to prohibit operations in those areas on those frequencies at midnight on the effective date of the rules adopted herein. Furthermore, all DEMS licenses for the 18 GHz band will be modified to expire on midnight of January 1, 2001 so as to prohibit operations on those frequencies beyond that date. All DEMS licenses will be modified to permit operations in the 24 GHz band for the remainder of their license term and consistent with the rules applicable in the 24 GHz band. Incumbent licensees will have 30 days from the date of release of this Order to protest the license modification consistent with Section 316 of the Communications Act of 1934, as amended. The Chief, Wireless Telecommunications Bureau, is instructed to notify the incumbent DEMS licensees of this Order on the release date pursuant to Section 1.87 of the Commission's Rules.

21. *It is further ordered* that licenses for low power systems in the 18 GHz band will be modified to prohibit any new low power operations within 55 km when used outdoor and 20 km when used indoor of the coordinates 38°48′ N and 76°52′ W (Washington, D.C., area) and 39°43′ N and 104°46′ W (Denver, Colorado, area). Incumbent licensees will have 30 days from the date of release of this Order to protest the license modification consistent with Section 316 of the Communications Act of 1934, as amended. The Chief, Wireless Telecommunications Bureau, is instructed to notify the incumbent low power licensees of this Order on the release date pursuant to section 1.87 of the Commission's Rules.

22. *It is further ordered* that, pending adoption of a future order consistent with NTIA's request for permanent coordination criteria concerning all non-Government operations in the 18 GHz band, we will continue to protect Government operations from non-Government operations not covered by this Order by using the interim procedures currently in place.

DEMS Relocation Technical Description

We have reviewed the operations and proposed operations of incumbent 18 GHz DEMS licensees and evaluated the changes that would be necessary to provide equivalent operations at 24 GHz. Differences in propagation, rain attenuation, and available equipment at 18 GHz, compared to 24 GHz, will require the licensees to use different modulation and will affect the ability of operators to dynamically assign channels to users. Assuming use of similar equipment in all other respects including transmit power, systems at 24 GHz will require approximately four times the bandwidth as at 18 GHz to maintain equivalent capacity and coverage. Specifically, based on a typical cell with a radius of 5 km and for a typical U.S. climate, there is an additional 11.8 dB of loss due to propagation and rain attenuation at 24 GHz compared to 18 GHz based on a reliability of 99.99%.

To provide for as rapid a transition as possible, as requested by NTIA, we have performed an analysis based on the use of the same or similar equipment to the extent possible. Based on this assumption, existing licensees will not be able to compensate for losses in the link budget merely by increasing transmitter power. Instead, changes in system operation will be required to achieve a reliable link comparable to that available at 18 GHz. Some benefit is realized by using the same antenna at the higher frequency. This provides 2.3 dB of additional gain at 24 GHz compared to 18 GHz. If licensees are to maintain the same cell coverage area, the remaining loss must be made up by changes in modulation and system operation. Current systems use 16–TCM (¾) modulation, but have the capability to use QPSK (½). Using QPSK rather than 16–TCM to serve user stations at the edge of the cell recovers 7 dB of the loss. The information capacity, however, is reduced by a factor of three (3). The additional path loss must be recouped by eliminating the dynamic bandwidth allocation planned by current licensees. Dynamic bandwidth allocation allows the DEMS systems to dynamically change the bandwidth available to a user based on actual demand at any given time. Fixing the amount of spectrum available to a user provides an additional 4 dB in the link budget over dynamic operations. Eliminating the efficiencies inherent in dynamically allocating spectrum, however, results in a significant reduction in system capacity. The exact reduction in capacity varies with parameters assumed for a typical system. Taken together, the changes in system operations necessary to compensate for greater losses at 24 GHz compared to 18 GHz result in a loss in system capacity in excess of four times the capacity at 18 GHz.

It is not necessary, however, to implement these changes in all areas of the cell. The changes are only necessary to maintain reliable coverage to the edge of a typical 5 km cell. We expect that, to the extent possible, licensees will maximize system capacity by maintaining the efficiencies planned for 18 GHz. Accordingly, we calculated the net effect on system capacity by considering the impact on information for any changes necessary to maintain a reliable link weighted by the area in which those changes would be necessary. Taking these factors into consideration, the information capacity at 24 GHz is approximately one-fourth that at 18 GHz, for a similar system with the same reliability and coverage. As a result, channels at 24 GHz will be four times those at 18 GHz.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 2

Radio.

47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

For the reasons set out in the preamble, Parts 1, 2, and 101 of Title 47 of the Code of Federal Regulations are amended as set forth below.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*, and 47 U.S.C. 151, 154(i), 154(j), and 303(r).

§ 1.825 [Amended]

2. In § 1.825 remove paragraph (b) and remove the paragraph designation (a).

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303 and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Remove the entries for 24.25–24.45 GHz and 24.75–25.25 GHz;

b. Add entries for 24.25–24.45 GHz, 24.75–25.05, and 25.05–25.25 GHz;

c. In the International Footnotes under heading I., add footnotes S5.534 and S5.535;

d. In the International Footnotes under heading II., remove footnote 882G; and

e. Add new footnote US341.

The additions read as follows:

§ 2.106 Table of Frequency Allocations.

International table			United States table		FCC use designators	
Region 1—allocation GHz	Region 2—allocation GHz	Region 3—allocation GHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation GHz	Allocation GHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
24.25–24.45 FIXED	24.25–24.45 RADIO-NAVIGATION	24.25–24.45 RADIO-NAVIGATION FIXED MOBILE	24.25–24.45 US341	24.25–24.45 RADIO-NAVIGATION FIXED US341	AVIATION (87) FIXED MICROWAVE (101)	
*	*	*	*	*	*	*
24.75–25.05 FIXED	24.75–25.05 FIXED-SATELLITE (Earth-to-space) S5.535	24.75–25.05 FIXED FIXED-SATELLITE (Earth-to-space) S5.535 MOBILE S5.534	24.75–25.05 RADIO-NAVIGATION	24.75–25.05 RADIO-NAVIGATION	AVIATION (87)	
25.05–25.25 FIXED	25.05–25.25 FIXED-SATELLITE (Earth-to-space) S5.535	25.05–25.25 FIXED FIXED-SATELLITE (Earth-to-space) S5.535 MOBILE S5.534	25.05–25.25	25.05–25.25 RADIO-NAVIGATION FIXED	AVIATION (87) FIXED MICROWAVE (101)	
*	*	*	*	*	*	*

International Footnotes

* * * * *

I. New ''S'' Numbering Scheme

* * * * *

S5.534 Additional allocation: in Japan, the band 24.65–25.25 GHz is also allocated to the radionavigation service on a primary basis until 2008.

S5.535 In the band 24.75–25.25 GHz, feeder links to stations of the broadcasting-satellite service shall have priority over other users in the fixed-satellite service (Earth-to-space). Such other users shall protect and shall not claim protection from existing and future operating feeder-link networks to such broadcasting satellite stations.

* * * * *

United States (US) Footnotes

* * * * *

US341 Non-government operations in the 24.25–24.45 GHz band must provide protection to FAA radionavigation radar facilities near Washington, D.C., and Newark, New Jersey, until January 1, 1998, and January 1, 2000, respectively. Protection will be afforded in accordance with criteria developed by the F.C.C. and N.T.I.A.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. In Section 101.13, paragraph (c) is amended by revising the first sentence to read as follows:

§ 101.13 Application forms and requirements for private operational fixed stations.

* * * * *

(c) A separate Form 402 for point-to-multipoint frequencies in the 10.6, 18 GHz and 24 GHz bands must be filed for each Nodal Station except for operations consistent with § 101.147. * * *

* * * * *

3. Section 101.45 is amended by adding a new paragraph (h) to read as follows:

§ 101.45 Mutually exclusive applications.

* * * * *

(h) Renewal applications will not be included in a random selection process.

§ 101.49 [Removed]

4. Section 101.49 is removed.

5. In § 101.59, paragraphs (b)(1), (c)(1)(i) and (c)(2)(i) are revised; paragraph (c)(2)(ii) is removed; and paragraph (c)(2)(iii) is redesignated as paragraph (c)(2)(ii), to read as follows:

§ 101.59 Processing of applications for facility minor modifications.

* * * * *

(b) * * *

(1) It is in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, or Local Television Transmission Services;

* * * * *

(c) * * *

(1) * * *

(i) Any increase in equivalent isotropically radiated power is less than 3 dB over the previously authorized output power;

* * * * *

(2) * * *

(i) Any increase in antenna height is less than 3.0 meters (10 feet) above the previously authorized height;

* * * * *

6. Section 101.101 is amended by adding an entry to the table to read as follows:

§ 101.101 Frequency availability.

Frequency band (MHz)	Radio service				
	Common carrier (Part 101)	Private radio (Part 101)	Broadcast auxilliary (Part 74)	Other (Parts 15, 21, 24, 25, 74, 78 & 100)	Notes
* * *	*	*	*	*	
24,250–25,250	DEMS	DEMS			
* * *	*	*	*	*	

* * * * *

7. In § 101.109, paragraph (c) is amended by adding an entry to the table to read as follows:

§ 101.109 Bandwidth.

* * * * *

(c) * * *

Frequency band (MHz)	Maximum authorized bandwidth
24,250–25,250	40 MHz

* * * * *

8. In § 101.111, the introductory text of paragraph (a)(4) is revised to read as follows:

§ 101.111 Emission limitations.

(a) * * *

(4) For Digital Termination System channels used in the Digital Electronic Message Service (DEMS) operating in the 17,700–19,700 and 24,250–25,250 MHz bands:

* * * * *

9. In § 101.113, paragraph (a) is amended by adding an entry to the table to read as follows:

§ 101.113 Transmitter power limitations.

(a) * * *

Frequency band (MHz)	Maximum allowable EIRP [1, 2]	
	Fixed (dBW)	Mobile (dBW)
* * *	*	*
24,250–25,250	+55	
* * *	*	*

[1] Per polarization.

[2] For multiple address operations, see § 101.147. Remote alarm units that are part of a multiple address central station protection system are authorized a maximum of 2 watts.

* * * * *

10. In § 101.115, paragraph (c) is amended by adding the entries to the table to read as follows:

§ 101.115 Directional antennas.

* * * * *

(c) * * *

Frequency (MHz)	Category	Maximum beam width to 3 dB points [1] (included angles in degrees)	Minimum antenna gain (dbi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
*	*	*	*	*		*		*		*
24,250 to 25,250 [10]	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	20	24	28	32	35	36	36
*	*	*	*	*		*		*		*
*	*	*	*	*		*		*		*

[1] If a licensee chooses to show compliance using maximum beamwidth to 3 dB points, the beamwidth limit shall apply in both the azimuth and the elevation planes.

[10] DEMS User Stations antennas in this band must meet performance Standard B and have a minimum antenna gain of 34 dBI. The maximum beamwidth requirement does not apply to DEMS User Stations. DEMS Nodal Stations need not comply with these standards.

* * * * *

11. In § 101.141, the introductory text of paragraph (a) is revised to read as follows:

§ 101.141 Microwave modulation.

(a) Microwave transmitters employing digital modulation techniques and operating below 19.7 GHz and in the 24.25–25.25 GHz band must, with appropriate multiplex equipment, comply with the following additional requirements:

* * * * *

12. In § 101.147, paragraph (a) is amended by adding an entry to the listing; revising paragraph (r) heading, paragraph (r)(9) introductory text, and the first two sentences of paragraph (r)(10); and adding new entries to the table in paragraph (r)(9), to read as follows:

§ 101.147 Frequency assignments.

(a) * * *

* * * * *

24,250–25,250 MHz

* * * * *

(r) *17,700 to 19,700 and 24,250 to 25,250 MHz.* * * *

* * * * *

(9) The following frequencies are available for point-to-multipoint DEMS Systems, except that channels 35–39 are available only to existing 18 GHz DEMS licensees as of March 14, 1997. Systems operating on Channels 25–34 must cease operations as of January 1, 2001, except that those stations on these channels within 150 km of the coordinates 38°48′ N/76°52′ W (Washington, D.C., area) and 39°43′ N/104°46′ W (Denver, Colorado, area) must cease operations as of June 5, 1997:

Channel No.	Nodal station frequency band (MHz) limits	User station frequency band (MHz) limits
*	*	*
35	24,250–24,290	25,050–25,090
36	24,290–24,330	25,090–25,130
37	24,330–24,370	25,130–25,170
38	24,370–24,410	25,170–25,210
39	24,410–24,450	25,210–25,250

* * * * *

(10) Special provision for low power systems in the 17,700–19,700 MHz band: Notwithstanding other provisions in this rule part and except for specified areas around Washington, D.C., and Denver, Colorado, licensees of point-to-multipoint channel pairs 25–29 identified in paragraph (r)(9) of this section may operate multiple low power transmitting devices within a defined service area. New operations are prohibited within 55 km when used outdoor and within 20 km when used indoor of the coordinates 38°48′ N/76°52′ W and 39°43′ N/104°46′ W.

* * *

* * * * *

13. Section 101.501 is revised to read as follows:

§ 101.501 Eligibility.

In that DEMS operations will be transitioned to the 24 GHz band, applications for new facilities using the 18 GHz channels identified in § 101.147(r)(9) are not acceptable for filing as of June 5, 1997.

14. Section 101.505 is revised to read as follows:

§ 101.505 Frequencies.

Frequencies, and the conditions on which they are available, for DEMS operations are contained in this subpart as well as in § 101.147(r)(9) of subpart C of this part.

15. Section 101.507 is revised to read as follows:

§ 101.507 Frequency stability.

The frequency stability in the 17,700–19,700 and 24,250–25,250 MHz bands must be ± 0.001% for each DEMS Nodal Station transmitter and ± 0.003% for each DEMS User Station transmitter.

16. In § 101.509, the introductory text of paragraph (c) is revised to read as follows:

§ 101.509 Interference protection criteria.

* * * * *

(c) The following interference studies, as appropriate, must be included in DEMS Nodal Station applications to the extent they are provided for in this subpart:

* * * * *

[FR Doc. 97–11768 Filed 5–5–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; DA 97–805]

Pay Telephone Reclassification and Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver.

SUMMARY: On April 15, 1997, the Common Carrier Bureau (''Bureau'') granted a limited waiver of the Commission's requirement that effective intrastate tariffs for payphone services be in compliance with federal guidelines, specifically that the tariffs comply with the ''new services'' test, as set forth in the *Payphone Reclassification Proceeding,* CC Docket No. 96–128 [''*Payphone Order*'' 61 FR 52307 (October 7, 1997); ''*Order on Reconsideration*'' 61 FR 65341 (December 12, 1996)]. Local exchange carriers (''LECs'') must comply with this requirement, among others, before they are eligible to receive the compensation from interexchange carriers (''IXCs'') that is mandated in that proceeding. Because some LEC intrastate tariffs for payphone services are not in full compliance with the Commission's guidelines, the Bureau granted all LECs a limited waiver until May 19, 1997 to file intrastate tariffs for payphone services consistent with the ''new services'' test, pursuant to the federal guidelines established in the *Order on Reconsideration,* subject to the terms discussed therein.

DATES *Effective:* April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Carowitz, 202–418–0960, Enforcement Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Synopsis of Order

1. Upon reviewing the contentions of the Regional Bell Operating Company (''RBOC'') Coalition and the language it cites from the two orders in the *Payphone Reclassification Proceeding,* the Bureau concluded that while the individual BOCs may not be in full compliance with the intrastate tariffing requirements of the *Payphone Reclassification Proceeding,* they have made a good faith effort to comply with the requirements. The RBOC Coalition concedes that the Commission's payphone orders, as clarified by the *Bureau Waiver Order,* mandate that the payphone services a LEC tariffs at the state level are subject to the new services test and that the requisite cost-support data must be submitted to the individual states. In addition, the RBOC Coalition states that it will take whatever action is necessary to comply with the Commission's orders in order to be eligible to receive payphone compensation at the earliest possible date. Therefore, the Bureau adopted an

order, which contains a limited waiver of the federal guidelines for intrastate tariffs, specifically the requirement that LECs have filed intrastate payphone service tariffs as required by the *Order on Reconsideration* and the *Bureau Waiver Order* that satisfy the new services test, and that effective intrastate payphone service tariffs comply with the ''new services'' test of the federal guidelines for the purpose of allowing a LEC to be eligible to receive payphone compensation. The existing intrastate tariffs for payphone services will continue in effect until the intrastate tariffs filed pursuant to the *Order on Reconsideration,* the *Bureau Waiver Order* and the instant order become effective. Because other LECs may also have failed to file the intrastate tariffs for payphone services that comply with the ''new services'' test of the federal guidelines, the Bureau applied this limited waiver to all LECs, with the limitations set forth therein.

2. Consistent with its conclusions above and in the interests of bringing LECs into compliance with the requirements of the *Payphone Reclassification Proceeding,* the Bureau waived for 45 days from the April 4, 1997 release date of the *Bureau Waiver Order* the requirement that LEC intrastate tariffs for payphone services comply with the ''new services'' test of the federal guidelines, as set forth in paragraph 163 of the Order on *Reconsideration* and clarified in the *Bureau Waiver Order.* LECs must file intrastate tariffs for payphone services, as required by the *Payphone Reclassification Proceeding* consistent with all the requirements set forth in the *Order on Reconsideration,* within 45 days of the April 4, 1997 release date of the *Bureau Waiver Order.* Any LEC that files these intrastate tariffs for payphone services within 45 days of the release date of the *Bureau Waiver Order* will be eligible to receive the payphone compensation provided by the Payphone *Reclassification Proceeding* as of April 15, 1997, as long as that LEC has complied with all of the other requirements set forth in paragraph 131 (and paragraph 132 for the Bell Operating Companies) of the *Order on Reconsideration,* subject to the clarifications and limited waiver in the *Bureau Waiver Order.* Under the terms of this limited waiver, a LEC must have in place intrastate tariffs for payphone services that are effective by April 15, 1997. The waiver permits the LEC to file intrastate tariffs that are consistent with the ''new services'' test of the federal guidelines set forth in the *Order on Reconsideration,* as clarified by the *Bureau Waiver Order.* The existing intrastate payphone service tariffs will continue in effect until the intrastate tariffs filed pursuant to the Bureau's order become effective.

3. The RBOC Coalition and Ameritech have committed, once the new intrastate tariffs are effective, to reimburse or provide credit to its customers for these payphone services from April 15, 1997, if newly tariffed rates, when effective, are lower than the existing rates. This action will help to mitigate any delay in having in effect intrastate tariffs that comply with the guidelines required by the *Order on Reconsideration,* including the concern raised by MCI that the subsidies from payphone services will not have been removed before the LECs receive payphone compensation. A LEC who seeks to rely on the waiver granted in the instant Order must also reimburse their customers or provide credit, from April 15, 1997, in situations where the newly tariffed rates are lower than the existing tariffed rates. The Bureau noted, in response to the arguments raised by the IXCs, that its order did not waive the requirement that subsidies be removed from local exchange service and exchange access services, the ''harm'' to the IXCs resulting from the delayed removal of subsidies from some intrastate payphone service tariffs will be limited.

4. The Bureau concluded that the waiver it granted, which is for a limited duration to address a specific compliance issue, is consistent with, and does not undermine, the rules adopted by the Commission in the *Payphone Reclassification Proceeding.* Therefore, it rejected the various alternatives to granting a waiver that were suggested by the American Public Communications Council (''APCC'') and the IXCs. More specifically, it concluded that APCC's proposal to require the refiling of all intrastate payphone service tariffs would unduly delay, and possibly undermine, the Commission's efforts to implement Section 276 and the congressional goals of ''promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public. * * *''. In response to Sprint's proposal that we delay the effective date of the LECs' interstate carrier common line reductions, the Bureau concluded that the better approach would be to evaluate requests for such treatment by individual LECs on a case-by-case basis. In addition, the Bureau declined to treat the request of the RBOC Coalition as an untimely petition for reconsideration of the Commission's rules, because the RBOC Coalition did not seek reconsideration of the rules adopted in the *Payphone Reclassification Proceeding,* but instead sought additional time, in a specific, limited circumstance, to comply with those rules.

5. In response to AT&T's arguments that a LEC must show proof that its intrastate tariffs have removed payphone subsidies consistent with Section 276, the Bureau noted the Commission concluded that ''[t]o receive compensation a LEC *must be able to certify*'' that it has satisfied each of the individual prerequisites to receiving the compensation mandated by the *Payphone Reclassification Proceeding.* The Commission did not require that the LECs file such a certification with it. Nothing in the Commission's orders, however, prohibits the IXCs obligated to pay compensation from requiring that their LEC payees provide such a certification for each prerequisite. Such an approach is consistent with the Commission's statement that ''we leave the details associated with the administration of this compensation mechanism to the parties to determine for themselves through mutual agreement.''

6. Waiver of Commission rules is appropriate only if special circumstances warrant a deviation from the general rule and such deviation serves the public interest. Because the LECs are required to file, and the states are required to review, intrastate tariffs for payphone services consistent with federal guidelines, which, in some cases, may not have been previously filed in this manner at the intrastate level, the Bureau found that special circumstances exist in this case to grant a limited waiver of brief duration to address this responsibility. In addition, it found that its grant of a waiver in this limited circumstance, does not undermine, and is consistent with, the Commission's overall policies in CC Docket No. 96–128 to reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated by payphones. Moreover, the states' review of the intrastate tariffs that are the subject of this limited waiver will enable them to determine whether these tariffs have been filed in accordance with the Commission's rules, including the ''new services'' test. Accordingly, the Bureau granted a limited waiver for 45 days from the April 4, 1997 release date of the *Bureau Waiver Order* the requirement that LEC intrastate tariffs for payphone services comply with the ''new services'' test of the federal guidelines, as set forth in paragraph 163 of the *Order on Reconsideration*. The

order did not waive any of the other requirements set forth in paragraphs 131–132 of the *Order on Reconsideration*.

Ordering Clauses

7. Accordingly, it is ordered, pursuant to Sections 4(i,), 5(c), 201–205, 276 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c), 201–205, 276, and Sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91 and 0.291, that limited waiver of the Commission's requirements to be eligible to receive the compensation provided by the *Payphone Reclassification Proceeding*, CC Docket No. 96–128, is granted to the extent stated herein.

8. It is further ordered that this Order shall be effective upon release.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–11683 Filed 5–5–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; DA 97–678]

Pay Telephone Reclassification and Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver.

SUMMARY: On April 4, 1997, the Common Carrier Bureau (''Bureau'') clarified and granted a limited waiver of the Commission's interstate tariffing requirements for unbundled features and functions, as set forth in the *Payphone Reclassification Proceeding*, CC Docket No. 96–128 [''*Payphone Order*'' 61 FR 52307 (October 7, 1997); ''*Order on Reconsideration*'' 61 FR 65341 (December 12, 1996)]. Local exchange carriers (''LECs'') must comply with these requirements, among others, before they are eligible to receive the compensation from interexchange carriers (''IXCs'') that is mandated in that proceeding. Because some LECs are not in full compliance with the Commission's federal tariffing requirements for unbundled features and functions under the *Payphone Order* and *Order on Reconsideration*, the Bureau granted all LECs a limited waiver of the deadline for filing the federal tariffs for unbundled features and functions, to the extent necessary, to enable LECs to file the required federal tariffs within 45 days after the release of the Bureau's order, with a scheduled effective date no later than 15 days after the date of filing.

DATES: Effective: April 4, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Carowitz, 202–418–0960, Enforcement Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Synopsis of Order

1. The Bureau clarified here that the unbundled features and functions addressed in the *Payphone Reclassification Proceeding* are network services similar to basic service elements (''BSEs'') under the Open Network Architecture (''ONA'') regulatory framework. BSEs are defined as optional unbundled features that an enhanced services provider may require or find useful in configuring its enhanced service. In this case, the unbundled features are payphone-specific, network-based features and functions used in configuring unregulated payphone operations provided by payphone service providers (''PSPs'') or LECs. Some of the LECs use terms such as tariffed ''options'' and ''elective features'' for network services that other LECs call features and functions. Options and elective features must be federally tariffed in the same circumstances as features and functions must be federally tariffed, depending on whether they are provided on a bundled basis with the basic network payphone line (state tariff), or separately on an unbundled basis (federal and state tariffs).

2. The Bureau also clarified that the requirement to file federal tariffs applies only to payphone-specific, network-based, unbundled features and functions provided to others or taken by a LEC's operations, such as answer supervision and call screening, with the following qualifications discussed below. It agreed with the Regional Bell Operating Company (''RBOC'') Coalition that the federal tariffing requirement does not apply to non-network services, such as inside wire services. Moreover, as suggested by the RBOC Coalition, the Bureau did not include in this federal tariffing requirement features and functions that are generally available to all local exchange customers and are only incidental to payphone service, such as touchtone services and various custom calling features. In addition, the Bureau clarified that payphone-specific, network-based features and functions must be federally tariffed now only if the LEC provides them separately and on an unbundled basis from the basic payphone line, either to its payphone operations or to others, because the payphone orders did not require additional unbundling of features and functions by April 15 beyond those that the LEC chooses to provide. As required by the *Payphone Reclassification Proceeding*, however, a state may require further unbundling, and PSPs may request additional unbundled features and functions from BOCs through the ONA 120-day service request process.

3. The Bureau concluded that the *Payphone Reclassification Proceeding* does not prohibit the mixing and matching of payphone services between federal and state tariffs by LEC and independent payphone operations. This conclusion applies only to payphone services and does not affect *Computer III* requirements. In *Computer III*, the Commission did not allow such mixing and matching because: (1) Mixing and matching could result in mismatch of basic service arrangements (''BSA'') and BSEs costs and revenues; (2) it could undermine state policies; (3) states may impose terms and conditions on BSAs/BSEs that differ from those of the FCC; and (4) other jurisdictional problems. Unlike *Computer III*, however, Section 276 provides the Commission with jurisdiction over all tariffing of payphone services. The Commission has delegated to each state the review, pursuant to federal guidelines, of payphone tariffs filed in the state. Given that the federal guidelines for tariffing discussed above are the same in the state and federal jurisdictions, there is no undermining of state policies or the creation of jurisdictional conflicts. Moreover, in this case, mixing and matching provides a safeguard to ensure that unbundled features are available at rates that comply with the guidelines established in the *Payphone Reclassification Proceeding.* The Bureau concluded that the separations issues, if any, raised by allowing mixing and matching are outweighed, in this case, by the importance of this safeguard to ensure that unbundled features and functions are available at rates that comply with the guidelines established in the *Payphone Reclassification Proceeding.*

4. Upon reviewing the contentions of the RBOC Coalition and the language it cites from the two orders in the *Payphone Reclassification Proceeding*, the Bureau concluded that while the individual BOCs are not in full compliance with the requirements of the *Payphone Reclassification Proceeding*,

they have made a good faith effort to comply with the requirements. The RBOC Coalition conceded that the Commission's payphone orders mandate the federal tariffing of some payphone services, namely those that the LEC provides to its own payphone operations. In addition, the RBOC Coalition stated that it will take whatever action is necessary to comply with the Commission's orders in order to be eligible to receive payphone compensation at the earliest possible date. Therefore, because the RBOC Coalition has indicated its intent to comply with the Commission's requirements, as established by the *Payphone Reclassification Proceeding*, and because the Coalition's narrower reading of what payphone services need to be federally tariffed is based on its good faith efforts to comply with the Commission's rules, the Bureau adopted an order, which contained a limited waiver of the federal tariffing requirements for unbundled features and functions a LEC must meet before it is eligible to receive payphone compensation. Because other LECs may also have failed to file all the federal tariffs for unbundled features and functions required by the *Payphone Order* and the *Order on Reconsideration*, the Bureau applied the limited waiver to all LECs, with the limitations set forth below.

5. In the *Payphone Order* and *Order on Reconsideration*, the Commission required that LECs file federal tariffs by January 15, 1997 with a 90-day review period for unbundled features and functions. Consistent with its conclusions outlined above and in the interests of bringing LECs into compliance with the requirements of the *Payphone Reclassification Proceeding*, the Bureau waived for 60 days the requirement that LECs have ''*in effect* * * * interstate tariffs for unbundled functionalities associated with [payphone] lines'' by April 15, 1997. The Bureau also waived both the January 15th filing deadline and the 90-day review period for interstate tariffs. LECs must file interstate tariffs for unbundled features and functions, as required by the *Payphone Reclassification Proceeding*, as clarified herein, within 45 days after the release date of this order under the streamlined tariff review process. These tariffs will be effective no later than 15 days after filing, unless suspended or rejected. Any LEC that files federal tariffs for unbundled functionalities, as clarified herein, within 45 days of the release date of the instant Order will be eligible to collect the payphone compensation provided by the *Payphone Reclassification Proceeding* on April 15, 1997, as long as that LEC has complied with all of the other requirements set forth in paragraph 131 (and paragraph 132 for the BOCs) of the *Order on Reconsideration*. If a LEC fails to file all of the requisite federal tariffs within 45 days, or if the federal tariffs for a particular LEC are not in effect after 60 days from the date of release of this Order, the LEC will not be eligible to receive the payphone compensation provided by the *Payphone Reclassification Proceeding.*

6. Waiver of Commission rules is appropriate only if special circumstances warrant a deviation from the general rule and such deviation serves the public interest. Because the Commission is required to review incoming tariffs for the unbundled features and functions associated with payphone service, which have not been previously filed at the interstate level, the Bureau found that special circumstances existed to grant a limited waiver of brief duration to address this responsibility. In addition, for the reasons stated above, the Bureau's grant of a waiver in a limited circumstance, would not undermine, and is consistent with, the Commission's overall policies in CC Docket No. 96–128 to reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated by payphones. Moreover, the Bureau's review of the interstate tariffs that are the subject of this limited waiver will enable it to determine whether these tariffs have been filed in accordance with its rules. Accordingly, the Bureau granted a limited waiver subject to the filing of federal tariffs for unbundled features and functions within 45 days of the release date of the Bureau's order. The Bureau's order does not waive any of the other requirements set forth in paragraphs 131–132 of the *Order on Reconsideration*, including the requirement that a LEC have ''in effect *intrastate* * * * tariffs for unbundled functionalities.* * *''

7. The Bureau denied the Motion by the American Public Communications Council (''APCC'') that requested that the Commission conclude that the BOCs are disqualified from receiving interim compensation pursuant to the *Payphone Reclassification Proceeding.* APCC argues that the BOCs have failed both to retariff their basic payphone services at cost-based rates, and to tariff separately from basic payphone lines coin service features and other unbundled features and functions. The Bureau clarified that the *Payphone Reclassification Proceeding* did not require, by April 15, 1997, the level of unbundling sought by APCC. LECs, including the BOCs, must comply with the state tariffing requirements of the *Payphone Reclassification Proceeding.* In response to APCC's contentions, the Bureau concluded that it did not have a record to determine whether the BOCs have complied with the state tariffing requirement for cost-based rates. As required by the *Order on Reconsideration*, however, LECs, including the BOCs, must be prepared to certify that they have complied with all the requirements of the *Payphone Reclassification Proceeding,* including those involving intrastate tariffs, subject to the limited waiver provided herein.

8. The Bureau emphasized that LECs must comply with all of the enumerated requirements established in the *Payphone Reclassification Proceeding,* except as waived, before the LECs' payphone operations are eligible to receive the payphone compensation provided by that proceeding. Both independent PSPs and IXCs claim that some LECs have not filed state tariffs that comply with the requirements set forth in the *Order on Reconsideration*. These requirements are: (1) That payphone service intrastate tariffs be cost-based, consistent with Section 276, and nondiscriminatory; and (2) that the states ensure that payphone costs for unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates. LEC intrastate tariffs must comply with these requirements by April 15, 1997 in order for the payphone operations of the LECs to be eligible to receive payphone compensation. LECs that have not complied with these requirements will not be entitled to receive compensation.

9. The Bureau disagreed with the RBOC Coalition regarding the applicability of the federal guidelines for state tariffing of payphone services. The Commission concluded in the *Order on Reconsideration* that it had jurisdiction over the tariffing of payphone services in order to implement Section 276. The plain language of the *Order on Reconsideration* provides that state tariffs for payphone services must be cost based, consistent with the requirements of Section 276, nondiscriminatory, and consistent with *Computer III* guidelines. The footnote referred to by the RBOC Coalition provides references to Commission orders describing the applicable *Computer III* guidelines.

10. The guidelines for state review of intrastate tariffs are essentially the same as those included in the *Payphone Order* for federal tariffs. On

reconsideration, the Commission stated that although it had the authority under Section 276 to require federal tariffs for payphone services, it delegated some of the tariffing requirements to the state jurisdiction. The *Order on Reconsideration* required that state tariffs for payphone services meet the requirements outlined above. The *Order on Reconsideration* provides that states that are unable to review these tariffs may require the LECs to file the tariffs with the Commission.

11. The Bureau clarified that, for purposes of meeting all of the requirements necessary to receive payphone compensation, the question of whether a LEC has effective intrastate tariffs is to be considered on a state-by-state basis. Under this approach, assuming the LEC has complied with all of the other compliance list requirements, if a LEC has effective intrastate tariffs in State X and has filed tariffs in State Y that are not yet in effect, then the LEC PSP will be able to receive payphone compensation for its payphones in State X but not in State Y. The intrastate tariffs for payphone services, including unbundled features, and the state tariffs removing payphone equipment costs and subsidies must be in effect for a LEC to receive compensation in a particular state.

Ordering Clauses

12. Accordingly, it is ordered, pursuant to Sections 4(i,), 5(c), 201–205, 276 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c), 201–205, 276, and Sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91 and 0.291, that limited waiver of the Commission's requirements to be eligible to receive the compensation provided by the *Payphone Reclassification Proceeding*, CC Docket No. 96–128, is granted to the extent stated herein.

13. It is further ordered that each individual BOC must file an *ex parte* document with the Secretary, by April 10, 1997, advising on the status of intrastate tariffs for the unbundled features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such unbundled features and functions within 45 days of the release date of this Order.

14. It is further ordered that this limited waiver shall be effective upon release.

15. It is further ordered that the Motion of APCC requesting that the Commission conclude that the BOCs are disqualified from receiving interim compensation under the *Payphone Reclassification Proceeding* is denied.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–11682 Filed 5–5–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 93–268; FCC 97–126]

Inclusion of Terminal Equipment Connected to Basic Rate Access Service Provided via Integrated Services Digital Network Access Technology and Terminal Equipment Connected to Public Switched Digital Service

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rules which were published in the **Federal Register** August 15, 1996. (61 FR 42386). The rules related to the effective dates after which new or modified equipment connected to the Integrated Services Digital Network (ISDN) or to the Public Switched Digital Service (PSDS) must comply with the rules released in a Report and Order on March 7, 1996. (FCC 96–1).

DATES: Effective on June 5, 1997.

FOR FURTHER INFORMATION CONTACT: Bill von Alven, Senior Engineer, Network Services Division, Common Carrier Bureau, (202) 418–2342.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 1997, the Commission released an Order on Reconsideration (FCC 97–126) to change the dates defining grandfathered equipment and thereby provide Part 68 applicants 18 months to comply with the new registration requirements. To retain the 18-month period necessary for an orderly transition of equipment to the new requirements, the Commission amends its rules to extend the time frame for equipment governed by the rules. The dates January 1, 1996 and July 1, 1997, are thus changed to November 13, 1996 and May 13, 1998, respectively. Consequently, equipment connected by November 13, 1996 will be considered grandfathered and not subject to our registration rules under Part 68.

Need for Correction

As published, the final rules need to be clarified to allow part 68 applicants the customary 18 months to comply with new registration requirements.

List of Subjects in 47 CFR Part 68

Federal Communications Commission, Registered terminal equipment, Telephone.

Accordingly, 47 CFR part 68 is corrected by making the following correcting amendments:

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for Part 68 is amended to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 68.2 is amended by revising paragraphs (j) and (k) as follows:

§ 68.2 Scope

* * * * *

(j)(1) Terminal equipment, including its premises wiring directly connected to PSDS (Type I, II or III) on or before November 13, 1996, may remain for service life without registration, unless subsequently modified. Service life means the life of the equipment until retired from service. Modification means changes to the equipment that affect compliance with part 68 rules.

(2) New installation of terminal equipment, including its premises wiring, may occur until May 13, 1998, without registration of any terminal equipment involved, provided that the terminal equipment is of a type directly connected to PSDS (Type I, II or III) as of November 13, 1996. This terminal equipment may remain connected and be reconnected to PSDS (Type I, II or III) for service life without registration unless subsequently modified.

(k)(1) Terminal equipment, including premises wiring directly connected to ISDN BRA or PRA on November 13, 1996, may remain connected to ISDN BRA or PRA for service life without registration, unless subsequently modified.

(2) New installation of terminal equipment, including premises wiring, may occur until May 13, 1998, without registration of any terminal equipment involved, provided that the terminal equipment is of a type directly connected to ISDN BRA or PRA as of November 13, 1996. This terminal equipment may remain connected and be reconnected to ISDN BRA or PRA for service life without registration unless subsequently modified.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–11722 Filed 5–5–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 950407093–6298–03; I.D. 012595A]

Endangered and Threatened Species; Threatened Status for Southern Oregon/Northern California Coast Evolutionarily Significant Unit (ESU) of Coho Salmon

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

ACTION: Final rule.

SUMMARY: The NMFS is issuing a final determination that the Southern Oregon/Northern California Coast Evolutionarily Significant Unit (ESU) of coho salmon (*Oncorhynchus kisutch*) is a ''species'' under the Endangered Species Act (ESA) of 1973, as amended, and is being listed as threatened. Coho salmon populations are very depressed in this ESU, currently numbering less than 10,000 naturally-produced adults. The threats to this ESU are numerous and varied. Several human-caused factors, including habitat degradation, harvest, and artificial propagation, exacerbate the adverse effects of natural environmental variability brought about by drought, floods, and poor ocean conditions. NMFS has determined that existing regulatory mechanisms are either inadequate or not implemented well enough to conserve this ESU. While conservation efforts are underway for some populations in this ESU, they are not considered sufficient to change the likelihood that the ESU as a whole will become endangered in the foreseeable future. NMFS will issue shortly protective regulations under section 4(d) of the ESA, which will apply section 9(a) prohibitions to this ESU, with certain exceptions. NMFS does not expect those regulations to become effective before July 1, 1997.

NMFS has further determined that the Oregon Coast ESU does not warrant listing at this time. Accordingly, NMFS will consider the Oregon Coast coho salmon ESU to be a candidate species in 3 years (or earlier if warranted by new information).

EFFECTIVE DATE: June 5, 1997.

ADDRESSES: Garth Griffin, NMFS, Northwest Region, Protected Species Program, 525 N.E. Oregon St., Suite 500, Portland, OR 97232–2737; Craig Wingert, NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; or Joe Blum, NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at (503) 231–2005; Craig Wingert at (310) 980–4021; or Joe Blum at (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Species Background

The coho salmon (*Oncorhynchus kisutch*) is an anadromous salmonid species that was historically distributed throughout the North Pacific Ocean from central California to Point Hope, AK, through the Aleutian Islands, and from the Anadyr River, Russia, south to Hokkaido, Japan. Historically, this species probably inhabited most coastal streams in Washington, Oregon, and northern and central California. Some populations, now extinct, are believed to have migrated hundreds of miles inland to spawn in tributaries of the upper Columbia River in Washington and the Snake River in Idaho.

Coho salmon on the west coast of the contiguous United States and much of British Columbia generally exhibit a relatively simple 3-year life cycle. Adults typically begin their freshwater spawning migration in the late summer and fall, spawn by mid-winter, and then die. The run and spawning times vary between and within populations. Depending on river temperatures, eggs incubate in ''redds'' (gravel nests excavated by spawning females) for 1.5 to 4 months before hatching as ''alevins'' (a larval life stage dependent on food stored in a yolk sac). Following yolk sac absorption, alevins emerge from the gravel as young juveniles or ''fry'' and begin actively feeding. Juveniles rear in fresh water for up to 15 months, then migrate to the ocean as ''smolts'' in the spring. Coho salmon typically spend 2 growing seasons in the ocean before returning to their natal stream to spawn as 3 year-olds. Some precocious males, called ''jacks,'' return to spawn after only 6 months at sea.

During this century, indigenous, naturally-reproducing populations of coho salmon have been extirpated in nearly all Columbia River tributaries and they are in decline in numerous coastal streams throughout Washington, Oregon, and California. NMFS'' coho salmon status review identified six distinct population segments (i.e., ESUs) in Washington, Oregon, and California and noted that natural runs in all ESUs are substantially below historical levels (Weitkamp, et al. 1995). At least 33 populations have been identified by state agencies and conservation groups as being at moderate or high risk of extinction. In general, the impacts on West Coast coho salmon stocks decrease geographically from south to north, with the central California stocks being in the worst condition.

This **Federal Register** document focuses on listing determinations for two coho salmon ESUs—the Southern Oregon/Northern California Coast ESU and the Oregon Coast ESU—both of which were proposed as threatened species under the ESA on July 25, 1995 (60 FR 38011). The Southern Oregon/ Northern California Coast ESU is composed of populations between Punta Gorda (CA) and Cape Blanco (OR). In the 1940s, estimated abundance of coho salmon in this ESU ranged from 150,000 to 400,000 naturally spawning fish. Today, coho populations in this ESU are very depressed, currently numbering approximately 10,000 naturally produced adults. Populations in the California portion of this ESU could be less than 6 percent of their abundance during the 1940s (CDFG, 1994), while Oregon populations have exhibited a similar but slightly less severe decline (ODFW, 1995); however, it is important to note that population abundance in the Rogue River Basin has increased substantially over the last 3 years (NMFS, 1997a). The bulk of current coho salmon production in this ESU consists of stocks from the Rogue River, Klamath River, Trinity River, and Eel River basins. Smaller basins known to support coho salmon include the Elk River in Oregon, and the Smith and Mad Rivers and Redwood Creek in California.

The Oregon Coast ESU is composed of populations between Cape Blanco and the Columbia River. More than one million coho salmon are believed to have returned to Oregon coastal rivers in the early 1900s (Lichatowich, 1989), the bulk of them originating in this ESU. Current production is estimated to be less than 10 percent of historical levels. Spawning in this ESU is distributed over a relatively large number of basins, both large and small, with the bulk of the production being skewed to the southern portion of its range. There, the coastal lake systems (e.g., the Tenmile, Tahkenitch, and Siltcoos basins) and the Coos and Coquille Rivers have been particularly productive for coho salmon.

Previous Federal ESA Actions Related to Coho Salmon

The history of petitions received regarding coho salmon is summarized in the proposed rule published on July 25, 1995 (60 FR 38011). The most comprehensive petition was submitted by the Pacific Rivers Council and 22 co-petitioners on October 20, 1993. In response to that petition, NMFS assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological and Technical Committees (PSBTCs) in Washington, Oregon, and California. The PSBTCs consisted of scientists with technical expertise relevant to coho salmon. They were drawn from Federal, state, and local resource agencies, Indian tribes, industries, professional societies, and public interest groups. NMFS also established a Biological Review Team (BRT), composed of staff from its Northwest Fisheries Science Center and Southwest Regional Office, which conducted a coastwide status review for coho salmon (Weitkamp et al., 1995).

Based on the results of the BRT report, and after considering other information and existing conservation measures, NMFS published a proposed listing determination (60 FR 38011, July 25, 1995) that identified six ESUs of coho salmon ranging from southern British Columbia to central California. The Olympic Peninsula ESU was found not to warrant listing and the Oregon Coast ESU, Southern Oregon/Northern California Coast ESU, and Central California Coast ESU were proposed for listing as threatened species. The Puget Sound/Strait of Georgia ESU and the lower Columbia River/southwest Washington Coast ESU were identified as candidates for listing. NMFS is now in the process of completing status reviews for these latter two ESUs; results and findings for both will be announced in an upcoming **Federal Register** notice.

On October 31, 1996, NMFS published a final rule listing the Central California Coast ESU as a threatened species (61 FR 56138). Concurrently, NMFS announced that a 6-month extension was warranted for the Oregon Coast and Southern Oregon/Northern California Coast ESUs (61 FR 56211) due to the fact that there was substantial disagreement regarding the sufficiency and accuracy of the available data relevant to the listing determination (pursuant to section 4(b)(6)(B)(i) of the ESA). The NMFS has now completed a review of additional data pertaining to these two ESUs and has updated its west coast coho salmon status review (NMFS, 1997a).

Summary of Comments Regarding the Oregon Coast and Southern Oregon/ Northern California Coast ESUs

The NMFS held six public hearings in California, Oregon, and Washington to solicit comments on the proposed listing determination for west coast coho salmon. Sixty-three individuals presented testimony at the hearings. During the 90-day public comment period, NMFS received 174 written comments on the proposed rule from state, Federal, and local government agencies, Indian tribes, non-governmental organizations, the scientific community, and other individuals. In accordance with agency policy (59 FR 34270, July 1, 1994), NMFS also requested a scientific peer review of the proposed rule, receiving responses from two of the seven reviewers. A summary of major public comments pertaining to the Oregon and Northern California coho salmon ESUs (including issues raised by peer reviewers) is presented below, grouped by issue categories.

Issue 1: Sufficiency and Accuracy of Scientific Information and Analyses

Comment: Many individuals urged NMFS to use the best available scientific information in reaching a final determination regarding the risk of extinction that the coho salmon ESUs face. Comments received from a peer reviewer, as well as from scientists representing state fish and wildlife agencies, tribes, and the private sector, disputed the sufficiency and accuracy of data that NMFS employed in its proposed rule to list west coast coho salmon. In particular, they questioned the data relating to the ESUs in Oregon and California. The primary areas of disagreement concerned data relevant to risk assessment and NMFS' evaluation of existing protective measures.

Response: The ESA requires that listing determinations be made on the basis of a population's status which is determined by using the best available scientific and commercial data, with subsequent consideration being given to state and foreign efforts to protect the species. In response to the comments summarized above, NMFS published a document (61 FR 56211, October 31, 1996) extending the final listing determination deadline for the Oregon Coast and Southern Oregon/Northern California Coast ESUs for 6 months to solicit, collect, and analyze additional data. During this period, NMFS met with fisheries co-managers and received new and updated information on coho salmon in British Columbia, Washington, Oregon, and California. This was deemed critical to assessing the current status of coho salmon ESUs. This new information, more fully described in a report from the NMFS BRT (NMFS, 1997a), generally consists of updates of existing data series, new data series, and new analyses of various factors. NMFS also received analyses and conservation measures associated with the OCSRI (OCSRI, 1996 and 1997). The OCSRI components relating to hatchery and harvest measures were assessed by the BRT (NMFS, 1997a), while remaining measures were assessed by the NMFS Habitat program (NMFS, 1997b).

NMFS believes that information contained in the agency's 1995 west coast coho salmon status review (Weitkamp *et al.*, 1995), together with more recent information collected by NMFS scientists and information provided to NMFS by other sources since the proposed listing determination was published, represent the best scientific information presently available for coho salmon populations on the Oregon and California coast. NMFS believes that this information is sufficient and accurate, and, in accordance with the ESA, finds it both mandatory and appropriate to make a listing determination at this time. If substantial new scientific information indicates a change in the status of either coho salmon ESU, NMFS will reconsider the present listing determinations.

Comment: Some commenters felt that NMFS should establish explicit listing criteria common to all coho salmon ESUs, and noted that such criteria would lead to different conclusions regarding extinction risk.

Response: At this time, there is no accepted methodology nor explicit listing criteria for determining the likelihood of extinction for Pacific salmon. In November 1996, NMFS' Northwest and Southwest Fisheries Science Centers sponsored a symposium/workshop on ''Assessing Extinction Risk for West Coast Salmon'' (Seattle, November 13–15, 1996). The objective of the workshop was to evaluate scientific methods for assessing various factors contributing to extinction risk for Pacific salmon populations. A preliminary summary of key recommendations was considered by the BRT during the coho salmon status review. Most of these recommendations require long-term development of improved methods, and thus, could not be substantially applied in this review.

In recent months, NMFS has also evaluated three different population simulation models for coho salmon developed by members of the OCSRI Science Team. The preliminary results of these viability models provide a wide range of results, with one model suggesting that most Oregon coastal stocks cannot sustain themselves at the ocean survival rates that have been observed in the last 5 years (even in the absence of harvest) and another suggesting that stocks are highly resilient and would be at significant risk of extinction only if habitat degradation continues into the future (more detailed evaluations of these models are presented in NMFS' status review update (NMFS, 1997a)). While these models have potential heuristic value, NMFS is presently reluctant to employ them to forecast extinction risk for coho salmon. Instead, NMFS has relied on its traditional assessment method, which employs a variety of information types to evaluate the level of risk faced by an ESU. These include: (1) Absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and carrying capacity of the habitat; (3) trends in abundance, based on indices such as dam or redd counts or on estimates of spawner-recruit ratios; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., fisheries and interactions between hatchery and natural fish); and (6) recent events (e.g., a drought or a change in management) that have predictable short-term effects on the ESU's abundance. These considerations and the approaches to evaluating them are described in more detail in Weitkamp et al. (1995) and have been used by NMFS in other salmon status reviews. At this time, NMFS believes that an integrated assessment using these types of information is both desirable and appropriate for determining whether a Pacific salmon species is likely to become endangered or extinct.

Issue 2: Description and Status of the Southern Oregon/Northern California Coast and Oregon Coast Coho Salmon ESUs

Comment: A few commenters disputed NMFS' conclusions regarding the geographic boundaries for these ESUs; those who did, believed that NMFS should reduce the size/number of populations that constitute ESUs. One commenter believed that the Umpqua River basin (in the Oregon Coast ESU) should be considered a separate ESU and that listing was not warranted.

Response: The NMFS has published a policy describing how it would apply the ESA definition of a ''species'' to anadromous salmonid species (56 FR 58612, November 20, 1991). More recently, NMFS and the U.S. Fish and Wildlife Service (FWS) published a joint policy, consistent with NMFS' policy, regarding the definition of ''distinct population segments'' (61 FR 4722, February 7, 1996). The earlier policy is more detailed and applies specifically to Pacific salmonids and, therefore, was used for this determination. This policy indicates that one or more naturally reproducing salmonid populations will be considered to be distinct and, hence, species under the ESA, if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance on applying this policy is contained in a scientific paper entitled: ''Pacific Salmon (*Oncorhynchus* spp.) and the Definition of 'Species' under the Endangered Species Act.'' It is also found in a NOAA Technical Memorandum: ''Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon.'' NMFS' proposed listing determination and rule (60 FR 38011, July 25, 1995) for west coast coho salmon and the west coast coho salmon status review (Weitkamp et al., 1995) describe the genetic, ecological, and life history characteristics, as well as human-caused genetic changes, that NMFS assessed to determine the number and geographic extent of the coho salmon ESUs.

With respect to the Umpqua River, NMFS recognizes that physical and hydrological conditions in this basin are unique (i.e., it is by far the largest basin in the Oregon Coast ESU, and it is the only basin in the ESU to cut through the Coast Range to drain the Cascade Mountains). However, NMFS believes that application of the agency's policy (described above) justifies including Umpqua River coho salmon populations as an integral part of the Oregon Coast ESU. Ocean distribution patterns (based on marine recovery locations of fish tagged with coded wire tags) for coho salmon released from this ESU (including releases from the Umpqua stocks) are distinctly different from the distribution patterns for coho salmon released from ESUs to the north and south. Thus, NMFS concludes that the ocean migration patterns of the Umpqua stocks are similar to the rest of the stocks in the ESU. In addition, genetic data that NMFS reviewed (Weitkamp *et al.*, 1995) indicate that genetic discontinuities are particularly pronounced at Cape Blanco and the mouth of the Columbia River. While there is evidence of genetic heterogeneity within this area (e.g., the Oregon Department of Fish and Wildlife (ODFW) has identified the Umpqua River basin as one of six distinct gene conservation groups of coho salmon), NMFS believes that this ESU, as a whole, which includes the Umpqua stocks, exhibits a reasonable degree of reproductive isolation from the other two ESUs that border it.

Comment: Most commenters expressed an opinion as to whether listing was warranted for these and other coho salmon ESUs, although few provided substantive new information relevant to making risk assessments. The majority of comments stated that both ESUs should be listed as threatened or endangered, while relatively few stated that listing was not warranted.

Response: Recent Status of the Southern Oregon/Northern California Coast ESU: The Estimates of natural population abundance in the ESU continue to be based on very limited information, but the ESU has clearly undergone a dramatic decline. Favorable indicators include recent increases in abundance in the Rogue River and the presence of natural populations in both large and small basins within the ESU—factors that may provide some buffer against the ESU's extinction. However, large hatchery programs, particularly in the Klamath/Trinity basin, raise serious concerns about effects on, and sustainability of, natural populations. For example, available information indicates that virtually all of the naturally spawning fish in the Trinity River are first-generation hatchery fish. Several hatcheries in the California portion of this ESU have used exotic stocks extensively in the past, in contrast to Cole Rivers Hatchery in Oregon which has only released Rogue River stock into the Rogue River. New data relating to coho salmon presence/absence in northern California streams that historically supported coho salmon are even more disturbing than earlier

results, indicating that a smaller percentage of streams in this ESU contain coho salmon than did during an earlier study. However, it is unclear whether these new data represent actual trends in local extinctions, or if they are simply biased by sampling methods.

In the Rogue River basin, natural spawner abundance in 1996 was slightly above levels found in 1994 and 1995. Abundances in the most recent 3 years are all substantially higher than they were in 1989–93, and are comparable to counts at Gold Ray Dam (upper Rogue) in the 1940s. Estimated return ratios for 1996 are the highest on record, but this may be influenced by an underestimate of parental spawners. The Rogue River run included an estimated 60 percent hatchery fish in 1996; this figure is comparable to the percentages found in recent years. The majority of these hatchery fish return to Cole Rivers Hatchery, but NMFS has no estimate of the actual number that stray into natural habitat.

Response: Recent Status of the Oregon Coast ESU: While this ESU's current abundance is substantially less than it was historically, recent trends indicate that spawner escapements in this ESU are stable or increasing as a likely result of significant harvest restrictions (or other factors). Although escapement has been increasing for the ESU as a whole (1996 estimate of ESU-wide escapement indicates an approximately four-fold increase since 1990), recruitment and recruits-to-spawner ratios have remained low. While recent natural escapement has been estimated to be on the order of 50,000 fish per year in this ESU (reaching approximately 80,000 fish in 1996), this has been coincident with drastic reductions in harvest. Pre-fishery recruitment was higher in 1996 than in either 1994 or 1995, but it still exhibits a relatively flat trend since 1990. When looked at on a finer geographic scale, the northern Oregon coast still has very poor escapement, the north-central coast is mixed with strong increases in some streams but continued poor escapement in others, and the south-central coast continues to have increasing escapement.

In contrast to most of the 1980s, spawner-to-spawner ratios in this ESU have remained at or above replacement since 1990 (due primarily to sharp reductions in harvest). This represents the longest period of sustained replacement observed in the past 20 years. It is notable that this sustained replacement has occurred during a period of low recruitment and primarily poor-to-fair ocean conditions. However, significant concerns remain regarding the declining trend in this ESU's productivity.

Issue 3: Factors Contributing to the Decline of West Coast Coho Salmon ESUs

Comment: Many commenters addressed factors contributing to the decline of coho salmon. These included overharvest, predation by pinnipeds, effects of artificial propagation, and the deterioration or loss of freshwater and marine habitats. One peer reviewer and several commenters believed that NMFS' assessment did not adequately consider the large influence of natural environmental fluctuations. Some commenters took exception to generalizations that NMFS made regarding the various factors for decline and requested more detail on the various factors so that recovery efforts could be appropriately focussed.

Response: NMFS agrees with the commenters that many factors, past and present, have contributed to the decline of coho salmon. The agency also recognizes that natural environmental fluctuations have likely played a large role in the species' recent declines. However, NMFS believes that other human-induced impacts (e.g., from overharvest, hatchery practices, and habitat modification) have been equally significant and, moreover, have likely reduced the coho salmon populations' resiliency in the face of adverse natural factors such as drought and poor ocean conditions. Since the time of NMFS' proposed listing, several documents have been produced that describe in more detail the impacts of various factors contributing to the decline of coho and other salmonids (NMFS, 1996a, 1997a, and 1997b; OCSRI 1997). In addition, NMFS has developed a document titled ''Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale'' (NMFS, 1996b). This document presents guidelines to facilitate and standardize determinations of ''effect'' under the ESA and includes a matrix for determining the condition of various habitat parameters. This matrix is being implemented in several northern California and Oregon coastal watersheds and is expected to help guide efforts to define salmon risk factors and conservation strategies throughout the west coast. A concise description of information contained in these documents, as well as new information provided by commenters, has been incorporated in the section below titled ''Summary of Factors Affecting Coho Salmon.''

Issue 4: Adequacy of Existing Conservation Measures or Regulatory Mechanisms

Comment: Many commenters expressed opinions regarding the adequacy of existing conservation efforts or regulatory mechanisms. While many thought that existing programs were sufficient to conserve coho salmon (and hence avoid listing), others believed that efforts were either inadequate, poorly implemented, or of uncertain benefit to the species.

Response: The regulatory mechanisms established by Federal, state, tribal, and local governments provide the most effective and available means to prevent a species from facing the peril of extinction. In its proposed rule, NMFS concluded that existing measures were not sufficient to offset population declines. Since that time, several documents have been produced that describe in more detail the existing conservation efforts for salmon in Oregon and California (NMFS, 1996a, 1996c, and 1997b; OCSRI, 1997). Moreover, the agency has reviewed a variety of state and Federal conservation efforts (including regulatory mechanisms) aimed at protecting coho salmon and their habitats in these ESUs, and NMFS recognizes that significant conservation efforts have been made by an array of government agencies and private groups in California and Oregon. NMFS has also developed a document titled ''Coastal Salmon Conservation: Working Guidance for Comprehensive Salmon Restoration Initiatives on the Pacific Coast'' (NMFS, 1996d). This document was drafted to guide the Pacific Coast states, tribes, and other entities in taking the initiative for coastal salmon restoration; it also provides a framework for developing successful salmon restoration strategies. Information that commenters provided regarding existing regulatory mechanisms has been incorporated in the sections below titled: ''Summary of Factors Affecting Coho Salmon, and Efforts to Protect Oregon and California Coho Salmon.''

Issue 5: Information Received After the Close of the Comment Period

Comment: When the states of Oregon and California announced that they were in the process of developing salmon restoration initiatives (61 FR 56211, October 31, 1996), it generated considerable interest among the general public. This was especially true for the OCSRI. Between the time the August OCSRI draft was released and this **Federal Register** document was written, NMFS received a great deal of

correspondence on this subject. Some of the mail was addressed to NMFS, but much of it arrived in the form of courtesy copies of mailings sent to the state. The majority of the comments NMFS received supported the concept of a state restoration initiative, but they also expressed the thought that NMFS should still provide the additional protections afforded by a listing under the ESA.

Response: NMFS has considered this information and thanked as many of these commenters as time has allowed, and, moreover, appreciates the input it has received from the many comments that were submitted.

Summary of Factors Affecting Coho Salmon

Section 4(a)(1) of the ESA and NMFS listing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

The factors threatening naturally-reproducing coho salmon throughout its range are numerous and varied. For coho salmon populations in California and Oregon, the present depressed condition is the result of several long-standing, human-induced factors (e.g., habitat degradation, harvest, water diversions, and artificial propagation) that serve to exacerbate the adverse effects of natural environmental variability from such factors as drought, floods, and poor ocean conditions.

As noted earlier, NMFS received numerous comments regarding the relative importance of various factors contributing to the decline of coho salmon. Several recent documents have been produced that describe in more detail the impacts of various factors contributing to the decline of coho and other salmonids (NMFS, 1996a, 1997a, and 1997b; OCSRI, 1997). The following sections provide an overview of the various risk factors and their role in the decline of Oregon and California coho salmon.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

NMFS, in conjunction with the State of Oregon, identified the habitat factors for decline that have affected coho salmon. The factors are: Channel morphology changes, substrate changes, loss of instream roughness, loss of estuarine habitat, loss of wetlands, loss/degradation of riparian areas, declines in water quality (e.g., elevated water temperatures, reduced dissolved oxygen, altered biological communities, toxics, elevated pH, and altered stream fertility), altered streamflows, fish passage impediments, elimination of habitat, and direct take. Additional detail on each of these factors for decline can be found in reports by NMFS (NMFS, 1996a, 1997a, and 1997b) and the State of Oregon (OCSRI, 1997).

The major activities responsible for the decline of coho salmon in Oregon and California are logging, road building, grazing and mining activities, urbanization, stream channelization, dams, wetland loss, beaver trapping, water withdrawals and unscreened diversions for irrigation. Many commenters expressed concern that these and other habitat-related activities, if unchecked, could ultimately lead to the ESUs' becoming endangered or extinct. The following discussion provides an overview of the types of activities and conditions that adversely affect coho salmon in coastal watersheds.

Numerous studies have demonstrated that land use activities associated with logging, road construction, urban development, mining, agriculture, and recreation have significantly altered the quantity and quality of coho salmon habitat. Impacts of concern associated with these activities include the following: Alteration of streambank and channel morphology, alteration of ambient stream water temperatures, alteration of the magnitude and timing of annual stream flow patterns, elimination of spawning and rearing habitat, fragmentation of available habitats, elimination of downstream recruitment of spawning gravels and large woody debris, removal of riparian vegetation resulting in increased stream bank erosion, and degradation of water quality (CDFG, 1965; Bottom *et al.*, 1985; California Advisory Committee on Salmon and Steelhead Trout, 1988; CDFG, 1991; Nehlsen *et al.*, 1991; California State Lands Commission, 1993; Wilderness Society, 1993; Bryant, 1994; CDFG, 1994; Brown *et al.*, 1994; Botkin *et al.*, 1995; McEwan and Jackson, 1996). Of particular concern is the increased sediment input into spawning and rearing areas that results from loss of properly functioning riparian areas, land management activities that occur on unstable slopes, and certain agricultural practices. Further, historical practices, such as the use of splash dams, widespread removal of log jams, removal of snags from river channels, and eradication of beaver have adversely modified fish habitat (Bottom *et al.*, 1985).

Agricultural practices have also contributed to the degradation of salmonid habitat on the west coast through irrigation diversions, overgrazing in riparian areas, and compaction of soils in upland areas from livestock (Botkin *et al.*, 1995; Spence *et al.*, 1996). The vigor, composition, and diversity of natural vegetation can be altered by livestock grazing in and around riparian areas. This in turn can affect the site's ability to control erosion, provide stability to stream banks, and provide shade, cover, and nutrients to the stream. Mechanical compaction can reduce the productivity of the soils appreciably and cause bank slough and erosion. Mechanical bank damage often leads to channel widening, lateral stream migration, increases in water temperature, and excess sedimentation. Agricultural practices are also a key producer of non-point source pollution which includes runoff from livestock and tilled fields (nutrients and sediments) and agricultural chemicals.

Urbanization has degraded coho salmon habitat through stream channelization, floodplain drainage, and riparian damage (Botkin *et al.*, 1995). When watersheds are urbanized, problems may result simply because structures are placed in the path of natural runoff processes, or because the urbanization itself has induced changes in the hydrologic regime. In almost every point that urbanization activity touches the watershed, point source and nonpoint source pollution occurs. Water infiltration is reduced due to an increase in impervious surfaces. As a result, runoff from the watershed is flashier, with increased flood hazard (Leopold, 1968). Flood control and land drainage schemes may concentrate runoff, resulting in increased bank erosion which causes a loss of riparian vegetation and undercut banks and eventually causes widening and down-cutting of the stream channel. Sediments washed from the urban areas contain trace metals such as copper, cadmium, zinc, and lead (CSLC, 1993). These, together with pesticides, herbicides, fertilizers, gasoline, and

other petroleum products, contaminate drainage waters and harm aquatic life necessary for coho salmon survival. The California State Water Resources Control Board (CSWRCB, 1991) reported that nonpoint source pollution is the cause of 50 to 80 percent of impairment to water bodies in California.

Forestry has degraded coho salmon habitat through removal and disturbance of natural vegetation, disturbance and compaction of soils, construction of roads, and installation of culverts. Timber harvest activities can result in sediment delivered to streams through mass wasting and surface erosion that can elevate the level of fine sediments in spawning gravels and fill the substrate interstices inhabited by invertebrates. Where logging in the riparian areas occurs, inputs of leaf litter, terrestrial insects, and large woody debris to the stream are reduced. Loss of large woody debris, combined with alteration of hydrology and sediment transport, reduces complexity of stream micro-and macrohabitats and causes loss of pools and channel sinuosity. The structure of the biological community may also change. This includes fish assemblages and diversity as well as timing of life history events (Spence *et al.*, 1996).

Depletion and storage of natural flows have drastically altered natural hydrological cycles, especially in California and southern Oregon rivers and streams. Alteration of streamflows has increased juvenile salmonid mortality for a variety of reasons: Migration delay resulting from insufficient flows or habitat blockages; loss of usable habitat due to dewatering and blockage; stranding of fish resulting from rapid flow fluctuations; entrainment of juveniles into unscreened or poorly screened diversions; and increased juvenile mortality resulting from increased water temperatures (California Advisory Committee on Salmon and Steelhead Trout, 1988; CDFG, 1991; CBFWA, 1991; Bergren and Filardo, 1991; Palmisano *et al.*, 1993; Reynolds *et al.*, 1993; Chapman *et al.*, 1994; Cramer *et al.*, 1995; Botkin *et al.*, 1995). In addition, reduced flows degrade or diminish fish habitats via increased deposition of fine sediments in spawning gravels, decreased recruitment of new spawning gravels, and encroachment of riparian and non-endemic vegetation into spawning and rearing areas.

Important elements of water quality include water temperatures within the range that corresponds with migration, rearing and emergence needs of fish and the aquatic organisms upon which they depend (Sweeney and Vannote, 1978; Quinn and Tallman, 1987). Desired conditions for coho salmon include an abundance of cool (generally in the range of 11.8 degrees C to 14.6 degrees C), well oxygenated water that is present year-round, free of excessive suspended sediments and other pollutants that could limit primary production and benthic invertebrate abundance and diversity (Cordone and Kelley, 1961; Reiser and Bjornn, 1979; Lloyd *et al.*, 1987).

There are approximately 18,137 miles (30,228 km) of streams in the coastal basins of Oregon. Of that number, 6,086 stream miles (10,143 km) (33.5 percent) have been assessed by Oregon Department of Environmental Quality (DEQ) for compliance with existing water quality standards using available water quality information. Of the 6,086 stream miles assessed (10,143 km), 3,035 stream miles (5,058 km) (49.9 percent) were found to be water quality limited, and 2,345 stream miles (3,908 km)(38.5 percent) need additional data or were of potential concern. Only 706 stream miles (1,177 km)(11.6 percent) of those assessed were found to be meeting all state water quality standards (OCSRI, 1997).

Eighteen water bodies in northern California, including eight within the range of the Southern Oregon/Northern California Coast ESU, have been designated as impaired by the Environmental Protection Agency (EPA) under section 303(d) of the Federal Clean Water Act (CWA). These eight river basins include the Mattole, Eel, Van Duzen, Mad, Shasta, Scott, Klamath, and Trinity Rivers. The primary factors for listing these river basins as impaired are excessive sediment load and elevated water temperatures.

Although individual management activities by themselves may not cause significant harm to salmonid habitats, incrementally and collectively, they may degrade habitat and cause long-term declines in fish abundance (Bisson *et al.*, 1992). Changes in sediment dynamics, streamflow, and water temperature are not just local problems restricted to a particular reach of a stream, but problems that can have adverse cumulative effects throughout the entire downstream basin (Sedell and Swanson, 1984; Grant, 1988). For example, increased erosion in headwaters, combined with reduced sediment storage capacity in small streams, from loss of stable instream large woody debris (LWD), can overwhelm larger streams with sediment (Bisson *et al.*, 1992). Likewise, increased water temperature in headwater streams may not harm salmonids there but can contribute to downstream warming (Bisson *et al.*, 1987; Bjornn and Reiser, 1991).

The most pervasive cumulative effect of past forest practices on habitats for anadromous salmonids has been an overall reduction in habitat complexity (Bisson *et al.*, 1992), from loss of multiple habitat components. Habitat complexity has declined principally because of reduced size and frequency of pools due to filling with sediment and loss of LWD (Reeves *et al.*, 1993; Ralph *et al.*, 1994). However, there has also been a significant loss of off-channel rearing habitats (e.g., side channels, riverine ponds, backwater sloughs) important for juvenile salmon production, particularly coho salmon (Peterson, 1982). Cumulative habitat simplification has caused a widespread reduction in salmonid diversity throughout California, Oregon, and the region.

B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes

Coho salmon have historically been a staple of Pacific Northwest and northern California Indian tribes and have been targeted in recreational and commercial fisheries since the early 1800s (Nickelson *et al.*, 1992). Coho salmon harvested by California Native American tribes in the northern California portion of the Southern Oregon/Northern California Coast ESU is primarily incidental to larger chinook salmon subsistence fisheries in the Klamath and Trinity Rivers; in neither basin is tribal harvest considered to be a major factor for the decline of coho salmon. The recent estimated Yurok tribal net harvest of coho salmon in the Klamath River was 27 in 1994, 660 in 1995, and 540 in 1996. The Yurok tribal fishery is managed annually under a Harvest Management Plan adopted by the Tribal Council pursuant to the authority of the Yurok Tribal Fishing Rights Ordinance. The Hoopa Tribe's estimated net harvest of coho salmon from 1982–96 averaged 263 fish per year and ranged from a low of 25 fish in 1994 to a high of 1,115 fish in 1985. Harvest management practiced by the tribes is conservative and has resulted in limited impacts on the coho salmon stocks in the Klamath and Trinity Rivers.

Overfishing in non-tribal fisheries is believed to have been a significant factor in the decline of coho salmon. Marine harvest in the Oregon Coast and Southern Oregon/Northern California Coast ESUs occurs primarily in nearshore waters off Oregon, and California (Weitkamp *et al.*, 1995). Coho

salmon landings off the California and Oregon coast ranged from 0.7 to 3.0 million in the 1970s, were consistently below 1 million in the 1980s, and averaged less than 0.4 million in the early 1990s prior to closure of the fisheries in 1994 (PFMC, 1995).

Significant overfishing occurred from the time marine survival turned poor for many stocks (ca. 1976) until the mid-1990s when harvest was substantially curtailed. This overfishing compromised escapement levels. Spawning escapement targets established for the Oregon Coastal Natural (OCN) coast wide aggregate (comprised of all naturally produced coho salmon from Oregon coastal streams) were rarely met over the past 2 decades. There are many reasons that escapement targets were not met, including excessive harvests and difficulty in estimating the maximum sustainable yield given extreme fluctuations in ocean productivity and the inability to properly distinguish wild spawners from stray hatchery fish.

Coho salmon stocks are managed by NMFS in conjunction with the Pacific Fishery Management Council (PFMC), the states, and certain tribes. Coho salmon ocean harvest is managed by setting escapement goals for OCN coho salmon. This stock aggregate constitutes the largest portion of naturally-produced coho salmon caught in ocean salmon fisheries off California and Oregon (PFMC, 1993). The PFMC prohibited the retention of coho salmon in both the commercial and recreational salmon fisheries along the entire west coast in 1994. A similar action prohibiting the retention of coho salmon in all salmon fisheries south of Cape Falcon (on the northern Oregon coast) was implemented in 1995. These actions were taken because of the depressed status of Oregon and California coastal coho salmon stocks in 1994 and 1995 and are believed to have immediately benefitted these stocks by increasing escapement.

New OCN coho salmon adult spawner escapement rebuilding criteria and associated fishery management strategy for OCN are currently being proposed by Oregon to the PFMC and NMFS and are described in more detail in the OCSRI (1997). Key provisions of this management strategy include: (1) Disaggregation of OCN stock into four components for better management of weaker stock units; (2) setting new adult spawner escapement rebuilding criteria for each component derived from a model based on freshwater habitat assessment and production capability; and (3) establishing future coho salmon fishery-related exploitation rates under a more restrictive fishery management regime that allocates most of future population increases to escapement.

Recreational fishing for coho salmon is pursued in numerous streams throughout the Oregon and California coast when adults return on their fall spawning migration. The contribution of coho salmon to the in-river sport catch is unknown for most California watersheds, and losses due to injury and mortality from incidental capture in other authorized fisheries, principally steelhead, are also unknown. The California Department of Fish and Game (CDFG) has monitored, with Trinity River Basin Fish and Wildlife Restoration Act funding, angler harvest of coho salmon in the Trinity River above Willow Creek with reward tags since 1977. In-river angler harvest estimates for coho salmon range from zero in 1980 to a high of 3,368 in 1987, with an average of 598 coho salmon harvested per year.

In the Oregon portion of the Southern Oregon/Northern California Coast ESU, marked hatchery coho salmon are allowed to be harvested in the Rogue River. All other recreational coho salmon fisheries in the Oregon portion of this ESU are closed. In the Oregon Coast ESU, recreational fisheries for coho salmon are limited to three rivers: North Fork Nehalem River (primarily a hatchery run), Trask River, and Yaquina River. Regulations for the latter two rivers allow only marked hatchery fish to be kept. With the marking of all hatchery fish, the Nehalem River recreational fishery will also be limited to harvest of marked hatchery coho salmon in the near future.

Collection for scientific research and educational programs is believed to have had little or no impact on coho salmon populations in these ESUs. In both California and Oregon, most of the scientific collection permits are issued to environmental consultants, Federal resource agencies, and universities by the CDFG and the ODFW. Regulation of take is controlled by conditioning individual permits. The state fish and wildlife agencies require reporting of any coho salmon taken incidentally to other monitoring activities; however, no comprehensive total or estimate of coho salmon mortalities related to scientific sampling is kept for watersheds in either state. Neither CDFG (F. Reynolds, pers. comm.) nor ODFW (R. Temple, pers. comm.) believe that mortalities, as regulated by the states' permitting processes, are detrimental to coho salmon in California and Oregon.

C. Disease or Predation

Relative to effects of fishing, habitat degradation, and hatchery practices, disease and predation are not believed to be major factors contributing to the overall decline of coho salmon in California and Oregon. However, disease and predation may have substantial impacts in local areas.

Coho salmon are exposed to numerous bacterial, protozoan, viral, and parasitic pathogens in freshwater and marine environments. Specific diseases such as bacterial kidney disease (BKD), ceratomyxosis, columnaris, furunculosis, infectious hematopoietic necrosis, redmouth and black spot disease, Erythrocytic Inclusion Body Syndrome, whirling disease, and others are present and known to affect salmon and steelhead (Rucker *et al.*, 1953; Wood, 1979; Leek, 1987; Cox, 1992; Foott *et al.*, 1994; Gould and Wedemeyer, undated). Very little current or historical information exists to quantify prevalences and mortality rates attributable to these diseases for coho salmon. However, studies have shown that native fish tend to be less susceptible to these pathogens than hatchery-reared fish (Buchanon *et al.*, 1983; Sanders *et al.*, 1992).

Infectious disease is one of many factors that can influence adult and juvenile survival (Buchanan *et al.*, 1983). Disease may be contracted by direct infection with waterborne pathogens or by interbreeding with infected hatchery fish (Fryer and Sanders, 1981; Evelyn *et al.*, 1984 and 1986). Salmonids typically are exposed to a variety of pathogens throughout their life; however, disease results only when the complex interaction among host, pathogen, and environment is altered.

Many natural and hatchery coho salmon populations throughout California's coast have tested positive for *Renibacterium salmoninarum*, the causative bacterium of BKD (Cox, 1992; Foott, 1992). For example, in the Central California Coast ESU, the overall prevalence of BKD measured by direct fluorescent antibody technique among Scott Creek coho salmon was 100 percent (13/13 fish) and 95.5 percent (21/22 fish) among San Lorenzo River coho salmon (Cox, 1992). The CDFG recently initiated a treatment protocol to attempt to control BKD outbreaks in hatchery fish released into the Russian River and Scott Creek (Cox, 1992). The impacts of this disease are subtle. Juvenile salmonids may survive well in their journey downstream but may be unable to make appropriate changes in kidney function for a successful

transition to sea water (Foott, 1992). Stress during migration may also cause overt disease (Schreck, 1987). Water quantity and quality during late summer is a critical factor in controlling disease epidemics. As water quantity and quality diminishes, stress may trigger the onset of these diseases in fish that are carrying the infectious agents (Holt *et al.*, 1975; Wood, 1979; Matthews *et al.*, 1986; Maule *et al.*, 1988).

Freshwater predation by salmonids and other fishes is not believed to be a major factor contributing to the decline of coho salmon in the Oregon Coast and Southern Oregon/Northern California Coast ESUs, although it could be a factor for some individual populations. For example, predation by exotic warmwater fish is believed to be a major factor limiting the production in Tenmile Lake, formerly one of the largest producers of coho salmon along the Oregon coast (Reimers, 1989). Higgins *et al.* (1992) and CDFG (1994) reported that Sacramento River squawfish have been found occupying anadromous salmonid habitat throughout the Eel River basin and are considered to be a serious threat to native coho salmon. Avian predators have been shown to impact some juvenile salmonids in freshwater and nearshore environments. Ruggerone (1986) estimated that ring-billed gulls consumed 2 percent of the salmon and steelhead trout passing Wanapum Dam, in the Columbia River, during the spring smolt outmigration in 1982. Wood (1987) estimated that the common merganser, a known freshwater predator of juvenile salmonids, were able to consume 24 to 65 percent of coho salmon production in coastal British Columbia streams. Known avian predators in the nearshore marine environment include herons, cormorants, and alcids (Allen, 1974). Cooper and Johnson (1992) and Botkin *et al.* (1995) reported that marine mammal and avian predation may occur on some local salmonid populations; however, they believed that it was a minor factor in the decline of coastwide salmonid populations. With the decrease in quality riverine and estuarine habitats, increased predation by freshwater, avian, and marine predators will occur. With the decrease in avoidance habitat (e.g., deep pools and estuaries, and undercut banks) and adequate migration and rearing flows, predation may play a role in the reduction of some localized coho salmon stocks.

California sea lions and Pacific harbor seals (which occur in most estuaries and rivers where salmonid runs occur on the west coast) are known predators of salmonids and their populations are increasing. This raises concerns over the negative impacts of predation on small salmonid populations, particularly when the pinnipeds co-occur with depressed salmonid populations in estuaries and rivers during salmonid migrations (NMFS, 1997c). The observations of steelhead predation by California sea lions at the Ballard Locks in Seattle, WA, show that a significant proportion (65 percent) of an entire salmonid run can be consumed by sea lions (Scordino and Pfeifer, 1993) and this clearly demonstrates that the combination of high local predator abundance during salmonid migrations, restricted passage, and depressed fish stocks can result in significant impacts on local salmonid populations (NMFS, 1997c). Unfortunately, there are only a few areas on the west coast, other than the Ballard Locks, where studies have documented the influence of pinniped predation on local salmonid populations. In the Puntledge River estuary in British Columbia, Bigg *et al.* (1990) observed Pacific harbor seals surface feeding on salmonids and documented predation rates of up to 46 percent of the returning adult fall chinook. In the same river, observations of harbor seal predation on coho salmon smolts in 1995 indicated that the seals consumed 15 percent of the total production. Predation on coho salmon has also been observed at the Ballard Locks with a single California sea lion documented to have consumed 136 coho salmon in 62 hours (2.1 coho salmon per hour) (NMFS, 1997c). Although there have been no specific studies in any coastal estuary on the west coast on impacts of pinniped predation, it is known that pinniped foraging on coho salmon can be extensive based on ancillary information from hatcheries that have documented pinniped scarring on 11–20 percent of the returning coho salmon (NMFS, 1997c).

In many of the small coastal rivers and streams in southern Oregon and northern California, there is a situation that makes returning adult coho salmon and winter steelhead more vulnerable to pinniped predation than larger systems (NMFS, 1997c). In low rainfall years, or when rain arrives late in the winter season, small coastal rivers do not flow with sufficient volume to open the beach crest and flow into the sea. Low tide periods also create or compound this condition in low-flowing small rivers and streams. During such periods, adult fish arrive and accumulate in nearshore waters just offshore of the closed-off river mouth. The adult salmonids are then exposed to days or weeks of pinniped predation at these sites until sufficient rainfall occurs or higher tides allow access to the river or stream. During successive years of drought, the situation is exacerbated because the river mouths are open only intermittently during the salmonid spawning season. Downstream migrating smolts also become more vulnerable to pinniped and bird predation in these conditions as they congregate in the lagoons formed near the river mouth until it opens up to the sea.

It is unlikely that pinniped predation was a significant factor in the decline of coho salmon populations on the west coast; there have been no specific studies that demonstrate a cause-effect relationship between increases in pinniped numbers and declines in salmonid populations. However, with reduced salmonid populations and increased pinniped populations, pinniped predation can be a factor affecting the recovery of some salmonid populations. Pinniped predation on small salmonid populations, especially at areas of restricted fish passage, can have negative impacts on the recovery of depressed salmonids. Seasonal predation by pinnipeds on some salmonid populations has been observed, and a significant negative impact on at least one salmonid population has been documented (i.e., winter steelhead migrating through the Ballard Locks). Pinniped impacts on salmonids are more likely due to opportunistic behavior by certain individual pinnipeds that have learned to exploit situations where salmonids are concentrated and particularly vulnerable rather than being strictly related to pinniped population size. As the number of pinnipeds increases, however, the likelihood of more pinnipeds discovering these situations increases, as does the opportunity to pass on such learned behavior to other pinnipeds.

All in all, the relative impacts of marine predation on anadromous salmonids are not well understood, but marine predation was not likely a major factor in the coho salmon decline, although it can be a factor in the recovery of some localized coho salmon stocks. Normally, predators play an important role in the ecosystem, culling out unfit individuals, thereby strengthening the species as a whole. The increased impact of certain predators has been, to a large degree, the result of ecosystem modification. Therefore, it would seem more likely that increased predation is but a symptom of a much larger problem,

namely, habitat modification and a decrease in water quantity and quality.

D. Inadequacy of Existing Regulatory Mechanisms

Habitat Management

1. Northwest Forest Plan (NFP). The NFP is a Federal program with important benefits for coho salmon, as described below (see Federal Conservation Efforts). While the NFP covers a very large area, the overall effectiveness of the NFP in conserving Oregon and California coho salmon is limited by the extent of Federal lands and the fact that Federal land ownership is not uniformly distributed in watersheds within the affected ESUs. In some areas, Federal lands tend to be located in the upper reaches of watersheds or river basins, upstream of lower gradient river reaches that were historically important for coho salmon production. In other areas, particularly Bureau of Land Management (BLM) ownership, Federal lands are distributed in a checkerboard fashion, resulting in fragmented landscapes. Both of these Federal land distribution factors place constraints on the ability of the NFP to achieve its aquatic habitat restoration objectives at watershed and river basin scales and highlight the importance of complementary salmon habitat conservation measures on non-Federal lands within the subject ESUs.

2. State Forest Practices. The California Department of Forestry and Fire Protection (CDF) enforces the State of California's forest practice rules (CFPRs) which are promulgated through the Board of Forestry (BOF). The CFPRs contain provisions that can be protective of coho salmon if fully implemented. However, NMFS believes that the ability of the CFPRs to protect coho salmon can be improved, particularly in the area of developing properly functioning riparian habitat. For this reason, NMFS is attempting to improve the condition of riparian buffers in ongoing habitat conservation plan negotiations with private landowners. Specifically, the CFPRs do not adequately address large woody debris recruitment, streamside tree retention to maintain bank stability, and canopy retention standards that assure stream temperatures are properly functioning for all life stages of coho salmon. The current process for approving Timber Harvest Plans (THPs) under the CFPRs does not include monitoring of timber harvest operations to determine whether a particular operation damaged habitat and, if so, how it might be mitigated in future THPs. The CFPR rule that permits salvage logging is also an area where better environmental review and monitoring could provide NMFS with the information to determine whether this practice impacts coho salmon.

There have been several reviews of the current CFPRs and particularly the rules associated with the Water/lake Protection Zones (WLPZs) for their adequacy in protecting aquatic dependent species such as coho salmon. Most reviews have shown that implementation and enforcement of the current rules are not adequate in protecting coho salmon or their habitats (CDFG, 1994; Murphy, 1995). NMFS' inability to assess the adequacy of the CFPRs is primarily due to the lack of published documentation that the CFPRs are functioning to protect coho salmon. NMFS is currently reviewing the CFPRs so that discussions can be opened with CDF to determine where improvements in the language and definition of the CFPRs would be beneficial.

The CDF has recently proposed 15 amendments to the CFPRs that would become effective on January 1, 1998, if approved by the BOF. The proposed changes are a positive sign that CDF recognizes the need to provide a higher level of protection to stream side zones, provide for additional control of sediment inputs from road construction and harvest operations, and clarify conditions for exemptions in stream zones. However, the adoption of the proposed changes to the CFPRs is uncertain at this time.

The BOF's Monitoring Study Group (MSG) has developed a Long-Term Monitoring Program (LTMP) for assessing the effectiveness of the CFPRs in protecting water quality. The MSG recently published a report on its Pilot Monitoring Program for the LTMP (January, 1997) which evaluated canopy retention in 50 randomly selected THPs in Mendocino and Humboldt Counties. The Pilot Study found that canopy retention was higher (70 percent) in the THPs which were evaluated than the minimum required by the CFPRs (50 percent).

The Oregon Forest Practices Act (OFPA), while modified in 1995 and improved over the previous OFPA, does not have implementing rules that adequately protect coho salmon habitat. In particular, the current OFPA does not provide adequate protection for the production and introduction of large woody debris (LWD) to medium, small and non-fish bearing streams. Small non-fish bearing streams are vitally important to the quality of downstream habitats. These streams carry water, sediment, nutrients, and LWD from upper portions of the watershed. The quality of downstream habitats is determined, in part, by the timing and amount of organic and inorganic materials provided by these small streams (Chamberlin *et al.* in Meehan, 1991). Given the existing depleted condition of most riparian forests on non-Federal lands, the time needed to attain mature forest conditions, the lack of adequate protection for non-riparian LWD sources in landslide-prone areas and small headwater streams (which account for about half the wood found naturally in stream channels) (Burnett and Reeves, 1997, citing Van Sickle and Gregory, 1990; McDade *et al.*, 1990; and McGreary, 1994), and current rotation schedules (approximately 50 years), there is a low probability that adequate LWD recruitment could be achieved under the current requirements of the OFPA. Also, the OFPA does not adequately consider and manage timber harvest and road construction on sensitive, unstable slopes subject to mass wasting, nor does it address cumulative effects.

3. Dredge, Fill, and Inwater Construction Programs. The Army Corps of Engineers (COE) regulates removal/fill activities under section 404 of the CWA, which requires that the COE not permit a discharge that would ''cause or contribute to significant degradation of the waters of the United States.'' One of the factors that must be considered in this determination is cumulative effects. However, the COE guidelines do not specify a methodology to be used in assessing cumulative impacts or how much weight to assign them in decision-making. In 1996 the Portland District Office of the COE issued approximately 250 section 404 permits for removal/fill in Oregon. The COE does not have in place any process to address the additive effects of the continued development of waterfront, riverine, coastal, and wetland properties.

The Oregon Division of State Lands (DSL) manages the state-permitted portion of the removal fill laws. Oregon intends to halt habitat degradation through the development of standardized permit conditions incorporating best management practices for Removal-Fill activities and through strengthening interagency coordination in Removal-Fill permitting. The DSL also does not currently have methods to assess, analyze, or manage cumulative effects.

4. Water Quality Programs. The Federal CWA is intended to provide for the protection of beneficial uses, including fishery resources. To date, implementation has not been effective

in adequately protecting fishery resources, particularly with respect to non-point sources of pollution. In Oregon, water quality standards are implemented by the DEQ pursuant to section 303(c) of the CWA. DEQ is required by section 303(d)(1) (C) and (D) of the CWA to prepare Total Maximum Daily Loads (TMDLs) for all water bodies that do not meet State water quality standards.

TMDLs are a method for quantitative assessment of environmental problems in a watershed and identifying pollution reductions needed to protect drinking water, aquatic life, recreation, and other use of rivers, lakes, and streams. TMDLs may address all pollution sources, including point sources such as sewage or industrial plant discharges, and non-point discharges such as runoff from roads, farm fields, and forests. The CWA gives state governments the primary responsibility for establishing TMDLs, however, EPA can also develop them.

Oregon DEQ entered into a consent decree in 1987 to develop at least two TMDLs per year. The Healthy Streams Partnership describes a general approach to address non-point source water quality problems in Oregon, particularly with respect to agricultural activities. If Oregon's Healthy Streams Partnership is fully funded, DEQ expects to complete all TMDLs for all impaired coastal watersheds within 10 years. Oregon's guidance for non-point source TMDLs includes an implementation component that is lacking in prior non-point source TMDLs nationwide. Since the beneficial use of salmonid fishes is most often affected by the largely non-point source sediment and temperature impairments, this advance in non-point source TMDLs may be important. The development of strong TMDLs to cover all water quality impaired coastal waters could contribute substantially to coho salmon recovery.

The CWA gives state governments the primary responsibility for establishing TMDLs. However, EPA is required to do so if a state does not meet this responsibility. In California, as a result of recent litigation, the EPA has made a legal commitment guaranteeing that either EPA or the State of California will establish TMDLs, which identify pollution reduction targets, for these 18 impaired river basins in northern California by the year 2007. The State of California has made a commitment to establish TMDLs for approximately half the 18 river basins by 2007. The EPA will develop TMDLs for the remaining basins and has also agreed to complete all TMDLS if the state fails to meet its commitment within the agreed upon time frame.

The ability of these TMDLs to protect coho salmon in Oregon and California is expected to be significant in the long-term; however, it will be difficult to develop them quickly in the short-term and their efficacy in protecting coho salmon habitat will be unknown for years to come.

5. State Agricultural Practices. Historically, the impacts to fish habitat from agricultural practices have not been closely regulated. The Oregon Department of Agriculture has recently completed guidance for development of agricultural water quality management plans (AWQMPs) (as enacted by State Senate Bill 1010). Plans that are consistent with this guidance are likely to achieve state water quality standards. It is open to question, however, whether they will adequately address salmonid habitat factors, such as properly functioning riparian conditions. Their ability to address all relevant factors will depend on the manner in which they are implemented. AWQMPs are anticipated to be developed at a basin scale, so the entirety of coastal Oregon may be covered. AWQMPs include regulatory authority and enforcement provisions. The Healthy Streams Partnership schedules adoption of AWQMPs for all impaired waters by 2001.

6. State Urban Growth Management. On lands inside Oregon's urban growth boundaries, some upgraded riparian area protection will be afforded by the newly revised requirements for statewide planning Goal 5. Local governments will amend their local comprehensive plans to implement these new requirements. Unfortunately, Goal 5 does not require establishment and protection of riparian vegetation to provide adequate large woody debris and allows limited road building in riparian areas.

Harvest Management

Harvest of coho salmon in Federal waters off the west coast is managed by the PFMC and NMFS. Harvest of California and Oregon coastal coho salmon has been managed based on achieving adequate escapement of OCN coho salmon. Despite annual management and use of best available scientific information, spawning escapements have declined significantly over the past 20 years. Prior to 1994, harvest rates on OCN coho salmon were too high for the poor ocean conditions that are now realized to have been occurring. Further, declining numbers of natural spawning fish were masked by high stray rates of hatchery fish. Since 1994, the PFMC has recommended harvest rates of 10–13 percent even though regulations allowed up to a 20 percent harvest rate during the same time period. Since 1994, the PFMC also has recommended prohibiting the retention of coho salmon south of Cape Falcon, OR, which has resulted in relatively low levels of incidental mortality. Oregon also has begun marking all hatchery fish so that natural escapements can be more accurately quantified. Oregon has proposed that the PFMC amend its ocean fisheries regulations to adopt the OCSRI harvest framework.

Fisheries management of coho salmon in Oregon state waters inside the 3-mile (5 km) limit historically had similar problems and contributed to the overall decline. In more recent years, however, state angling regulations have required the release of all naturally-produced coho salmon in the Oregon portion of the Southern Oregon/Northern California Coast ESU. The harvest measures and associated monitoring plan in the OCSRI will provide a significantly better framework from which PFMC and Oregon will manage their coho salmon fisheries.

Oregon currently manages several populations of non-indigenous fish species (e.g., striped, largemouth, and smallmouth bass) for optimal recreational fisheries. These fish were in many cases introduced into Oregon waters in violation of Oregon law. Scientists have documented that at least in some circumstances, the presence of these non-indigenous species has reduced or eliminated coho salmon populations (OCSRI 1997). The ongoing management applied to these exotic fish species, in certain locales, may not be consistent with the goals of the ESA. The OCSRI contains provisions to review the science and management direction pertinent to the interaction of non-indigenous fish species and coastal coho salmon. Results of this review will guide NMFS and Oregon in the future management or actions addressing interactions of these species with coho salmon.

The State of California has jurisdiction over ocean salmon fishing within 3 miles (5 km) of the coast offshore California. Subsequent to NMFS's implementation of ocean salmon harvest regulations for the Exclusive Economic Zone, the California Fish and Game Commission (CFGC) and CDFG, respectively, conform the State's ocean salmon regulations for commercial and sportfishing within the 3-mile (5 km) limit to those adopted by NMFS. In most years the CFGC and CDFG issue

regulations that conform fully with Federal ocean salmon regulation.

The CFGC is also responsible for issuing in-river sportfishing regulations in California. At present, the state's sportfishing regulations continue to allow fishing for coho salmon in the inland waters of the Southern Oregon/ Northern California Coast ESU, and the Commission has not proposed to take action in the event the ESU is listed under the Federal ESA.

The contribution of coho salmon to the in-river sport catch is unknown for most California watersheds, as are losses due to injury and mortality from incidental capture in other state-authorized fisheries such as steelhead. However, the CDFG has conducted limited in-river monitoring of coho salmon harvest by anglers in the Trinity River above Willow Creek since 1977, and estimates that in-river angler harvest for coho salmon in this reach of the Trinity River has averaged 598 coho salmon harvested per year. Current state funding and personnel resources are not available to implement comprehensive monitoring programs to evaluate the magnitude of in-river harvest impacts in California.

Hatchery Management

Oregon has adopted a Wild Fish Policy that guides many aspects of hatchery use, their broodstock protocols, and the degree of interaction between hatchery and wild fish. This policy has improved many hatchery operations throughout Oregon with respect to the protection of wild fish populations and their genetic diversity. However, full and prompt implementation of the policy has not occurred and Oregon continues to make program adjustments to achieve fish management consistent with the purposes of the policy and the Federal ESA.

One provision of the Wild Fish Policy is that hatcheries using local broodstock and managed according to specific protocols can contribute up to 50 percent of the number of fish spawning in the natural habitat. NMFS believes this 50 percent guideline can be appropriate when the hatchery fish are part of a recovery program needed to boost an at-risk population. However, current scientific information indicates that it is not appropriate in hatchery programs intended to enhance populations for the purposes of increased harvest. Consequently discussions between NMFS and ODFW have resulted in the OCSRI including a measure to manage coho salmon hatchery and harvest programs so that natural spawning populations contain no more than 10 percent hatchery strays.

In California, the CDFG directly operates artificial propagation programs for coho salmon at three hatcheries in the Southern Oregon/Northern California Coast ESU. These include Iron Gate Hatchery, Trinity River Hatchery, and the Mad River Hatchery. The CDFG has recently developed production goals and constraints for both the Iron Gate and Trinity River Hatchery programs (CDFG, 1997a). Both hatcheries now operate under goals and constraints which specify use of adults returning to the hatcheries and prohibits use of stocks from other drainages for spawning and rearing. Transfer of production to outside drainages is generally prohibited, but can occur under some circumstances. Additional privately-owned and operated hatchery programs for coho salmon are conducted in Rowdy Creek (Rowdy Creek Hatchery), the Eel River (Hollow Tree Creek Hatchery), and in the Mattole River. Other smaller programs that are not currently propagating coho salmon are in Freshwater Creek and Prairie Creek.

In the past, non-native coho salmon stocks have been introduced as broodstock in hatcheries and widely transplanted in many coastal rivers and streams in the California portion of the Southern Oregon/Northern California Coast ESU (Weitkamp *et al.*, 1995). Because of problems associated with this practice, CDFG developed its Salmon and Steelhead Stock Management Policy. This policy recognizes that such stock mixing is detrimental and seeks to maintain the genetic integrity of all identifiable stocks of salmon and steelhead in California, as well as minimize interactions between hatchery and natural populations. To protect the genetic integrity of salmon and steelhead stocks, this policy directs CDFG to evaluate each salmon and steelhead stream and classify it according to its probable genetic source and degree of integrity. However, this has not yet been accomplished by the state.

Although non-native coho salmon stocks have been introduced in the Southern Oregon/Northern California Coast ESU, most hatchery programs are now being conducted without the import of broodstock from other ESUs in accordance with CDFG's policy. With the exception of the Mad River Hatchery, hatchery programs in this ESU are being operated as supplementation hatcheries rather than production hatcheries. They are taking eggs from the rivers in which they operate and returning fish to the river from which they were taken. Release of hatchery fish occurs in streams with stocks similar to the native runs. Efforts are made to return hatchery fish to their natal streams, and they are held for an acclimation period to increase the probability of imprinting. In contrast, the Mad River Hatchery has used numerous out-of-basin and out-of-state coho salmon stocks. A review of CDFG hatchery production and planting records indicates that coho salmon smolts still continue to be planted in streams other than that where the hatchery is located. These out-of-stream plants have occurred both in other coho salmon ESUs and in other basins within individual ESUs. In addition, there are inadequate CDFG resources to tag enough hatchery coho salmon to monitor return rates and rates of straying (CDFG 1995).

The CFGC has also developed specific policies for Private Non-profit Hatcheries (section 1170–1175 of the Fish and Game Code) and Cooperative Salmon and Steelhead Rearing Facilities (sections 1200–1206 of the Fish and Game Code) that have been incorporated into the Fish and Game Code. These policies are intended to ensure that the bulk of the state's salmon and steelhead resources are produced naturally and that the state's goals of maintaining and increasing natural production take precedence over the goals of cooperatively operated rearing programs. Privately owned rearing and hatchery programs for coho salmon in the Southern Oregon/Northern California Coast ESU are operated in accordance with these policies.

In its comments on the proposed rule (CDFG, 1995), CDFG stated that its coho salmon hatchery programs can be integrated into recovery plans for each ESU within California through re-evaluation of each hatchery's goals and constraints with program modifications where appropriate. In a letter dated March 7, 1997 (CDFG, 1997b), CDFG reiterated its view that its coho salmon hatchery programs are compatible with the recovery of coho salmon and other at-risk salmon and steelhead populations in California.

E. Other Natural or Human-Made Factors Affecting Its Continued Existence

Natural Factors

Long-term trends in rainfall and marine productivity associated with atmospheric conditions in the North Pacific Ocean likely have a major influence on coho salmon production. Numerous comments received by NMFS

underscored both the importance and uncertainties surrounding natural environmental fluctuations, but few provided substantive new information. Some commenters thought that recent coho salmon declines were merely reflective of a natural production cycle while others believed that declines had been exacerbated by human influences, especially on freshwater habitats.

Populations that are fragmented or reduced in size and range are more vulnerable to extinction by natural events. Whether recent climatic conditions represent a long-term change that will continue to affect salmonid stocks in the future or whether these changes are short-term environmental fluctuations that can be expected to reverse in the near future remains unclear. Many of the coho salmon population declines began prior to these recent drought conditions.

1. Drought. Many areas of the Pacific coast have experienced drought conditions during much of the past decade, a situation that has undoubtedly contributed to the decline of many salmonid populations. Drought conditions reduce the amount of water available, resulting in reductions (or elimination) of flows needed for adult coho salmon passage, egg incubation, and juvenile rearing and migration. There are indications in tree ring records that droughts more severe than the drought that California recently experienced occurred in the past (Stine 1994). Aside from the critical role that habitat complexity plays in providing fish with instream refugia during drought conditions, the key to survival in this type of variable and rapidly changing environment is the evolution of behaviors and life history traits that allow coho salmon to cope with a variety of environmental conditions.

2. Floods. With high inherent erosion risk, urban encroachment, and intensive timber management, flood events can cause major soil loss (Hagans *et al.*, 1986; Nawa *et al.*, 1991; Higgins *et al.*, 1992). As previously mentioned, sedimentation of stream beds has been implicated as a principal cause of declining salmonid populations throughout their range. Floods can result in mass wasting of erodible hillslopes and failure of roads on unstable slopes causing catastrophic erosion. In addition, flooding can cause scour and redeposition of spawning gravels in typically inaccessible areas.

During flood events, land disturbances resulting from logging, road construction, mining, urbanization, livestock grazing, agriculture, fire, and other uses may contribute sediment directly to streams or exacerbate sedimentation from natural erosive processes (California Advisory Committee on Salmon and Steelhead Trout, 1988; CSLC, 1993; FEMAT, 1993). Judsen and Ritter (1964), the California Department of Water Resources (CDWR, 1982), and the California State Lands Commission (CSLC, 1993) have stated that northwestern and central coastal California have some of the most erodible terrain in the world. Several studies have indicated that, in this region, catastrophic erosion and subsequent stream sedimentation (such as during the 1955 and 1964 floods) resulted from areas which had been clearcut or which had roads constructed on unstable soils (Janda *et al.*, 1975; Wahrhaftig, 1976; Kelsey, 1980; Lisle, 1982; Hagans *et al.*, 1986).

As streams and pools fill in with sediment, flood flow capacity is reduced. Such changes cause decreased stream stability and increased bank erosion, and, subsequently, exacerbate existing sedimentation problems (Lisle, 1982), including sedimentation of spawning gravels and filling of pools and estuaries. Channel widening and loss of pool-riffle sequence due to sedimentation has damaged spawning and rearing habitat of all salmonids. By 1980, the pool-riffle sequence and pool quality in some California streams still had not fully recovered from the 1964 regional flood. In fact, Lisle (1982) and Weaver and Hagans (1996) found that many Pacific coast streams continue to show signs of harboring debris flow from the 1964 flood. Such streams have remained shallow, wide, warm, and unstable.

More recently, between November 1995 and April 1996, the Pacific Northwest experienced a rare series of storm and flood events. High winds, heavy rainfall, rapid snowmelt, numerous landslides and debris torrents, mobilization of large woody debris and high runoff occurred over portions of Oregon, Washington, Idaho, and Montana (USFS and BLM, 1996). These storms, which resulted in 100-year floods in some Oregon coastal basins, also had a potentially large effect on the survival of Oregon coast coho salmon and the freshwater habitats upon which they depend. Aerial surveys from a study by Pacific Watershed Associates (PWA undated) in the middle Coast Range of Oregon noted that areas with the greatest impact were typically watersheds with a combination of steep slopes, unstable bedrock geology, recent timber harvesting, high road densities, and within the altitude range where precipitation intensities were probably the greatest. This study also stressed that landslides were highly correlated with management activities and originated from recent clear-cuts and forest roads at much higher frequencies than from wilderness or unmanaged areas. In addition to these observations, Pacific Watershed Associates concluded that the floods may have had long-term effects on watershed habitats. For example, they suggested that materials destabilized but not mobilized by the flood may remain unstable and therefore be susceptible to future flood events for some time, materials deposited in streams and rivers may persist for decades, and the impact to larger streams and rivers may actually increase over a period of several years as sediment is moved downstream.

With regard to impacts to in-stream coho salmon habitat, changes due to flooding were both positive and negative, depending on the area. For example, ODFW surveys (Moore and Jones, 1997) identified some areas with many new channels cut, which could provide off-channel habitat for coho salmon. In the Tillamook Bay basin, the Wilson River received major negative impacts, while the Tillamook and Trask Rivers received little impact. Siuslaw National Forest (SNF, 1996) reported that the February 1996 flooding actually increased positive habitat changes (increased pool area and quality, increased cover complexity, and shift from bedrock, boulder and cobble substrates to gravel and sand) in many smaller streams in areas undergoing habitat improvement projects but not in adjacent, untreated reaches, nor in habitat improvement projects in large streams. Bush *et al.* (1997) noted that decreases in pool area ranged from 10–50 percent, and largely resulted from a 60-percent loss of beaver pond habitat (which provide critical overwinter coho salmon habitat). Large woody debris decreased by approximately 25 percent from the initial surveys, although much of the lost wood had been pushed up onto the floodplain or out of the active channel. Overall, large amounts of gravel were added to most streams, and new gravel bars were common.

Recent stream production studies conducted by ODFW (Solazzi and Johnson, 1997) indicate that 1996 smolt production in four central Oregon coast study streams were lower than recent averages, with overwinter survival the lowest or second lowest on record for the two streams for which estimates were made, and that age zero fish production was also low. They concluded that the most significant impact of the flooding was on juveniles and coho salmon eggs that were in the

gravel at the time of the flood. While these results are based on a small sample of streams and may not reflect average effects of the floods, it suggests that 1997 and 1998 adult returns to some coastal basins will be reduced by the floods. Longer-term effects of the floods can also be expected to vary among basins, but most reports available to us suggest that long-term effects should generally be neutral or slightly beneficial (e.g., from sediment removal and increased off-channel habitat) to coho salmon.

3. Ocean Conditions and El Niño. Large fluctuations in Pacific salmon catch have occurred during the past century. Annual world harvest of Pacific salmon has varied from 772 million kg in the 1930s to about 409 million kg in 1977 and back to 818 million kg by 1989 (Hare and Francis, 1993). Mechanisms linking atmospheric and oceanic physics and fish populations have been suggested for Pacific salmon (Rogers, 1984; Nickelson, 1986; Johnson, 1988; Brodeur and Ware, 1992; Francis *et al.*, 1992; Francis, 1993; Hare and Francis, 1993; Ward, 1993). Many studies have tried to correlate the production or marine survival of salmon with environmental factors (Pearcy, 1992; Neeley, 1994). Vernon (1958), Holtby and Scrivener (1989), and Holtby *et al.* (1990) have reported associations between salmon survival and sea surface temperature and salinity, especially during the first few months that salmonids are at sea. Francis and Sibley (1991), Rogers (1984), and Cooney *et al.* (1993) also found relationships between salmon production and sea surface temperature. Some studies have tried to link salmon production to oceanic and atmospheric climate change. For example, Beamish and Bouillon (1993) and Ward (1993) found that trends in Pacific salmon catches were similar to trends in winter atmospheric circulation in the North Pacific.

Francis and Sibley (1991) and Francis *et al.* (1992) have developed a model linking decadal-scale atmospheric variability and salmon production that incorporates hypotheses developed by Hollowed and Wooster (1991) and Wickett (1967), as well as evidence presented in many other studies. The model developed by Francis *et al.* (1992) describes a time series of biological and physical variables from the Northeast Pacific that appear to share decadal-scale patterns. Biological and physical variables that appear to have undergone shifts during the late 1970s include the following: Abundance of salmon (Rogers, 1984 and 1987; Hare and Francis, 1993) and other pelagic fish, cephalopods, and zooplankton (Brodeur and Ware, 1992); oceanographic properties such as current transport (Royer, 1989), sea surface temperature and upwelling (Holowed and Wooster, 1991); and atmospheric phenomena such as atmospheric circulation patterns, sea-surface pressure patterns, and sea-surface wind-stress (Trenberth, 1990; Trenberth *et al.*, 1993).

Finally, Scarnecchia (1981) reported that near-shore conditions during the spring and summer months along the California coast may dramatically affect year-class strength of salmonids. Bottom *et al.* (1986) believed that coho salmon along the Oregon and California coast may be especially sensitive to upwelling patterns because these regions lack extensive bays, straits, and estuaries, such as those found along the Washington, British Columbia, and Alaskan coast, which could buffer adverse oceanographic effects. They speculate that the paucity of high quality near-shore habitat, coupled with variable ocean conditions, makes freshwater rearing habitat more crucial for the survival and persistence of many coho salmon populations.

An environmental condition often cited as a cause for the decline of west coast salmonids is the condition known as ''El Niño.'' El Niño is a warming of the Pacific Ocean off South America and is caused by atmospheric changes in the tropical Pacific Ocean. During an El Niño event, a plume of warm sea water flows from west to east toward South America, eventually reaching the coast where it is deflected south and north along the continents.

El Niño ocean conditions are characterized by anomalously warm sea surface temperature and changes in thermal structure, coastal currents, and upwelling. Principal ecosystem alterations include decreases in primary and secondary productivity and changes in prey and predator species distributions. Several El Niño events have been recorded during the last several decades, including those of 1940–41, 1957–58, 1982–83, 1986–87, 1991–92, and 1993–94. The degree to which adverse ocean conditions can influence coho salmon production was demonstrated during the El Niño event of 1982–83, which resulted in a 24 to 27 percent reduction in fecundity and a 58 percent reduction (based on pre-return predictions) in survival of adult coho salmon stocks originating from the Oregon Production Index area (Johnson, 1988).

Manmade Factors—Artificial Propagation

Potential problems associated with hatchery programs include genetic impacts on indigenous, naturally-reproducing populations, disease transmission, predation of wild fish, difficulty in determining wild stock status due to incomplete marking of hatchery fish, depletion of wild stock to increase brood stock, and replacement rather than supplementation of wild stocks through competition and continued annual introduction of hatchery fish (Waples, 1991; Hindar *et al.*, 1991; Stewart and Bjornn, 1990). All things being equal, the more hatchery fish that are released, the more likely natural populations are to be impacted by hatchery fish. Similarly, the more genetically similar hatchery fish are to natural populations they spawn with, the less change there will be in the genetic makeup of future generations in the natural population. Non-native coho salmon stocks have been introduced as broodstock in hatcheries and widely transplanted in many coastal rivers and streams in Oregon and California (Bryant, 1994; Weitkamp *et al.*, 1995; NMFS, 1997a).

Advancement and compression of run timing have been common phenomena in hatchery populations, and these changes can affect future generations of naturally-reproducing fish. Fry of early-spawning adults generally hatch earlier and grow faster and can thus displace fry of later-spawning natural fish (Chapman, 1962). Conversely, early-spawning coho salmon redds are more prone to being destroyed by early fall floods. Consequently, early-spawning individuals may be unable to establish permanent, self-sustaining populations but may nevertheless adversely affect existing natural populations (Solazzi *et al.*, 1990). A recent study found that over a period of 13 years, the range of spawning timing of coho salmon at five Washington hatcheries decreased from 10 weeks to 3 weeks, causing the range of the period of return to the hatcheries to decrease by one-half (Flagg *et al.*, 1995).

Another common hatchery practice with coho salmon is release of ''excess'' hatchery production into natural habitat as fry or parr. Outplanting large numbers of large hatchery juveniles into streams already occupied by naturally-produced juveniles may place the resident fish at a competitive disadvantage and may force them into marginal habitats that have low survival potential (Chapman, 1962; Solazzi *et al.*, 1990).

Stock transfers of coho salmon were common throughout the Oregon and California coast; the nature and magnitude of these transfers varied by area and basin. Compared to areas farther north, hatcheries in central California and southern Oregon/ northern California are relatively small and widely dispersed, given the size of both areas. Northern California hatcheries have received fairly large transplants of coho salmon from hatcheries in Washington and Oregon, which have spread to central California through stock transfers. Because of the predominance of hatchery stocks in the Klamath River basin, stock transfers into Trinity and Iron Gate Hatcheries may have had a substantial impact on natural populations in the basin and raises serious concerns about their sustainability. Available information indicates that virtually all of the naturally spawning fish in the Trinity River are first generation hatchery fish. In contrast, Cole Rivers Hatchery (on the Rogue River) appears to have relied exclusively on native stocks.

In recent years, large hatcheries in southern Oregon/northern California (e.g., Mad and Trinity River Hatcheries) have produced 400,000 to 500,000 juveniles annually, while smaller hatcheries, and most hatcheries in central California, produce no more than 100,000 to 200,000 juveniles each year. Most Oregon coastal hatcheries recently produced approximately 400,000 to 1,400,000 juveniles annually, although private hatcheries (no longer in operation) recently produced 2 to 5 million juvenile coho salmon annually. Most historic transfers of coho salmon into Oregon coastal hatcheries used other Oregon coastal stocks. However, some coastal hatchery programs (notably private hatcheries no longer in existence) made extensive use of Puget Sound coho salmon stocks. Some transfers of Columbia River coho salmon into Oregon coastal hatcheries have occurred, but these were relatively infrequent and minor. Similarly, most outplants of coho salmon into Oregon coastal rivers have used Oregon coastal stocks, with outplants of stocks from other areas being relatively small and infrequent.

NMFS received a number of comments regarding the impacts of hatchery fish on wild coho salmon populations. Some commenters (including a peer reviewer) contended that NMFS overstated the significance of impacts from hatchery fish on wild coho salmon. NMFS has worked with the state agency comanagers to resolve uncertainties regarding these impacts, and has documented these findings in a status review update (NMFS 1997a). These findings note that widespread spawning by hatchery fish continues to be a major concern for both the Oregon Coast and Southern Oregon/Northern California Coast ESUs. Scale analyses to determine hatchery-wild ratios of naturally spawning fish indicate moderate to high levels of hatchery fish spawning naturally in many basins on the Oregon coast, and at least a few hatchery fish were identified in almost every basin examined. Although it is possible that these data do not provide a representative picture of the extent of this problem, they represent the best information available at the present time. In addition to concerns for genetic and ecological interactions with wild fish, these data also suggest that the natural portion (i.e., fish born in the gravel) of the natural spawner abundance may be overestimated by ODFW and that the declines in recruits per spawner in many areas may have been even more severe than current estimates indicate (NMFS, 1997a). However, Oregon has made some significant changes in its hatchery practices, such as substantially reducing production levels in some basins, switching to on-station smolt releases, and decreasing fry releases, and proposes additional changes (discussed below), to address this and other concerns about the impacts of hatchery fish on natural populations.

While there are obvious concerns over the negative effects of hatchery fish on wild coho salmon stocks, it is important to note that artificial propagation could play an important role in coho salmon recovery and that some hatchery populations of coho salmon may be deemed essential for the recovery of threatened or endangered ESUs (e.g., if the associated natural population(s) were already extinct or at high risk of extinction). Under these circumstances, NMFS would consider taking the administrative action of listing the hatchery fish.

Efforts To Protect Oregon and California Coho Salmon

Under section 4 of the ESA, a determination to propose a species for listing as threatened or endangered requires considering the biological status of the species, as well as efforts being made to protect the species. Since the early 1990s Federal agencies, state and local governments and private parties have taken substantial measures to protect coho salmon in Oregon and California. These measures affect habitat, harvest, and hatchery activities. In the agency's decision to invoke a statutory extension for the listing determination (October 31, 1996, 61 FR 56211), it was noted that the State of Oregon was planning to submit a peer-reviewed salmon restoration initiative (i.e., the Oregon Coastal Salmon Restoration Initiative) for NMFS' consideration in the spring of 1997. California was undertaking a similar effort, but it was less certain when its plan would be completed. These plans were expected to contain detailed summaries and assessments of conservation measures which benefit coho salmon in the respective states, and hence aid NMFS in making a listing determination. The following sections summarize these Federal and state conservation efforts.

I. Federal Conservation Efforts. 1. NFP. The NFP is a Federal interagency cooperative program, the Record of Decision for Amendments to U.S. Forest Service (USFS) and BLM Planning Documents Within the Range of the Spotted Owl, which was signed and implemented in April 1994. The NFP represents a coordinated ecosystem management strategy for Federal lands administered by the USFS and BLM within the range of the Northern spotted owl (which overlaps considerably with the freshwater range of coho salmon). The NFP region-wide management direction either amended or was incorporated into approximately 26 USFS land and resource management plans (LRMPs) and two regional guides.

The most significant element of the NFP for anadromous fish is its Aquatic Conservation Strategy (ACS), a regional-scale aquatic ecosystem conservation strategy that includes: (1) Special land allocations, such as key watersheds, riparian reserves, and late-successional reserves, to provide aquatic habitat refugia; (2) special requirements for project planning and design in the form of standards and guidelines; and (3) new watershed analysis, watershed restoration, and monitoring processes. These ACS components collectively ensure that Federal land management actions achieve a set of nine Aquatic Conservation Strategy objectives, which include salmon habitat conservation. In recognition of over 300 ''at-risk'' Pacific salmonid stocks within the NFP area (Nehlsen et al., 1991), the ACS was developed by aquatic scientists, with NMFS participation, to restore and maintain the ecological health of watersheds and aquatic ecosystems on public lands. The ACS strives to maintain and restore ecosystem health at watershed and landscape scales to protect habitat for fish and other riparian-dependent species and resources and to restore currently degraded habitats. The approach seeks

to prevent further degradation and to restore habitat on Federal lands over broad landscapes.

In the final rule listing Umpqua River cutthroat trout as endangered (August 9, 1996, 61 FR 41514), NMFS acknowledged that NFP amendments to Federal LRMPs were ''intended to ultimately reverse the trend of aquatic ecosystem degradation and contribute toward recovery of fish habitat,'' however, it was noted at the time that the results of the NFP ACS were ''yet to be demonstrated.'' Following 3 years of NFP implementation, NMFS subsequently reviewed the adequacy of 14 individual LRMPs, as modified by the NFP and its ACS, for conserving Oregon Coast and Southern Oregon/ Northern California Coast coho salmon. The results of these reviews are described in two conference opinions (NMFS, 1995 and 1997d) that document NMFS'' determinations that the programmatic direction for Federal land management actions embodied in the 14 LRMPs would not be likely to jeopardize the continued existence of Oregon Coast or Southern Oregon/ Northern California Coast coho salmon. Moreover, the opinions concluded that implementation of management direction in the LRMPs and RMPs will result in substantially improved habitat conditions for these ESUs over the next few decades and into the future. Improved habitat conditions will result in increased survival of the freshwater life stages of these fish. Implementation of actions consistent with the ACS objectives and components—including watershed analysis, watershed restoration, reserve and refugia land allocations, and associated standards and guidelines—will provide high levels of aquatic ecosystem understanding, protection, and restoration for aquatic habitat-dependent species.

Federal lands managed under the NFP comprise about 35 percent of the total area of the Oregon Coast coho salmon ESU. This includes all or part of the Siskiyou, Siuslaw, and Umpqua National Forests (NF); and the Coos Bay, Eugene, Medford, Roseburg and Salem BLM Districts. Federal land ownership in the Southern Oregon/Northern California Coast coho salmon ESU represents approximately 53 percent of the total area of the ESU and includes Federal land managed by the USFS, BLM, and National Park Service (NPS). The USFS lands, for example, include all or substantial portions of four National Forests (Klamath NF, Six Rivers NF, Shasta-Trinity NF, and Mendocino NF). The vast majority of the USFS land is concentrated in the northernmost California watersheds, including significant portions of the Smith River basin (including the Smith River National Recreational Area, which is part of Six Rivers NF), the mid-to upper Klamath basin (with the exception of Scott and Shasta Rivers), and the Trinity River basin.

2. Other Federal Programs. Other significant federally funded and/or managed conservation programs or activities in the California portion of the Southern Oregon/Northern California Coast ESU include the Klamath Basin Restoration Program, the Trinity River Basin Fish and Wildlife Restoration Program, the Action Plan for the Restoration of the South Fork Trinity River Watershed and Fisheries, and Redwood National Park efforts to restore anadromous salmonid habitat in the Redwood Creek basin.

In addition to these major efforts, NMFS is also engaged in significant ESA section 7 consultation actions on several Federal projects or activities in the California portion of this ESU. These efforts include: (1) Consultation with the Bureau of Reclamation (BOR) concerning operations management of the Klamath Project in the upper Klamath River basin to provide adequate flows for anadromous salmonids in the mainstem Klamath River, (2) consultation with the FWS and BOR to provide adequate flows and temperatures for anadromous salmonids in the mainstem Trinity River, (3) consultation with the COE to address gravel mining and other instream activities, and (4) consultation with the Federal Energy Regulatory Commission (FERC) concerning inter-basin water transfers from the Eel River to the Russian River (between the Southern Oregon/Northern California Coast ESU and Central California ESU) via Pacific Gas & Electric's Potter Valley Project. These consultation efforts are expected to contribute significantly to the long-term conservation of coho salmon and its habitat. Other Federal efforts in Oregon include the South Slough National Estuarine Research Reserve located in Coos Bay, an upcoming consultation on a hydropower facility on the Umpqua River, continued road retirement and obliteration on Federal forest lands, and ongoing review of Elk Creek Dam and Savage Rapids Dam on the Rogue River and the proposed Milltown Hill Dam on the Umpqua River.

The Natural Resource Conservation Service (NRCS) assists agriculture in addressing impacts to anadromous fish. The NRCS is currently engaged with the NMFS in discussions about updating their Field Office Technical Guides (FOTGs) to better assist landowners in California and Oregon desiring to implement voluntary conservation measures protective of, or benefitting, salmonids. A subset of the FOTGs are the guidance that local field offices follow when engaging in actions that may affect anadromous fish or their habitats.

3. Habitat Conservation Plans. NMFS and the FWS are engaged in an ongoing effort to assist in the development of multiple species Habitat Conservation Plans (HCPs) for state and privately owned lands in both California and Oregon. While section 7 of the ESA addresses species protection on Federal lands, Habitat Conservation Planning under section 10 of the ESA addresses species protection on private (non-Federal) lands. HCPs are particularly important since approximately 65 percent of the habitat in the range of these ESUs is in non-federal ownership. The intent of the HCP process is to reduce conflicts between listed species and economic development activities, and to provide a framework that would encourage ''creative partnerships'' between the public and private sectors and state, municipal, and Federal agencies in the interests of endangered and threatened species and habitat conservation (NRC, 1995).

II. Oregon's Coastal Salmon Restoration Initiative (OCSRI). Beginnings of the OCSRI. In October 1995, Oregon's Governor John Kitzhaber launched the OCSRI. One of the Governor's first steps was to establish a team approach for developing an action plan to restore the health of coastal salmon and trout populations. The following key teams were formed early in the process: (1) A Salmon Strategy Team in which the directors of key state agencies met with the Governor on a biweekly basis; (2) an Outreach and Education Team that was directed to work with key agency stakeholders, ask for their advice, and present ideas for their comment; (3) a Science Team to work on technical issues; and (4) an Agency Planning & Implementation Team to coordinate many aspects of the development of the conservation plan. Senior NMFS staff members participated as members of the Salmon Strategy Team, the Science Team, and the Agency Planning & Implementation Team.

This effort focussed each of the major state agencies on developing a plan, removing institutional barriers, and working through difficult issues with their state and Federal colleagues, stakeholders, and the public. Meanwhile, the science team was

working on the biological underpinnings of the OCSRI.

Essential Tenets of the OCSRI

1. The plan comprehensively addresses all factors for decline of the coho salmon, most notably, those factors relating to harvest, habitat, and hatchery activities.

2. Under this plan, all State agencies whose activities affect salmon are held accountable for coordinating their programs in a manner that conserves and restores the species and their habitat. This is essential because coastal salmon have been affected by the actions of many different state agencies.

3. The Plan includes a framework for prioritizing conservation and restoration efforts. Draft coho salmon ''core areas'' are identified in order to focus measures on retaining current salmon strongholds while rebuilding other areas.

4. The Plan includes a comprehensive monitoring plan that coordinates Federal, state, and local efforts to improve our understanding of freshwater and marine conditions, determine populations trends, evaluate the effects of artificial propagation, and rate the OCSRI's success in restoring the salmon.

5. The Plan recognizes that actions to conserve and restore salmon must be worked out by communities and landowners—those who possess local knowledge of problems and who have a genuine stake in the outcome. Watershed councils, soil and water conservation districts, and other grassroots efforts are the vehicles for getting this work done.

6. The Plan is based upon the principles of adaptive management. Through this process, there is an explicit mechanism for learning from experience, evaluating alternative approaches, and making needed changes in the programs and measures.

7. The Plan includes an Independent Multidisciplinary Science Team (IMST). The IMST's purpose is to provide an independent audit of the OCSRI's strengths and weaknesses. They will aid the adaptive management process by compiling new information into a yearly review of goals, objectives, and strategies, and by recommending changes.

8. The Plan requires that a yearly report be made to the Governor, the legislature, and the public. This will help the agencies make the adjustments described for the adaptive management process (above).

Development of the OCSRI

The state distributed a draft OCSRI to interested parties in August 1996. Shortly thereafter, county commissioners sponsored a series of public information meetings to involve key groups and interested individuals in the following locations: Astoria, Tillamook, Newport, Coos Bay, Grants Pass, Gold Beach, Roseburg, and Portland. The Governor's staff presented the draft OCSRI and explained the opportunities for public comment. More than 550 people attended these public meetings. The August 1996 OCSRI draft was critically reviewed and over 600 pages of comments, suggestions, and questions on the draft Plan were received. Those comments were used by Oregon to revise the Plan.

In September 1996, NMFS published and distributed *Coastal Salmon Conservation: Working Guidance For Comprehensive Salmon Restoration Initiatives On the Pacific Coast* (NMFS, 1996d). The intent of the document was to help guide restoration initiatives such as the OCSRI. The OCSRI was revised and supplemented in many areas in response to that guidance. In early November 1996, William Stelle, Jr., NMFS' Northwest Regional Administrator, sent Governor Kitzhaber a package of substantive comments on the August OCSRI draft.

A second draft of the OCSRI was issued on February 24, 1997. Although time was short, Legislators, constituents, and NMFS technical staff reviewed this draft and provided additional suggestions for improving the Plan. Many of these were incorporated into the final document. As part of the Oregon Legislature's consideration of the OCSRI, several more public hearings were held and testimony was taken. In March 1997, NMFS received the final OCSRI for consideration in this coho salmon listing decision.

Addressing Coho Salmon Factors for Decline

The protective measures contained in the OCSRI represent commitments by various state agencies (and their stakeholders), watershed councils, the forest industry, and the Federal government to address coho salmon ''factors for decline.'' Factors for decline identified in the OCSRI include: Loss/degradation of riparian areas, changes in channel morphology, changes in stream substrate, loss of instream roughness (structure), fish passage impediments, loss of estuarine rearing habitat, loss of wetlands, water quality degradation/sedimentation, changes in flow, elimination of habitat, harvest impacts on spawner escapement, illegal salmon catch, salmon bycatch, low ocean productivity, loss of genetic adaptation through interbreeding with genetically dissimilar hatchery fish, competition with hatchery fish, predation by pinnipeds and sea birds, and interaction with exotic fishes. The OCSRI incorporates measures presented by state agencies and their stakeholders as well as Federal agencies to address these factors for decline.

OCSRI Habitat Measures

The OCSRI organized its habitat measures by the 17 habitat-related factors for decline listed above. This organization enables an evaluation of the extent to which the OSCRI's measures influence or reverse each of the factors for decline. Typically, more than one management sector (forestry, agriculture, urban, etc.) contributed to each of the factors for decline. For example, forestry and agricultural measures both address several factors for decline, including loss of riparian areas, channel morphology, substrate changes, instream roughness, water quality and sedimentation (NMFS, 1997b).

On state lands, the Oregon Department of Forestry is preparing a Northwest Oregon State Forest Management Plan. The State of Oregon has indicated interest in working with NMFS and FWS on a multiple-species HCP for approximately 600,000 acres in the Clatsop, Tillamook, and possibly Elliott State Forests. These HCPs would contain aquatic conservation strategies that meet the standards of section 10 of the ESA. Additional HCPs with private landowners may increase the total acreage managed under protective HCPs within this timeframe.

On private forested lands, the State of Oregon developed new forest practices regulations (effective July 1995) that represent an improvement over past forest practices. The OCSRI also provides some additional voluntary measures on the part of industrial forest landowners and small woodland owners that focus on OCSRI core areas, including increased conifer retention in riparian management areas and in-unit leave tree placement for some fish and non-fish bearing streams. Another voluntary measure with significant promise is a road erosion and risk reduction measure that could reduce road-related sediment inputs, road related mass failures, and culvert problems.

On agricultural lands, the State of Oregon addresses coho salmon habitat protection and restoration through the 1993 Senate Bill (SB) 1010 (ORS 568.900–933) and its extension, the Healthy Streams Partnership (HSP). The purpose of SB1010 is to meet the requirements of the Federal CWA on

agricultural lands. Complete and successful implementation of the CWA, and the State's water quality programs, could substantially benefit coho salmon.

The OCSRI's greatest contribution is that it provides a comprehensive framework for integrating habitat protection and restoration efforts by all entities, public and private. An important innovation is the emphasis upon voluntary citizen action, utilizing the industry and resource management expertise of local private property owners. Critical components of the OCSRI that should contribute to habitat restoration include watershed council programs, monitoring, and adaptive management described below.

OCSRI Harvest Measures

Overfishing has greatly depleted the coastal coho salmon; it is a primary factor for the species' decline. Harvest rates on coho salmon have at times exceeded 80 percent, but have recently been reduced to an average of less than 15 percent. Ocean harvest of coho salmon stocks is managed by NMFS in conjunction with the Pacific Fishery Management Council, the states, and certain tribes. Coho salmon ocean harvest is managed by setting escapement goals for OCN coho salmon. Due to concerns over declining population status, directed harvest of coho salmon has been eliminated since 1994.

The OCSRI establishes a comprehensive, weak-stock management framework for ensuring that fishing-related mortalities remain at low levels. The harvest levels may increase in the future, but only moderately, and only based on (1) substantiated increases in coho salmon escapement beyond targeted levels, and (2) greater marine survival that will ensure continued growth of the natural spawning populations.

More specifically, the OCSRI establishes new, disaggregated escapement objectives for four component stocks of the existing OCN coho salmon stock. Harvest rates on each of these four stock components will be allowed to increase from current levels of 10–13 percent (to a maximum of 35 percent) only if significant increases are attained in escapement and productivity. In mixed-stock areas, such as most ocean waters, harvest rates will be limited by the weakest stock component. Within any given stock component, terminal and in-river harvest will be regulated to achieve escapement limits for that component. In addition, if any individual basin has a severe conservation problem, harvest within that basin and in mixed-stock areas may be further restricted.

In the near term, Oregon proposes to limit ocean coho salmon harvest impacts (mostly incidental to the harvest of chinook salmon) to low levels. As populations achieve abundance and productivity targets, fisheries may be established to target marked, unlisted hatchery coho salmon. Ultimately, after high escapement levels have been achieved and evaluated, specific fisheries may be allowed that take some unmarked, naturally-produced coho salmon from healthy populations, as other weaker populations continue to recover. Any downturn in either the marine survival or escapement targets will result in further restrictions.

As described in OCSRI's monitoring program, harvest impacts will be regulated through established, public forums that evaluate the most recent data on natural escapements, population abundance, direct and indirect fishing mortalities, and measurements of wild and hatchery fish survival rates in ocean waters.

OCSRI Hatchery Measures

Hatchery production of coho salmon has been identified as a factor in the decline of natural coho salmon populations. Past increases in hatchery programs to enhance sport and commercial fisheries are now believed to have adversely affected natural populations: Hatchery fish competed with wild coho salmon for limited food and habitat; stray hatchery adults spawned, often in excessive numbers, with wild fish, likely reducing the fitness and productivity of the wild populations. This problem of genetic introgression was, at times, compounded by the use of non-local hatchery broodstocks.

Under the OCSRI, coho salmon smolt releases that numbered 6.4 million in 1990 (and were subsequently reduced to 3.5 million in 1996) will be reduced 64 percent by 1998, thus decreasing adverse competitive interactions. Hatchery releases will be further reduced or modified, if necessary, to keep adult stray rates to less than 10 percent, thus minimizing the effects of genetic introgression. As deemed appropriate to meet wild fish management needs, hatchery broodstocks will receive infusion of wild fish to minimize genetic divergence of the populations.

Oregon has already begun marking all hatchery coho salmon to differentiate them from naturally-produced fish. This will allow more accurate assessment of stray rates and allow for any future selective fisheries on hatchery coho salmon when conditions permit. Artificial propagation may be used to boost natural coho salmon populations or reintroduce coho salmon into vacant habitats, but only after specific management plans are developed and reviewed.

Watershed Councils

Watershed councils are voluntary groups established to improve the condition of the state's watersheds. Oregon laid the foundation for its statewide local watershed council program in 1993. That year, House Bill 2215 set up the program and established two pilot project areas. Due to the success of the program pilots, in 1995 the legislature passed House Bill 3441. This law delegates to the Governor's Watershed Enhancement Board (GWEB) the responsibility to work with local councils and to coordinate project funding. The GWEB approves funding for only those projects based on sound principles of watershed management and encourages the use of nonstructural methods to enhance riparian areas and associated uplands. The GWEB uses the expertise of state agencies according to the type of enhancement project in development, and cooperates with the Federal agencies to ensure integrated efforts.

The premise of the OCSRI is that factors for decline are, and will continue to be, identified in individual watersheds, and that one of the primary means to address those factors will be action plans implemented on a local level involving watershed councils, soil and water conservation districts (SWCDs), the Oregon State University Cooperative Extension Service, landowners, local governments, conservation groups and other grassroots stakeholders. Since 1993, over 60 watershed Councils have been formed in Oregon. The entire Oregon coast is now represented by local watershed Councils. Three of these watersheds will be used as model integration projects for the OCSRI. Two of these, the Applegate and the Coquille Councils, already have strong programs that will act as a templates for other Councils on the coast.

Watershed Councils are currently in different stages in their development of watershed action plans. The action plan is a working document that characterizes the conditions on the watershed, identifies priority areas (based on watershed analysis) for restoration and protection, sets out public involvement strategies, and identifies funding sources. Currently, Councils in the Rogue and South Coast

watersheds are participating in an effort to develop a guidance document that will address the decline of salmon in those basins. A key to this process is identification of current conditions and trends and developing an understanding of their causes. The guidance document, once fully developed, will allow the watershed Councils to update their action plans and assessments.

Councils generally request participation from local, state, Federal, and private resource professionals to participate in a Technical Advisory Committee (TAC). A TAC is a voluntary, scientific, interdisciplinary, nonpolitical group whose purpose is to provide advice and guidance on technical issues. A TAC advises Councils on how to complete a watershed assessment, develop strategic plans, set priorities, and design and implement projects and monitoring programs.

Since 1994, coastal watershed Council TACs have helped review, design, and implement over 250 projects (including one riparian restoration project that involved over 200 private land owners). TACs have also been heavily involved in developing 11 watershed assessments and action plans for watershed Councils. The process is continuing. TACs are being created for new Councils, helping OCSRI, updating watershed Council action plans and assessments, developing new watershed Council action plans and assessments, and continuing to develop, design, and implement on-the-ground projects.

The future success of watershed Councils depends on many factors—including strong TACs. State agencies have made providing scientific and technical support for watershed Councils a priority. Under the OCSRI, state agencies and the Governor have requested new budget packages that will enable agencies to better meet the increased Council demands by adding field staff and increasing communication.

Monitoring Results and Adaptive Management

The OCSRI describes a comprehensive, aggressive, and coordinated monitoring program. Full implementation of the monitoring program is a crucial tool for adaptive management and the success of the OSCRI. State and Federal agencies and other groups have made major commitments to developing and supporting this effort. The objectives of the monitoring program are to develop accurate information on the status of salmon populations and their habitats, detect trends in abundance, determine the effectiveness of measures designed to improve conditions for salmon, and provide the analysis needed to help develop adaptive management strategies for agencies, private landowners, watershed Councils, and individuals. More specifically, monitoring and reporting at the regional, basin, or subbasin scale will include: (1) Stream biotic condition and ambient water quality assessments, (2) juvenile salmon abundance surveys, (3) stream channel and habitat assessments, (4) spawner abundance surveys, (5) genetic and life history monitoring, (6) fish propagation monitoring, (7) harvest monitoring, (8) ''core area'' and ''index area'' population and habitat monitoring, (9) ocean condition monitoring, (10) estuary and riverine wetland population and habitat monitoring, (11) Oregon Forest Practices and Northwest Forest Plan conservation strategy monitoring, and (12) cumulative effects/watershed assessment for mixed ownership.

For more localized decision making, the key monitoring and assessment data will be provided on an ongoing basis to agency managers, watershed Councils and initiative groups, and other interested participants. Regional interagency groups have been organized around state agency administrative boundaries. Participants in the regional groups are lead agency decision-makers for field operational programs. Relevant watershed assessment efforts and data will be routinely reported to this group for coordination and application purposes. The participants of this group are expected to coordinate with the watershed Councils and SWCDs to ensure they all receive the same information in a timely manner.

Watershed Councils, SWCDs, and other partners will report the results of their watershed assessment efforts to the Monitoring Program coordinator as each module is completed. These results will also be given to the involved state and Federal agencies to support their day-to-day decision making.

The interagency monitoring group will convene an annual monitoring conference at which agencies and other partners will be required to present the results of their monitoring efforts. This conference will be used to adjust monitoring efforts and protocols and describe the habitat and population trends. Annual progress of the OCSRI will be assessed by comparing these monitoring results and trends with the OCSRI's published biological objectives. The report (and results of the conference) will be sent to the IMST established by the Oregon Legislature (SB 924–B) for its use in auditing the program.

A bipartisan Joint Legislative Committee on Salmon and Stream Enhancement will receive reports from the IMST including recommendations for changes to the OCSRI. On the basis of these reports, and reports of Oregon's Salmon Restoration and Production Task Force, the Committee may recommend changes to the OSCRI. The annual Governor's report on the ''State of the Salmon'' will also include discussion and recommendations based upon the monitoring results. This report will describe how the monitoring results will be used to adjust the OSCRI's best management practices (BMPs) and program measures.

Funding for the OCSRI

The Natural Resource Investment Budget (authorized by the 69th Oregon Legislative Assembly [House Bill 5042 and 5044] for the biennium beginning July 1, 1997) provides $20 million in new grant funding to support watershed Council coordinators and other local organizations. The existing Governor's Watershed Enhancement Board will administer the grant program. The budget also provides approximately $10 million to add new technical staff to the Department of Agriculture (19 positions), the Department of Environmental Quality (19 positions), the Department of Fish and Wildlife (14 positions), the Department of Forestry (6 positions), the Water Resources Department (4 positions), and the Department of Land Conservation and Development (1 position). In addition, Oregon State Police reprogrammed 13 officers for public education and enforcement of the OCSRI.

Memorandum of Agreement (MOA) between NMFS and Governor of Oregon

NMFS welcomed adoption of the OCSRI by Oregon and believed it would provide significant protections for Oregon Coast ESU in a number of areas. In particular, the harvest and hatchery measures will continue to contribute to improved spawning escapement and the near-term population stability of the ESU. NMFS was concerned, however, that the habitat measures contained in the OCSRI will not secure adequate high quality habitat over the long term to ensure coho survival under a range of environmental conditions. To address this concern, NMFS entered into a MOA in April 1997 with the Governor of Oregon (MOA 1997). Under the MOA, NMFS will provide the state of Oregon guidance on those specific measures it considers adquate and necessary for habitat protection. If these or equivalent measures are not adopted by Oregon within 2 years, NMFS will promptly

change the ESA status of this ESU to the extent warranted. The MOA further commits the parties to full implementation of all elements of the OCSRI, including harvest and hatchery measures and provisions for monitoring and scientific review.

III. California Efforts. In 1995, the California Resources Agency initiated its Coastal Salmon Initiative (CSI), a community-oriented planning effort designed to produce a conservation program based on voluntary measures and incentives to protect fish and wildlife habitat in a manner that would protect the economic interests of communities within the range of coho salmon. The CSI planning process progressed slowly and was suspended in late 1996, before a comprehensive state conservation plan for coho salmon in California was developed.

Recently, however, the State of California has proposed instead to develop and implement a state conservation plan known as the California Watersheds Protection Program based on the State's Natural Communities Conservation Planning (NCCP) Act. This conservation program is intended to provide for the long-term protection and conservation of coho salmon and other anadromous salmonids on non-Federal lands in California's coastal watersheds, as well as a means for incidental take authorization for activities on non-Federal lands. As part of this conservation effort, the State would convene a Scientific Review Panel to develop conservation guidelines for the implementation of the Watershed Protection Program. These guidelines would include conservation strategies and monitoring protocols necessary to protect salmonid habitat in coastal watersheds. The State would subsequently adopt these conservation guidelines under the California Fish and Game Code and then begin the development of individual watershed protection plans.

The Governor of California has proposed a $3.8 million Watershed Initiative to assist in the development and implementation of the California Watersheds Protection Program. The Governor's Budget specifically proposes: (1) $1.5 million for CDFG to participate on inter-agency watershed management team, lead wildlife standard teams, provide guidance and technical assistance to community-based watershed groups, and make grants for habitat restoration, (2) $1.0 million for the state Water Resources Control Board and Regional Boards, for watershed coordinators who will facilitate prioritization of regulatory functions on a watershed basis, integrate resources in priority watersheds, and maximize community involvement in the development and implementation of water quality control plans, (3) $900,000 for the Department of Conservation for inter-agency watershed management teams and for grants to Resource Conservation Districts, and (4) $400,000 for the Department of Forestry and Fire Protection to lead inter-agency watershed teams, conduct watershed assessments, and provide geographic information data base support.

In California, the Range Management Advisory Committee has developed a Rangeland Water Quality Management Plan for inclusion in the State's Nonpoint Source Management Plan. Its purpose is to maintain and improve the quality and associated beneficial uses of surface water as it passes through and out of rangeland resources in the State. The programmatic emphasis is on a voluntary, cooperative approach to water quality management. This includes appropriate technical assistance, planning mechanisms, program incentives, and regulatory authorities. This Plan has been favorably received by the State Water Resources Control Board, EPA, and the BOF.

The state agencies identified in the Governor's Watershed Initiative have developed budget plans, but the likelihood of funding and implementation are unknown at this time. Implementation of the Watershed Initiative will depend on the State Legislature's approval of the budget request. Specific deficiencies of the Watershed Initiative are that no funding past the current fiscal cycle is proposed, and landowner participation in the program is voluntary. NMFS believes that stakeholder-based solutions at the watershed level are essential to recovering coho salmon but that adequate long-term funding and full participation by all stakeholder groups will be necessary for the state's program to succeed.

Local and private efforts are also underway in California. At least eight industrial timber landowners are in the process of developing HCPs that cover approximately 1.2 million acres of privately owned land in Del Norte, Humboldt, Siskiyou, Trinity, and Mendocino counties. This acreage includes ownership in the river basins: Smith River, Klamath River, Redwood Creek, Little River, Mad River, Eel River, and several smaller coastal streams. NMFS anticipates these landowners will be submitting applications for ESA section 10 incidental take permits within the next 6–12 months. These efforts are critical to the conservation of coho salmon in the Southern Oregon/Northern California Coast ESU because nearly 50 percent of the land is privately owned.

Long-term sustained gravel mining plans have been, or are being, developed by three northern California counties (Del Norte, Humboldt, and Mendocino) which comprise a substantial portion of the Southern Oregon/Northern California Coast ESU's range in California. The approach that is being used is to evaluate the impacts of all gravel extraction projects within a watershed as part of a long-term gravel mining plan, and then obtain a Letter of Permission (LOP) from the COE to approve graveling mining projects at the county level. The LOPs would be issued for a period of 3 years and would require annual monitoring reports on gravel recruitment, river geomorphology, and fisheries. Humboldt County currently has an LOP in-place and Del Norte and Mendocino Counties are in the process of obtaining their LOPs. NMFS will be working with the counties and the COE to ensure that any LOPs issued for gravel mining are protective of coho salmon.

Timber, farming, and fishing interests formed the Fish, Forests, and Farms Community (FFFC) organization in California in an effort to address land management and fisheries issues related to salmon and steelhead listings in California. The FFFC has focused its efforts in: (1) Promoting research projects to improve the scientific knowledge regarding salmonid life histories and habitat requirements in coastal watersheds, and (2) developing standardized protocols for biological and physical assessment and monitoring of anadromous fish habitat and populations in coastal watersheds. The FFFC has made important progress to date, and it should be recognized for its efforts to bring together multiple and diverse interests. More importantly, FFFC is attempting to fill a void for standardizing data collection and to quantify technical processes that should eventually lead to a better scientific understanding of coho salmon.

In 1996, the California Forestry Association established the Forest Science Project (FSP) at Humboldt State University. The purpose of the industry-sponsored FSP is to acquire, compile, and disseminate baseline biological and habitat information being developed by private timber companies operating within the California portion of the Southern Oregon/Northern California Coast ESU. The timber industry expects to continue this on-going effort to compile and synthesize biological,

habitat, and other types of data, and has expressed interest in developing a process with NMFS that would assure that such data are available for future decision making.

Local habitat restoration and planning efforts are also currently ongoing in several watersheds that should contribute to the conservation of coho salmon in the Southern Oregon/ Northern California Coast ESU. These include efforts by the Scott River Watershed Committee and French Creek Watershed Advisory Group in the Scott River watershed, the Shasta River Project (Shasta River watershed), the South Fork Trinity River (South Fork Trinity River), and the Mattole Restoration Council (Mattole River). In several counties within the range of the Southern Oregon/Northern California Coast ESU, there are county-based Resource Conservation Districts (RCDs) that are providing the focus for agricultural and local conservation groups to use Federal grants to develop and prioritize restoration plans.

An extensive network of RCDs exists within the range of coho salmon in the Southern Oregon/Northern California Coast ESU. These RCDs represent an important vehicle through which the agricultural community can voluntarily address and correct management practices that impact coho salmon and its habitat, and their potential is significant. Working with individual landowners or through organizations such as the California Farm Bureau, these RCDs can assist landowners in developing and implementing best management practices that are protective of salmonids, including coho salmon. NMFS believes that the conservation and recovery of coho salmon in California will require the active participation of the agriculture community.

Finding and Withdrawal

Based on its assessment of the best available information, NMFS has determined that the Southern Oregon/ Northern California Coast and the Oregon Coast coho salmon ESUs constitute distinct ''species'' under the ESA. NMFS has further determined that the Oregon Coast ESU does not warrant listing at this time, and that the Southern Oregon/Northern California Coast ESU does warrant listing as a threatened species. Accordingly, NMFS is listing the Southern Oregon/Northern California Coast coho salmon ESU as threatened. NMFS will consider the Oregon Coast coho salmon ESU to be a candidate species and will review its listing status in 3 years (or earlier if warranted by new information). NMFS will publish shortly in the **Federal Register** protective regulations, pursuant to ESA section 4(d), which will apply the ESA section 9(a) prohibitions to the listed ESU, with certain exceptions. NMFS does not expect those regulations to become effective before July 1, 1997.

Oregon Coast Coho Salmon ESU

Section 4(b)(1)(A) of the ESA provides that the Secretary shall make a listing determination solely on the basis of the best scientific and commercial data available, after conducting a review of the species' status and ''after taking into account those efforts * * * being made by any state or foreign nation * * * to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within an area under its jurisdiction.'' NMFS has carefully considered the conclusions of the scientists on NMFS' Biological Review Team (BRT) regarding the species' status and has taken into account the OCSRI, the NFP and other actions that protect coho in this ESU.

The scientists on the BRT generally agreed that implementation of the harvest and hatchery measures of the OCSRI would have a positive effect on the status of the ESU. Previous harvest rate reductions on Oregon coastal coho, as refined and continued in the OCSRI, will continue to contribute to improved spawning escapement and near-term population stability of the Oregon coast ESU. The BRT expressed the view that these harvest and hatchery reforms may substantially reduce the short-term risk of extinction. The BRT was about evenly split as to whether the effects of these reforms would be substantial enough to move the ESU out of the ''likely to become endangered'' category. Some members felt that, in addition to the extinction buffer provided by the estimated 80,000 naturally produced spawners in 1996, the reforms would promote higher escapements and alleviate genetic concerns enough that the ESU would not be at significant risk of extinction or endangerment in the foreseeable future. Other members were not convinced that the hatchery and harvest reforms by themselves would be sufficient to alleviate risk due to declining productivity and habitat degradation.

Habitat degradation was one of the primary concerns of the BRT in evaluating long-term risks to this ESU. The BRT concluded that while the harvest and hatchery improvements may substantially reduce the short-term risk of extinction, habitat protection and restoration are key to ensuring the long-term survival of the ESU, especially under variable and unpredictable future climate conditions. There were two primary concerns with respect to habitat: First, that the habitat capacity for coho salmon within the range of the ESU has significantly decreased from historical levels; and, second, that preliminary results of the Nickelson-Lawson model predicted that, during poor ocean survival periods, only high quality habitat is capable of sustaining coho populations, and subpopulations dependent on medium and low quality habitats would be likely to go extinct. Both of these concerns caused the BRT to consider risks from habitat loss and degradation to be relatively high for this ESU.

The previous section of this document describes the Federal NFP and the OCSRI adopted by Oregon to protect and restore Oregon coastal coho salmon stocks. The NFP, which covers 35 percent of the geographic range of this ESU, will provide a high level of protection for coho habitat into the future. The OCSRI also contains many programs that will improve habitat conditions. The forest practices regulations adopted by Oregon in 1995 provide improvements over past practices, and the measures regarding agricultural practices should result in improvements in water quality. Overall, however, the habitat measures of the OCSRI do not currently provide the protections NMFS considers essential to creating and maintaining the high quality habitat needed to sustain Oregon Coast coho over the long term across a range of environmental conditions.

The OCSRI contains the tools necessary to ensure that adequate habitat measures are ultimately adopted and implemented: a comprehensive monitoring program, scientific review, and an adaptive management program. Natural escapement has been increasing markedly in recent years and reached 80,000 fish in 1996. On the basis of the harvest and hatchery improvements together with the habitat protections in the NFP and given the improving trends in escapement, the Oregon Coast coho is not likely to become endangered in the interval between this decision and the adoption of improved habitat measures by the State of Oregon. Under the April 1997 MOA between NMFS and the Governor of Oregon (MOA, 1997), described in the previous section, NMFS will propose to Oregon additional forest practices modifications necessary to provide adequate habitat conditions for coho. If these or other comparable protections are not adopted within 2 years, NMFS will act promptly

to change the ESA status of this ESU to whatever extent may be warranted.

Because the determination not to list the Oregon Coast ESU relies heavily on continued implementation of the OCSRI (in accordance with the MOA), including the enactment of improved habitat protective measures, NMFS intends to review this listing determination no later than the conclusion of 3 years (which represents one full life cycle and 3 year classes of coho salmon) or at any time sooner if substantive new information warrants consideration. During the interim, NMFS is designating the Oregon Coast ESU as a candidate species under the ESA and will continue to monitor the ESU's status as well as the efficacy of the OCSRI and other conservation measures.

Southern Oregon/Northern California Coast Coho Salmon ESU

Coho salmon populations are very depressed in this ESU, currently numbering fewer than 10,000 naturally-produced adults. The threats to this ESU are numerous and varied as described elsewhere in this document. Several human-caused factors, including habitat degradation, harvest, and artificial propagation, exacerbate the adverse effects of natural environmental variability brought about by drought, floods, and poor ocean conditions. NMFS has determined that existing regulatory mechanisms over the ESU as a whole are either inadequate or not implemented well enough to conserve this ESU. While conservation efforts are underway for some populations in this ESU, particularly in the Oregon portion of the ESU, they are not considered sufficient to reduce the risk that the ESU as a whole will become endangered in the foreseeable future. Accordingly, NMFS concludes that this ESU warrants listing as threatened. NMFS will issue shortly protective regulations that will apply the section 9(a) prohibitions to this ESU, with certain exceptions.

As described in the BRT status reviews (Weitkamp et al., 1995; NMFS, 1997a) and the proposed listing determination for west coast coho salmon (July 25, 1995, 60 FR 38011), NMFS defines the Southern Oregon/ Northern California Coast coho salmon ESU to include all naturally spawned populations of coho salmon (and their progeny) that are part of the biological ESU and reside below long-term, naturally impassible barriers in streams between Punta Gorda (CA) and Cape Blanco (OR). NMFS has also evaluated the status of seven hatchery stocks of coho salmon presently reared and released within the range of this ESU (NMFS, 1997a). Two of these hatchery stocks from California are either not considered part of the ESU (Mad River Hatchery) or are of uncertain relationship to the ESU (Iron Gate Hatchery). In contrast, NMFS has concluded that fish from four California hatchery populations (Mattole River, Eel River, Trinity River, and Rowdy Creek) and Oregon's Rogue River hatchery stock should be included in the definition of this ESU. None of these five hatchery stocks considered part of this ESU are presently deemed ''essential'' for its recovery, hence these hatchery fish are not being listed at this time. However, NMFS has determined that two of the hatchery populations may play an important role in recovery efforts: Mattole River, because the natural population is very depressed, and the Trinity River, because there appears to be essentially no natural production in the basin. It is important to note that the determination that a hatchery stock is not ''essential'' for recovery does not preclude it from playing a role in recovery. Any hatchery population that is part of the ESU is available for use in recovery if conditions warrant. In this context, an ''essential'' hatchery population is one that is vital to fully incorporate into recovery efforts (for example, if the associated natural population(s) were extinct or at high risk of extinction). Under these circumstances, NMFS would consider taking the administrative action of listing the existing hatchery fish.

NMFS' ''Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act'' (58 FR 17573, April 5, 1993) provides guidance on the treatment of hatchery stocks in the event of a listing. Under this policy, ''progeny of fish from the listed species that are propagated artificially are considered part of the listed species and are protected under the ESA.'' In the case of Oregon's Rogue River hatchery (Cole Rivers), the protective regulations that NMFS will issue shortly will exempt take of naturally spawned listed fish for use as broodstock as part of an overall conservation program. According to the interim policy, the progeny of these hatchery-wild crosses would also be listed. NMFS has determined in this case, however, not to consider hatchery-reared progeny of intentional hatchery-wild crosses as listed. The Rogue River natural population is relatively abundant, the take of naturally spawned fish for broodstock purposes is specifically limited, and the BRT concluded that this hatchery population was not essential for recovery, nor does it have an important role to play in recovery. NMFS therefore concludes that it is not inconsistent with NMFS' interim policy, nor with the policy and purposes of the ESA, to consider these progeny as part of the ESU but not listed.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. NMFS has completed its analysis of the biological status of the Southern Oregon/Northern California Coast ESU but has not completed the analysis necessary for the designation of critical habitat. NMFS has decided to proceed with the final listing determination now and to proceed with the designation of critical habitat in a separate rulemaking. Section 4(b)(6)(C)(ii) provides that, where critical habitat is not determinable at the time of final listing, NMFS may extend the period for designating critical habitat by not more than 1 additional year. Congress further stated in the 1982 amendments to the ESA, ''where the biology relating to the status of the species is clear, it should not be denied the protection of the Act because of the inability of the Secretary to complete the work necessary to designate critical habitat.'' (H. Rep. No. 567, 97th Cong., 2d Sess. 19, 1982). NMFS believes that proceeding with this final listing determination, even though critical habitat has not been designated, is appropriate and necessary to protect this ESU and is consistent with congressional direction.

NMFS further concludes that critical habitat is not determinable at this time, because information sufficient to perform the required analysis of the impacts of the designation is lacking. NMFS has solicited information necessary to designate critical habitat in its proposed rule (60 FR 38011, July 25, 1995) and will consider such information in the proposed designation. Specifically, designation requires a determination of those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. It further requires the consideration of an economic analysis of the impacts of the designation. These analyses have not yet been completed, and, therefore, critical habitat is not determinable at this time. NMFS is extending the period for the designation of critical habitat by not more than 1 additional year.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, recovery actions, Federal agency consultation requirements, and prohibitions on taking. Recognition through listing promotes public awareness and conservation actions by Federal, state, and local agencies, private organizations, and individuals.

With respect to the Southern Oregon/Northern California Coast coho salmon ESU, several efforts are underway (described previously) that may slow or reverse the decline of coho salmon in this ESU. The NMFS intends to move rapidly during the next year to work with Federal, state, and tribal entities to develop and implement a comprehensive strategy to halt the decline and begin the recovery of coho salmon populations within this ESU. Because a substantial portion of land in this ESU is in private ownership (approximately 46 percent), conservation measures on private lands will be key to protecting and recovering coho salmon in this ESU.

Section 4(d) of the ESA directs the Secretary to implement regulations ''to provide for the conservation of [threatened] species,'' that may include extending any or all of the prohibitions of section 9 to threatened species. Section 9(a)(1)(g) also prohibits violations of protective regulations for threatened species implemented under section 4(d). NMFS will issue shortly protective regulations pursuant to section 4(d) for the conservation of the species.

For listed species, section 7(a)(2) of the ESA requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS.

Examples of Federal actions most likely to be affected by listing this ESU include COE section 404 permitting activities under the CWA, COE section 10 permitting activities under the River and Harbors Act, FERC licensing and relicensing for non-Federal development and operation of hydropower, EPA implementation of TMDLs and 303(c) water quality standards, and NRCS funded activities. These actions will likely be subject to ESA section 7 consultation requirements that may result in conditions designed to achieve the intended purpose of the project and avoid or reduce impacts to coho salmon and its habitat within the range of the listed ESU.

There are likely to be Federal actions ongoing in the range of the Southern Oregon/Northern California Coast ESU at the time that this listing becomes effective. Therefore, NMFS will review all on-going actions that may affect the listed species with the Federal agencies and will complete formal or informal consultations, where requested or necessary, for such actions as appropriate, pursuant to ESA section 7(a)(2).

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''taking'' prohibitions (see regulations at 50 CFR 222.22 through 222.24). Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves directed take of listed species.

NMFS has issued section 10(a)(1)(A) research or enhancement permits for other listed species (e.g., Snake River chinook salmon, Sacramento River winter-run chinook salmon) for a number of activities, including trapping and tagging to determine population distribution and abundance, and collection of adult fish for artificial propagation programs. NMFS is aware of several sampling efforts for coho salmon in the Southern Oregon/Northern California Coast ESU, including efforts by Federal and state fisheries agencies, and private landowners. These and other research efforts could provide critical information regarding coho salmon distribution and population abundance.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities to authorize take of listed species incidental to otherwise lawful activities. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and funding of hatcheries and release of artificially propagated fish by the state, state or university research not receiving Federal authorization or funding, the implementation of state fishing regulations, and timber harvest activities on non-Federal lands.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir., 1981), NMFS has categorically excluded all ESA listing actions from the environmental assessment requirements of NEPA (48 FR 4413, February 6, 1984).

As noted in the Conference Report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of the species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. Similarly, this final rule is exempt from review under E.O. 12866.

References

The complete citations for the references used in this document can be obtained by contacting Garth Griffin or Craig Wingert, NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: April 25, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, paragraph (i) is added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(i) Southern Oregon/Northern California Coast coho salmon (*Oncorhynchus kisutch*). Includes all coho salmon naturally reproduced in streams between Cape Blanco in Curry County, OR, and Punta Gorda in Humboldt County, CA.

[FR Doc. 97–11571 Filed 5–5–97; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 62, No. 87
Tuesday, May 6, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

[DA–97–05]

Milk in the Eastern Colorado Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend certain performance standards of the Eastern Colorado Federal milk order. The suspension was requested by Mid-America Dairymen, Inc., a cooperative association that supplies milk for the market's fluid needs. The suspension was requested to prevent the uneconomic movement of milk that otherwise would be required in order to maintain the pooling status of milk that has been historically associated with the order.

DATES: Comments are due no later than June 5, 1997.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456. Reference should be given to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368, e-mail address: Clifford__M__Carman@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of March 1997, the milk of 415 producers was pooled on the Eastern Colorado Federal milk order. Of these producers, 308 producers were below the 326,000-pound production guideline and are considered small businesses. During this same period, there were 10 handlers operating 11 pool plants under the Eastern Colorado order. Five of these handlers would be considered small businesses.

This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This proposed suspension will not result in any additional regulatory burden on handlers in the Eastern Colorado marketing area since this suspension has been continually in effect since 1985.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Proposed Rule

Notice is hereby given that, pursuant to the provisions of the Act, the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered:

1. For the months of September 1, 1997, through February 28, 1998: In the second sentence of § 1137.7(b), the words ''plant which has qualified as a'' and ''of March through August''; and

2. For the months of September 1, 1997, through August 31, 1998: In the first sentence of § 1137.12(a)(1), the words ''from whom at least three deliveries of milk are received during the month at a distributing pool plant''; and in the second sentence ''30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of'', and the word ''distributing''.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by

the 30th day after publication of this notice in the **Federal Register**.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed rule would suspend certain portions of the pool plant and producer definitions of the Eastern Colorado order. The proposed suspension would make it easier for handlers to qualify milk for pooling under the order.

The proposed suspension was requested by Mid-America Dairyman, Inc. (Mid-Am), a cooperative association that has pooled milk of dairy farmers on the Eastern Colorado order for several years. Mid-Am has requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers historically associated with the Eastern Colorado order.

Mid-Am requests, for the months of September 1997 through February 1998, that the limit on the period of automatic pool plant status for a supply plant that met pool shipping standards during the previous September through February period be suspended. This provision has been suspended annually for several years. Mid-Am also requests the suspension of the touch-base and diversion limitation requirements during the months of September 1997 through August 1998. These requirements have been suspended since September 1985.

These provisions have been suspended previously in order to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. Mid-Am asserts that they have made a commitment to meet the fluid requirements of fluid distributing plants if the suspension request is granted. Without the suspension action, Mid-Am contends that it will be necessary to ship milk from distant areas to Denver area bottling plants. This will displace locally produced milk that would then have to be shipped from the Denver area to surplus handling plants.

In addition, Mid-Am maintains that ample supplies of locally produced milk will be available to meet fluid needs without requiring that each producer's milk be received at least three times each month at a pool distributing plant or by restricting the amount of milk that can be diverted to nonpool plants.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: April 30, 1997.

Aggie Thompson,

Acting Director, Dairy Division.

[FR Doc. 97–11745 Filed 5–5–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 95–029–1]

Animal Welfare; Perimeter Fence Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare regulations to require that a perimeter fence be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities for marine mammals and certain other regulated animals. Although it has been our policy that such fences should be in place around sheltered and outdoor housing facilities for such animals, there have been no provisions in the regulations specifically requiring their use. Adding the perimeter fence requirement to the regulations for these additional categories of animals would serve to protect the safety of the animals and provide for their well being.

DATES: Consideration will be given only to comments received on or before July 7, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–029–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–029–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare regulations contained in 9 CFR chapter 1, subchapter A, part 3 (referred to below as ''the regulations'') provide specifications for the humane handling, care, treatment, and transportation, by regulated entities, of animals covered by the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) (The Act). The regulations in part 3 are divided into six subparts, designated as subparts A through F, each of which contains facility and operating standards, animal health and husbandry standards, and transportation standards for a specific category of animals. These categories are: (A) cats and dogs, (B) guinea pigs and hamsters, (C) rabbits, (D) nonhuman primates, (E) marine mammals, and (F) animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals.

Each of these subparts contains regulations regarding outdoor housing facilities, and subparts A and D contain regulations regarding sheltered housing facilities. However, only subpart D (nonhuman primates) includes a requirement for a perimeter fence surrounding outdoor housing facilities and sheltered housing facilities. Although perimeter fences are not required by the regulations for animals other than nonhuman primates, most facilities do have perimeter fences in place. It has been the policy of the Animal and Plant Health Inspection Service (APHIS) that perimeter fences should be in place at outdoor and sheltered housing facilities for animals other than nonhuman primates, but, as noted above, only the regulations in subpart D require perimeter fences. We now believe that it is necessary to include perimeter fence requirements in subparts E and F in order to protect the safety of marine mammals and certain other animals and to provide for their well-being. We will not be amending subpart A (cats and dogs) or subpart C (rabbits) at this time as most dogs, cats, and rabbits are currently maintained in enclosed kennels or indoors, with the exception of tethered dogs. Tethered dogs are already required to have a perimeter fence. No amendment is needed in subpart B (guinea pigs and hamsters) because outdoor housing for hamsters is prohibited, and any outdoor housing for guinea pigs must be approved in advance by APHIS.

Therefore, we are proposing to amend §§ 3.103 and 3.127 to require that a perimeter fence be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities

for marine mammals and animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals. With the exception of the proposed 8-foot-fence requirement explained in the following paragraphs, the proposed requirements would serve the same purpose as those currently found in §§ 3.77 and 3.78 for nonhuman primates.

For marine mammals, we propose that the perimeter fence be high enough to reasonably be expected to keep animals and unauthorized persons out of the containment area. If the facility is a sea pen facility, this would mean that a perimeter fence high enough to reasonably be expected to keep animals and unauthorized persons from gaining access to the sea pen from the surrounding land would be installed to encompass the land portion of the facility (from one end of sea pen-shoreline contact, around the land based portion of the facility, to the other end of sea pen-shoreline contact). The perimeter fence would help prevent injury of marine mammals by other animals or persons and would afford the marine mammals protection from exposure to diseases. We believe that for most marine mammals, a perimeter fence should be at least 6 feet high to reasonably be expected to prevent entry of animals and unauthorized persons, and protect against disease exposure. However, in the case of polar bears, we believe that the perimeter fence should be at least 8 feet high to provide an added measure of security for the protection of the bears and the protection of the public. Polar bears are categorized as dangerous animals and will likely attack if provoked. Should the bears escape from captivity, they would be subject to potentially dangerous, or lethal, recapture and control methods. It is in the interest of the welfare of the animal to be contained within the facility, rather than tracked and possibly killed if it escapes from containment. Therefore, we believe that a perimeter fence measuring at least 8 feet in height would act as a secondary containment system and would reduce the possibility that a polar bear would escape from the containment area and be harmed in its recapture or control.

Except for potentially dangerous animals, we propose to require that the perimeter fence for animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals be high enough to reasonably be expected to keep animals and unauthorized persons out of the containment area. For the purposes of this regulation, potentially dangerous animals include, but are not limited to, large felines (e.g., lions, tigers, leopards, cougars, bobcats, etc.), bears, wolves, elephants, and rhinoceros. This provision would protect the animals from injury by other species and would prevent the animals' exposure to diseases carried by other species. However, as in the case of polar bears, we propose that for potentially dangerous animals covered by the regulations in subpart F, the perimeter fence be a minimum of 8 feet in height to provide an added measure of security for the protection of the animals and the protection of the public. As with polar bears, it is in the interest of the welfare of the animal to be contained within the facility, rather than tracked and possibly killed if it escapes from containment. Therefore, we believe that a perimeter fence measuring at least 8 feet in height would act as a secondary containment system and would reduce the possibility that a potentially dangerous animal would escape from the containment area and be harmed in its recapture or control.

However, we recognize that conditions at a particular facility may allow for the use of a shorter perimeter fence for marine mammals or animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals. The shorter fence would have to be approved by the Administrator. Approval by the Administrator of a shorter perimeter fence would only be given if the alternative security measures offered by the facility would provide the same or better degree of protection from access by animals and unauthorized persons, disease exposure, and animal escape, if applicable.

We are also proposing to require that the perimeter fence be constructed so that it prevents animals the size of dogs, skunks, and raccoons, as well as unauthorized persons, from going through or under the fence. The perimeter fence could be slatted, latticed, or of other similar design, as long as it is designed and constructed in a manner that restricts unauthorized animals and persons from entering the facility or having contact with the animals in the facility and can function as a secondary containment system for the animals in the facility. This provision would help prevent an animal's injury and exposure to disease from unauthorized animals, and would minimize the need to employ potentially harmful or fatal recapture techniques.

We are proposing to require that the perimeter fence be set far enough away from the outside wall or fence of the primary enclosure to prevent physical contact between animals inside the enclosure and animals and persons outside the perimeter fence. Sufficient space—i.e., at least 3 feet—would also provide enough room to clean and maintain the space between the perimeter fence and the primary enclosure. This provision would offer a ''safety zone'' for the animals in the facility by ensuring that animals or persons outside of the perimeter fence cannot reach into the enclosure to poke, bite, or otherwise harm a contained animal or expose a contained animal to disease.

However, we recognize that conditions at a particular facility may allow for less space between the perimeter fence and the outside wall or fence of the primary enclosure for marine mammals or animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals. A fence located less than 3 feet away from the outside wall of the primary enclosure would have to be approved by the Administrator. Approval by the Administrator would only be given if the alternative spacing offered by the facility would provide the same or better degree of protection from physical contact between the animals inside the enclosure and animals and persons outside the perimeter fence and would provide the same or better degree of protection from possible escape of a housed animal.

There may be cases in which the conditions at a facility are such that a perimeter fence is not necessary to keep animals and unauthorized persons from entering the facility or from having physical contact with animals in the facility. Therefore, the proposed regulations state that a perimeter fence is not required if the outside walls of the primary enclosure are made of sturdy, durable material, which may include certain types of concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that restricts contact with or entry by animals and unauthorized persons that are outside the facility, and the Administrator gives written approval.

Similarly, a perimeter fence would not be required if the facility is surrounded by an effective (i.e., impenetrable) natural barrier that keeps the animals in the facility and protects them from contact with animals and unauthorized persons that are outside of the facility. As a means of ensuring that the natural barrier is inspected and found to be adequate, the operator of the facility would have to obtain written permission from the Administrator to

use a natural barrier instead of a perimeter fence.

We believe that the proposed requirements for perimeter fences would serve to protect the safety of marine mammals and animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals in facilities and would provide for the well-being of such animals.

Executive Order 12866 and Regulatory Flexibility Act

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

This proposed rule would amend the Animal Welfare regulations by requiring that a perimeter fence be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities for marine mammals and animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals.

Class A and B dealers, Class C exhibitors, registered exhibitors, and research facilities are the entities that would be affected by the proposed perimeter fence requirement. Class A dealers breed and raise animals to sell for research, teaching, or exhibition; Class B dealers include brokers and operators of auctions sales for animals; and Class C licensees and registered exhibitors include exhibitors such as animal acts, carnivals, circuses, and public and roadside zoos. Research facilities include schools, institutions, organizations, or persons who use live animals in research, tests, or experiments.

In 1995, there were 4,325 licensed dealers, 1,968 regulated exhibitors, and 1,300 registered research facilities. According to the Small Business Administration (SBA) size standards, more than 50 percent of zoos are considered large businesses. There are no SBA standards for animal dealers; the number of animals handled and gross sales vary greatly with the type of animals bought and sold by a dealer. Class A and B dealers may deal in exotic animals for private owners and for public exhibition, as well as in animals for biomedical research. There are no uniform SBA standards for research facilities, as the standards are categorized for type of research activities undertaken and/or number of employees. The type of research activities undertaken, type and number of animals used, number of employees, and operating budget (funding levels, income, etc.) vary greatly from facility to facility.

A 50-yard roll of a 6-foot-high chain link fence would cost approximately $60 to $70, and a 50-yard roll of an 8-foot-high fence would cost approximately $80 to $100. There is some flexibility as to the type of fence a facility could use, so certain facilities may have a perimeter fence of less expensive material, such as a tightly woven wire. In addition, a fence that is not tall enough to meet the proposed 6-foot or 8-foot height requirement could be modified to meet the standard rather than replaced if a 6- or 8-foot-high fence was necessary for the facility. The size of a perimeter fence for a dealer, exhibitor, or research facility would depend on the size of the facility and type of housing provided, but for almost all facilities, we estimate that perimeter fences represent less than 5 percent of total expenses for the facility.

There are several reasons the impact of the proposed requirement on small businesses would be limited. First, most licensed dealers and regulated exhibitors already meet the proposed perimeter fence requirement. Most research facilities do not utilize sheltered and/or outdoor housing facilities (it is estimated that greater than 90 percent of research facilities are solely indoor facilities), and all research facilities utilizing outdoor housing for nonhuman primates are already required to provide perimeter fencing in accordance with the regulations in subpart D. Second, fencing costs represent only a small portion of a facility's operational costs. Finally, the fencing requirements are relatively flexible and provide for alternatives where appropriate.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 95–029–1. Please send a copy of your comments to: (1) Docket No. 95–029–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the Animal Welfare regulations to require that a perimeter fence be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities for marine mammals and certain other regulated animals. The proposed rule would provide the opportunity for a facility to request approval from the Administrator to have a shorter perimeter fence or other measures, if that facility already provides the same or better degree of protection from access by animals and unauthorized persons, disease exposure, and animal escape. In order to adequately evaluate and track such requests, the facility must make the request in writing. Facilities not in compliance with the rule must come into compliance or request approval from the Administrator for a shorter fence or other measures. Requests for approval from the Administrator would usually be a one time request. We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the

validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Dealers, exhibitors, and research facilities.

Estimated number of respondents: 164.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 328 hours.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, 9 CFR part 3 would be amended as follows:

PART 3—STANDARDS

1. The authority citation for part 3 would be revised to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 3.103 would be amended by adding a new paragraph (c) to read as follows:

§ 3.103 Facilities, outdoor.

* * * * *

(c) *Perimeter fence.* On and after [*date 6 months after effective date of final rule*] an outdoor facility must be enclosed by a fence that is of sufficient height to keep animals and unauthorized persons out. Fences less than 8 feet high for polar bears or less than 6 feet high for other marine mammals must be approved by the Administrator. The fence must be constructed so that it protects marine mammals by restricting animals and unauthorized persons from going through it or under it and having contact with the marine mammals, and so that it can function as a secondary containment system for the animals in the facility when appropriate. It must be of sufficient distance from the outside wall or fence of the primary enclosure to prevent physical contact between animals inside the enclosure and animals or persons outside the perimeter fence. Such fences less than 3 feet in distance from the primary enclosure must be approved by the Administrator. For facilities with sea pens, the perimeter fence must prevent access by animals and unauthorized persons to the sea pen from the surrounding land, and would be required to encompass the land portion of the facility from one end of sea pen-shoreline contact to the other end of sea pen-shoreline contact. A perimeter fence is not required if:

(1) The outside walls of the primary enclosure are made of sturdy, durable material, which may include certain types of concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that restricts contact with or entry by animals and unauthorized persons that are outside the outdoor facility, and the Administrator gives written approval; or

(2) The outdoor facility is surrounded by an impenetrable natural barrier that restricts the marine mammals to the facility and protects them from contact with animals and unauthorized persons that are outside the facility, and the Administrator gives written approval.

3. Section 3.127 would be amended by adding a new paragraph (d) to read as follows:

§ 3.127 Facilities, outdoor.

* * * * *

(d) *Perimeter fence.* On or after [*date 6 months after effective date of final rule*] an outdoor facility must be enclosed by a fence that is of sufficient height to keep animals and unauthorized persons out. Fences less than 8 feet high for potentially dangerous animals, such as, but not limited to, large felines (e.g., lions, tigers, leopards, cougars, bobcats, etc.), bears, wolves, rhinoceros, and elephants, or less than 6 feet high for other animals must be approved by the Administrator. The fence must be constructed so that it protects the animals in the facility by restricting animals and unauthorized persons from going through it or under it and having contact with the animals in the facility, and so that it can function as a secondary containment system for the animals in the facility. It must be of sufficient distance from the outside wall or fence of the primary enclosure to prevent physical contact between animals inside the enclosure and animals or persons outside the perimeter fence. Such fences less than 3 feet in distance from the primary enclosure must be approved by the Administrator. A perimeter fence is not required if:

(1) The outside walls of the primary enclosure are made of sturdy, durable material, which may include certain types of concrete, wood, plastic, metal, or glass, and are high enough and constructed in a manner that restricts contact with or entry by animals and unauthorized persons that are outside the outdoor facility, and the Administrator gives written approval; or

(2) The outdoor facility is surrounded by an impenetrable natural barrier that restricts the animals in the facility to the facility and protects them from contact with animals and unauthorized persons that are outside the facility, and the Administrator gives written approval.

Done in Washington, DC, this 30th day of April 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–11723 Filed 5–5–97; 8:45 am]

BILLING CODE 3410–34–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1015

Procedures for Disclosure or Production of Information Under the Freedom of Information Act; Amendments

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed amendments to rule.

SUMMARY: The Electronic Freedom of Information Act Amendments of 1996, which amend the Freedom of Information Act, are designed to make government documents more accessible to the public in electronic form. The amendments are also intended to expedite and streamline the process by which agencies disclose information generally. In this notice, the Commission proposes amendments to its Freedom of Information Act regulations to comply with the requirements of the new statute.

DATES: Comments concerning this proposal must be received in the Office of the Secretary no later than July 7, 1997. The amendments are proposed to become effective 30 days after their publication in the **Federal Register** in final form.

ADDRESSES: Mail comments concerning this proposal to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or

deliver them to room 502, 4330 East West Highway, Bethesda, MD 20814. Comments may be seen in the Commission's Public Reading Room, 4330 East West Highway, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Jayme Rizzolo Epstein, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0980; or Todd Stevenson, Freedom of Information Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800.

SUPPLEMENTARY INFORMATION:

Background Information

On October 2, 1996, the President signed into law the Electronic Freedom of Information Act Amendments of 1996 (''EFOIA''), Public Law 231, 110 Stat. 3048 (1996). EFOIA includes provisions authorizing or requiring agencies to promulgate regulations implementing certain of its requirements, including the tracking of Freedom of Information Act (''FOIA'') requests, the aggregation of FOIA requests, and the expedited processing of FOIA requests. In addition, EFOIA changes the time limit for responding to a FOIA request from ten to twenty days, the requirements for reporting regarding FOIA activities to Congress, and the cases in which an agency may extend the time within which it will respond to a FOIA request. EFOIA also includes provisions regarding the availability of documents in electronic form, the treatment of electronic records, and the establishment of ''electronic reading rooms.''

The Consumer Product Safety Commission (''Commission'') proposes amendments to its regulations implementing the Freedom of Information Act, 16 CFR part 1015. The proposed amendments would revise the Commission's FOIA regulations to comply with EFOIA.

New Provisions

A. Electronic Records

Section 3 of EFOIA amends 5 USC 552(f) to define ''record'' for purposes of FOIA as including ''any information that would be an agency record subject to the requirements of (5 USC section 552) when maintained by an agency in any format, including an electronic format.'' Section 552(f) thus clarifies that the term ''agency record'' includes information stored on computer as well as traditional paper documents. The proposed regulations amend 16 CFR 1015.1(a) by adding language to reflect this definition of ''record'' and to clarify that the Commission produces all releasable records responsive to a FOIA request, whether in traditional paper or electronic form.

B. Electronic Reading Room

FOIA section 552(a)(2) requires agencies to make available for inspection and copying the following: (1) Final opinions and orders made in adjudicated cases; (2) statements of policy and interpretations not published in the **Federal Register**; and (3) administrative staff manuals and instructions to staff that affect the public. 5 U.S.C. 552(a)(2). As stated in the Commission's FOIA regulations, the Commission maintains these materials in its Public Information Center. 16 CFR 1015.2(a). EFOIA adds a fourth category to the materials that agencies must place in their reading rooms:

> Copies of all records * * * which have been released to any person under [FOIA] and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

EFOIA sec. 4; 5 USC § 552(a)(2)(D).

EFOIA further requires agencies to make available by ''computer telecommunications'' all reading room materials that are created on or after November 1, 1996. The statute envisions that each agency will ultimately have both a traditional reading room and a new ''electronic reading room'' on the World-Wide Web.

Proposed regulation 1015.2(c) states that the Commission will post the requisite materials on its Website. Where appropriate and feasible, and as resources permit, the Commission may also place additional reading room materials on the Website.

C. Multitrack Processing of Requests

EFOIA authorizes agencies to promulgate regulations providing for multitrack processing of requests for records based on the amount of work and/or time involved in processing requests. EFOIA section 7(a); 5 USC 552(a)(6)(D)(i). This would expedite the production of records where little work or time is required. The statute states that an agency's regulations may include a provision granting a FOIA requester whose request does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing. 5 USC 552(6)(D)(ii).

The Commission believes that multitrack processing is the most efficient and fair way to process FOIA requests. If requests were processed on a strict first in, first out basis, easily filled requests—for example for a press release or Commission brochure—would be processed only after earlier-received, complex requests for dozens of documents located in offices throughout the Commission. The Commission currently intends to process FOIA requests on five tracks, as follows:

Track 1: Responsive documents are available in the Office of the Secretary in releasable form. Examples include press releases, Commission brochures, and cleared Commission briefing packages.

Track 2: Responsive documents are on file outside the Office of the Secretary in one easily identifiable location, but must be located and copied, and require internal clearance. Examples include meeting logs, technical reports and contractor reports.

Track 3: Responsive documents are located in various Commission offices and require internal clearance.

Track 4: Responsive documents require both internal clearance and review by identified manufacturers pursuant to sections 6(a) and/or (b) of the Consumer Product Safety Act, 15 U.S.C. 2055(a) and (b). Examples include requests for information regarding Commission investigations of specific products and/or companies.

Track 5: Responsive documents are voluminous or are located in various Commission offices, and require section 6(a) and/or (b) review.

In general, when a request is received, the Freedom of Information Office will review it and categorize it for tracking purposes. Requests within each ''track'' will then be processed according to the date of receipt within each category. This should help further expedite responses to FOIA requests that are easier to fill. Of course, many requests are unique and will not easily fit one of the above descriptions. Others may appear to qualify for a fast track but prove complex once the search for the responsive documents is underway. As the Office of the Secretary implements and gains experience with the multitrack system, adjustments will almost certainly be required.

Pursuant to proposed regulation 1015.3(e), the Office of the Secretary may contact requesters whose requests do not appear to qualify for the fastest tracks and provide such requesters the opportunity to limit their requests so they qualify for a faster track. Such notification will be at the discretion of the Office of the Secretary and will depend largely on whether that Office believes that a narrowing of the request could put the request on a faster track. The regulation further provides that requesters who believe that their requests qualify for the fastest tracks and who wish to be notified if the Office

of the Secretary disagrees may so indicate in the request. If practicable, the Office of the Secretary may also work with such requesters to limit their requests to qualify for a faster track.

D. Time Limit for Responding to Requests

1. General: EFOIA lengthened the time within which agencies must respond to FOIA requests from ten to twenty working days. EFOIA sec. 8(b); 5 U.S.C. 552(a)(6)(A)(i). The proposed regulations amend the Commission's current regulations to conform to the new time limit. *See* 16 CFR 1015.4, 1015.5(a), 1015.6(c).

2. Extension of time in unusual circumstances: Pursuant to FOIA section 552(a)(6)(B), agencies are permitted to extend the time limit for responding to a request or deciding an appeal of a denial of a request in ''unusual circumstances,'' as defined in that section, for no more than ten working days, upon written notice to the requester. 5 U.S.C. 552(a)(6)(B). EFOIA amends section 552(a)(6)(B) to permit agencies to extend the response time by notifying the requesters and providing them with an opportunity to: (1) Limit the scope of the request so that it may be timely answered; or (2) arrange with the agency an alternative time frame for processing the request. EFOIA sec. 7(b); 5 U.S.C. 552(a)(6)(B)(ii). EFOIA also provides that a requester's refusal to modify a request or arrange an alternative response time shall be considered a factor in the judicial review of an agency's failure to comply with the applicable time limits. EFOIA does not alter the definition of ''unusual circumstances.''

The proposed regulations would add a new paragraph (d) to 16 CFR 1015.5 to conform to the new provision.

3. Aggregation of related requests: EFOIA authorizes agencies to promulgate regulations providing for the aggregation of related requests by the same requester or a group of requesters acting in concert when the requests would, if treated as a single request, present ''unusual circumstances'' as defined in 5 U.S.C. 552(a)(6)(B). EFOIA section 7(b); 5 USC 552(a)(6)(B)(iv). Proposed regulation 1015.5(e) implements this provision. As EFOIA requires, the proposed regulation provides that requests will be aggregated only when the Commission ''reasonably believes that such requests actually constitute a single request'' and the requests ''involve clearly related matters.'' *Id.*; 16 CFR 1015.5(e).

4. Requests for expedited processing: EFOIA requires each agency to promulgate regulations providing for the expedited processing of FOIA requests in cases of ''compelling need'' and in other cases determined by the agency. EFOIA sec. 8(a); 5 U.S.C. 552(a)(6)(E)(i). The statute specifies two categories of ''compelling need'':

> (1) That a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
>
> (2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

5 U.S.C. 552(a)(6)(E)(v). Additionally, the statute sets forth requirements for the handling of requests for expedited processing and for the judicial review of agency denials of such requests. 5 U.S.C. 552(a)(6)(E)(ii)–(iv).

Proposed regulation 1015.5(f) implements the expedited processing requirements of EFOIA. The Commission emphasizes that, in keeping with Congress' express intent that the specified criteria for compelling need ''be narrowly applied,'' expedited processing will be granted only in those truly extraordinary cases meeting the specific statutory requirements. H.R. Rep. 795, 104th Cong., 2d Sess. 26 (1996) (hereafter ''House Report''). As the legislative history states, ''the expedited process procedure is intended to be limited to circumstances in which a delay in obtaining information can reasonably be foreseen to cause a significant adverse consequence to a recognized interest.'' *Id.*

A requester seeking expedited processing under the ''imminent threat'' category of the ''compelling need'' definition must show that: (1) The failure to obtain the information expeditiously threatens the life or safety of an individual; and (2) the threat is ''imminent.'' That an individual or his or her attorney needs information for an approaching litigation deadline is not a ''compelling need'' under this provision.

A requester seeking expedited processing under the second, ''urgency to inform,'' category must show that: (1) He or she is ''primarily engaged in disseminating information;'' (2) there is an ''urgency to inform the public'' about the information requested; and (3) the information relates to an ''actual or alleged Federal government activity.''

To meet the first ''urgency to inform'' criterion, the requester must show that his or her principal occupation is disseminating information to the public. As the legislative history makes clear, ''[a] requestor who only incidentally engages in information dissemination, besides other activities, would not satisfy this requirement.'' *Id.*

To meet the second ''urgency to inform'' criterion, the requester must show more than a general interest in the ''public's right to know.'' *See id.* Rather, as explained in the legislative history, a requester must show that a delay in the release of the requested information would ''compromise a significant *recognized* interest,'' and that the requested information ''pertain[s] to a matter of *current* exigency to the American public.'' *Id.* (emphasis added). It would, therefore, be insufficient to base a showing of ''compelling need'' on a reporter's desire to inform the public of something he or she believes might be of public concern if it were publicized. Rather, a reporter must show that the information pertains to a subject currently of significant interest to the public and that delaying the release of the information would harm the public's ability to assess the subject governmental activity.

The final ''urgency to inform'' criterion makes clear that the information must relate to the activities of the Commission and its staff. A request for expedited processing could thus be considered for information relating, for example, to a Commission decision. The Office of the Secretary generally would not, however, grant a request for expedited processing of information the Commission has collected regarding incidents involving specific consumer products.

EFOIA also authorizes agencies to expand the categories of requests qualifying for expedited processing beyond the two specified in the statute. EFOIA sec. 8(a); 5 U.S.C. 552 (a)(6)(E)(i)(II). The Commission has determined that no further categories are currently necessary or appropriate. As the legislative history explains, ''[g]iven the finite resources generally available for fulfilling FOIA requests, unduly generous use of the expedited processing procedure would unfairly disadvantage other requestors who do not qualify for its treatment.'' House Report at 26.

As EFOIA requires, proposed regulation 1015.5(f)(5) states that the Secretary will process requests granted expedited processing ''as soon as practicable.'' *See* EFOIA sec. 8(a); 5 U.S.C. 552(a)(6)(E)(iii). Pursuant to this requirement, the Office of the Secretary will give priority to such requests.

5. Time limits and section 6(b) of the Consumer Product Safety Act: Pursuant to section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2055(b)), prior to

the release of information that identifies a manufacturer or private labeler, the Commission must ''take reasonable steps to assure * * * that (the information) is accurate, and that (its) disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the (Consumer Product Safety Act).'' Section 6(b) requires that the Commission notify identified manufacturers and private labelers that it intends to disclose information at least 30 days prior to the disclosure. 15 U.S.C. 2055(b)(1). The manufacturer or private labeler may then submit comments regarding the disclosure of the information to the Commission. *Id.* If the Commission, after reviewing the comments, decides to release the information over the objections of the manufacturer or private labeler, it must so notify the firm at least 10 days prior to the release. 15 U.S.C. 2055(b)(2).

The Supreme Court, in *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.*, 100 S. Ct. 2051 (1980), ruled that the Commission must follow the requirements of section 6(b) prior to the release of information in response to a FOIA request. As a result, it is frequently impossible for the Commission to comply with FOIA time limits when information responsive to a request identifies a manufacturer or private labeler. When the Office of the Secretary receives a request for information that requires section 6(b) review, it routinely notifies the requester that the response will be delayed. Proposed regulation 1015.5(g) is intended to assure that requesters are aware of the requirements of section 6(b) and of the Commission's section 6(b) regulations at 16 CFR part 1101.

E. Estimates of the Volume of Materials Denied

EFOIA requires that agency responses denying information include an estimate of the volume of any responsive documents the agency is withholding. EFOIA sec. 8(c); 5 U.S.C. 552(a)(6)(F). Additionally, EFOIA requires that when an agency withholds only a portion of a record, the response shall indicate the amount of information deleted on the released record, where possible at the place of the deletion. EFOIA sec. 9; 5 U.S.C. 552(b)(9). Proposed regulation 1015.6 includes a new subparagraph (b)(3) to implement these new requirements.

F. Fees

Proposed §§ 1015.9 (e)(5) and (g)(1) would amend the current regulation on fees the agency charges for the production of documents to reflect current Commission practices. Current § 1015.9(e)(5) sets forth the amount charged for computerized records that the Commission retrieves from on offsite central processing system. Currently, the majority of computer printouts are made at the Commission's offices, and the specified calculation is inapplicable. Proposed § 1015.9(e)(5) would amend the regulation to specify a charge of ten cents per page for computer printouts generated at the Commission.

Section 1015.9(g)(1) currently states that interest will be charged on fees owed ''on the 31st day following the day on which the billing was *sent.*'' (Emphasis added.) Proposed section 1015.9(g)(1) would amend the regulation to provide that interest will instead be calculated based on the day the requester *receives* the bill, as is the current Commission practice.

G. Annual Report to Congress

The current Commission regulations describe the information the Commission submits to Congress annually regarding the Commission's processing of FOIA requests. 16 CFR 1015.10. EFOIA amended the FOIA provisions regarding reporting in several ways, including the timing of reports and the information to be reported. EFOIA sec. 10; 5 U.S.C. 552(e). The proposed regulations amend § 1015.10 to conform to the EFOIA reporting requirements.

Comments

The Commission invites comments by interested persons on these proposed amendments to the Commission's rules governing the processing of FOIA requests. Comments must be submitted by July 7, 1997. Late filed comments will be considered to the extent practicable. Comments should be addressed to the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Secretary in room 502, 4330 East West Highway, Bethesda, MD 20814. Interested persons may examine comments received in the Commission's Public Reading Room, room 419, 4330 East West Highway, Bethesda, MD, between 8 a.m. and 5 p.m., Monday through Friday.

Proposed Effective Date

The Commission proposes that the amendments become effective 30 days after the date of publication of the amendments in final form in the **Federal Register**, and would apply to all requests for information received after that date.

Impact on Small Business

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that these amendments will not have a significant economic impact upon a substantial number of small entities.

Environmental Considerations

These amendments do not fall within any of the categories of Commission activities described in 16 CFR 1021.5(b) which have the potential for producing environmental effects and which, therefore, require environmental assessments, and, in some cases, environmental impact statements. The Commission does not believe that the proposal contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstances in which the amendments may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

Preemption

In accordance with Executive Order 12988 (February 5, 1996), the Commission states that these amendments have no preemptive effect.

Other Executive Orders

Because this rule will not have any significant impact on family formation, maintenance, or well-being if issued on a final basis, no assessment of the rule is required by Executive Order 12606 of September 2, 1987. The Commission also certifies that the rule does not have sufficient implications for federalism to warrant a Federalism Assessment under Executive Order 12612 of October 26, 1987.

List of Subjects in 16 CFR Part 1015

Administrative practice and procedure, Consumer protection, Disclosure of information, Freedom of information.

In accordance with the provisions of 5 U.S.C. 553 and under the authority of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, the Commission proposes to amend Part 1015 of Title 16, Chapter II, of the Code of Federal Regulations as follows:

PART 1015—PROCEDURES FOR DISCLOSURE OR PRODUCTION OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1. Section 1015.1 is amended by revising the second and third sentences of paragraph (a) as follows:

§ 1015.1 Purpose and scope.

(a) * * * Official records of the Consumer Product Safety Commission consist of all documentary material maintained by the Commission in any format, including an electronic format. These records include those maintained in connection with the Commission's responsibilities and functions under the Consumer Product Safety Act, as well as those responsibilities and functions transferred to the Commission under the Federal Hazardous Substances Act, Poison Prevention Packaging Act of 1970, Refrigerator Safety Act, and Flammable Fabrics Act, and those maintained under any other authorized activity * * *

* * * * *

2. Section 1015.2 is amended by revising paragraph (a) and adding paragraph (c) as follows:

§ 1015.2 Public reference facilities.

(a) The Consumer Product Safety Commission will maintain in a public reference room or area the materials relating to the Consumer Product Safety Commission which are required by 5 U.S.C. 552(a)(2) and 552(a)(5) to be made available for public inspection and copying. The principal location will be in the Office of the Secretary of the Commission. The address of this office is:

Office of the Secretary, Consumer Product Safety Commission, Room 500, 4330 East West Highway, Bethesda, MD 20814.

* * * * *

(c) The Consumer Product Safety Commission will maintain an ''electronic reading room'' on the World-Wide Web for those records which are required by 5 U.S.C. 552(a)(2) to be available by ''computer telecommunications.''

3. Section 1015.3 is amended by adding a new paragraph (e) as follows:

§ 1015.3 Requests for records and copies.

* * * * *

(e) The Consumer Product Safety Commission uses a multitrack system to process requests under the Freedom of Information Act that is based on the amount of work and/or time involved in processing requests. Requests for records are processed in the order they are received within each track. Upon receipt of a request for records, the Secretary or delegate of the Secretary will determine which track is appropriate for the request. The Secretary or delegate of the Secretary may contact requesters whose requests do not appear to qualify for the fastest tracks and provide such requesters the opportunity to limit their requests so as to qualify for a faster track. Requesters who believe that their requests qualify for the fastest tracks and who wish to be notified if the Secretary or delegate of the Secretary disagrees may so indicate in the request and, where appropriate and feasible, will also be given an opportunity to limit their requests.

4. Section 1015.4 is amended by revising the last sentence to read as follows:

§ 1015.4 Responses to requests for records; responsibility.

* * * If no response is made by the Commission within twenty working days, or any extension thereof, the requester and the Commission may take the action specified in § 1015.7(e).

5. Section 1015.5 is amended by revising the heading and the first sentence of paragraph (a), changing the phrase ''Chairman of the Commission'' to ''General Counsel of the Commission'' in paragraph (b), and adding new paragraphs (d), (e), (f), and (g) as follows:

§ 1015.5 Time limitation on responses to requests for records and requests for expedited processing.

(a) The Secretary or delegate of the Secretary shall respond to all written requests for records within twenty (20) working days (excepting Saturdays, Sundays, and legal public holidays). * * *

* * * * *

(d) If the Secretary at the initial stage or the General Counsel at the appellate stage determines that an extension of time greater than ten (10) working days is necessary to respond to a request satisfying the ''unusual circumstances'' specified in paragraph (b) of this section, the Secretary or the General Counsel shall so notify the requester and give the requester the opportunity to:

(1) Limit the scope of the request so that it may be processed within the time limit prescribed in paragraph (b); or

(2) Arrange with the Secretary or the General Counsel an alternative time frame for processing the request or a modified request.

(e) The Secretary or delegate of the Secretary may aggregate and process as a single request requests by the same requester, or a group of requesters acting in concert, if the Secretary or delegate reasonably believes that the requests actually constitute a single request which would otherwise satisfy the unusual circumstances specified in paragraph (b) of this section, and the requests involve clearly related matters.

(f) The Secretary or delegate of the Secretary will consider requests for the expedited processing of requests in cases where the requester demonstrates a compelling need for such processing.

(1) The term *compelling need* means:

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(2) Requesters for expedited processing must include in their requests a statement setting forth the basis for the claim that a ''compelling need'' exists for the requested information, certified by the requester to be true and correct to the best of his or her knowledge and belief.

(3) The Secretary or delegate of the Secretary will determine whether to grant a request for expedited processing and will notify the requester of such determination within ten (10) days of receipt of the request.

(4) Denials of requests for expedited processing may be appealed to the Office of the General Counsel as set forth in § 1015.7 of this part. The General Counsel will expeditiously determine any such appeal.

(5) The Secretary or delegate of the Secretary will process as soon as practicable the documents responsive to a request for which expedited processing is granted.

(g) The Secretary may be unable to comply with the time limits set forth in this § 1015.5 when disclosure of documents responsive to a request under this part is subject to the requirements of section 6(b) of the Consumer Product Safety Act, 15 U.S.C. 2055(b), and the regulations implementing that section, 16 CFR part 1101. The Secretary or delegate of the Secretary will notify requesters whose requests will be delayed for this reason.

6. Section 1015.6 is amended by redesignating paragraph (b)(3) as (b)(4), adding a new paragraph (b)(3), and revising the first sentence of paragraph (c) as follows:

§ 1015.6 Responses: Form and content.

* * * * *

(b) * * *

(3) An estimation of the volume of requested material withheld. When only a portion or portions of a document are withheld, the amount of information deleted shall be indicated on the released portion(s) of the record. When technically feasible, the indication of the amount of material withheld will appear at the place in the document

where any deletion is made. Neither an estimation of the volume of requested material nor an indication of the amount of information deleted shall be included in a response if doing so would harm an interest protected by the exemption in 5 U.S.C. 552(b) pursuant to which the material is withheld.

* * * * *

(c) If no response is made within twenty (20) working days or any extension thereof, the requester can consider his or her administrative remedies exhausted and seek judicial relief in a United States District Court as specified in 5 U.S.C. 552(a)(4)(B). * * *

7. Section 1015.9 is amended by revising paragraphs (e)(5) and (g)(1) to read as follows:

§ 1015.9 Fees for production of records.

* * * * *

(e) * * *

* * * * *

(5) Computerized records: $0.10 per page of computer printouts or, for central processing, $0.32 per second of central processing unit (CPU) time; for printer, $10.00 per 1,000 lines; and for computer magnetic tapes or discs, direct costs.

* * * * *

(g) * * *

(1) Interest will be charged on amounts billed, starting on the 31st day following the day on which the requester received the bill. Interest will be at the rate prescribed in 31 U.S.C. 3717.

8. Section 1015.10 is amended by revising the introductory paragraph and paragraphs (b) through (g) as follows:

§ 1015.10 Commission report of actions to Congress.

On or before February 1 of each year, the Commission shall submit a report of its activities with regard to freedom of information requests during the preceding fiscal year to the Attorney General of the United States. This report shall include:

* * * * *

(b)(1) The number of appeals made by persons under such provisions, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(2) a complete list of all statutes that the Commission relies upon to withhold information under such provisions, a description of whether a court has upheld the decision of the Commission to withhold information under each such statute, and a concise description of the scope of any information withheld.

(c) The number of requests for records pending before the Commission as of September 30 of the preceding year, and the median number of days that such requests had been pending before the Commission as of that date.

(d) The number of requests for records received by the Commission and the number of requests which the Commission processed.

(e) The median number of days taken by the Commission to process different types of requests.

(f) The total amount of fees collected by the Commission for processing requests.

(g) The number of full-time staff of the Commission devoted to processing requests for records under such provisions, and the total amount expended by the Commission for processing such requests.

Dated: April 29, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–11497 Filed 5–5–97; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 96N–0417]

RIN 0910–AA59

Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is extending to June 6, 1997, the comment period for the advance notice of proposed rulemaking on current good manufacturing practice (CGMP) in manufacturing, packing, or holding dietary supplements that published in the **Federal Register** of February 6, 1997 (62 FR 5700). This action is being taken in response to several requests from interested persons for an extension of the comment period on this document to allow a more thorough development of comments on FDA's request for information on whether requirements for manufacturing and handling dietary ingredients and dietary supplements may be addressed by a regulation based on the principles of Hazard Analysis and Critical Control Points (HACCP).

DATES: Written comments by June 6, 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: Robert J. Moore, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4605.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 6, 1997 (62 FR 5700), FDA published an advance notice of proposed rulemaking on CGMP in manufacturing, packing, or holding dietary supplements (Docket No. 96N–0417). Interested persons were given until May 7, 1997, to comment on the advance notice of proposed rulemaking.

FDA has received requests from two manufacturers, and two trade organizations representing manufacturers, of dietary supplements for an extension of the comment period. Three requests asked that the agency extend the comment period in order to provide more time for interested parties to develop comments on FDA's request for information on whether requirements for manufacturing and handling dietary ingredients and dietary supplements may be adequately addressed by a regulation based on the principles of HACCP. The requests stated that many dietary supplement manufacturers were not familiar with the HACCP concept, and additional time was needed to fully understand HACCP and its applicability to the development of CGMP for dietary supplements. After careful consideration of the requests submitted to the agency, FDA has decided to grant an extension of the comment period until June 6, 1997.

Interested persons may, on or before June 6, 1997, submit to the Dockets Management Branch (address above) written comments regarding this advance notice of proposed rulemaking. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the appropriate docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 28, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–11713 Filed 5–5–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA Number 162P]

Schedules of Controlled Substances: Proposed Removal of Fenfluramine From the Controlled Substances Act

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Acting Deputy Administrator of the DEA to remove the anorectic drug, fenfluramine, including its salts, isomers and salts of isomers from control under the Controlled Substances Act (CSA). This proposed action is based upon a finding by the Acting Deputy Administrator of the DEA that the data collected and reviewed to date are insufficient to establish that fenfluramine has sufficient potential for abuse and dependence to justify its continued control in any schedule at this time. This rule, if finalized, would remove all regulatory controls and criminal sanctions of the CSA from activities involving fenfluramine.

DATES: Comments, objections, and requests for a hearing must be received on or before July 7, 1997.

ADDRESSES: Comments, objections and requests for a hearing should be submitted in quintuplicate to the Acting Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Fenfluramine is an anorectic indicated for the management of exogenous obesity that was first approved for marketing in the United States under the trade name of Pondimin in 1973. Fenfluramine, its salts, isomers and salts of isomers, were placed into Schedule IV of the CSA effective on June 15, 1973 because fenfluramine was determined to be chemically and pharmacologically similar to amphetamine and other anorectic drugs controlled under the CSA. This action was based on a recommendation by the Acting Assistant Secretary for Health. Interneuron Pharmaceuticals, Inc., the manufacturer of a new fenfluramine product (Redux, approved by the Food and Drug Administration for marketing in the United States in April 1996) petitioned the DEA on March 18, 1991 to decontrol fenfluramine, citing a lack of actual or potential for abuse. The DEA Administrator, after gathering available data and conducting an initial review of that data, requested a scientific and medical evaluation and scheduling recommendation from the Assistant Secretary for Health, Department of Health and Human Services (DHHS) by letter dated December 2, 1991 in accordance with 21 U.S.C. 811(b). DHHS provided its medical and scientific evaluation and scheduling recommendation on fenfluramine to the DEA by letter dated June 3, 1996. The Assistant Secretary for Health concluded that fenfluramine does not warrant control under the CSA and recommended to the DEA that fenfluramine be decontrolled. The Assistant Secretary for Health provided a written scientific and medical evaluation which formed the basis for the recommendation.

The DHHS evaluation considered reports in the scientific and medical literature (1968–1995), adverse reaction reports (1973–1995), data from the Drug Abuse Warning Network (DAWN) (1985–1993), the System to Retrieve Information from Drug Evidence (STRIDE) (1973–1991), marketing data (1990–1993) and other sources of information. Data from the scientific and medical literature demonstrate that fenfluramine is not an amphetamine-like stimulant. Fenfluramine does not maintain self-administration as evidenced by studies in several species (rhesus monkeys, baboons, dogs or rodents). In drug discrimination studies in humans and laboratory animals, the effects of fenfluramine differed from those of amphetamine and cocaine. In human studies, the subjective effects of fenfluramine were found to differ from those of other amphetamine-like anorectics. Fenfluramine however, at high doses, displays complete generalization to MDMA in rodents. Subjective evaluation studies of high doses of fenfluramine in humans shows that in some cases it produces euphoria alternating with dysphoria. The DHHS reported that although high doses of fenfluramine may result in LSD-like responses, these have been characterized by dysphoric. Clinical data does not show that the use of fenfluramine or dexfenfluramine at high doses leads to dependence to the same extend as other substances in Schedules IV or V. The DHHS found the risks to the public health resulting from the abuse of fenfluramine to be similar to the abuse or misuse of any other agent that is taken outside of appropriate medical direction. However, the DHHS did cite neurotoxic consequences and primary pulmonary hypertension in humans as possible safety risks associated with fenfluramine use. The DHHS review also indicates that based upon over 20 years of marketing of fenfluramine in the United States and elsewhere, abuse of fenfluramine has not been demonstrated to result in either physical or psychic dependence that would lead to craving of the desire to re-initiate the drug upon discontinuation of use. The document indicates that reports of actual abuse, diversion and withdrawal syndrome have been collected but are considered isolated. The significance of these reports, relative to the production of dependence to the same extend as other substances in Schedules IV or V, has not been established.

The DHHS, in its evaluation, however, noted that there had been limited sales and prescribing of fenfluramine from 1973 to 1992, thus data on abuse, diversion and trafficking of fenfluramine would be expected to be minimal. DHHS reported a recent dramatic increase in usage of fenfluramine, particularly in combination with phentermine, a Schedule IV controlled substance. DHHS noted that this could be reason for concern because the long-term use could significantly impact the public health.

While the recommendations of DHHS are binding on DEA regarding scientific and medical matters, the recommendation to decontrol fenfluramine is not binding on the DEA because fenfluramine is currently controlled under the CSA. The DEA must consider the DHHS recommendation and all other relevant data prior to making a determination as to whether substantial evidence of potential for abuse exists so as to warrant continued control of fenfluramine under the CSA. Thus, the DEA examined the DHHS recommendation, supplemented by more recent abuse, diversion, and trafficking data in light of the following factors determinative of control or removal of a drug or other substance from the schedules [21 U.S.C. 811(c)]:

(1) Its actual or relative potential for abuse.

(2) Scientific evidence of its pharmacological effect, if known.

(3) The state of current scientific knowledge regarding the drug or other substance.

(4) Its history and current pattern of abuse.

(5) The scope, duration, and significance of abuse.

(6) What, if any, risk there is to the public health.

(7) Its psychic or physiological dependence liability.

(8) Whether the substance is an immediate precursor of a substance already controlled under the CSA.

In addition to the DHHS data, the DEA review shows that:

(1) DAWN, forensic laboratory data and associated federal investigative files show very little abuse, trafficking and diversion of fenfluramine. A few DEA Field Offices have reported increases in fenfluramine purchases by physicians and pharmacies accompanied by indiscriminate prescribing of fenfluramine, often in combination with phentermine. The U.S. Customs Service has documented seizures of illegally imported fenfluramine tablets into the United States, that were repackaged and shipped to Mexican pharmacies. The significance of these reports in terms of fenfluramine's abuse potential is unknown as of this time. The levels of abuse, trafficking and diversion identified thus far for fenfluramine are less than those of similarly controlled substances.

(2) State authorities including Boards of Pharmacy, Boards of Medical Examiners, Departments of Health, and police crime laboratories were queried and reported little or no documented actual abuse, trafficking and diversion at this time. DEA received input from 36 state agencies and the District of Columbia. The majority of state drug regulatory agencies reported that they had no evidence that fenfluramine is trafficked or abused. There were a few cases reported where patients had obtained fenfluramine through unauthorized prescription refills, fraudulent prescriptions, doctor shopping, illegal sales, mail order schemes and thefts. However, these reports generally include phentermine and their association with fenfluramine abuse has not been established. Very few state police crime laboratories reported cases involving fenfluramine.

(3) Fenfluramine has been marketed in the U.S. since 1973, with little therapeutic use until recently when the combination of phentermine and fenfluramine emerged. The number of prescriptions for fenfluramine has increased dramatically since 1992 and has more than doubled each year since 1994. Total prescriptions dispensed in the United States in 1992 for fenfluramine were less than 100,000. In 1996, total prescriptions dispensed in the United States totalled over 5.1 million, an increase of 6100 percent in four years.

The Acting Deputy Administrator of the DEA, based on the DHHS evaluation and the DEA review, has concluded that there is insufficient data available at this time to establish that fenfluramine has a potential for abuse which warrants control under the CSA. Nevertheless, it is unclear whether the low levels of abuse, trafficking and diversion are due to the fact that only recently fenfluramine became available in significant quantities or if the low levels of data are an indication that fenfluramine lacks abuse potential. Therefore, in light of the increasing availability and use of fenfluramine, particularly in combination with phentermine, and possible public health and safety risks including neurotoxicity, primary pulmonary hypertension and reports that fenfluramine may have pharmacological similarity to some hallucinogenic substances, the DEA will carefully monitor the abuse, trafficking and diversion indicators regarding this substance. If this data indicates the need for a reexamination of the control status of fenfluramine, the DEA will re-initiate the evaluation process as set forth in the CSA [21 U.S.C. 811(b)].

Relying on the scientific and medical evaluation and the recommendation of the Assistant Secretary of Health received in accordance with 21 U.S.C. 811(b), and the independent review of the DEA, the Acting Deputy Administrator of the DEA, pursuant to Section 201(b) of the Act [21 U.S.C. 811(b)], has determined that these facts and all other relevant data constitute substantial evidence that fenfluramine should be removed entirely from the schedules.

Interested persons are invited to submit their comments, objections or requests for a hearing, in writing, with regard to this proposal. Requests for a hearing should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Acting Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537. Attention: DEA Federal Register Representative. In the event that comments, objections or requests for a hearing raise one or more issues which the Acting Deputy Administrator finds warrants a hearing, the Acting Deputy Administrator shall order a public hearing by notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

In accordance with the provisions of the CSA [21 U.S.C. 811(a)], this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, Section 3(d)(1).

The Acting Deputy Administrator, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small-business entities. Fenfluramine is available in drug products for the treatment of obesity, some of which have been marketed in the United States for a number of years. This proposed rule, if finalized, will allow persons to handle fenfluramine without being subject to the regulatory controls of the CSA. Fenfluramine will continue to be a prescription drug.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among their various levels of government. States may choose to decontrol fenfluramine or continue to control it under their respective CSA. Therefore, in accordance with E.O. 12612, it is determined that this rule, if finalized, does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, drug traffic control, narcotics, prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegate to the Acting Deputy Administrator pursuant to 28 CFR 0.104, the Acting Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

§ 1308.14 [Amended]

2. Section 1308.14 is proposed to be amended by removing the existing paragraph (d) and by redesignating the existing paragraphs (e) and (f) as (d) and (e), respectively.

Dated: April 29, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–11689 Filed 5–5–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 851 (97–105)]

RIN: 1512–AA07

Davis Mountains Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in Jeff Davis County, Texas, to be known as ''Davis Mountains.'' This proposal is the result of a petition filed by Maymie Nelda Weisbach of Blue Mountain Vineyard, Inc. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

DATES: Written comments must be received by July 7, 1997.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, Attn: Notice No. 851. Copies of written comments received in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Document Services Branch, Room 6300, 650 Massachusetts Avenue, NW, Washington, DC 20226.

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

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

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

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

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

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

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

Petition

ATF has received a petition from Maymie Nelda Weisbach, of Blue Mountain Vineyard, Inc., proposing to establish a viticultural area in Jeff Davis County, Texas, to be known as ''Texas Davis Mountains.'' The proposed viticultural area is located in the Trans-Pecos region of west Texas. The entire area contains approximately 270,000 acres, of which approximately 40 acres are planted to vineyards. Blue Mountain Vineyard is the only commercial grower currently active within the proposed viticultural area.

Evidence of Name

The petitioner provided evidence that the name ''Davis Mountains'' is locally known as referring to the area specified in the petition, and proposed that the area be designated as ''Texas Davis Mountains'' to aid in national recognition of the area. She noted that, outside of the State of Texas, the name Davis Mountains may not be well known. Evidence supporting the use of the name ''Davis Mountains'' includes:

(a) One of the U.S.G.S. maps used to show the boundaries of the proposed area (Mount Livermore, Texas—Chihuahua) uses the name ''Davis Mountains'' to identify the northern portion of the proposed area. There is a park named ''Davis Mountain State Park'' in the southeastern portion of the proposed area. The map shows no conflicting designation for the remainder of the proposed area.

(b) The petitioner provided an excerpt from the 1952 edition of *The Handbook of Texas,* published by the Texas State Historical Association, which describes the Davis Mountains. The location and other features described in this entry are consistent with the petition.

(c) The petitioner also provided an excerpt from the 1968 edition of *Texas Today,* a book in the Harlow State Geography Series, from the Harlow Publishing Corporation. In it, the Davis Mountains are described as the most extensive and among the highest of the Texas mountain groups.

(d) Finally, the petitioner provided copies of two highway maps, the Champion Map of Texas, and the Exxon Travel Club Map of the United States, both of which identify the Davis Mountains by name.

ATF reviewed available resources and found no references to any other ''Davis Mountains.'' There is national recognition of the name ''Davis Mountains'' as an area in Texas, known for the McDonald Observatory, which is located there, and as a tourist destination for its history, scenery and wildlife. For purposes of this notice, the name ''Davis Mountains'' will be used as the name for the proposed area. Comments on the need for further clarification of this name are solicited in the Public Participation section of this notice.

Evidence of Boundaries

The petitioner has defined the proposed area primarily by highways which, she states, parallel geographic features which define the area. In support of this approach, the petitioner provided a copy of ''Texas,'' the *Houston Chronicle* Magazine, for June 2, 1996. The cover story was ''High mountain vistas, driving the 73-mile loop around the Davis Mountains.'' In a map associated with the article, the routes used for the driving tour are the same as those selected by the petitioner, except the northern boundary. The

driving tour recommendation followed a route to the north of the proposed northern boundary, which the petitioner drew using other features. As evidence that the proposed boundaries for the area are as specified in the petition, the petitioner states the proposed limits of the area parallel geographic features such as canyons, creeks and escarpments, which represent natural boundaries between the mountains and the surrounding desert.

Geographical Features

The proposed viticultural area is described in *Great Texas Getaways,* copyright 1992, by Ann Ruff, as follows:

No matter which way you drive into the Davis Mountains you will have to face the barren terrain without the taste of cool water. But when you reach this wonderful oasis, those long, dreary miles are more than worth the reward. Here the days are fresh and cool, the nights brisk, and the scenery fantastic.

The petitioner stated the proposed area is distinguishable from surrounding areas primarily by its altitude, which contributes to the geographic and climatic features which provide for excellent grape-growing.

The petitioner provided the following evidence to support her claims:

Topography

The U.S.G.S. topographic map submitted by the petitioner shows the proposed area is a mountainous area varying in elevation from 4,500 to 8,300 feet, surrounded by flatter terrain. The petitioner adds these mountains are the second-highest range in Texas. The northern and eastern limits are clearly defined by escarpments. Sharp boundaries in the west and south, however, are lacking as the same formations continue into the Ord and Del Norte Mountains. The Chihuahua desert extends for miles in all directions, its gently rolling grasses interspersed with yucca and agave.

Soil

The petitioner states the Davis Mountains were created about 35 million years ago by the same volcanic thrust that formed the front range of the Rockies. The mountains are composed of granitic, porphrytic and volcanic rocks, as well as limestones of various ages.

Climate

The cover story in ''Texas,'' the *Houston Chronicle* Magazine, for June 2, 1996, titled ''High mountain vistas, driving the 73-mile loop around the Davis Mountains'' by Leslie Sowers, described the proposed area as a ''mountain island * * * that is cooler, wetter, and more biologically diverse than the vast plains of the Chihuahua desert that surround it.'' The article went on to note that the Davis Mountains receive 20 inches of rainfall a year, contrasted with 10 inches a year in the surrounding desert.

Proposed Boundary

The boundary of the proposed Davis Mountains viticultural area may be found on two United States Geological Survey (U.S.G.S.) maps with a scale of 1:100,000. The boundary is described in § 9.155

Executive Order 12866

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

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested parties. We are particularly interested in comments concerning the need for the use of the name ''Texas Davis Mountains'' to clarify the location of the proposed area. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information: The principal author of this document is Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

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

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in subpart C is amended by adding § 9.155 to read as follows:

Sec.

* * * * *

9. Davis Mountains.

Par. 3. Subpart C is amended by adding § 9.155 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.155 Davis Mountains.

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

(b) *Approved map.* The appropriate maps for determining the boundary of the Davis Mountains viticultural area are two U.S.G.S. metric topographical maps of the 1:100,000 scale, titled:

(1) ''Fort Davis, Texas,'' 1985.

(2) ''Mount Livermore, Texas—Chihuahua,'' 1985.

(c) *Boundary.* The Davis Mountains viticultural area is located in Jeff Davis County, Texas. The boundary is as follows:

(1) The beginning point is the intersection of Texas Highway 17 and Farm Road 1832 on the Fort Davis, Texas, U.S.G.S. map;

(2) From the beginning point, the boundary follows Highway 17 in a southeasterly and then southwesterly direction until it intersects with Highway 166;

(3) The boundary then follows Highway 166 in a southwesterly

direction onto the Mt. Livermore, Texas—Chihuahua, U.S.G.S. map;

(4) The boundary continues to follow Highway 166 in a westerly direction;

(5) The boundary then continues to follow Highway 166 as it turns in a northerly and then northeasterly direction to the point where it meets Highway 118;

(6) The boundary then follows Highway 118 in a northerly direction until it reaches a point where it intersects with the 1600 meter contour line, just north of Robbers Roost Canyon;

(7) The boundary then proceeds in a straight line due east for about two miles until it reaches the 1600 meter contour line to the west of Friend Mountain;

(8) The boundary follows the 1600 meter contour line in a northeasterly direction until it reaches the northernmost point of Friend Mountain;

(9) The boundary then diverges from the contour line and proceeds in a straight line east-southeast until it reaches the beginning point of Buckley Canyon, approximately three-fifths of a mile;

(10) The boundary then follows Buckley Canyon in an easterly direction to the point where it meets Cherry Canyon;

(11) The boundary then follows Cherry Canyon in a northeasterly direction to the point where it meets Grapevine Canyon;

(12) The boundary then proceeds in a straight line from the intersection of Cherry and Grapevine Canyons to the peak of Bear Cave Mountain, on the Fort Davis, Texas, U.S.G.S. map;

(13) The boundary then proceeds in a straight line from the peak of Bear Cave Mountain to the point where Farm Road 1832 begins;

(14) The boundary follows Farm Road 1832 back to its intersection with Texas Highway 17, at the point of beginning.

Approved: April 21, 1997.

John W. Magaw,

Director.

[FR Doc. 97–11746 Filed 5–5–97; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC47

Cape Cod National Seashore, Off-road Vehicle Use

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to revise the current regulation for off-road vehicle (ORV) use at Cape Cod National Seashore. Since the current plan (1981 ORV Management Plan, as amended in 1985) went into effect, new and unrelated measures have impacted the off-road vehicle corridor identified in the amended plan. These measures have resulted from the necessity to protect the federally listed threatened piping plover (*Charadrius melodus*). Because of a lack of flexibility in the Amended 1985 Plan, there has been an inability to adapt it to changing natural resource concerns.

The piping plover became a federally listed threatened species in 1986. In 1995 there were 83 pair of plovers nesting on the beaches of Cape Cod National Seashore. Thirty-three pair were within the eight and one-half miles of the ORV corridor. During the Fourth of July weekend (a period of peak use for ORV's) in 1994, eight-tenths of a mile of the ORV corridor was open. In 1995, only six-tenths of a mile was open. Because of the sand dune configuration on portions of the outer beach, 1995, only six-tenths of a mile was open. Because of the sand dune configuration on portions of the outer beach, it is expected that the birds will continue to nest here. Thus, Cape Cod National Seashore hopes to develop a more flexible and effective regulation governing ORV use that will accommodate the NPS's responsibilities for managing natural resources.

DATES: Written comments will be accepted through June 5, 1997.

ADDRESSES: All comments should be addressed to: Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

FOR FURTHER INFORMATION CONTACT: Maria Burks, Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667. Telephone 508–349–3785, est. 203.

SUPPLEMENTARY INFORMATION:

Background

The mission of the NPS is to preserve and protect park resources while at the same time allowing for the enjoyment of these same resources in a manner that will leave them unimpaired for future generations. In September 1995, Cape Cod National Seashore convened a committee to negotiate a rulemaking (per the Federal Advisory Commission Act (FACA), 5 U.S.C. App. II conflicts, while also providing optimum protection for the piping plover (*Charadrius melodus*) in compliance with the Endangered Species Act of 1973, as amended, and other Seashore resources.

The 1981 ORV Management Plan was challenged in U.S. District Court. However, the plan, as amended in 1985 (50 FR 31181), was upheld by the District Court in 1988 and the U.S. Court of Appeals in 1989. The District Court found that ORV use at Cape Cod National Seashore is not inappropriate; that the 1985 Plan minimized user conflicts; that the NPS had provided other recreational users adequate use of the Seashore; that the NPS had properly surveyed the sentiments of Seashore users; and that ORV use, as managed by the NPS, does not adversely affect the Seashore's values or its ecology.

The 1985 regulation that established an 8.5 mile ORV corridor on the 40 miles of outer beach within the Seashore would have provided a satisfactory solution except that since 1988, the number of nesting pair of piping plover increased in this area over 800 percent. The ORV corridor is one of the prime nesting areas in the Seashore (in 1995, 33 of 87 pair nested in the corridor). Primarily because of plovers in the corridor, the Seashore staff monitors every bird, nest and egg daily to determine if the ORV corridor should be open or closed. Symbolic fencing is put up as soon as a nest is established to identify the site. Wire enclosures are put up once the eggs have been laid and the ORV corridor is closed from the time the birds hatch until they fledge, approximately 28 days later. In the past few years, during the time when the Seashore receives the most visitors (Fourth of July), including people wishing to use the ORV corridor, only 0.4 to 0.6 miles of the corridor has been open.

Decision To Initiate Negotiated Rulemaking

The need for a new rule and the use of the negotiated process was motivated by a number of events including legislative requirements, past litigation, management issues and inflexibility of the existing rule to deal with changing conditions such as the use of the corridor by the piping plover. The proposed regulation and the negotiated rulemaking process is an attempt to manage off-road vehicle (ORV) access on the outer beach in a way that accommodates the wishes of ORV enthusiasts and those choosing other forms of beach use, while minimizing impacts to natural and cultural resources and providing a degree of flexibility for managing the beach.

Since the current plan (1981 ORV Management Plan, as amended in 1985) went into effect, issues which had not been anticipated or addressed previously impacted the off-road vehicle corridor. These impacts were mainly in response to the importance of and the efforts to protect the piping plover. Thus, Cap Cod National Seashore hopes the new regulation will be more flexible and effective in governing ORV use, and will accommodate the NPS's responsibilities for managing natural resources and the recreational opportunities mandated in the Seashore's enabling legislation.

The objective of negotiated rulemaking is to front load the controversy by getting all the interested parties involved in the decision making process from the beginning and acknowledging, if not resolving, all the issues and concerns. The process brings together at the negotiating table the organizations that are interested in the issues and charges them with developing a solution that is acceptable to everyone. This process is used by many Federal agencies, but this was the first time the NPS used negotiated rulemaking to develop a rule that will become part of the Code of Federal Regulations (CFR).

A total of 23 agencies, organizations and interest groups with long term interests and involvement in the ORV issue were identified for the committee. They included State agencies, the 6 towns the Seashore is located within, ORV user groups, environmental groups, Federal agencies, and tourism and preservation groups.

Specifically, the Committee consisted of members from the following organizations:

1. Association for the Preservation of Cape Cod
2. Cape Cod Chamber of Commerce
3. Cape Cod Commission
4. Cape Cod Salties
5. Citizens Concerned for Seacoast Management
6. Conservation Law Foundation
7. Eastham Forum
8. Highland Fish and Game Club
9. Massachusetts Audubon Society
10. Massachusetts Beach Buggy Association
11. Massachusetts Coastal Zone Management
12. Massachusetts Department of Environmental Protection
13. Massachusetts Division of Fisheries and Wildlife
14. Massachusetts Division of Marine Fisheries
15. National Park Service
16. Sierra Club
17. Town of Chatham
18. Town of Eastham
19. Town of Orleans
20. Town of Provincetown
21. Town of Truro
22. Town of Wellfleet
23. Town of U.S. Fish and Wildlife Service

Each organization selected one representative to sit at the table. This person spoke and made commitments for that organization. Only representatives were allowed to participate in the formal discussions. All participants at the table had an equal voice.

To avoid problems with unbalanced votes on one ''side,'' the negotiated rulemaking was done as a consensus process (every organization had veto authority). The task assigned the committee was to develop a new ORV regulation for Cape Cod National Seashore. If the committee was unable to reach consensus on a new regulation, then the NPS would develop a new rule using the ideas, information and creativity that had been gathered from the group. This process allowed every issue, idea and concern to be heard; all sides had a chance to hear what was most important and what most worried the other participants. The NPS agreed that if consensus was reached, the consensus regulation would be put forward as a proposed rule through the notice and comment rulemaking process with full public involvement.

As required by FACA, all formal meetings were announced in the **Federal Register** and were open to the public. There was a public comment period at the end of each meeting. Letters could be submitted to be included in the official record if someone was unable to attend.

The rulemaking sessions were conducted by contracted professional negotiators. The sessions were limited to three, two-day meetings. These meetings were spaced one month apart to allow the representatives sufficient time between meetings to report back to their respective organizations and to ensure that they were not committing to things the organizations could not support and, very importantly, to allow time for independent interactions and negotiations among committee members to occur.

The committee was successful in reaching consensus on a proposed ORV regulation for Cape Cod National Seashore. It is the contents of that regulation that have been used to identify issues, alternatives and potential impacts for National Environmental Policy Act (NEPA) compliance. The proposed rule, accompanied by the environmental compliance documentation for that rule, is published here for public comment and review.

Issues of Concern Raised During the Negotiated Rulemaking

During the course of negotiations, many ideas and issues were discussed, clarified and agreed to by the negotiating committee. The committee reached consensus on the following items and agreed that, although not appropriate for inclusion in the text of the regulation, these items were important points, ideas and agreements that should be included in the preamble where they would be part of the official record and identified as part of the committee consensus.

Executive Order 11644, as amended by E.O. 11989, ''Use of Off-Road Vehicles on Public Lands'' directs the NPS to monitor the impacts of the ORV program on the resources of Cape Cod National Seashore. The committee supported this monitoring to identify the actual effects (or lack of effects) of ORV use at the Seashore. The intent of this research is not to develop ''new'' science on the effects of ORV use on the outer beaches, but to document specifically the current condition of the ORV corridor and to monitor the changes, if any, that occur over time. This data will be used to assess any changes that occur in the area where the ORV corridor is located and to try to identify the causes of these changes. The monitoring methods identified for use by the NPS will undergo peer review by the broader scientific community to identify weaknesses, including areas of monitoring not covered by the technical research design. In this context, ''peer'' includes scientists beyond the NPS scientific community. The monitoring will result in an annual report that NPS will also distribute for public and peer review and comment. While user fees gathered from ORV permits can be used to fund this research, this funding is limited.

The committee recognized the importance and relative fragility of barrier spits, such as the sand spit at Hatches Harbor. The NPS agrees to work in consultation with the Massachusetts Office of Coastal Zone Management to address concerns specific to barrier spits. It is understood that these areas are more sensitive; that they are important to shorebirds and for protecting the natural resources located behind them; and that a closer look at these sensitive areas may result in a need to limit use or further control existing uses to protect resources.

The Cape Cod National Seashore Advisory Commission will be requested to develop a new subcommittee to provide input and advice on the ORV program at Cape Cod National Seashore. The chair of the subcommittee will be a duly appointed member of the Commission. Other members of the subcommittee will represent the same general mix of interests represented in the negotiated rulemaking committee. This subcommittee will be assigned to review and analyze the annual monitoring report. Following its review and analysis, the subcommittee may refer any ORV program management issues it identifies to the commission for further deliberation, and the Commission may advise the Superintendent with respect to those issues.

Night fishing is recognized as an important activity on the beaches of Cape Cod National Seashore. Vehicles displaying a permit approved by the Superintendent are able to access paved public parking lots, closed to the general public after hours, for nighttime fishing. An annual report submitted to the Secretary of the Interior will include an analysis of the annual operating costs of the ORV program.

The negotiated rulemaking committee discussed a potential future need for commercial permittees who would bring people to various outer beach locations to fish, swim, picnic or enjoy other activities compatible with the establishment of the Seashore. This service could potentially reduce the number of people needing to drive their personal ORV's on the beach. The Seashore agreed to evaluate the impact if the number of commercial permits for the ORV corridor exceeded the number issued in 1981 (18). Operators of a passenger vehicle for hire, engaged in carrying passengers for a fee on a designated ORV route, will obtain a permit for commercial use issued by the Superintendent. One condition of this permit will be that the applicants must demonstrate they possess adequate knowledge of the Seashore's off-road system and points of interest, and they must comply with all applicable Federal, State and local regulations. The fee for this permit will be based on the costs incurred by the NPS to administer this program. Failure to comply with any provision of an ORV permit, any regulation listed in this section or Part 2 or Part 4 of this chapter, or the requirements of the commercial use permit may result in revocation of permits by the Superintendent.

The committee recognized that, even given the greater flexibility of the consensus rule, there is a high probability portions of the beach may be closed at various times because of resource protection concerns. To provide access to some locations immediately adjacent to prime fishing areas, the committee identified ''limited parking areas'' for fishing access. These areas will be sand pull-offs located behind the primary dunes and be limited to two or three cars. NPS staff will identify areas for these to be located on the High Head access route and the Power Line route. Every attempt will be made to locate the parking spaces on previously impacted areas. They will be located to provide minimal visual impact and to minimize widening of the route or impact to vegetation. The spaces will be posted to identify that only people actively fishing may park.

It is recognized that boat launching, within the ORV corridor, is permitted by properly approved and permitted vehicles. The definition of boat in this context does not include personal watercraft (e.g., jet skis style vessel). Additional information regarding the requirements pertaining to the use of personal watercraft and boats is contained within the Compendium of Designations, Closures (36 CFR 1.5 and 1.7) for Cape Cod National Seashore and 36 CFR part 3.

Self-contained vehicles will continue to be managed as they have in the past. A self-contained vehicle is a vehicle with a water or chemical toilet and a permanently installed holding tank able to hold a minimum of three days of waste material. It is recognized that self-contained vehicles need to be located within close proximity to a beach access route. They also need to be located on a wider section of beach away from vegetation. The access route for self-contained vehicles must be fairly flat and stable. These factors will limit the possible locations for this activity. The committee agreed that, while the location of the self-contained parking area may need to shift somewhat, neither the scale nor the general level of impact would increase.

All the organizations represented by the committee agreed that the protection of the piping plover is important. There was consensus of the need to close beaches to ORV's when chicks have hatched and before they have fledged.

The committee acknowledged Executive Order 12962, Recreational Fisheries, which, in part, acknowledges the importance of participating in recreational fishing, and protecting and conserving fish stock.

The NPS recognizes the importance of citizen participation in the ORV program. In accordance with NPS policy, a program will be developed to make use of the unique skills and knowledge of individuals within the ORV community. This program will formalize and recognize the preservation efforts, education, beach clean up and other activities many of these individuals already perform.

Section-by-Section Analysis

The two main reasons for use of off-road vehicles on the outer beach are to get to prime fishing areas that are located a considerable distance from parking lots or other access points, and to participate in family related activities including swimming, picnicking and other activities compatible with the establishment of the Seashore. The proposed rule will permit flexibility, while protecting resources and restricting off-road vehicle use to a limited portion of the beaches.

Section 7.67(a) Off-road Operation of Motor Vehicles

The proposed rule will permit flexibility, while protecting resources and restricting off-road vehicle use to a limited portion of the beach. The major changes in the rule include the following.

Section 7.67(a)(1) Closure

This new paragraph clarifies that the Superintendent may close any access or route when necessary to protect resources.

Section 7.67(a)(2) Route Designations

The new rule will close a section of the existing off-road vehicle corridor from April 1 through July 20. This section is prime plover nesting area and consequently is usually closed. The total closure of this area will also eliminate the need, by Seashore staff, to watch daily the nests, eggs and unfledged chicks of piping plover.

The rule will open a section of the outer beach which is currently closed to ORV's to allow use for night fishing of prime fishing areas.

The rule will authorize the use of an alternative access route (route through the inner dunes to the outer beach), which previously could only be open during emergencies, to be opened by the superintendent for a variety of reasons. Often one pair of plover, by nesting at the end of an access route, will close off large portions of the corridor.

The new rule will establish small, undeveloped parking areas, located behind the primary dunes, for people who want to fish. These parking areas would be used when the off-road corridor was closed to vehicles. The location of these lots would improve the

transportation of fishing equipment to and from the outer beach to a vehicle.

Section 7.67(a)(3) Travel Restriction

This new paragraph will allow boat launching in designated open route corridors.

Section 7.67(a)(4) Equipment Requirements

This paragraph is unchanged.

Section 7.67(a)(5) Oversand Permit

During the off-season (November 16 through April 14), a person with an oversand permit would be able to access a limited section of the ORV corridor for fishing, as well as for the recovery of personal property, flotsam and jetsam, and for caretaker functions at dune cottages. This can be prime fishing season, and would provide access to isolated locations.

Section 7.67(a)(6) Commercial Vehicle Permits

This new paragraph is broken out from § 7.67(a)(5) Oversand permits for clarity.

Section 7.67(a)(7) Camping

The new rule will eliminate language which suggests that the only beach camping that is allowed is in a self-contained ORV, and will allow the park to consider potential future camping on the beach, if authorized by the Superintendent through another approved permitting process.

Section 7.67(a)(8) Program Management and Review

This new paragraph strengthens the NPS commitment to monitoring the use and condition of the oversand routes for the purpose of reviewing the effects on natural, cultural and aesthetic resources by vehicles in designated corridors, but recognizes that funding is a limiting factor in this research. The rule also commits the NPS to producing an annual report. Cape Cod National Seashore is one of the approved Inventory and Monitoring parks, and the need for this information has already been integrated into this program.

Section 7.67(a)(9) Penalties

This new paragraph clarifies the penalty for a violation of the section.

Section 7.67(a)(10) Information Collection

This paragraph is unchanged.

Section-by-Section Comparison

Section 7.67 Cape Cod National Seashore

(a) Off-road operation of motor vehicles. (1) Route designations.

Existing: (i) From April 15–November 15 on the outer beach from the opening to Hatches Harbor, around Race Point to High Head, and including the beach access routes at Race Point and High Head and the bypass route at Race Point Light.

(iv) Except as described in paragraph (a)(1)(ii), from November 16 through April 14 oversand travel is restricted to uses and routes approved in writing or by permit by the Superintendent on a single-trip basis.

New: (2) *Route designations.* (i) From April 15 through November 15 on the outer beach between the opening to Hatches Harbor, around Race Point to High Head including the North and South beach access routes at Race Point, the bypass route at Race Point Light, the access route at High Head, and for night fishing (hours as posted) from Coast Guard Beach in Truro to Longnook Beach. The off-road vehicle corridor from Exit 8 to High Head will be closed from April 1 through July 20. The Superintendent may open the Power Line Route access and fishing parking area when high tides, beach erosion, shorebird closures, or other circumstances exist that warrant public use of this access way.

(iv) From January 1 through December 31 the access road and parking area for fishing only at High Head.

(v) From July 1 through August 31 on the outer beach from High Head to Head of the Meadow.

(3) *Travel restrictions.* (vii)(a)

Existing: No such section.

New: (vii) The following is permitted: (a) Boat trailering and launching in designated open route corridors.

(5) *Oversand permits.*

Existing: (E) during the period from November 16 through April 14 the Superintendent may issue a limited-access pass to the holder of an oversand permit.

(1) Travel under this pass is limited to that portion of the beach between High Head and Hatches Harbor only.

(2) Vehicle travel under this pass is prohibited within two hours either side of high tide.

(3) The pass will specify the times and routes of travel authorized.

(4) The pass may be issued for the following purposes:

(i) Access to town shellfish beds at Hatches Harbor;

(ii) Recovery of personal property, flotsam and jetsam from the beach; or

(iii) Caretaker functions at a dune cottage.

New: (i)(A) An oversand permit is a type of Special Use Permit that is issued under the authority found at 36 CFR 1.6 and 4.10. The following information must be provided for each vehicle for which a permit is requested: Name and address of registered owner; drivers license number and State of issue; vehicle license plate number and State of issue; vehicle description, including year, make, model and color; make, model and size of tires; and the equipment on board as required by section 4 of this rule.

(ii) Off-season oversand use. During the period from November 16 through April 14, an oversand route user will possess an oversand permit and a limited access pass that requires the viewing of an educational program that outlines the special aspects of off-season oversand use. The limited access pass will be issued to any vehicle operator possessing a valid permit issued under section 5(i)(A) of this rule.

(A) Vehicle travel during this season is limited to that portion of the beach between High Head and Hatches Harbor.

(B) Vehicle travel during this season is prohibited within two hours either side of high tide.

(C) The limited access pass may be issued for the following purposes

(1) Access to town shellfish beds at Hatches Harbor;

(2) Recovery of personal property, flotsam and jetsam from the beach;

(3) Caretaker functions at a dune cottage; or

(4) Fishing

The limited access pass will be annotated to specify the purpose(s) for which the permit is being issued.

(ii) Commercial vehicle permits

Existing: (ii) Commercial vehicle permits. The operation of a passenger vehicle for hire on a designated oversand route is permitted only pursuant to a commercial vehicle permit issued by the Superintendent, subject to all applicable regulations in this section and all applicable Federal, State and local regulations concerning vehicles for hire.

(A) Commercial vehicle permits are limited to 18, which is the number issued in the 1981 permit year.

(B) Each operator of a passenger vehicle for hire who is engaged in carrying passengers for a fee on a designated oversand route will obtain a guide permit issued by the Superintendent. Such permit may only be issued upon a showing that the applicant possesses adequate knowledge of the Seashore's off-road system and points of interest and has complied with

all applicable Federal, State and local regulations.

(C) Annual permit fees.

(1) Commercial Vehicle Permit: $10 for each passenger-carrying seat in the vehicle to be operated.

(2) Guide Permit: $15 for the calendar year or any part thereof.

(iii) Failure to comply with any provision of an oversand permit or with any regulation listed in this section or part 2 or part 4 of this chapter is prohibited and is grounds for immediate revocation of an oversand permit.

New: (6) *Commercial vehicle permits.* (i) The operation of a passenger vehicle for hire on a designated oversand route is permitted only pursuant to a permit issued by the Superintendent, subject to all applicable regulations in this section and all applicable Federal, State and local regulations concerning vehicles for hire. A commercial vehicle permit is issued under the authority found at 36 CFR 1.6, 4.10 and 5.6. The following information must be provided by the applicant for each vehicle that will use a designated oversand route: Name and address of tour company and name of company owner; make and model of vehicle; vehicle license plate number and State of issue; and number of passenger seats.

(7) *Camping*

Existing: (5) Camping. (v) Tents and camping trailers are prohibited on the beach.

(vi) Beach camping in any manner other than authorized by this section is prohibited.

New: (7) *Camping.* The operator of an oversand vehicle wishing to camp on the beach must possess a valid permit issued under section (5)(i)(A) of this rule and under the authority found at 36 CFR 2.10. In addition, the operator must provide the following information for each vehicle for which a permit is requested: Name and address of registered owner; drivers license number and State of issue; vehicle license plate number and State of issue; vehicle description, including year, make, model, color, pickup or motor home; and the equipment on board as required by section 4 of this rule.

(v) Camping on the beach in any manner other than authorized in the provisions of this section or as authorized by the Superintendent through another approved permitting process, is prohibited.

(vi) deleted.

(8) *Program management and review.*

Existing: No such section.

New: (8) *Program management and review.* In implementing this rule, the Superintendent will:

(i) monitor the use and condition of the oversand routes for the purpose of reviewing the effects on natural, cultural and aesthetic resources of vehicles in designated corridors. The Superintendent may amend, rescind, limit the use of, or close designated routes for the purpose of resource protection if monitoring results find resource degradation or visitor impact is occurring, consistent with 36 CFR 1.5 and 1.7, Executive Order 11644 Sec. 3 and Executive Order 11989 Sec. 8;

(ii) consult with the Cape Code National Seashore Advisory Commission regarding management of the off-road vehicle program;

(iii) pursuant to 16 U.S.C. 18g–j, recognize and utilize volunteers to provide education, inventorying, monitoring, field support, and other activities involving off-road vehicle use;

(iv) provide an annual report to the Secretary and the public of the results of the monitoring conducted under subparagraph (7)(i) subject to the availability of funding; and

(v) issue no more than a combined total of 3400 oversand permits annually, including self-contained permits.

(9) *Penalties.*

Existing: No such section.

New: (9) *Penalties.* Failure to comply with any provision of an oversand permit, or with any regulation listed in this section or part 2 or part 4 of this chapter, is prohibited and may result in revocation of an oversand permit by the Superintendent.

Note: Section (6) Information Collection of existing rule is now section (10) of new rule, same language.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon an analysis of the comments.

Drafting Information

A formal negotiated rulemaking was utilized in the development of this proposed rule in accordance with the Federal Advisory Commission Act (FACA) and the Negotiated Rulemaking Act (5 U.S.C. 561).

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget and assigned clearance number 1024–0026. This information is being collected to solicit information that is necessary for the Superintendent to issue off-road vehicle permits. The public is being asked to provide this information in order for the park to track the number of permits issued and to whom they are issued. Should the park need to contact the permittees, a mechanism will be in place to allow them to do so. The information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

Specifically, the NPS needs the following information to issue a permit:

(1) Name and address of registered owner.

(2) Drivers license number and State of issue.

(3) Vehicle license plate number and State.

(4) Vehicle description, including year, make, model and color.

(5) Make, model and size of tires.

(6) List of equipment on board as required in section 4 of the rule.

The public reporting burden for the collection of information in this instance is estimated to be 0.28 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden of these information collection requests, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, DC 20001; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Department of the Interior (1024–0125), Washington, DC 20503.

Compliance With Other Laws

This rule is subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 152 *et seq.*), that

this rule will not impose a cost of $100 million or more in any given year on local, State or tribal governments or private entities.

This regulation is subject to National Environmental Policy Act (NEPA) compliance and a draft Environmental Assessment (EA) has been completed. This document is available for public review and can be obtained by contacting the park at the address noted at the beginning of this rulemaking.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS proposes to amend 36 CFR Ch. I, as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k), Sec. 7.96 also issue under Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.67(a) is proposed to be revised to read as follows:

§ 7.67 Cape Cod National Seashore.

(a) *Off-road operation of motor vehicles.*—(1) *Closure.* The Superintendent may close any access or oversand route at any time for weather, impassable conditions due to changing beach conditions or to protect resources.

(2) *Route designations.* The operation of motor vehicles, other than on established roads and parking areas, is limited to the following oversand routes during the prescribed dates:

(i) From April 15 through November 15, on the outer beach between the opening to Hatches Harbor, around Race Point to High Head, including the North and South Beach access routes at Race Point, the bypass route at Race Point Light, the access route at High Head, and for night fishing (hours as posted), from Coast Guard Beach in Truro to Longnook Beach. The off-road vehicle corridor from Exit 8 to High Head will be closed from April 1 through July 20. The Superintendent may open the Power Line Route access and fishing parking area when high tides, beach erosion, shorebird closures of other circumstances exist that warrant public use of this access way.

(ii) From January 1 through December 31, on controlled access routes for residents or caretakers of individual dune cottages in the Province Lands.

(iii) From April 15 through November 15, on commercial dune taxi routes following portions of the outer beach and cottage access routes as described in the appropriate permit.

(iv) From January 1 through December 31, the access road and parking area at High Head for fishing only.

(v) From July 1 through August 31, on the outer beach from High Head to Head of the Meadow.

(3) *Travel restrictions.* The operation of a motor vehicle on oversand routes is subject to all applicable provisions of this chapter, including part 4 as well as the specific provisions of this section.

(i) Route limits. (A) On the beach, a vehicle operator will drive in a corridor extending from a point 10 feet seaward of the spring high tide drift line to the berm crest. An operator may drive below the berm crest only to pass a temporary cut in the beach, but will regain the crest immediately following the cut. Delineator posts mark the landward side of the corridor in critical areas.

(B) On an inland oversand route, a vehicle operator will drive only in a lane designated by pairs of delineator posts showing the sides of the route.

(ii) An oversand route is closed at any time that tides, nesting birds or surface configuration prevent vehicle travel within the designated corridor.

(iii) When two vehicles meet on the beach, the operator of the vehicle with the water on the left will yield.

(iv) When two vehicles meet on a single-lane oversand route, the operator of the vehicle in the best position to yield will pull out of the track only so far as necessary to allow the other vehicle to pass safely, and then will back into the established track before resuming the original direction of travel.

(v) When the process of freeing a vehicle that has been stuck results in ruts or holes, the operator will fill the ruts or holes created by such activity before removing the vehicle from the immediate area.

(vi) The following are prohibited:

(A) Driving off a designated oversand route.

(B) Exceeding a speed of 15 miles per hour unless posted otherwise.

(C) Parking a vehicle in an oversand route so as to obstruct traffic.

(D) Riding on a fender, tailgate, roof, door or any other location on the outside of a vehicle.

(E) Driving a vehicle across a designated swimming beach at any time when it is posted with a sign prohibiting vehicles.

(F) Operating a motorcycle on an oversand route.

(vii) Boat trailering and launching by permitted ORV's in designated open route corridors is permitted.

(4) *Equipment requirements.* (i) Each vehicle operated on an oversand route will be equipped to the standard identified by the Superintendent, including:

(A) Shovel;

(B) Tow rope, chain, cable or other similar towing device;

(C) Jack;

(D) Jack support board;

(E) Low air pressure tire gauge; and

(F) Five tires that meet or exceed established standards.

(ii) Operating a vehicle on an oversand route without the required equipment is prohibited.

(5) *Oversand permits.* No oversand vehicle, other than an authorized emergency vehicle, will be operated on a designated oversand route without an oversand permit issued by the Superintendent.

(i) The Superintendent may establish a permit system for oversand vehicles and establish fees, designed to recover the costs incurred by the National Park Service to administer the oversand program.

(A) An oversand permit is a type of Special Use Permit that is issued under the authority found at 36 CFR 1.6 and 4.10. The following information must be provided for each vehicle for which a permit is requested: Name and address of registered owner; drivers license number and State if issue; vehicle license plate number and State of issue; vehicle description, including year, make, model and color; make, model and size of tires; and the equipment on board as required by paragraph (a)(4) of this section.

(B) Prior to being issued a permit, an operator of an oversand vehicle will:

(1) Demonstrate that the vehicle is equipped as required in paragraph (a)(3) of this section; and

(2) Demonstrate evidence of compliance with all Federal and State regulations that apply to licensing, registering, inspecting and insuring such a vehicle.

(C) Before being issued a permit, an applicant for an oversand permit will view an oversand vehicle operation educational program and shall assure that all other potential operators view the same program.

(D) The Superintendent will affix an oversand permit to the permitted vehicle at the time of issuance.

(E) Transfer of an oversand permit from one vehicle to another is prohibited.

(ii) Off-season oversand use. During the period from November 16 through April 14, an oversand route user will possess an oversand permit and a limited access pass that requires the viewing of an educational program that outlines the special aspects of off season

oversand use. The limited access pass will be issued to any vehicle operator possessing a valid permit issued under paragraph (a) (5)(i)(A) of this section. The limited access pass will be annotated to specify the purpose(s) for which the permit is being issued.

(A) Vehicle travel during the off-season is limited to that portion of the beach between High Head and Hatches Harbor.

(B) Vehicle travel during the off-season is prohibited within two hours either side of high tide.

(C) The limited access pass may be issued for the following purposes:

(*1*) Access to town shellfish beds at Hatches Harbor;

(*2*) Recovery of personal property, flotsam and jetsam from the beach;

(*3*) Caretaker functions at a dune cottage; or

(*4*) Fishing

(6) *Commercial vehicle permits.* (1) The operation of a passenger vehicle for hire on a designated oversand route is permitted only pursuant to a permit issued by the Superintendent, subject to all applicable regulations in this section and all applicable Federal, State and local regulations concerning vehicles for hire. A commercial vehicle permit is issued under the authority found at 36 CFR 1.6, 4.10 and 5.6. The following information must be provided by the applicant for each vehicle that will use a designated oversand route: Name and address of tour company and name of company owner; make and model of vehicle; vehicle license plate number and State of issue; and number of passenger seats.

(7) *Camping.* The operator of an oversand vehicle wishing to camp on the beach must possess a valid permit issued under paragraph (a)(5)(i)(A) of this section and under the authority found at 36 CFR 2.10. In addition, the operator must provide the following information for each vehicle for which a permit is requested: Name and address of registered owner; drivers license number and State if issue; vehicle license plate number and State of issue; vehicle description, including year, make, model, color, pickup or motor home; and the equipment on board as required by paragraph (a)(4) of this section.

(i) A self-contained vehicle is defined as one that has a self-contained water or chemical toilet and a permanently installed holding tank with a minimum capacity of three days' waste material.

(ii) Camping is allowed only in self-contained vehicles in areas designated for that purpose.

(iii) Two areas with a maximum combined capacity of 100 vehicles are designated.

(A) An operator will drive the self-contained vehicle off the beach for the purpose of emptying holding tanks at a dumping station at intervals of no more than 72 hours.

(B) Before returning to the beach, a vehicle operator will notify the Oversand Station as specified by the Superintendent.

(iii) An operator will not drive a self-contained vehicle outside the limits of a designated camping area except when entering or leaving the beach by the most direct authorized route.

(iv) Each self-contained vehicle permit holder is limited to a maximum of 21 days camping on the beach from July 1 through Labor Day.

(v) Camping on the beach in any manner other than authorized in the provisions of this section or as authorized by the Superintendent through another approved permitting process is prohibited.

(8) *Program management and review.* In implementing this program, the Superintendent will: (i) Monitor the use and condition of the oversand routes for the purpose of reviewing the effects on natural, cultural and aesthetic resources of vehicles in designated corridors. The Superintendent may amend, rescind, limit the use of or close designated routes for the purpose of resource protection if monitoring results find resource degradation or visitor impact is occurring, consistent with 36 CFR 1.5 and 1.7, Executive Order 11644 Sec. 3 and Executive Order 11989 Sec. 8;

(ii) Consult with the Cape Cod National Seashore Advisory Commission regarding management of the off-road vehicle program;

(iii) Pursuant to 16 U.S.C. 18g-j, recognize and utilize volunteers to provide education, inventorying, monitoring, field support, and other activities involving off-road vehicle use;

(iv) Provide an annual report to the Secretary of the Interior and the public of the results of the monitoring conducted under paragraph (a)(8)(i) of this section subject to the availability of funding; and

(v) Issue no more than a combined total of 3400 oversand permits annually, including self-contained permits.

(9) *Penalties.* Violation of a term or condition of an oversand permit issued in accordance with this section is prohibited. A violation may also result in the suspension or revocation of the permit.

(10) *Information collection.* The information collection requirement contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026. The information is being collected to solicit information necessary for the Superintendent to issue off-road vehicle permits. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

* * * * *

Dated: March 23, 1997.

Don Barry,

Assistant Secretary for Fish and Wildlife and Parks.

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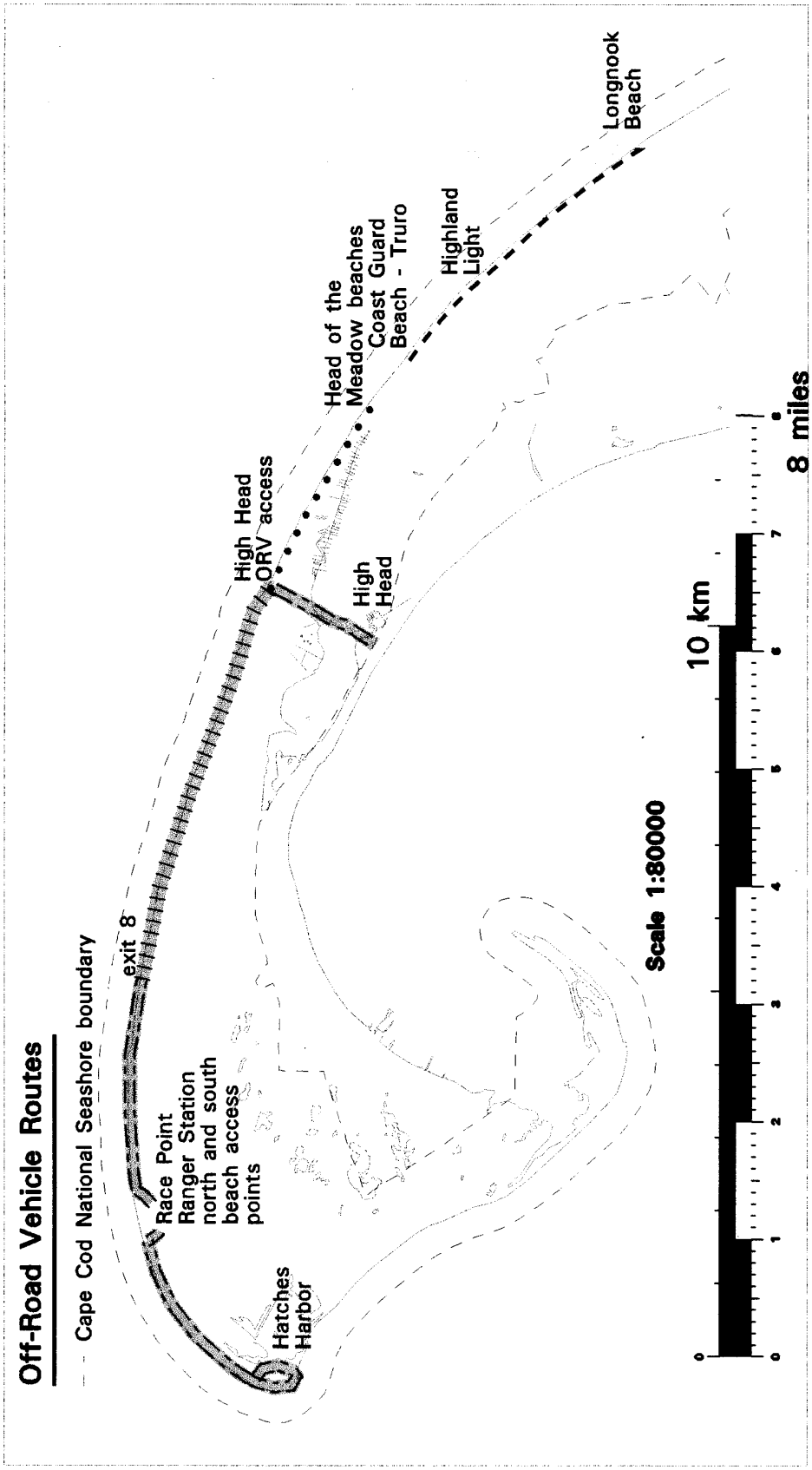

[FR Doc. 97–11433 Filed 5–5–97; 8:45 am]

BILLING CODE 4310–70–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 192–0037b; FRL–5817–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from active and inactive landfills.

The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is finalizing a simultaneous limited approval and limited disapproval of the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this limited approval and limited disapproval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 5, 1997.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1188

SUPPLEMENTARY INFORMATION:

This document concerns South Coast Air Quality Management District's Rule 1150.1, Control of Gaseous Emissions from Active Landfills, and Rule 1150.2, Control of Gaseous Emissions from Inactive Landfills. The rules were submitted by the California Air Resources Board (CARB) to EPA on October 16, 1985 and February 10, 1986, respectively. For further information, please see the information provided in the Direct Final action which is located in the Final Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 13, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–11912 Filed 5–5–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AC10

Endangered and Threatened Wildlife and Plants, Notice of Extension of Comment Period on Proposed Threatened Status for the Flat-tailed Horned Lizard

AGENCY: Fish and Wildlife Service, Interior.

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

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of an extension of the comment period on the proposed threatened status for the flat-tailed horned lizard (*Phrynosoma mcalli*). The comment period has been extended at the request of an individual interested in providing public comment.

DATES: The public comment period has been extended 30 days, and will now close on June 9, 1997. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent directly to the Field Supervisor, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sandy Vissman, at the address listed above (telephone 760/431–9440, facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Background

The flat-tailed horned lizard inhabits desert areas of southern Riverside, eastern San Diego, and Imperial Counties in California; southwestern Arizona; and adjacent regions of northwestern Sonora and northeastern Baja California Norte, Mexico. Within the United States, populations of the flat-tailed horned lizard are centered in portions of the Coachella Valley, Ocotillo Wells, Anza Borrego Desert, West Mesa, East Mesa and the Yuma Desert in California; and the area between Yuma and the Gila Mountains in Arizona. The flat-tailed horned lizard occurs on Federal, State, county, and privately owned lands.

This species may be threatened by one or more of the following: commercial and residential development, agricultural development, off-highway vehicle activity, energy developments, military activities, and pesticide use.

On November 29, 1993, the Service published a rule proposing threatened status for the flat-tailed horned lizard. The original comment period closed on January 28, 1994. The Service was unable to make a final listing determination on this species because of a limited budget, other endangered species assignments driven by court orders, and higher listing priorities. In addition, a moratorium on listing actions (Pub. L. 104–6) that took effect April 10, 1995, stipulated that no funds could be used to make final listing or critical habitat determinations. Now that funding has been restored, the Service is proceeding with a final determination for this species.

In response to a request from a constituent of Senator Kyl of Arizona, the Service is extending the comment period for 30 days. This individual requested an extension to allow

sufficient time to review requested documents and prepare comments.

The Service continues to seek information that has become available in the last 3 years concerning:

(1) biological, commercial, or other relevant data on any threat (or lack thereof) to this species; and

(2) the size, number, or distribution of populations of this species.

Written comments may be submitted through June 9, 1997, to the Service office in the **ADDRESSES** section.

Author: The primary author of this notice is Sandy Vissman (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

Dated: April 29, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1.

[FR Doc. 97–11712 Filed 5–5–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 62, No. 87
Tuesday, May 6, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket 97–032N]

Relocation of FSIS Docket Reading Room and Inclusion of Freedom of Information Act Documents for Public Display and Access

AGENCY: Food Safety and Inspection Service.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is relocating its Docket Reading Room from the South Agriculture Building to the Cotton Annex Building. FSIS is also making available in the Reading Room Freedom of Information Act (FOIA) documents for review by the public.

DATES: The Docket Reading Room is open from 8:30 a.m. to 4:30 p.m., each Monday through Friday, except for designated Federal holidays.

ADDRESSES: The FSIS Docket Reading Room has moved to Room 102 Cotton Annex Building, Department of Agriculture, 300 12th Street SW., Washington, DC. 20250–3700 from its former location in Room 3806 South Agriculture Building, 1400 Independence Avenue SW., Washington, DC. 20250–3700.

FOR FURTHER INFORMATION CONTACT: To inquire about the availability of FSIS dockets and other public documents, contact Ms. Diane Moore, FSIS Docket Clerk, at (202) 720–3813.

Done at Washington, DC, on: April 24, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–11743 Filed 5–5–97; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Private Property Access-Road Construction; Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The owner of record of landlocked private property located in portions of Sections 33 and 34, Township 27 North, Range 31 West, Principal Montana Meridian and the owner of record of landlocked private property located in portions of Sections 12 and 13, Township 26 North, Range 31 West, Principal Montana Meridian have requested special use permit applications for the construction and reconstruction of roads to their property.

The Libby Ranger District on the Kootenai National Forest intends to prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of the proposed road construction and reconstruction. The decision areas are located approximately 24 and 26 air miles respectively south of Libby, Montana.

The EIS will tier to the Kootenai National Forest Land and Resource Management Plan and Final EIS of September 1987, which provides overall guidance for forest management of the area.

DATES: Written comments and suggestions should be received on or before June 5, 1997.

ADDRESSES: The Responsible Official is Robert L. Schrenk, Forest Supervisor, Kootenai National Forest. Written comments and suggestions concerning the scope of the analysis should be sent to Lawrence A. Froberg, District Ranger, Libby Ranger District, 12557 U.S. Hwy 37 N, Libby, Montana 59923.

FOR FURTHER INFORMATION CONTACT: Jon Jeresek, Interdisciplinary Team Leader, Libby Ranger District. Phone: (406) 293–7773.

SUPPLEMENTARY INFORMATION: All of the properties and proposed road constructions are located within the Inventoried Roadless Area #671—Cabinet Face East. The decision areas are occupied grizzly bear habitat.

Proposed Action: The Kootenai National Forest is proposing to issue two special use permits for permanent access to West Fisher private property and to allow reconstruction of roads to allow passenger traffic. The purpose of the projects is to access private land that is surrounded by National Forest. No proposed activities are located in areas considered for inclusion to the National Wilderness Preservation System as recommended by the Kootenai National Forest Plan.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MA's). The decision area is allocated to MA–2, Semi-Primitive Non-Motorized Recreation. Briefly described, MA–2 is managed to provide for the protection and enhancement of areas for roadless recreation use, and to provide for wildlife management where specific values are high. Within grizzly bear habitat, the goal of MA–2 is to provide habitat that will contribute to the recovery of the grizzly bear.

Preliminary Issues: Several preliminary issues of concern have been identified by the Forest Service. These issues are briefly described below.

- Water Quality—How would the proposed actions affect sediment production?
- Roadless Areas—The proposed road construction lies entirely within the Cabinet Face East Inventoried Roadless Area #671. What effect would the proposals have on the character of this Roadless Area?
- Grizzly Bear—The decision area lies within the recovery area for the Cabinet/Yaak grizzly bear ecosystem. How would the proposals protect and enhance grizzly bear habitat, and contributes to recovery efforts?
- Fisheries—The proposed road construction would cross Bramlet and 4th of July Creeks which are priority bull trout streams. How would the proposed action affect sediment production and bull trout habitat?
- Heritage Resources—The road construction is proposed to occur over the existing historic 4th of July Trail #115. Can the loss of this resource and associated sites by mitigated?

Forest Plan Amendment: The Kootenai National Forest Land and Resource Management Plan has specific management direction for the Harpole

and Skranak decision area. Prior to making a NEPA decision, a thorough examination of all standards and guidelines of the Forest Plan would be completed and, if necessary, plan amendments would be addressed in the EIS.

Decisions To Be Made: The Kootenai Forest Supervisor will decide the following:

Should road construction to the private properties be permitted and if so how and where,

What mitigation measures would be required for protection of National Forest Service resources, and

If Forest Plan amendments are necessary to proceed with the Proposed Action within the decision area.

Public Involvement and Scoping: Notices will be mailed to interested parties from a mailing list, to provide an opportunity for the public to review and comment on the proposed action. Consultation with appropriate State and Federal agencies will be initiated. Preliminary effects analysis indicated that the proposed road construction may significantly affect the quality of the human environment. These potential effects prompted the decision to prepare an EIS for the road construction proposals.

This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the draft and final EIS. The scoping process will include:

- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Exploring additional alternatives which will be derived from issues recognized during scoping activities.
- Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The analysis will consider a range of alternatives, including the proposed action, no action, and other reasonable action alternatives.

Estimated Dates for Filing: The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August, 1997. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The final EIS is scheduled to be completed in November, 1997. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations: The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803, F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternative discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Robert L. Schrenk, Forest Supervisor, Kootenai National Forest, 506 U.S. Highway 2 West, Libby, MT 59923 is the Responsible Official. As the Responsible Official I will decide which, if any, of the proposed projects will be implemented. I will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: April 28, 1997.

Robert L. Schrenk,

Forest Supervisor.

[FR Doc. 97–11749 Filed 5–5–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Skranak Road Construction; Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Cancellation of the notice of intent to prepare an environmental impact statement published Monday, November 18, 1996, **Federal Register**, Vol. 61, No. 223.

SUMMARY: The Skranak Road Construction Environmental Analysis has been combined with another private property access request. Both of these private property requests are located in the same inventoried roadless area and in the same Grizzly Bear Management Unit. Therefore, the Libby Ranger District has decided to combine the analyses of the requests and proposed road construction and reconstruction and prepare one Environmental Impact Statement. The Notice of Intent, published in the **Federal Register**, Vol. 61, No. 223, on Monday, November 18, 1996 is thereby rescinded. A new notice of intent will be issued.

FOR FURTHER INFORMATION CONTACT: Jon Jeresek, Interdisciplinary Team Leader, Libby Ranger District. Phone: (406) 293–7773.

Dated: April 28, 1997.

Robert L. Schrenk,

Forest Supervisor.

[FR Doc. 97–11751 Filed 5–5–97; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: May 12–13, 1997.

PLACE: ARRB 600 E Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Assistant Press and Public Affairs Officer, 600 E Street,

NW., Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 97–11815 Filed 5–2–97; 9:44 am]

BILLING CODE 6118–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: May 13, 1997; 9:30 a.m.

PLACE: Radio Free Asia, 2025 ''M'' Street, NW., Suite 300, Washington, DC 20036.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BAG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded nonmilitary international broadcasting. They will address internal procedural, organizational, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel issues of the BAG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6)) The meeting of the Broadcasting Board of Governors will be followed, as necessary, by meetings of the corporate boards of Radio Free Asia and RFE/RL, Inc.

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Thomas at (202) 401–3736.

Dated: May 2, 1997.

David W. Burke,

Chairman.

[FR Doc. 97–11882 Filed 5–2–97; 1:27 pm]

BILLING CODE 8230–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the US Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Thursday, May 29, 1997, at the Sheraton Hotel and Conference Center, Boardroom, 2100 Bush River Road in Columbia, South Carolina 29210. The purpose of the meeting is to: (1) Review Commission and Committee activities; (2) discuss report on church burnings in the State; (3) discuss civil rights progress and/or problems in the State; and (4) discuss plans to adopt a new project. The meeting is open to the public.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Milton B. Kimpson, 803–779–2597, or Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). 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, April 29, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–11748 Filed 5–5–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 13, 1997, the Department of Commerce (the Department) published the preliminary results and partial rescission of an administrative review of the antidumping duty order on certain cased pencils (pencils) from the People's Republic of China (PRC) covering the period of December 21, 1994, through November 30, 1995 (62 FR 1734). We gave interested parties an opportunity to comment on our preliminary results. We received no comments. Therefore, the preliminary results are unaltered. The review indicates the existence of a PRC-wide dumping margin of 44.66 percent for this period.

EFFECTIVE DATE: May 6, 1997.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Thomas Futtner, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, US Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 482–4474/3814.

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 Departments 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:

Scope of the Review

The products covered by this review are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this review are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-case crayons (wax), pastels, charcoals, and chalks. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Background

The antidumping duty order on pencils from the PRC was published on December 28, 1994 (59 FR 66909). On January 13, 1997, the Department published in the **Federal Register** the preliminary results of its review of this order for the period December 21, 1994 through November 30, 1995 POR. In our notice of January 13, 1997, we rescinded the review as to the several companies

which reported that they had no shipments of subject merchandise during the POR and as to China First Pencil Company, Ltd. (China First) and Guangdong Provincial Stationery & Sporting Goods Import and Export Corporation (Guangdong). With respect to China First and Guangdong, we verified that the only subject merchandise exported by these firms during the December 21, 1994 through November 30, 1995 POR was merchandise excluded from the order (*i.e.*, manufactured by the factories upon which the zero margins in the less-than-fair-value investigation were based). See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China, 59 FR 66909, (December 28, 1994). Therefore, these final results apply only to the PRC-wide entity which includes the remaining respondents in this review which did not reply to our questionnaire and show that they were entitled to a rate separate from the PRC entity.

Final Results of the Review

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. Therefore, the preliminary results are unaltered. Based on the rationale set forth in our preliminary determination, we have determined that a margin of 44.66 percent exists for the PRC entity for the period December 21, 1994 through November 30, 1995. (This rate applies to all exports of pencils from the PRC other than those produced and exported by China First and those produced by Shanghai Three Star Stationery Company, Ltd. (Three Star) and exported by Guangdong, and those exported by Shanghai Foreign Trade Corporation (SFTC), an exporter which was previously determined to be entitled to a separate rate, and for which the petitioner withdrew its request for this administrative review.) The weighted-average dumping margins are as follows:

Manufacturer/ producer/ exporter	Weighted average margin percentage
PRC Rate	44.66

The U.S. Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and normal value 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) No cash deposit is required for entries of subject merchandise both produced by China First and exported by China First, or for subject merchandise both produced by Three Star Stationery and exported by Guangdong; (2) the cash deposit rate for merchandise exported by China First and produced by any manufacturer other than China First, merchandise exported by Guangdong and produced by any manufacturer other than Three Star, and merchandise exported by all other PRC exporters will be the PRC rate of 44.66 percent; (3) the cash deposit rate for SFTC will be 8.31 percent; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate of its supplier, *i.e.*, the PRC rate.

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 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: April 30, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–11756 Filed 5–5–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–791–001]

Final Results of the 1992 Countervailing Duty Administrative Review; Ferrochrome From South Africa

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty Administrative Review.

SUMMARY: On December 13, 1996, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on ferrochrome from South Africa for the period January 1, 1992 through December 31, 1992 (*see* 61 FR 65546) (Preliminary Results). We have completed this review and determine the net subsidy to be zero percent ad valorem for all companies. The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from South Africa exported on or after January 1, 1992, and on or before December 31, 1992.

EFFECTIVE DATE: May 6, 1997.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Office 1, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4087.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1996, the Department published in the **Federal Register** the *Preliminary Results.* The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the *Preliminary Results.* Respondents Consolidated Metallurgical Industries, Ltd. (CMI), Ferralloys Limited (Ferralloys) and Samancor Ltd. (Samancor), producers of the subject merchandise which exported ferrochrome to the United States during the review period, submitted a case brief on January 22, 1997. No case brief was submitted by the Macalloy Corporation (petitioner).

This review covers three producers/ exporters of the subject merchandise

(CMI, Ferralloys, and Samancor), which account for all exports of the subject merchandise to the United States from South Africa, and eight programs. One company, Chromecorp Technology (PTY) Ltd. (Chromecorp), reported having no exports to the United States during the review period; therefore, we did not include Chromecorp in this review (*see* the *Preliminary Results*).

Applicable Statute

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). 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.

Scope of Review

The imported product covered by this review is ferrochrome from South Africa which is currently classifiable under items 7202.41.00, 7202.49.10 and 7202.49.50 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item numbers are provided for convenience and Customs purposes, our written description of the scope of this proceeding remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

Respondents received countervailable benefits only with respect to one program. We weight-averaged the rate received by each company for this program, including companies with de minimis and zero rates, by that company's share of total exports of ferrochrome to the United States (*see* Ceramica Regiomontana, *S.A.* v. *United States*, 853 F. Supp. 431 (CIT 1994)). We then summed the individual companies' weighted-averaged rates to determine the total subsidy rate benefitting exports of subject merchandise to the United States. The benefits received under this program were so small (0.003 percent) as to render a zero ad valorem subsidy rate, when rounded. Therefore, the total country-wide rate is zero percent ad valorem. Since the country-wide rate was zero, no further calculations were necessary.

Analysis of Programs

Based upon our analysis of respondents' questionnaire responses and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Regional Industrial Development Incentives: Subsidy on Housing for Key Personnel

In the *Preliminary Results* we found that this program conferred benefits on the subject merchandise of 0.003 percent which, when rounded, gives an *ad valorem* subsidy rate of zero percent. We received no comments by the interested parties. Therefore, we have not changed our findings from the *Preliminary Results.*

II. Programs Found Not To Be Used

Our analysis of the comments submitted by the interested parties, summarized below, has led us to change the status of the following program from a program conferring subsidies to a program not used with respect to exports of subject merchandise to the United States:

A. Category A of the EIP (see comment, below).

In addition, in the *Preliminary Results* we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

B. Industrial Development Corporation Loans;

C. Export Incentive Program, Categories B, C and D;

D. Regional Industrial Development Incentives;

(1) Labor Incentive;

(2) Interest Concession;

E. Preferential Rail Rates;

F. Government Loan Guarantees;

G. Beneficiation Allowances—Electric Power Cost Aid Scheme;

H. General Export Incentive Scheme;

I. Rail Transport Rebate on Outgoing Goods (subprogram of the Regional Industrial Development Incentives).

We received no comments regarding these programs from the interested parties. Therefore, we have not changed our findings in the *Preliminary Results.*

Analysis of Comments

Comment

Respondents argue that the Department does not have to rely on GOSA oversight in order to achieve the requisite assurance that Category A benefits were limited to non-U.S. exports, as required by the GOSA. Instead, respondents point out that the Department has other means at its disposal with which to assure itself, including the option to conduct verification. Respondents also state that the decision to require GOSA oversight is contrary to the Department's policy of preferring to rely upon primary evidence from respondents above secondary evidence from the foreign governments. In addition, according to respondents, the decision ignored the evidence already on the record which clearly indicated that Category A benefits were tied to non-U.S. exports. Nevertheless, should the Department continue to require government oversight, the information submitted by respondents should demonstrate that there was sufficient GOSA oversight of Category A claims to ensure that the allocated benefits were tied solely to exports to countries other than the United States.

DOC Response

We agree with respondents that government oversight of claims under a program whose benefits are allocated to exports in general is not necessarily required for a determination that the benefits are tied to specific markets. However, it is essential that any such tying of benefits be done by the government at time of bestowal (*see* General Issues Appendix, Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria (58 FR 37217 at 37232 (July 9, 1993)).

The record in this case shows that the producers of the subject merchandise were required by the GOSA to refrain from claiming Category A benefits on exports to the United States. In addition, other information on the record, including evidence of GOSA oversight of Category A claims, demonstrates sufficiently that the producers did not claim or receive benefits on exports to the United States pursuant to the GOSA's requirement. Therefore, we determine that the benefits received were tied to markets other than the United States at the time of bestowal and, accordingly, that Category A was not used with respect to exports of subject merchandise to the United States during the POR.

Final Results of Review

For the period January 1, 1992 through December 31, 1992, we determine the net subsidy to be zero percent *ad valorem* for all companies. The Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of subject merchandise exported on or after January 1, 1992 and entered on or before December 31, 1992. Because the countervailing duty order was revoked effective January 1, 1995 (*see* Revocation of Countervailing Duty Orders (60 FR 40568, August 9, 1995)) pursuant to section 753 of the Act, as amended by the Uruguay Round

Agreements Act, no other instructions will be sent to the U.S. Customs Service.

This notice 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 355.34(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 an 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 355.22.

Dated: April 29, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–11757 Filed 5–5–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–403; C–357–005]

Oil Country Tubular Goods From Argentina and Cold-Rolled Carbon Steel Flat Products From Argentina; Termination of Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review/termination of administrative reviews.

SUMMARY: On December 30, 1996, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty order on Oil Country Tubular Goods (OCTG) from Argentina for the periods 1992, 1993 and 1994, and the countervailing duty order on Cold-Rolled Carbon Steel Flat Products (Cold-Rolled Steel) from Argentina for the periods 1992 and 1993. The Department preliminarily determined that it lacked the authority to assess countervailing duties on the entries subject to these reviews, and announced its intent to terminate the reviews. We have now finalized that determination and terminate these reviews.

EFFECTIVE DATE: May 6, 1997.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1996, the Department published in the **Federal Register** (61 FR 68713) the preliminary results of its administrative reviews and its intent to terminate the administrative reviews of the countervailing duty orders on OCTG and Cold-Rolled Steel from Argentina. The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

The review of OCTG covering the period January 1 through December 31, 1994, was initiated on December 15, 1995 (60 FR 64413). The review of OCTG covering the period January 1 through December 31, 1993, was initiated on December 15, 1994 (59 FR 64650). The review of OCTG covering the period January 1 through December 31, 1992, was initiated on December 17, 1993 (58 FR 65964).

The review of Cold-Rolled Steel covering the period January 1 through December 31, 1993, was initiated on May 12, 1994 (59 FR 24683). The review of Cold-Rolled Steel covering the period January 1 through December 31, 1992, was initiated on May 27, 1993 (58 FR 30767).

In the preliminary results, the Department determined that it lacks the authority to assess countervailing duties on entries of OCTG and Cold-Rolled Steel made on or after September 20, 1991 and on or before December 31, 1994. We invited interested parties to comment on these preliminary results. We did not receive any comments. Therefore, for the reasons stated in the preliminary results (61 FR 68713), we are terminating these reviews.

The question of the Department's authority to assess duties on unliquidated entries of OCTG made on or after January 1, 1995 remains to be determined in the context of the ongoing changed circumstances reviews. See, Leather from Argentina, Wool from Argentina, Oil Country Tubular Goods from Argentina, and Carbon Steel Cold-Rolled Flat Products from Argentina; Preliminary Results of Changed Circumstances Countervailing Duty Reviews (Changed Circumstances Reviews), to be published on May 2, 1997, in the **Federal Register**.

Applicable Statute and Regulations

With the exception of the 1994 administrative review of the countervailing duty order on OCTG from Argentina, the Department is conducting these administrative reviews in accordance with section 751(a) of the Act. The 1994 OCTG review is being conducted in accordance with the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act, effective January 1, 1995. Otherwise, citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Reviews

OCTG from Argentina. Imports covered by this order include shipments of Argentine oil country tubular goods. Oil country tubular goods include hollow steel products of circular cross-section intended for use in the drilling of oil or gas and oil well casing, tubing and drill pipe or carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. The scope covers both finished and unfinished OCTG. The products covered in this review are provided for under item numbers of the Harmonized Tariff Schedule (HTS): 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.80, 7304.39.00, 7304.51.50, 7304.20.70, 7304.59.60, 7304.59.80, 7304.90.70, 7305.20.40, 7305.20.60, 7305.20.80, 7305.31.40, 7305.31.60, 7305.39.10, 7305.39.50, 7305.90.10, 7305.90.50, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, 7306.20.80, 7306.30.50, 7306.50.50, 7306.60.70, 7306.90.10. The HTS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

Cold-Rolled Steel from Argentina. Imports covered by this order include shipments of Argentine cold-rolled carbon steel flat products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width and under 0.1875 inches in thickness whether or not in coils; as currently provided for under the following item numbers of the HTS: 7209.11.00, 7209.12.00, 7209.13.00, 7209.14.00, 7209.21.00, 7209.22.00, 7209.23.00, 7209.24.00, 7209.31.00, 7209.32.00, 7209.33.00, 7209.34.00, 7209.41.00, 7209.42.00, 7209.43.00, 7209.44.00, 7209.90.00, 7210.70.00, 7211.30.50, 7211.41.70, 7211.49.50,

7211.90.00, 7212.40.50. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Termination of Administrative Reviews

We determine that we do not have the authority to assess countervailing duties for the period September 20, 1991 through December 31,1994, for the reasons stated in the preliminary results (61 FR 68713). Thus, we are terminating administrative reviews covering the periods 1992, 1993, and 1994, for the countervailing duty order on OCTG from Argentina, and the periods 1992 and 1993, for the countervailing duty order on Cold-Rolled Steel from Argentina.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Argentina entered during those periods.

The requirement for cash deposits of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of OCTG from Argentina, entered, or withdrawn from warehouse, for consumption on or after January 1, 1995 will remain in effect pending the outcome of the changed circumstances reviews of the four Argentine countervailing duty orders currently being conducted by the Department. See Changed Circumstances Reviews. The order on Cold-Rolled Steel was revoked effective January 1, 1995; thus, the suspension of liquidation and cash deposit requirements were discontinued effective that date.

This notice 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 355.34(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 an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: April 29, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–11755 Filed 5–5–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, (1995 ed.) [MCM]. The proposed changes are the 1997 draft annual review required by the MCM and DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 8, 1996. With one exception, the proposed changes concern the rules of procedure and evidence applicable in trials by courts-martial. One proposed change adds an offense to Part IV of the MCM. More specifically, the proposed changes would: (1) Delete the requirement that judges be on ''active duty'' at the time of trial; (2) permit the referral and trial of additional charges at any time until entry of pleas; (3) set forth rules for taking the testimony of children by remote closed-circuit television; (4) clarify that ''hate motivation'' can be considered as aggravation evidence in sentencing; (5) eliminate the punishment of loss of numbers; (6) add the youth of the victim as an aggravating factor in capital cases; (7) clarify the length of time during which sentences may be suspended; (8) clarify the limitations on post-trial contact with court members; (9) recognize a limited, qualified psychotherapist-patient privilege; and (10) recognize the offense of reckless endangerment.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon,'' May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 8, 1996. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

DATES: Comments on the proposed changes must be received no later than July 20, 1997 for consideration by the JSC.

ADDRESSES: Comments on the proposed changes should be sent to LTC Paul P. Holden, Jr., U.S. Army, Office of the Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Washington, DC, 20310–2200.

FOR FURTHER INFORMATION CONTACT: LTC Paul P. Holden, Jr., US Army, Office of the Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Washington, DC, 20310–2200; 703-695–1891; FAX 703–693–5086.

Manual for Courts-Martial Proposed Amendments

The full text of the affected sections follows:

R.C.M. 502(c) is amended by deleting the words ''on active duty'' in the second line of the rule.

The analysis accompanying R.C.M. 502(c) is amended by adding the following:

199__ Amendment: R.C.M. 502(c) was amended to delete the requirement that military judges be ''on active duty'' to enable Reserve Component judges to conduct trials during periods of inactive duty for training (IDT/IADT) and inactive duty training travel (IATT). The active duty requirement does not appear in Article 26, UCMJ which prescribes the qualifications for military judges. It appears to be a vestigial requirement from paragraph 4e of the 1951 and 1969 MCM. Neither the current MCM nor its predecessors provide an explanation for this additional requirement. It was deleted to enhance efficiency in the military justice system.

R.C.M. 601(e)(2) is amended by deleting the words ''arraignment'' and substituting the words ''the entry of pleas'', in the second sentence, and by deleting the words ''arraignment of the accused upon charges'' and inserting the words ''the entry of pleas'' in the last sentence.

The analysis accompanying R.C.M. 601(e)(2) is amended by adding the following:

199__ Amendment: R.C.M. 601(e)(2) was amended to permit the adding of charges until the entry of pleas in general and special courts-martial without the consent of the accused, provided that all necessary procedural requirements concerning the additional charges have been complied with. Prior to this amendment, arraignment had always been the point of demarcation, after which new charges could not be added without the accused's consent. *United States* v. *Davis*, 11 USCMA 407, 29 C.M.R. 223 (1960).

In the Federal civilian system, arraignment was the preliminary stage where the accused was informed of the indictment and pled to it, thereby formulating the issues to be tried. *Hamilton* v. *Alabama,* 368 U.S. 52 (1961). In the military, arraignment symbolized formal notice to the accused and often was followed closely by pleas. Id. However, arraignment has become the event whereby the court-martial is formally placed under the cognizance of the military judge, and the entry of pleas is oftentimes now deferred. Precluding the addition of charges at arraignment no longer serves a useful purpose.

This amendment extends the period of time during which charges can be served on the accused at courts-martial to the taking of pleas. Provided that procedural safeguards with respect to the additional charges are accorded, (i.e. Article 32 hearing, or the 3/5 day statutory waiting period, voir dire of the military judge, and challenge of the qualifications of counsel), the original purpose of the rule is fulfilled.

R.C.M. 804 is amended by redesignating the current subsection (c) as subsection (d) and inserting the following as subsection (c)

(c) Absence for Limited Purpose of Child Testimony

(1) *Election by accused.* Following a determination by the military judge in a child abuse case that remote testimony of a child is appropriate pursuant to M.R.E. 611(d)(2), the accused may elect to voluntarily absent himself from the courtroom in order to preclude the use of procedures described in R.C.M. 914A.

(2) *Procedure.* The accused's absence will be conditional upon his being able to view the witness' testimony from a remote location. A two-way closed circuit television system will be used to transmit the child's testimony from the courtroom to the accused's location. The accused will also be provided contemporaneous audio communication with his counsel, or recesses will be granted as necessary in order to allow the accused to confer with counsel. The procedures described herein will be employed unless the accused has made a knowing and affirmative waiver of these procedures.

(3) *Effect on accused's rights generally.* Exercise by the accused of the procedures under subsection (c)(2) will not otherwise affect the accused's right to be present at the remainder of the trial in accordance with this rule.

The analysis accompanying R.C.M. 804 is amended by adding the following:

199__ Amendment: The amendment provides for two-way closed circuit television to transmit the child's testimony from the courtroom to the accused's location. The use of two-way television, to some degree, may defeat the purpose of these alternative procedures, which is to avoid trauma to the victim who must view his or her alleged abuser. In such cases, the judge has discretion to direct one-way television communication. The use of one-way television was approved by the Supreme Court in *Maryland* v. *Craig,* 497 U.S. 836 (1990). This amendment also gives the accused the election to absent himself from the courtroom to prevent remote testimony. Such a provision gives the accused a greater role in determining how this issue will be resolved.

R.C.M. 914A is created as follows:

Rule 914A. Use of Remote Live Testimony in Child Abuse Cases

(a) *General procedures.* A child witness in a case involving abuse shall be allowed to testify out of the presence of the accused after appropriate findings have been entered in accordance with M.R.E. 611(d)(2). The procedure used to take such testimony will be determined by the military judge based upon the exigencies of the situation. However, such testimony should normally be taken via a two-way closed circuit television system. When a television system is employed, the following procedures will be observed:

(1) The witness will testify from a closed location outside the courtroom;

(2) The only persons present at the remote location will be the witness, counsel for each side (not including an accused pro se), equipment operators, and other persons, such as an attendant for the child, whose presence is deemed necessary by the military judge;

(3) The military judge, the accused, members, the court reporter, and all other persons viewing or participating in the trial will remain in the courtroom;

(4) Sufficient monitors will be placed in the courtroom to allow viewing of the testimony by both the accused and the fact finder;

(5) The voice of the military judge will be transmitted into the remote location to allow control of the proceedings;

(6) The accused will be permitted audio contact with his counsel, or the court will recess as necessary to provide the accused an opportunity to confer with counsel.

(b) *Prohibitions.* The procedures described above will not be used where the accused elects to absent himself from the courtroom pursuant to R.C.M. 804(c).

The analysis accompanying R.C.M. 914A is as follows:

199__*Amendment:* This rule allows the military judge to determine what procedure to use when taking testimony under Mil. R. Evid. 611(d)(2). It states that normally such testimony should be taken via a two-way closed circuit television system. The rule further prescribes the procedures to be used if a television system is employed. The use of two-way television, to some degree, may defeat the purpose of these alternative procedures, which is to avoid trauma to the victim who must view his or her alleged abuser. In such cases, the judge has discretion to direct one-way television communication. The use of one-way television was approved by the Supreme Court in *Maryland* v. *Craig,* 497 U.S. 836 (1990). This amendment also gives the accused an election to absent himself from the courtroom to prevent remote testimony. Such a provision gives the accused a greater role in determining how this issue will be resolved.

Military Rule of Evidence 611 is amended by adding the following subsection:

(d) Remote examination of child witness.

(1) In a case involving abuse of a child under the age of 16, the military judge shall, subject to the requirements of section (2) of this rule, allow the child to testify from an area outside the courtroom as prescribed in R.C.M. 914A.

(2) Remote examination will be used only where the military judge makes a finding on the record, following expert testimony, that either:

(A) The child witness is likely to suffer substantial trauma if made to testify in the presence of the accused; or

(B) The prosecution will be unable to elicit testimony from the child witness in the presence of the accused.

(3) Remote examination of a child witness will not be utilized where the accused elects to absent himself from the courtroom in accordance with R.C.M. 804(c).

The analysis accompanying Mil. R. Evid. 611 is amended by adding the following:

199__*Amendment:* This amendment to Mil. R. Evid. 611 gives substantive guidance to military judges regarding the use of alternative examination methods for child abuse victims. The use of two-way television, to some degree, may defeat the purpose of these alternative procedures; which is to avoid trauma to the victim who must view his or her abuser. In such cases, the military judge has discretion to

direct one-way communication. The use of one-way television was approved by the Supreme Court in *Maryland* v. *Craig,* 497 U.S. 836 (1990). This amendment also gives the accused an election to absent himself from the courtroom to prevent remote testimony. Such a provision gives the accused a greater role in determining how this issue will be resolved.

Rule for Courts-Martial 1001(b)(4), regarding the introduction of evidence in aggravation during the presentencing procedure, is amended by adding between the first and second sentences, the following:

Evidence in aggravation includes, but is not limited to, evidence of financial, social, psychological, and medical impact on or cost to any person or entity who was the victim of an offense committed by the accused and evidence of significant adverse impact on the mission, discipline, or efficiency of the command directly and immediately resulting from the accused's offense. In addition, evidence in aggravation may include evidence that the accused intentionally selected any victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.

The Discussion to R.C.M. 1001(b)(4) is amended by striking the first paragraph thereof.

The analysis to R.C.M. 1001(b)(4) is amended by adding the following:

199__*Amendment:* R.C.M. 1001(b)(4) was amended by elevating to the Rule language that heretofore appeared in the Discussion to the Rule. The Rule was further amended to recognize that evidence that the offense was a ''hate crime'' may also be presented to the sentencing authority. The additional ''hate crime'' language was derived in part from § 3A1.1 of the Federal Sentencing Guidelines, in which hate crime motivation results in an upward adjustment in the level of the offense for which the defendant is sentenced. Courts-martial sentences are not awarded upon the basis of guidelines, such as the Federal Sentencing Guidelines, but rather upon broad considerations of the needs of the service and the accused and on the premise that each sentence is individually tailored to the offender and offense. The upward adjustment used in the Federal Sentencing Guidelines does not directly translate to the court-martial presentencing procedure. Therefore, in order to adapt this concept to the court-martial process, this amendment was made to recognize that ''hate crime'' motivation is admissible in the court-martial presentencing procedure. This amendment also differs from the Federal Sentencing Guideline in that the amendment does not specify the burden of proof required regarding evidence of ''hate crime'' motivation. No burden of proof is customarily specified regarding aggravating evidence admitted in the presentencing procedure, with the notable exception of aggravating factors under R.C.M. 1004 in capital cases.

R.C.M. 1003 is amended by deleting ''(4) Loss of numbers, lineal position, or seniority. These punishments are authorized only in cases of Navy, Marine Corps, and Coast Guard officers;'' by deleting the ''Discussion'' thereto, and by correcting subsequent numbered paragraphs to reflect this deletion.

The analysis accompanying R.C.M. 1003 is amended by adding the following:

199__Amendment: Although loss of numbers had the effect of lowering precedence for some purposes, e.g., quarters priority, board and court seniority, and actual date of promotion, loss of numbers did not affect the officer's original position for purposes of consideration for retention or promotion. Accordingly, this punishment was deleted because of its negligible consequences and the misconception that it was a meaningful punishment.

Appendix 11 of the MCM is amended by deleting ''Loss of numbers, Etc., paragraphs (6) and (7) thereunder, by correcting subsequent numbered paragraphs to reflect this deletion, and deleting the notation at the end of Appendix 11 which states ''Numbers 6 and 7 apply only in the Navy, Marine Corps, and Coast Guard.'' Rule for Courts-Martial 1004(c)(7) is amended by adding at the end thereof, the following aggravating factor applicable in the case of a violation of Article 118(1): ''(K) The victim of the murder was 14 years of age or younger.''

The Analysis to R.C.M. 1004 is amended by adding the following:

199__Amendment: R.C.M. 1004(c)(7)(K) was added to afford greater protection to victims who are especially vulnerable due to their age.

R.C.M. 1108(d) is amended by adding after the second sentence the following:

A period of suspension equal to the time served in confinement, plus 2 years thereafter, or a period of suspension of 5 years from the date of convening authority's action, whichever is greater, shall not be deemed ''unreasonably long'' for a sentence adjudged by a general court-martial. A period of suspension of 2 years from the date of convening authority's action shall not be deemed ''unreasonably long'' for a sentence adjudged by a special court-martial. Notwithstanding the foregoing, a period of suspension agreed to by the parties in a pretrial agreement (R.C.M. 705) ordinarily shall not be deemed ''unreasonably long.''

The analysis accompanying R.C.M. 1108(d) is amended by adding the following:

199__Amendment: This amendment clarifies the term ''not unreasonably long'' by defining the maximum period of suspension which is reasonable and lawful, thereby assisting convening authorities, those who advise them, and courts as to the maximum length of time the unexecuted portion of a sentence may be suspended. Thus, convening authorities are guided in fixing a period of suspension which bears a rational relationship to the severity of the sentence adjudged and approved. This amendment does not address any other term of suspension than time. Further, the amendment will most often be applied to suspended, unexecuted confinement. A convening authority may, however, in the exercise of discretionary powers, suspend all or any part of an adjudged sentence, and may impose reasonable and lawful conditions upon the accused as provision of that suspension. UCMJ, Arts. 60, 71, 10 U.S.C.A. §§ 860, 871 (1994); *United States* v. *Cowan,* 34 M.J. 258 (C.M.A. 1992). The service Secretaries may further restrict the periods of suspension.

Rule for Court-Martial 1012 is created as follows:

Rule 1012. Interviewing Members Following Adjournment

Except as provided in R.C.M. 1105(b)(4), following adjournment, no attorney or any party to a court-martial shall themselves or through any investigator or other person acting for them, interview, examine, or question any member of a court-martial, after the member has been excused from the court-martial, about any matter pertaining to the court-martial, except at a session held under Article 39(a). Any such session shall be limited to inquiring into whether extraneous prejudicial information was improperly brought to the attention of the members of the court-martial, whether any outside influence was improperly brought to bear upon any member, or whether there was unlawful command influence.

The analysis accompanying R.C.M. 1012 is created as follows:

199__Amendment: Prior to adjournment, contacts with court-

members are already adequately regulated by the military judge. This rule was added to address post-trial contacts with members. It prevents anyone from disturbing the sanctity of deliberations by questioning members about matters associated with their duties as members. Such questioning results in lessened public confidence in the court-martial system and intrudes into a process that must remain secret in order to grant court members the independence and discretion needed to arrive at a verdict free from fear of public or private criticism or retribution. See *United States* v. *Turner,* 42 M.J. 783 (N.M.Ct.Crim.App. 1995); *United States* v. *Thomas,* 39 M.J. 626 (N.M.C.M.R. 1993). Also, this amendment brings the military practice in line with most Federal courts. See *United States* v. *Hooshmand,* 931 F.2d. 725, 736–37 (11th Cir. 1991); *United States* v. Davila, 704 F.2d. 749, 753–54 (5th Cir. 1983).

Military Rule of Evidence 501(d) is amended to read as follows:

(d) Except as provided in Rule 513, information not otherwise privileged does not become privileged on the basis that it was acquired by a military or civilian health care provider acting in a professional capacity.

Military Rules of Evidence 513 is created as follows

Rule 513. Psychotherapist-Patient Privilege

(a) *General rule of privilege.* A patient, as that term is defined in this rule, has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the patient to a psychotherapist or an assistant to a psychotherapist, as those terms are defined in this rule, if such communication was made for the purpose of facilitating diagnosis or treatment of the patient's mental or emotional condition.

(b) Definitions. As used in this rule:

(1) A ''patient'' is a person who consults with or is examined or interviewed by a psychotherapist, but the term does not include a person who, at the time of such consultation, examination or interview, is subject to the Uniform Code of Military Justice under Article 2(a)(1), (2), (3), (7), (8), (9), or (10).

(2) A ''psychotherapist'' is a psychiatrist or psychologist who is licensed or certified in any state, territory, the District of Columbia or Puerto Rico to perform professional services as such and, if such person is a member of, employed by, or serving under contract with the armed forces, who holds credentials to provide such services from any military health care facility, or is a person reasonably believed by the patient to have such qualifications.

(3) An ''assistant to a psychotherapist'' is a person employed by or assigned to assist a psychotherapist in providing professional services, or is reasonably believed by the patient to be such.

(4) A communication is ''confidential'' if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional services to the patient or those reasonably necessary for the transmission of the communication.

(5) ''Evidence of a patient's records or communications'' is testimony of a psychiatrist, psychologist, or assistant to the same, or patient records that pertain to communications by a patient to a psychiatrist, psychologist, or assistant to the same for the purposes of diagnosis or treatment of the patient's mental or emotional condition.

(c) Who may claim the privilege. The privilege may be claimed by the patient or the guardian or conservator of the patient. The psychotherapist or assistant to a psychotherapist who received the communication may claim the privilege on behalf of the patient. The authority of such a psychotherapist or assistant to so assert the privilege is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule under the following circumstances:

(1) Death of patient. The patient is dead;

(2) Crime or fraud. If the communication clearly contemplated the future commission of a fraud or crime or if the services of the psychotherapist were sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud;

(3) Spouse abuse or child abuse or neglect. When the communication is evidence of spouse abuse, or child abuse or neglect;

(4) Mandatory reports. When a federal law, state law, or military regulation imposes a duty to report information contained in a communication;

(5) Patient is dangerous to self or others. When a psychotherapist or assistant to a psychotherapist has a reasonable belief that a patient's mental or emotional condition makes the patient a danger to any person, including the patient, or to the property of another person;

(6) Military necessity. When necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission.

(e) Procedure to determine admissibility of patient records or communications:

(1) In any case in which the production or admission of records or communications of a patient other than the accused is a matter in dispute, a party may seek an interlocutory ruling by the military judge. In order to obtain such a ruling, the party shall:

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) serve the motion on the opposing party, the military judge and, if practicable, notify the patient or the patient's guardian or representative of the filing of the motion and of the opportunity to be heard as set forth in subparagraph (e)(2).

(2) Before ordering the production or admission of evidence of a patient's records or communications, the military judge shall conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the patient, and offer other relevant evidence. The patient will be afforded a reasonable opportunity to attend the hearing and be heard at the patient's own expense unless the patient has been otherwise subpoenaed or ordered to appear at the hearing. However, the proceedings will not be unduly delayed for this purpose. In a case before a court-martial composed of a military judge and members, the military judge shall conduct the hearing outside the presence of the members.

(3) If the military judge determines on the basis of the hearing described in subparagraph (2) of this subdivision that the evidence that the party seeks to acquire, offer, or exclude is privileged, irrelevant, or otherwise inadmissible, no further proceedings will be conducted on the issue and the military judge shall not order the production or admission of the evidence.

(4) If the military judge is unable to determine whether the evidence is privileged or relevant, the military judge shall examine the evidence or a proffer thereof in camera.

(A) If the military judge determines on the basis of the in camera examination that the evidence is privileged, irrelevant, or otherwise inadmissible, the military judge shall not order the production or admission of the evidence.

(B) If the military judge determines that the evidence is relevant and not privileged, such evidence, or pertinent portions thereof, shall be produced and/or admitted in the trial to the extent specified by the military judge.

(5) To prevent unnecessary disclosure of evidence of a patient's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

(6) The motion, related papers, and the record of the hearing shall be sealed and shall remain under seal unless the military judge or an appellate court orders otherwise.

The analysis to Mil. R. Evid. 501 is amended by adding:

''*199 Amendment:* The amendment of Mil. R. Evid 501(d), and the related creation of Mil. R. Evid. 513, clarify the state of military law after the Supreme Court decision in *Jaffee* v. Redmond, _____ U.S. _____ [116 S. Ct. 1923, 135 L.Ed. 2d. 337] (1996). *Jaffee* interpreted Fed. R. Evid. 501, which refers federal courts to state law to determine the extent of privileges in civil proceedings. Although Mil. R. Evid. 501(d), as it existed at the time of the *Jaffee* decision, precluded application of such a privilege in courts-martial, Rule 501(d) was amended to prevent misapplication of a privilege. The language of Mil R. Evid 513 is based in part on Proposed Fed. R. Evid. (not enacted) 504 and state rules of evidence. Mil. R. Evid. 513 was created to establish a limited psychotherapist-patient privilege for civilians not subject to the UCMJ and military retirees. In keeping with the practice of American military law since its inception, there is still no doctor-patient or psychotherapist-patient privilege for members of the Armed Forces.

The analysis to Mil. R. Evid. 513 is created as follows:

''*199 Amendment:* Mil. R. Evid. 513 was created to establish a limited psychotherapist-patient privilege for civilians not subject to the UCMJ and military retirees. In keeping with the practice of American military law since its inception, there is still no doctor-patient or psychotherapist-patient privilege for members of the Armed Forces. Rule 513, and the related amendment to Mil. R. Evid 501(d), clarify the state of military law after the Supreme Court decision in *Jaffee* v. *Redmond, U.S.* _____ [116 S. Ct. 1923, 135 L.Ed. 2d. 337] (1996). *Jaffee* interpreted Fed. R. Evid. 501, which refers federal courts to state law to determine the extent of privileges in civil proceedings. Although Mil. R. Evid. 501(d), as it existed at the time of the *Jaffee* decision, precluded application of such a privilege in courts-martial, Rule 501(d) was amended to prevent misapplication of a privilege. The language of Mil R. Evid 513 is based in part on Proposed Fed. R. Evid. (not enacted) 504 and state rules of evidence.

The following new paragraph is inserted in MCM, part IV after paragraph 100:

100a. Article 134 (Reckless Endangerment)

a. Text. See paragraph 60.

b. Elements.

(1) That the accused did engage in conduct;

(2) That the conduct was wrongful and reckless or wanton;

(3) That the conduct was likely to produce death or grievous bodily harm to another person;

(4) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. Explanation.

(1) In general. This offense is intended to prohibit and therefore deter reckless or wanton conduct which wrongfully creates a substantial risk of death or serious injury to others.

(2) Wrongfulness. Conduct is wrongful when it is without legal justification or excuse.

(3) Recklessness. ''Reckless'' conduct is conduct that exhibits a culpable disregard of foreseeable consequences to others from the act or omission involved. The accused need not intentionally cause a resulting harm or know that his conduct is substantially certain to cause that result. The ultimate question is whether, under all the circumstances, the accused's conduct was of that heedless nature which made it actually or imminently dangerous to the rights or safety of others.

(3) Wantoness. ''Wanton'' includes ''reckless,'' but may connote willfulness, or a disregard of probable consequences, and thus describe a more aggravated offense.

(4) Likely to produce. When the natural or probable consequence of particular conduct would be death or grievous bodily harm, it may be inferred that the conduct is ''likely'' to produce that result. See paragraph 54c(4)(a)(ii).

(5) Grievous bodily harm. ''Grievous bodily harm'' means serious bodily injury. It does not include minor injuries, such as a black eye or a bloody nose, but does include fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other serious bodily injuries.

(6) Death or injury not required. It is not necessary that death or grievous bodily harm be actually inflicted to prove reckless endangerment.

d. Lesser included offenses. None.

e. Maximum punishment. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

f. Sample specification. In that _____ (personal jurisdiction data), did, (at/on board _____ location) (subject-matter jurisdiction data, if required), on or about _____ 19____, wrongfully and recklessly engage in conduct, to wit: (he/she) (describe conduct) and that the accused's conduct was likely to cause death or serious bodily harm to _____.

The following paragraph is added to the analysis of the punitive articles, A23, MCM:

100a. Article 134 (Reckless Endangerment).

c. Explanation. This paragraph is new and is based on *United States* v. *Woods,* 28 M.J. 318 (C.M.A. 1989); see also Md. Ann. Code art. 27, sect. 120. The definitions of ''reckless'' and ''wanton'' have been taken from Article 111, drunken or reckless driving. The definition of ''likely to produce grievous bodily harm'' has been taken from Article 128, assault.

Dated: April 29, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–11601 Filed 5–5–97; 8:45 am]

BILLING CODE 5000–04–P

DEPARTMENT OF DEFENSE

Department of the Army

Committee Meeting Notice

AGENCY: School of the Americas, Training and Doctrine Command.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), announcement is made of the following committee meeting:

Name of Committee: School of the Americas (SOA) Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: 21 and 22 May 1997.

Place: School of the Americas, Building 35, Fort Benning, Georgia.

Time: 0900–1700 on 21 May, 0900–1600 on 22 May 1997.

FOR FURTHER INFORMATION CONTACT: School of the Americas, Attention: TMD, MAJ Clemente, Room 333, Building 35, Fort Benning, GA 31905.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: Presentation by the Commanding General Training and Doctrine Command on the Subcommittee's report of the previous meeting and issues requested from that meeting.

1. Purpose of Meeting: This is the third SOA Subcommittee meeting. The subcommittee will receive a report from the Commander Training and Doctrine Command, and briefings they requested as a result of the second subcommittee meeting.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Committee Management Office in writing at least 5 days prior to the meeting date of their intent to attend.

3. Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the subcommittee chairman may allow public presentations of oral statements at the meeting.

4. All communications regarding this subcommittee should be addressed to Lieutenant Colonel Franklin Montalvo, Designated Federal Official, US Army School of the Americas, Attn: ATZB–SAZ–CS, Fort Benning, GA 31905–6245.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–11714 Filed 5–5–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Exclusive Licensing of U.S. Patent Application Concerning Liposomes Including Sterols Having Thiol Moieties and Peptides or Proteins Including CTL Epitopes and Administration Thereof

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial No. 08/764,469, entitled ''Liposomes Including Sterols Having Thiol Moieties and Peptides or Proteins Including CTL Epitopes and Administration Thereof,'' filed July 2, 1996. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Office of the Command Judge Advocate, U.S. Army Medical Research and Materiel Command, 504 Scott Street, Fort Detrick, Maryland 21702–5012, Attn: MCMR–JA.

FOR FURTHER INFORMATION CONTACT: CPT Elizabeth Arwine, Legal Advisor, (301) 619–2065 or fax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention is a method for production of an unlimited number of uniquely modified liposomes which result in an enhanced cytotoxic T lymphocyte (CTL) response and which can be used in production of vaccines and reagents. Modification occurs by altering the liposomes to include at least one sterol having at least one thiol moiety and which include peptides or proteins. Examples of the method's utility include synthesis of peptides which may be used in construction of vaccines directed against viral and bacterial pathogens, composed of varied HIV subunits, or in which enhanced CTL activity is desired.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–11715 Filed 5–5–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant Exclusive Patent License; Medical Technology and Practice Patterns Institute, Inc.

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army hereby gives notice of its intent to grant to Medical Technology and Practice Patterns Institute, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government owned invention described in U.S. Patent Application Serial No. 08/764,469, entitled ''Liposomes Including Sterols Having Thiol Moieties and Peptides or Proteins Including CTL Epitopes And Administration Thereof,'' filed July 2, 1996. Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections may be filed with the Office of the Command Judge Advocate, U.S. Army Medical Research and Materiel Command, 504 Scott Street, Fort Detrick, Maryland, 21702–5012, Attn: MCMR–JA.

FOR FURTHER INFORMATION CONTACT: CPT Elizabeth Arwine, Legal Advisor, (301) 619–2065 or fax (301) 619–5034.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–11716 Filed 5–5–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 5, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the

information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: April 30, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Postsecondary Education

Title: Directory of Teacher Shortage Subject Areas for the Federal Perkins Loan Program.
Frequency: Annually.
Affected Public: Individuals or households; not-for-profit institutions; Federal Government; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 57.
Burden Hours: 2,127.
Abstract: The Higher Education Act of 1992 (Pub. L 102–325) enacted provisions for Federal Perkins Loan and National Direct Student Loan (NDSL) borrowers to receive a loan cancellation for providing teaching service in any field of expertise that is determined by the State education agency to have a shortage in certain subject areas.

[FR Doc. 97–11695 Filed 5–5–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Canadian Entitlement Allocation Extension Agreements (CEAEA)

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: The Administrator and Chief Executive Officer (CEO) of BPA, acting for BPA, and, as Chairman of the United States Entity (the Administrator of BPA and the Division Engineer, North Pacific Division of the United States Army Corps of Engineers), acting on behalf of the United States Entity, has decided to adopt for the CEAEA a Federal hydroelectric project allocation of 72.5 percent and a non-Federal hydroelectric project allocation of 27.5 percent.

This decision is consistent with the Columbia River System Operation Review (SOR) Final Environmental Impact Statement (EIS) (DOE/EIS–0170, November 1995) which evaluated the potential impacts of four alternatives that represent the likely range of allocations between the Federal and non-Federal projects. The selected allocation falls within this range of alternatives. None of the allocation alternatives influence power system operations under the system operating strategy selected in the Columbia River SOR on Selecting an Operating Strategy for the Federal Columbia River Power System (SOS) ROD, published February 1997.

ADDRESSES: Copies of the SOR Final EIS, Appendix P of the EIS (which presents the environmental review for the CEAEA), the SOS ROD, and complete copies of this ROD may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Mesa—PGPL–DITT2, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, phone number (360) 418–2152.

SUPPLEMENTARY INFORMATION: The Columbia River Treaty (Treaty), ratified in 1964, required the construction of three storage dams in Canada. These storage dams provide regulated streamflows that enable hydroelectric projects downstream in the United States to produce additional power benefits. The Treaty requires the United States to deliver to Canada one-half of these downstream power benefits (known as the Canadian Entitlement).

The Canadian Entitlement is generated downstream in the United States at both Federal and non-Federal hydroelectric projects. The Canadian Entitlement Allocation Agreements (CEAA), also executed in 1964, established how the Canadian Entitlement was to be attributed collectively to the six downstream Federal hydroelectric projects and to each of the five downstream non-Federal projects.

The Administrator's decision on the new allocation agreements, the CEAEA, establishes both the Federal and non-Federal allocation of the Canadian Entitlement. The CEAEA will begin to replace the existing CEAA when the first portion of the Canadian Entitlement is returned to Canada in 1998. The CEAEA extend to 2024, since the United States' obligation to return the Canadian Entitlement continues to 2024, the first year the Treaty can be terminated with 10 years' notice.

Issued by the United States Entity in Portland, Oregon, on April 29, 1997.

Randall W. Hardy,

Administrator and CEO, Bonneville Power Administration, and Chairman, United States Entity.

[FR Doc. 97–11730 Filed 5–5–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11175–002 Minnesota]

Crown Hydro Company; Notice of Proposed Restricted Service List on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

April 30, 1997.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgement of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission is consulting with the Minnesota State Historic Preservation Office (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to 36 CFR 800.13 of the Council's regulations implementing Section 106 of the National Historic Preservation Act, as amended, (16 USC 470f), to prepare a Programmatic Agreement for managing properties in or eligible for inclusion in the National Register of Historic Places at Project No. 11175.

The Programmatic Agreement, upon approval by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106

[1] 18 CFR 385.2010.

responsibilities for all individuals undertakings carried out in accordance with the agreement until the agreement expires or is terminated (36 CFR 800.13(e)).

Crown Hydro Company as prospective licensee for the project, is being asked to participate in the consultation and is being invited to sign as a concurring party to the Programmatic Agreement.

For purposes of commenting on the Programmatic Agreement we propose to restrict the service list for Project No. 11175 as follows:

Nina Archabal, Minnesota Historical Society, 345 Kellog Blvd. West, St. Paul, MN 55102–1906, Advisory Council on Historic Preservation, Eastern Office of Project Review, The Old Post Office Building, Suite 809, 1100 Pennsylvania Avenue, NW, Washington, DC 20004

Tom Griffin, Crown Hydro Company, 5436 Columbus Avenue, Minneapolis, MN 55417

Robert F. Copeland, Minneapolis Heritage Preservation Commission, Room 210, 350 South Fifth Street, Minneapolis, MN 55415–1385.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE, Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on the motion.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11701 Filed 5–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–002]

El Paso Natural Gas Company; Notice of Compliance Filing

April 30, 1997.

Take notice that on April 25, 1997, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective on April 10, 1997:

Substitute Fourth Revised Sheet No. 113
Substitute First Revised Sheet No. 290
Original Sheet No. 290A
Third Revised Sheet No. 338

El Paso states that it has revised certain aspects of its negotiated rate tariff provisions in compliance with the Commission's order issued April 10, 1997 at Docket No. RP97–287–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–11703 Filed 5–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–340–000]

Gas Research Institute; Notice of Refund Report

April 30, 1997.

Take notice that on April 25, 1997, the Gas Research Institute (GRI) filed its report summarizing its 1996 Tier 1 refunds made to its pipeline members.

GRI states that the refunds, totaling $27,700,087 to twenty-nine pipelines, were made in accordance with the Commission's October 13, 1995 directive reflected in Opinion No. 402 (73 FERC ¶ 61,073).

GRI states that it has served copies of the filing to each person included on the Secretary's service list.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–11706 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–339–000]

KO Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 30, 1997.

Take notice that on April 25, 1997, KO Transmission Company (KO Transmission) tendered for filing to become a part of KO Transmission's FERC Gas Tariff, Original Volume No. 1, the pro forma tariff sheets on Appendix A attached to the filing, proposed to be effective on June 1, 1997.

On July 17, 1996, the Commission issued Order No. 587 in Docket No. RM96–1–000 (Final Rule). The Final Rule adopts certain standardized business practices and electronic communication practices promulgated by the Gas Industry Standards Board (GISB) and requires pipelines to comply with the requirements of the GISB standards by incorporating by reference the standards into Commission regulations. The purpose of this filing is to comply with the Final Rule.

KO Transmission states that copies of this filing were served to KO Transmission's firm and interruptible customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NW., 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 as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make any protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–11705 Filed 5–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–399–001 and ER97–449–001]

Montana Power Company; Notice of Filing

April 30, 1997.

Take notice that on March 31, 1997, Montana Power Company tendered for filing an amendment to its January 31, 1997, filing in the above-referenced dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 12, 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 to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–11754 Filed 5–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–21–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreement

April 30, 1997.

Take notice that on April 25, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance (1) A non-conforming service agreement with Northwest Natural Gas Company (Northwest Natural), and (2) Third Revised Sheet No. 363 of its FERC Gas Tariff, Third Revised Volume No. 1, to become effective April 8, 1997.

Northwest states that the non-confirming service agreement provides for a periodic, temporary reallocation of up to 20,000 Dth per day of maximum daily delivery obligations from the Northeast Portland delivery point to the Portland West delivery point in order to accommodate firm transportation of vaporized LNG from Northwest's Plymouth LNG storage facility. Northwest also states that it filed a revised Sheet No. 363 to add this agreement to its list of non-conforming service agreements.

Northwest states that a copy of this filing has been served upon all of Northwest's customers and upon interested state regulatory comissions.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–11700 Filed 5–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–112–020]

Tennessee Gas Pipeline Company; Notice of Refund Report

April 30, 1997.

Take notice that on April 28, 1997, Tennessee Gas Pipeline Company (Tennessee), pursuant to Article II, section 1(b) of the Stipulation and Agreement filed in the referred proceeding and 18 CFR 154.501(e), hereby submits its rate case refund report.

Tennessee states that the refunds include principal amounts for the period of July 1, 1995 through February 28, 1997 as well as interest calculated at the Commission interest rate, set forth in 18 CFR 154.501, from the 25th day of the month in which the customer's payment to Tennessee was due. Tennessee states that the total refund obligation was $191,233,137.26, inclusive of principal and interest.

Tennessee states that this amount was adjusted for customers who have elected to apply their rate case refund as a credit to their future billing of the GSR Settlement Surcharge and for other billing adjustments, resulting in a net refund of $154,274,766.86 as shown on Schedule 1 to the filing. Each customer was provided with a detailed and summary report supporting their refund calculation.

Tennessee states that each customer was served with a summary and detailed calculation of that customer's refund, along with their refunds.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 7, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–11702 Filed 5–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–001]

Transwestern Pipeline Company, Notice of Compliance Filing

April 30, 1997.

Take notice that on April 25, 1997, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, the following tariff sheets, proposed to be effective April 11, 1997:

Second Revised Volume No. 1

Second Revised Sheet No. 112
Fourth Revised Sheet No. 126
First Revised Sheet No. 138

Transwestern states that the above tariff sheets are being filed by Transwestern to comply with the Commission's April 11, 1997 Order allowing Transwestern to charge

negotiated transportation rates pursuant to the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking Methodologies, issued January 31, 1996. The tariff sheets modify Transwestern's form service agreements to conform to the tariff provisions in its negotiated rate proposal.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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 in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–11704 Filed 5–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–353–000]

Williston Basin Interstate Pipeline Company; Notice of Application

April 30, 1997.

Take notice that on April 17, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed an Abbreviated Application pursuant to Section 7(b) of the Natural Gas Act for an order permitting the abandonment of 2.1 miles of Marmarth-Bowman Lateral natural gas transmission pipeline located in Fallon County, Montana and 5.2 miles of the Marmarth-Bowman Lateral natural gas transmission pipeline located in Bowman and Slope Counties, North Dakota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin states that concurrently with this application, Williston Basin is filing for authority to replace these segments of the Marmarth-Bowman Lateral and to uprate the Maximum Allowable Operating Pressure (MAOP) of the Marmarth-Bowman Lateral from the Baker to Little Beaver mainline take-off to the town of Marmarth, North Dakota from its existing MAOP of 350 psig to an MAOP of 500 psig.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 21, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–11699 Filed 5–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Notice of Cases Filed During the Week of January 20 Through January 24, 1997

Office of Hearings and Appeals

During the Week of January 20 through January 24, 1997, the appeals, and applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: April 28, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 20 through January 24, 1997]

Date	Name and location of applicant	Case No.	Type of submission
01/21/97	Arawak Paving Co., Inc. Santa Barbara, California 93103.	RR272–280	Request for Modification/Rescission in the Crude Oil Refund Proceeding. IF GRANTED: The December 19, 1996 Dismissal, Case No. RG272–991, issued to Arawak Paving Co., Inc., would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
01/21/97	Poe Asphalt Paving, Inc. Santa Barbara, California.	RR272–278	Request for Modification/Rescission in the Crude Oil Refund Proceeding. IF GRANTED: The December 19, 1996 Dismissal, Case No. RG272–990, issued to Poe Asphalt Paving, Inc., would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of January 20 through January 24, 1997]

Date	Name and location of applicant	Case No.	Type of submission
01/21/97	Sankey Construction, Inc. Santa Barbara, California.	RR272–279	Request for Modification/Rescission in the Crude Oil Refund Proceeding. IF GRANTED: The December 19, 1996 Dismissal, Case No. RG272–992, issued to Sankey Construction, Inc., would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
01/22/97	Stand of Amarillo, Inc. Amarillo, Texas	VFA–0261	Appeal of an Information Request Denial. IF GRANTED: A December 12, 1996 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Stand of Amarillo, Inc. would receive access to certain DOE information.
01/22/97	William H. Payne	VFA–0262	Appeal of an Information Request Denial. IF GRANTED: The December 4, 1996 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and William H. Payne would receive access to certain DOE information.
01/24/97	Fried, Frank, Harris, Shriver & Jacobson Washington, D.C.	VFA–0263	Appeal of an Information Request Denial. IF GRANTED: The December 24, 1996 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Fried, Frank, Harris, Shriver and Jacobson would receive access to certain DOE information.

[FR Doc. 97–11732 Filed 5–5–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of March 17 Through March 21, 1997

During the week of March 17 through March 21, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: April 28, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 25

Week of March 17 Through March 21, 1997

Appeals

J. Richard Quirk, 3/19/97, VFA–0266

The DOE granted a Freedom of Information Act (FOIA) Appeal filed by J. Richard Quirk. The DOE remanded the request to the Savannah River Operations Office with instructions to conduct a new expanded search for responsive documents and to issue a new determination.

Niagara Mohawk Power Corp., 3/17/97, VEA–0004

The Niagara Mohawk Power Corporation (Niagara) filed an Appeal from a determination issued to it by the Office of Environmental Management (OEM). Niagara asserted that the OEM erroneously determined its liability for payment into the Uranium Enrichment Decontamination and Decommissioning Fund established under the Energy Policy Act of 1992. The Office of Hearings and Appeals found that the OEM properly determined Niagara's Special Assessment. Accordingly, Niagara's Appeal was denied

Personnel Security Hearings

Personnel Security Hearing, 3/21/97, VSO–0120

An Office of Hearings and Appeals Hearing Officer issued an opinion under 10 CFR Part 710 concerning the continued eligibility of an individual for access authorization. The Hearing Officer found that the individual has been a user of alcohol habitually to excess and has been diagnosed by a practicing psychiatrist as suffering from alcohol abuse, and has an illness or mental condition, which, in the opinion of that psychiatrist, causes or may cause a significant defect in judgment or reliability. The Hearing Officer further found that the individual failed to present sufficient evidence of rehabilitation, reformation or other factors to mitigate the derogatory information. Specifically, the Hearing Officer found that there was a significant risk that the individual might resume drinking since his asserted abstinence from alcohol was for less than a year and he had not fully accepted the Alcoholics Anonymous program. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Personnel Security Hearing, 3/21/97, VSO–0124

An Office of Hearings and Appeals Hearing Officer issued an opinion addressing the eligibility of an individual for access authorization under the provisions of 10 CFR Part 710. The Hearing Officer found that the DOE Office had presented sufficient evidence to show that the individual: (i) Had been diagnosed as polysubstance dependent and continued to have an alcohol-related disorder, and (ii) has engaged in conduct or which tends to show that he is not reliable and trustworthy. The

Hearing Officer also found that the individual had not shown he was rehabilitated or presented evidence which mitigated the security concerns of the DOE. Accordingly, the Hearing Officer recommended that the individual be denied an access authorization.

Request for Exception

Rice Oil Company, 3/21/97, VEE–0035

Rice Oil Company (Rice) filed an Application for Exception asking that it be relieved of the requirement of filing Form EIA–782B, entitled ''Resellers/ Retailers' Monthly Petroleum Products Sales Report'' and Form EIA–821, entitled ''Annual Fuel Oil and Kerosene Sales Report.'' The DOE found that exception relief was not warranted because Rice was not experiencing a special hardship, inequity or unfair distribution of burdens as a result of the requirement that it file the Forms. Consequently, the DOE denied the Application for Exception.

Refund Application

Wales Transportation, Ed McCormick, John Burkhart, Richard Cook, 3/18/97, RF272–97064, RF272–97065, RG272–1050, RG272–1051

The Department of Energy considered Applications for Refund filed in the Subpart V crude oil refund proceeding by Wales Transportation, Ed McCormick, John Burkhart and Richard Cook. The applications of the individuals were based on the purchases of petroleum products made by their trucking firm, C.A. White Trucking Company. The DOE found that the Wales application should be denied because the firm had given up its right to a Subpart V crude oil overcharge refund by filing a waiver in the Surface Transporters refund proceeding. The DOE further found that the three individuals should receive a refund for White's purchases, divided according to their respective ownership shares.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Carol Management Corporation	RF272–74782	3/21/97
Carol Management Corporation	RD272–74782	
Gerald Wright	RJ272–40	3/21/97
H.E. Butt Grocery Co	RF272–98776	3/21/97
Crowley Maritime Corp	RF272–98784	
Margaret M. Thomsen, et al	RK272–03032	3/17/97
S.C. Johnson & Son, Inc	RR272–00150	3/21/97
Toys ''R'' Us, Inc., et al	RK272–02030	3/21/97
Tupper Lake Central Schl Dist, et al	RF272–95314	3/18/97
Valley Camp Coal Company	RF272–86827	3/21/97
Vermont Depart. of Public Safety	RF272–97149	3/17/97
Vessels Gas Processing Co./Gas Engineering & Equip. Co	RF354–00007	3/17/97
Wales Transportation, Inc	RF272–97064	3/18/97
John Burkhart	RG272–1050	
Richard Cook	RG272–1051	
Ed McCormick	RF272–97065	
Western Industries Holding Corp., et al	RK272–4091	3/21/97

Dismissals

The following submissions were dismissed.

Name	Case No.
American Blackline Coatings	RG272–1
American Steel & Aluminum Corp	RG272–858
Bounds Oil Company	RF300–21836
Bruckerhoff Elevator/Sharon Walter	RK272–4176
Cairo Elevator	RG272–26
Cecil I. Walker Machinery Co	RG272–128
Charlotte School Dept	RF272–81158
Delran Township	RG272–137
Eastport School Dept	RF272–81159
Nationwide Moving & Storage Co	RG272–142
Pembroke School Dept	RF272–81157
Personnel Security Hearing	VSO–0135
Schafer Oil Company	VEE–0038
Spring Lake Public School Dist	RF272–80701
Towne Bus Corp	RF272–98734

[FR Doc. 97–11731 Filed 5–5–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5479–9]

Notice of Availability of Environmental Assessment for the Interim Final Rule for Environmental Impact Assessment of Nongovernmental Activities in Antarctica

AGENCY: U.S. Environmental Protection Agency (EPA).

NOTICE OF AVAILABILITY: The Environmental Protection Agency (EPA), pursuant to Public Law 104–227, the Antarctic Science, Tourism, and Conservation Act of 1996 (Act), has published an Interim Final Rule. In support of the Interim Final Rule, EPA prepared an Environmental Assessment (EA), ''Environmental Assessment of Proposed Rules for Non-Governmental Activity in Antarctica,'' and made a Finding of No Significant Impact (FNSI).

FOR FURTHER INFORMATION AND FOR COPIES OF THE EA, FNSI, AND INTERIM FINAL RULE CONTACT: Mr. Joseph Montgomery or Ms. Katherine Biggs, Office of Federal Activities (2252A), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; telephone: (202)564–7157 or (202)564–7144, respectively. Copies of the EA, FNSI and Interim Final Rule are also available on the World Wide Web at: http://es.inel.gov/oeca/ofa/. Information on the process for development of the EIS and Final Rule discussed in the **SUPPLEMENTARY INFORMATION** section below may also be obtained from these contacts.

SUPPLEMENTARY INFORMATION: The Act implements the Protocol on Environmental Protection (Protocol) to the Antarctic Treaty of 1959 (Treaty). Pursuant to the Act, the EPA is required to promulgate regulations that provide for assessment of the environmental impacts of nongovernmental activities, including tourism, in Antarctica and for coordination of the review of information regarding environmental impact assessments received from Parties to the Protocol. The EPA promulgated an Interim Final Rule so that the United States would have the ability to implement its obligations under the Protocol as soon as the Protocol enters into force. The EPA prepared the EA to evaluate the environmental and cultural impacts of an interim rule relative to the No Action Alternative, i.e., no interim rule. Based on the EA analysis, EPA issued a FNSI concluding that the promulgation of the Interim Final Rule will not have or cause significant impacts on the Antarctic environment. Through the EA, EPA concluded that the Interim Final Rule will foster appropriate environmental impact assessment and documentation procedures, including documentation regarding planned mitigation and monitoring, if appropriate, by tour operators; enhance the collection of data on effects and intensity of activities by nongovernmental visitors in Antarctica; reduce the likelihood of inadvertent environmental perturbations that may be avoidable; and will allow the U.S. to immediately ratify the Protocol which, in turn, should lead to its adoption by all Parties. The EPA concluded that all of the potential impacts of the Interim Final Rule would be beneficial for the Antarctic environment. The Interim Final Rule was issued without notice and comment pursuant to 5 U.S.C. 553(b)(B), as discussed in the Preamble to the Interim Final Rule and, for the same reasons, under 5 U.S.C. 553(d)(3) became effective on April 30, 1997 (**Federal Register**/Vol. 62, No. 83/Wednesday, April 30, 1997/23538–23549). The Interim Final Rule is limited in time and effect and applies only to nongovernmental activities to be conducted in Antarctica through the 1998–99 austral summer; it will expire upon the earlier of the end of the 1998–99 austral summer or upon issuance of a Final Rule. To support the regulatory development of the Final Rule, EPA is preparing an Environmental Impact Statement (EIS) to consider the environmental and regulatory issues to be addressed in the Final Rule and the alternatives for addressing these issues within the rule-making process. Although the Interim Final Rule was promulgated without public notice and comment, the Final Rule and the associated EIS will include extensive opportunities for public comment.

Responsible Official:

Dated: May 1, 1997.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 97–11758 Filed 5–5–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

April 30, 1997.

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 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.

DATES: Persons wishing to comment on this information collection should submit comments by July 7, 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 Number: 3060–XXXX.

Title: Auction Forms and License Transfer Disclosures—Supplement for the Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking in CC Docket No. 92–297.

Type of Review: New Collection.

Respondents: Businesses or other for-profit entities.

Category	Number of respondents	Estimated time for response
1. Ownership and Gross Revenues Information.	44,000	.5–4 hours.
2. Disclosure of Terms of Joint Bidding Agreements.	44,000	.5 hour.

Category	Number of respondents	Estimated time for response
3. Maintaining Ownership and Gross Revenues Information.	33,000	4 hours/5 year.
4. Transfer Disclosures.	44,000	.5 hour.

Total Annual Burden: 764,500 hours.

Total Cost to Respondents: $45,734,700.

Needs and Uses: The ownership, gross revenues and joint bidding agreement information portions of this collection will be used by the Commission to determine whether the applicant is legally, technically and financially qualified to be a licensee. Without such information, the Commission could not determine whether to issue the licenses to the applicants that provide telecommunications, multi-channel video programming distribution and other communications services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. The information will also be used to ensure the market integrity of future auctions. Likewise, the information collected in connection with § 1.2111(a) of the Commission's rules, 47 CFR 1.2111(a) (transfer disclosures), will be used to maintain the market integrity of future auctions and prevent unjust enrichment.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–11679 Filed 5–6–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission

April 29, 1997.

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 continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) Whether the proposed collection 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 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 information techniques or other forms of information technology.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M. St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CALL: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet to jboley@fcc.gov.

OMB Approval Number: 3060–.

Title: § 5.56, Procedure for Obtaining a Special Temporary Authorization (STA) in the Experimental Radio Service.

Form No.: N/A.

Type of Review: Existing collection in use without OMB control number.

Respondents: Not-for-profit institutions; Business or other for-profit; Small businesses and organizations.

Number of Respondents: 500.

Estimated time per response: 1 hour.

Total Annual Burden: 500 hours.

Estimated Cost per Respondent: Based on the estimated salaries of one technical (1½ hrs @ $25 per hr) and one clerical (½ hr @ $10 per hr), it is estimated that the total cost will be approximately $21,250.

Needs and Uses: In cases where a need is shown for operation of an experimental radio authorized station for a limited time only, a request for a Special Temporary Authorization (STA) to operate transmitting equipment will be accepted under the conditions set forth in § 5.56 (a), (b), & (c) of Part 5 of the Commission's Rules. The request may be filed as an informal application, normally by letter from the applicant, and shall contain the information specified in § 5.56(b). Since STAs are filed as informal requests, no form is required. The information collected is necessary to ensure that the STA request complies with Part 5 of the Commission's Rules, and that the proposed operation will not cause interference to existing government and non-government operations.

Due to an administrative oversight this information collection was not submitted to OMB for approval of the collection. The Commission is requesting OMB approval of this voluntary collection by May 12, 1997 to permit expeditious processing of the pending STAs.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–11681 Filed 5–2–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

April 30, 1997.

Open Commission Meeting Tentatively Scheduled for May 6, 1997, Rescheduled to Wednesday, May 7, 1997

The Federal Communications Commission has rescheduled the Open Meeting tentatively scheduled for Tuesday, May 6, 1997, to Wednesday, May 7, 1997, on the subject listed below. The meeting is scheduled to commence at 9:30 am, in Room 856, at 1919 M Street, NW., Washington, DC.

Item No. 1

Bureau: Office of General Counsel and Office of Communications Business Opportunities.

Subject: Title: Section 257 proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (GN Docket No. 96–113); Summary: The Commission will consider addressing implementation of Section 257.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media which includes, large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the

Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418–0460, or TTY (202) 418–1398; fax numbers (202) 418–2809 or (202) 418–7286.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–11784 Filed 5–1–97; 3:46 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a new Privacy Act system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552), the Federal Communications Commission (FCC), Office of the Managing Director, Operations Management and Services Division, is creating a system of records entitled ''FCC Employee Transit Benefit Program, FCC/OMD–7.'' This notice meets the requirement of documenting the change to the Commission's system of records inventory, and provides the public, Congress and the Office of Management and Budget (OMB) an opportunity to comment.

DATES: Any interested person may submit written comments concerning the routine uses of this system on or before June 5, 1997. OMB, which has oversight responsibility under the Privacy Act to review the system may submit comments on or before June 16, 1997. This system becomes effective without further notice on June 16, 1997, unless the comments received cause the Commission to change its decision.

ADDRESSES: Address comments to Federal Communications Commission Chief, Operations Management and Services Division, 1919 M St., NW, Room 404, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dorothy Conway, Privacy Act Liaison, at (202) 418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: The purpose of maintaining FCC Employee Transit Benefit Program records is to identify transit benefit applicants and recipients. This system will also provide a mechanism for monitoring disbursement of transit benefit subsidies.

FCC/OMD–7

SYSTEM NAME:

FCC Employee Transit Benefit Program.

SYSTEM LOCATION:

FCC, Office of Managing Director, AMD—Operations, Operations Management Services Division, 1919 M Street, NW, Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FCC employees who apply for and participate in the FCC Transit Benefit Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains various records required to administer the Transit Benefit Program. It contains information regarding the organizational location, telephone number, FCC badge number, home address, mode of transportation and monthly cost of transportation of any applicant who has submitted an application for the Transit Benefit Program. The system contains records and reports of disbursements to transit benefit recipients and information on local public mass transit facilities. The records in the system consist of the Employee Transit Benefit Program Application, Transit Benefit Certification Forms, and Change of Information on Employee Transit Benefit Program Application.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Employees Clean Air Incentives Act (section 2(a) of Pub. L. 103–172, found at 5 U.S.C. 7905).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Commission does not normally disclose records from this system of records. However, in the event it is appropriate, disclosure of relevant information may be made in accordance with the provisions of 5 U.S.C. 552a(b). Records and data may be disclosed as necessary pursuant to 5 U.S.C. 552a(b)(3):

1. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained;

2. To the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records; and

3. To the National Finance Center (the Commission's designated payroll office), the Department of the Treasury's Debt Management Services and/or a current employer to effect a salary, IRS tax refund or administrative offset to satisfy an indebtedness incurred for unofficial use of transit benefits; and to Federal agencies to identify and locate former employees for the purpose of collecting such indebtedness, including through administrative, salary or tax refund offsets. Identifying and locating former employees, and the subsequent referral to such agencies for offset purposes, may be accomplished through authorized computer matching programs. Disclosures will be made only when all procedural steps established by the Debt Collection Act of 1982, and the Debt Collection Improvement Act of 1996 or the Computer Matching and Privacy Protection Act of 1988 as appropriate, have been taken.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on 8½ x 11 and 8½ x 5 papers in file folders and on the transit benefit computer system. Storage will be at the FCC, Office of the Managing Director, AMD—Operations, Operations Management and Services Division, 1919 M Street, NW., Washington, DC 20554.

RETRIEVABILITY:

Records are retrieved by the employee's name and/or by the FCC Badge Identification Number.

SAFEGUARDS:

Records are maintained in a secured area and are available only to authorized personnel responsible for implementing the Program and whose duties require access. Computer systems are set up with a secured password. File cabinets where the records are stored will be controlled by on-site personnel when unlocked and locked when not in use.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Records Schedule 6, National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Communications Commission, Chief, Operations Management and Services Division, 1919 M St., NW., Room 404, Washington, DC 20554.

NOTIFICATION PROCEDURE:

Anyone inquiring about an employee record under the Transit Benefit Program should contact the Transit Benefit Program Coordinator. Individuals must supply their full name and FCC Badge Identification Number (ID Number must match what is in the system) in order for records to be located and identified.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures.

RECORD SOURCE CATEGORIES:

Information in the system of records is obtained from applications submitted by individuals for participation in the Transit Benefit Program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–11680 Filed 5–5–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–857]

Cable Services Action; Commission Announces En Banc Hearing on Industry Proposal for Rating Video Programming and on ''V-Chip'' Technology

April 23, 1997.

On June 4, 1997, the Federal Communications Commission will hold an en banc hearing on: (1) The joint proposal submitted to the Commission on January 17, 1997 by the National Association of Broadcasters, the National Cable Television Association and the Motion Picture Association of America describing a voluntary system for rating video programming (the ''industry proposal''); and (2) video programming blocking technology (the so-called ''V-chip'' technology). The en banc hearing will begin at 9:30 a.m. in the Commission meeting room, Room 856, 1919 M Street, NW., Washington, DC 20554. The Commission will announce participants and a hearing format in the near future.

On February 7, 1997, the Commission issued a public notice seeking comment on the industry proposal. See public notice, Commission Seeks Comment on Industry Proposal for Rating Video Programming, CS Docket No. 97–55, FCC 97–34, Report No. CS 97–6 (February 7, 1997). Copies of the public notice, which attaches a copy of the industry proposal as an Appendix, may be obtained from the Commission's Public Reference Room, Room 239, 1919 M Street, NW., Washington, DC, from the Commission's Internet site (http://www.fcc.gov/vchip), or by calling ITS, the Commission's transcription service, at (202) 857–3800.

In order to provide interested parties an opportunity to respond to matters raised in the en banc hearing, the due date for surreply comments in CS Docket No. 97–55 is extended from May 23, 1997 to June 16, 1997.

Media contact: Morgan Broman (202) 418–2358.

TV Ratings contact: Meryl S. Icove or Rick Chessen (202) 418–7096.

V-chip Technology contact: Rick Engelman (202) 418–2157.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–11720 Filed 5–5–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1169–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana, (FEMA–1169–DR), dated March 18, 1997, and related determinations.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 18, 1997:

Calcasieu, Cameron, and Jefferson Davis Parishes for Hazard Mitigation (already designated for Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–11733 Filed 5–5–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1175–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1175–DR), dated April 8, 1997, and related determinations.

EFFECTIVE DATE: April 22, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 22, 1997, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from severe flooding, severe winter storms, snowmelt, high winds, rain, and ice on March 21, 1997, and continuing, is of sufficient severity and magnitude that the provision of direct Federal assistance to ensure public health and safety is warranted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act'').

Therefore, I amend my declaration of April 8, 1997 to provide that the Federal Emergency Management Agency (FEMA) may reimburse 100 percent of the costs of providing direct Federal assistance for emergency work which FEMA approves retroactive to April 8, 1997 through April 30, 1997. This assistance may be provided to all counties currently designated under the major disaster declaration. You may extend this assistance for an additional period of time, if warranted.

Please notify the Governor of Minnesota and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dated: April 28, 1997.

Jane A. Bullock,

Chief of Staff.

[FR Doc. 97–11734 Filed 5–5–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1175–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–1175–DR), dated April 8, 1997, and related determinations.

EFFECTIVE DATE: April 21, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota, is hereby amended to include Categories C through G under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 8, 1997:

Big Stone, Blue Earth, Brown, Chippewa, Dakota, Grant, Lac Qui Parle, Le Suere, Nicollet, Polk, Redwood, Renville, Sibley, Stevens, Swift, Traverse, Wilkin, and Yellow Medicine for Categories C–G under the Public Assistance program (already designated for Individual Assistance, Categories A and B under the Public Assistance program and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–11735 Filed 5–5–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1174–DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State North Dakota (FEMA–1174–DR), dated April 7, 1997, and related determinations.

EFFECTIVE DATE: April 22, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 22, 1997, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe flooding, severe winter storms, heavy spring rain, rapid snowmelt, high winds, ice jams, and ground saturation due to high water tables beginning on February 28, 1997, and continuing, is of sufficient severity and magnitude that the provision of direct Federal assistance to ensure public health and safety is warranted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act'').

Therefore, I amend my declaration of April 7, 1997 to provide that the Federal Emergency Management Agency (FEMA) may reimburse 100 percent of the costs of providing direct Federal assistance for emergency work which FEMA approves retroactive to April 7, 1997 through April 30, 1997. This assistance may be provided to all counties currently designated under the major disaster declaration. You may extend this assistance for an additional period of time, if warranted.

Please notify the Governor of North Dakota and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: April 28, 1997.

Jane A. Bullock,

Chief of Staff.

[FR Doc. 97–11736 Filed 5–5–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1173–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota (FEMA–1173–DR), dated April 7, 1997, and related determinations.

EFFECTIVE DATE: April 22, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 22, 1997, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting, from severe flooding, severe winter storms, heavy spring rain, rapid snowmelt, high winds, and ice jams beginning on February 3, 1997, and continuing, is of sufficient severity and magnitude that the provision of direct Federal assistance to ensure public health and safety is warranted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act'').

Therefore, I amend my declaration of April 7, 1997 to provide that the Federal Emergency Management Agency (FEMA) may reimburse 100 percent of the costs of providing direct Federal assistance for emergency work which FEMA approves retroactive to April 7, 1997 through April 30, 1997. This assistance may be provided to all counties currently designated under the major disaster declaration. You may extend this assistance for an additional period of time, if warranted.

Please notify the Governor of South Dakota and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: April 28, 1997.

Jane A. Bullock,

Chief of Staff.

[FR Doc. 97–11737 Filed 5–5–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 27, 1997.

A. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Clifford R. Ronnenberg, Sunset Beach, California; to acquire 27.8 percent of the voting shares of Security First Bank, Fullerton, California.

Board of Governors of the Federal Reserve System, April 30, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–11691 Filed 5–5–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 am., Monday, May 12, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 pm. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 2, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–11938 Filed 5–2–97; 3:46 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

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 § 225.28 of Regulation Y (12 CFR 225.28) 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.

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 May 27, 1997.

A. Federal Reserve Bank of Cleveland (Jeffrey Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Fifth Third Bancorp, Cincinnati, Ohio; to acquire 100 percent of the voting shares of Suburban Bancorporation, Inc., Cincinnati, Ohio, and thereby indirectly acquire Suburban Federal Savings Bank, Cincinnati, Ohio, and thereby engage in operating a savings association, pursuant to § 225.28(b(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 30, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–11690 Filed 5–5–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 740]

Occupational Radiation and Energy-Related Health Research Grants; Notice of Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), announces that grant applications are being accepted for research projects relating to occupational safety and health concerns associated with occupational exposures to radiation and other hazardous agents at nuclear facilities and in other energy-related industries. Studies in the nuclear power industry and deliberate exposure of human subjects in radiation experiments are outside the scope of this announcement.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of ''Healthy People 2000,'' see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under the Public Health Service Act, as amended, section 301(a) (42 U.S.C. 241(a)) and the Occupational Safety and Health Act of 1970, sections 20(a) and 22 (29 U.S.C. 669(a) and 671). The applicable program regulation is 42 CFR Part 52.

Eligible Applicants

Eligible applicants include domestic and foreign non-profit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments and small, minority and/or woman-owned businesses.

Note: An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of

all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Availability of Funds

Approximately $250,000 is available in fiscal year (FY) 1997 to fund approximately 3 to 5 research project grants (R01). The amount of funding available may vary and is subject to change. Awards will range from $50,000 to $100,000 in total costs (direct and indirect) per year. Awards are expected to begin on or about September 1, 1997. Awards will be made for a 12-month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 HHS Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997 appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before State legislatures. This new law, section 503 of Public Law 104–208, provides as follows:

> Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress or any State legislative body itself.
>
> (b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, section 101(e), Public Law 104–208 (September 30, 1996).

Background

The Secretary, Department of Health and Human Services (HHS) and the Secretary, Department of Energy (DOE) signed a Memorandum of Understanding (MOU) transferring the authority and resources to manage and conduct energy-related analytic epidemiologic research from DOE to HHS. This includes the authority, resources, and responsibility for the design, implementation, analysis, and scientific interpretation of analytic epidemiologic studies of the following populations: workers at DOE facilities; other workers potentially exposed to radiation; and workers exposed to potential hazards resulting from non-nuclear energy production and use.

The Comprehensive Epidemiologic Data Resource (CEDR) was established by DOE to serve as a repository for data from epidemiologic studies they had sponsored prior to transferring this responsibility to CDC. These data are available to investigators who wish to conduct additional analyses on these completed studies in response to this program announcement. The CEDR is maintained by DOE and to access the data, an investigator must make an application to the DOE's Office of Environment, Safety and Health.

Purpose

NIOSH will support applied field research projects to identify and investigate the relationships between health outcomes and occupational exposure to radiation and other hazardous agents; epidemiologic methods research relevant to energy-related occupational health research; and research related to assessing occupational exposures.

Programmatic Interest

The focus of grants should reflect the following topical areas, emphasizing field research: (1) Occupational exposure assessment, (2) radiation measurement issues, (3) non-cancer morbidity and mortality outcomes, (4) meta-analysis and combined analysis methodologies, (5) uncertainty analysis, (6) effects of measurement error on risk estimates, and (7) studies of current workers.

(1) Retrospective Exposure Assessment

Epidemiologic studies of occupational cohorts frequently involve, and can generally benefit from, retrospective exposure assessment to provide estimates of exposure or categorize groups of workers by common exposure. Exposure assessment in energy-related occupational epidemiology requires evaluating exposures to various hazards including ionizing and non-ionizing radiation, metals, acids, and solvents. Grant opportunities encompass the fields of industrial hygiene and retrospective exposure assessment of health physics dosimetry. Research areas of general interest include: Methods to use limited data to best advantage; how to treat censored data in retrospective exposure assessment; uncertainty analysis techniques for industrial hygiene exposure data and health physics dosimetry; insight to sampling strategy design yielding a representative understanding of exposed groups; decision logic to select/use the most appropriate exposure metric for epidemiologic and risk assessment use; and, development approaches of ''Homogeneous Exposed Groupings'' and the advantages/limitations for epidemiologic use. Research opportunities of specific interest include: reconstruction and dose adjustment of historic film badges; exposure assessment for acid mists, carcinogenic solvents, exotic metals, and leukemogens; assessment of electromagnetic field exposure; and evaluation of biomarkers of exposure.

(2) Radiation Measurement Issues

This topic will focus on the applicability and utility of radiation dose data in epidemiological research. Examples of such issues include how to use nondetectable values and missing dose data in historical radiation exposure measurements, the accuracy of historical external dosimetry techniques (film and pocket dosimeters), combining external and internal doses into a useful index, historical bioassay, and radiochemistry techniques.

(3) Non-Cancer Morbidity and Mortality Outcomes

The majority of analytical epidemiologic research of health effects of energy-related occupational and environmental exposures has focused historically on the assessment of the association between cancer mortality

and exposure to ionizing radiation. Although the importance of this research should not be underestimated, it is essential that other potential adverse health effects, as well as other possible energy-related exposures, be thoroughly evaluated as well. Among these would be the possible effects of radiation on the reproductive, neurologic, and immune systems. Chemical exposures highly prevalent in Department of Energy facilities, such as beryllium and mercury, have also been associated with a variety of disease outcomes, particularly respiratory and neurologic in nature.

(4) Meta-Analysis and Combined Analysis Methodologies

Many of the cohorts at nuclear facilities are not individually large enough to detect statistically significant increases in mortality or incidence for rare cancer types. Methods and/or analyses for combining data across studies, whether in summary form or individual data, are valuable to the NIOSH research effort involving energy-related health research.

(5) Uncertainty Analysis

Measures of occupational exposure are inherently uncertain. Even when measures of external radiation exposure are generally available, the models used to estimate organ dose, shallow versus deep dose, neutron dose, etc., are subject to error. Measures of dose derived from biological monitoring of urine, feces, blood, etc., are even less precise. Methods for assessing the degree of error in various estimates of exposure to both ionizing radiation as well as other toxic agents (chemicals, EMF, etc.) are desirable.

(6) Effects of Measurement Error on Risk Estimates

Estimation of both bias and imprecision introduced into risk analyses through exposure measurement error have recently received considerable attention. Many of the suggested approaches are very computer intensive. Practical solutions to this problem with regard to the spectrum of epidemiologic designs (cohort, case-control, cross-sectional, etc.) are needed, with particular attention to the nature of exposure measurement in radiation epidemiology.

(7) Studies of Current Workers

Much of the epidemiologic research on nuclear workers conducted at nuclear facilities and other sites has emphasized retrospective studies. More recently new activities involve environmental restoration, waste management and other work that is not related to the design and production of nuclear weapons. Workers are being exposed to radiation and other hazardous agents under conditions and in processes not previously encountered. Exposure assessment, epidemiologic and related studies are needed to evaluate these new conditions and processes and the impact on worker health.

Reporting Requirements

Progress reports are required annually as part of the continuation application (75 days prior to the start of the next budget period). The annual progress reports must contain information on accomplishments during the previous budget period and plans for each remaining year of the project. Financial status reports (FSR) are required no later than 90 days after the end of the budget period. The final performance and financial status reports are required 90 days after the end of the project period. The final performance report should include, at a minimum, a statement of original objectives, a summary of research methodology, a summary of positive and negative findings, and a list of publications resulting from the project. Research papers, project reports, or theses are acceptable items to include in the final report. The final report should stand alone rather than citing the original application. Three copies of reprints of publications prepared under the grant should accompany the report.

In addition, under 45 CFR 74.36(c), ''The Federal Government has the right to: (1) Obtain, reproduce, publish, or otherwise use the data first produced under an award; and (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.'' This regulation is consistent with an HHS, DOE, MOU requirement that any data collected on workers at DOE facilities must be sent to DOE with personal identifiers removed. These data are then included in the CEDR database for future reference by other researchers. On or before the expiration date of the grant, the applicant shall submit study data, with appropriate documentation, to the CEDR, maintained by the Department of Energy at the Lawrence Berkeley Laboratory. This shall include analysis files and separate analytic files for all relevant study data, including demographic variables, radiation dosimetry, industrial hygiene, work history, and/or medical records data. A written report describing each data set and a code book for each data set shall also be submitted. Information about preparation of CEDR files can be obtained from Barbara Brooks (DOE Headquarters, telephone 301–903–4674) or Mark Durst (Lawrence Berkeley Labs, telephone 510–486–4136).

Evaluation Criteria

Upon receipt, applications will be reviewed by NIOSH for completeness and responsiveness. Applications determined to be incomplete or unresponsive to this announcement will be returned to the applicant without further consideration. If the proposed project involves organizations or persons other than those affiliated with the applicant organization, letters of support and/or cooperation must be included.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by appropriate peer reviewers in accordance with the review criteria stated below. As part of the initial merit review, a process (triage) may be used by the peer reviewers in which applications will be determined to be competitive or non-competitive using the evaluation criteria below to determine their scientific merit relative to other applications received in response to this announcement. Applications judged to be competitive will be discussed and be assigned a priority score. Applications determined to be non-competitive will be withdrawn from further consideration and the principal investigator/program director and the official signing for the applicant organization will be promptly notified.

The review criteria are:

—Scientific, technical, or medical significance and originality of proposed research;
—Appropriateness and adequacy of the experimental approach and methodology proposed to carry out the research;
—Qualifications and research experience of the Principal Investigator and staff, particularly but not exclusively in the area of the proposed research;
—Availability of resources necessary to perform the research;
—Adequacy of plans to include both sexes and minorities and their subgroups as appropriate for the scientific goals of the research. Plans for the recruitment and retention of subjects will also be evaluated.

The peer reviewers will critically examine the submitted budget and will recommend an appropriate budget and period of support for each scored application.

Secondary review criteria for programmatic importance are as follows:

1. Results of the initial review.
2. Magnitude of the problem in terms of numbers of workers affected.
3. Severity of the disease or injury in the worker population.
4. Usefulness to applied technical knowledge in the identification, evaluation, and/or control of occupational safety and health hazards.

Applicants will compete for available funds with all other approved applications that were submitted in response to this program announcement. The following will be considered in making funding decisions:

1. Quality of the proposed project as determined by peer review.
2. Availability of funds.
3. Program balance among research areas of the announcement.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit. In addition, the applicant will be responsible for complying with a NIOSH–DOE agreement that assures the research protocol is reviewed by the institutional review committee(s) (if such a committee exists) at each DOE site where the research will be conducted. This process will be coordinated by NIOSH after the award of the grant.

Women and Racial and Ethnic Minorities

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Confidentiality Agreement

To comply with the routine uses allowing access to Department of Energy (DOE) Privacy Act systems of records, grantees who will be accessing DOE records to conduct epidemiologic studies and/or other public health activities on behalf of NIOSH will be asked to sign a written statement that documents data security procedures to be maintained by the grantee and an agreement to comply with the privacy and confidentiality requirements of the Privacy Act routine uses and the Memorandum of Understanding between the Department of Energy and the Department of Health and Human Services.

Travel

The applicant shall include in its proposal the costs of travel to NIOSH in Cincinnati, Ohio, for the annual meeting of energy-related research extramural partners.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B., ''Applications''). It should be postmarked no later than May 30, 1997. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 (OMB Number 0925–0001) and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies on or before July 15, 1997 to: Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, (CDC), 255 East Paces Ferry Road, NE., Room 321, MS–E13, Atlanta, GA 30305.

C. Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailings.

2. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive a complete program description, information on application procedures, and application forms, call (404) 332–4561. You will be asked your name, address, and telephone number and will need to refer to Announcement 740. In addition, this announcement is also available through the CDC Home Page on the Internet. The address for the CDC Home Page is http://www.cdc.gov. If you have questions after reviewing the contents of all the documents, business management information may be obtained from Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS–E13,

Atlanta, GA 30305, telephone (404) 842–6535, fax: (404) 842–6513; internet: jcw6@cdc.gov. Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, MS–D30, Atlanta, GA 30333, telephone (404) 639–3343, fax: (404) 639–4616; internet: rmf2@cdc.gov.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: April 29, 1997.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–11688 Filed 5–5–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Environmental Assessment for Off-Road Vehicle Management Program Cape Cod National Seashore

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The National Park Service has available for public review, the Environmental Assessment (EA) to evaluate the proposed regulation for off-road vehicle (ORV) use at Cape Cod National Seashore (CCNS). In order to resolve an ongoing issue, ORV use on Cape Cod National Seashore beaches, CCNS convened a negotiated rulemaking committee (per the Federal Advisory Commission Act [FACA, Pub. L. 92–463, 5 U.S.C. App. II Sec 9(c)], and the Negotiated Rulemaking Act, 5 U.S.C. 561–570) in September 1995. ORV use and management of ORV use has led to many years of controversy, litigation and several different proposed regulations. These regulations have attempted to provide a wide range of visitor experiences and minimize users conflicts while also providing optimum protection for the piping plover (Charadrius melodus) in compliance with the Endangered Species Act of 1973, as amended, and other natural and cultural resources located within the areas utilized by ORVs. The proposed regulation resulting from the negotiated rulemaking process is published elsewhere in this issue of the **Federal Register**.

The EA is available for review at CCNS Headquarters located in South Wellfleet, MA from 8 to 4:30, Monday through Friday. Copies of the EA may be obtained by writing to the Superintendent at the address shown below.

FOR FURTHER INFORMATION CONTACT: Maria Burks, Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, South Wellfleet, MA 02667. Telephone 508–349–3785.

Dated: April 24, 1997.

Chris L. Andress,

Division Chief, Ranger Activities Division.

[FR Doc. 97–11432 Filed 5–5–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 26, 1997. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by May 21, 1997.

Paul Lusignan,

Acting Keeper of the National Register.

ARKANSAS

Benton County

Applegate, Joe, House
(Arkansas Designs of E. Fay Jones MPS)
2301 SW. 2nd St.,
Benton, 97000451.

Carroll County

Thorncrown Chapel and Office
(Arkansas Designs of E. Fay Jones MPS)
AR 62, 0.5 mi. W of Eureka Springs,
Eureka Springs vicinity, 97000452.

Phillips County

Spirit of the American Doughboy Monument—Helena, Jct. of Cherry and Perry Sts.,
Helena, 97000455.

Sebastian County

Spirit of the American Doughboy Monument—Fort Smith,
4901 Midland Ave.,
Fort Smith, 97000454.

Washington County

Jones, E. Fay and Gus, House
(Arkansas Designs of E. Fay Jones MPS)
1330 N. Hillcrest,
Fayetteville, 97000453.

FLORIDA

Jackson County

Marianna Historic District
(Marianna MPS)
Bounded by Davis, Park, Jackson, and Wynn Sts.,
Marianna, 97000456.

Polk County

Henley Field Ball Park,
1125 N. Florida Ave.,
Lakeland, 97000458.

Volusia County

Southwest Daytona Beach Black Heritage District
(Daytona Beach MPS)
Roughly bounded by Foote Court, South St., Dr. Martin Luther King Blvd., and the FEC RR tracks.,
Daytona Beach, 97000457.

GEORGIA

De Kalb County

Decatur Cemetery, 229 Bell St., Decatur, 97000459.

ILLINOIS

Champaign County

Alpha Rho Chi Fraternity House (Fraternity and Sorority Houses at the Urbana-Champaign Campus of the University of Illinois MPS) 1108 S. First St., Champaign, 97000460.

IOWA

Harrison County

Woodbine Public Library, 58 5th St., Woodbine, 97000462.

Woodbury County

Sioux City Free Public Library, 705 6th St., Sioux City, 97000461.

KANSAS

Finney County

Cedar Cliff, 501 N. 9th St., Garden City, 97000464.

Shawnee County

Willits House, 1035 SW. Fillmore, Topeka, 97000463.

LOUISIANA

Acadia Parish

Hoffpauir, Ellis, House, 210 LeBlanc St., Etherwood, 97000467.

Lafourche Parish

Ledet House, LA 308, E of Bayou Lafourche, Racland vicinity, 97000468.

Sabine Parish

Miller, J. M., and Brother Store, 7886 LA 473, Florien, 97000465.

St. Martin Parish

Soulier House, 417 N. Main St., St. Martinville, 97000466.

MASSACHUSETTS

Barnstable County

Forestdale School, 87 Falmouth—Sandwich Rd., Sandwich, 97000469.
Union Hall, Town Hall Rd., E of MA 6, Truro, 97000470.

NEW YORK

Warren County

Riverside Train Station, Jct. of Hudson R. and NY 8, Johnsburg, 97000471.

NORTH CAROLINA

Cabarrus County

Bethel Church Arbor, Jct. of NC 1123 and NC 1121, Midland vicinity, 97000472.

Watauga County

Ward Family House, 8018 Rominger Rd., Sugar Grove vicinity, 97000473.

Yadkin County

Durrett—Jarratt House, 0.35 mi. SW of jct. of NC 1605 and NC 1569, Enon vicinity, 97000474.

TENNESSEE

Shelby County

Vollintine Evergreen North Historic District, Roughly bounded by Mclean Blvd., Vollintine Ave., University St., and Rainbow Cir., Memphis, 97000475.
Vollintine Evergreen Avalon Historic District, Roughly bounded by Stonewall, Vollintine, and Evergreen Sts., and Cypress Creek, Memphis, 97000476.

TEXAS

Dallas County

Santa Fe Terminal Buildings No. 1 and No. 2, 1114 Commerce St. and 1118 Jackson St., Dallas, 97000478.

Travis County

Zilker Park Historic District, 2100 Barton Springs Rd., Austin, 97000479.

Wise County

Texas Tourist Camp, 900—904 S US 81/287, Decatur, 97000477.

VIRGINIA

Amherst County

Hite Store, 0.25 mi. S of jct. of VA 778 and VA 666, Lowesville, 97000487.

Bedford County

Brook Hill Farm, 0.75 mi. S of jct. of US 221 and VA 643, Forest, 97000489.

Caroline County

Green Falls, Jct of VA 627 and VA 623, Bowling Green vicinity, 97000485.

Clarke County

Cool Spring Battlefield, Jct. of Shenandoah R. and VA 643, Berryville vicinity, 97000492.

Franklin County

Finney—Lee House, 0.75 mi. N of Jct. of VA 717 and VA 890, Snow Creek vicinity, 97000484.

Northumberland County

Claughton—Wright House, 2 mi. NE of Jct. of VA 623 and VA 624, Lewisetta vicinity, 97000491.

Page County

Spitler, Isaac, House, 2948 Oak Forest Ln., Luray vicinity, 97000486.

Smyth County

Greer, R. T., and Company, 107 Pendleton St., Marion vicinity, 97000481.
Konnarock Training School, Jct. of VA 603 and VA 600, Konnarock vicinity, 97000483.

Washington County

Brook Hall, 13160 Byars Ln., Abingdon vicinity, 97000490.

Virginia Beach Independent City

Miller—Masury, Dr. John, House, 515 Wilder Point, Virginia Beach, 97000488.

Williamsburg Independent City

Williamsburg Inn, 136 E. Francis St., Williamsburg, 97000480.

WASHINGTON

Jefferson County

Butler—Jackson House, 1703 Grand Ave., Everett, 97000494.
Everett High School, 2400 Colby Ave., Everett, 97000493.

WYOMING

Teton County

Mormon Row Historic District (Grand Teton National Park MPS) Roughly E of US 26–89–187 from Antelope Flats to Grand Teton National Park—Teton National Forest border, Moose vicinity, 97000495.

[FR Doc. 97–11710 Filed 5–5–97; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Telecommunications Industry Liaison Unit; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; implementation of Section 104(d) of the Communications Assistance for Law Enforcement Act.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published on April 10, 1996, in the **Federal Register** and allowed 60 days for public comment. A summary of these comments are included at the end of this notice.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 5, 1997. This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Department of Justice Desk Officer, Washington, D.C., 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285.

Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, N.W., Washington, D.C., 20530. Additionally, comments may be submitted to DOJ via fascimile to 202–514–1534.

The purpose of this notice is to request written comments and suggestions from the public, including telecommunications carriers, and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of 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 COLLECTION: The type of information acquired is required to be furnished by law in terms of a carrier statement, as set forth in subsection 104(d) of the Communications Assistance for Law Enforcement Act (CALEA) (Pub. L. 103–414, 47 U.S.C. 1001–1010). A template, which is not mandatory, has been developed through the consultative process with the telecommunications industry to facilitate submission of the telecommunications carrier statements.

Such information is quantitative and qualitative data necessary to identify any systems or services of a telecommunications carrier that do not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices as specified in the final capacity notice to subsection 104(a) of CALEA.

(2) The title of the information collection: ''Telecommunications Carrier Statement.''

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collections; Form number: None. Sponsored by the Federal Bureau of Investigation (FBI), United States Department of Justice.

(4) Who will be asked or required to respond, as well as a brief abstract; BUSINESS OR OTHER FOR PROFIT: Telecommunications carrier, as defined in CALEA subsection 102(8), will respond.

The collected data will be used in conjunction with law enforcement priorities and other factors to determine the telecommunications carriers that may be eligible for cost reimbursement according to section 104.

The amount and type of information collected will be minimized to ensure that the submission of this data by telecommunications carriers will not be burdensome nor unreasonable. Each telecommunications carrier will submit a statement identifying any of its systems or services that do not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices as set forth in the final capacity notice.

Based on consultation with industry, information solicited to specifically identify such systems and services that cannot meet the estimated capacity requirements will include: Common Language Location Identifier (CLLI) code or equivalent identifier, switch model or other system or service type, and the city and state where the system or service is located. Unique information required for wireline systems and services would include the host CLLI code if the system or service is a remote and the county name(s) that the system or service serves. Unique information required for wireless systems and services would include the Metropolitan or Rural Service Area number(s), or the Metropolitan or Basic Trading Area number(s) served by the system or service.

Confidentiality regarding the data received from the telecommunications carriers will be protected by statute, regulation, and through non-disclosure agreements as necessary.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The FBI estimates that there are approximately three-thousand four-hundred ninety-seven (3,497) telecommunications carriers, with approximately twenty-three thousand (23,000) unique systems or services, that will be affected by this collection of information. The total amount of time required to complete the Telecommunications Carrier Statement will vary, depending upon the total number of systems and services that the telecommunications carrier deploys that provide a customer or subscriber with the ability to originate, terminate, or direct communications. The time required to read and prepare information, for one system or service is estimated at 10 minutes. There is also an associated startup time per carrier that is estimated at 2 hours. This startup time consists of reading the Telecommunications Carrier Statement and determining data sources.

(6) An estimate of the total public burden (in hours) associated with the collection is 10,904 hours. These estimates were derived from close consultation with industry.

Public comment on this proposed information collection is strongly encouraged.

Summary of Comments to the 60-Day Notice

Based on industry comments and to conform with the Second Notice of Capacity that was published in the **Federal Register** on January 16, 1997, the Telecommunications Carrier Statement Template has been changed to:

(a) Remove the capacity field. This information is no longer required because estimates of actual and maximum capacity requirements are being provided by geographical location in Appendices sections A through D of the Second Notice of Capacity.

(b) Associate the county(s) field to be unique information required for wireline systems and services only.

Pacific Telesis Group (PTG)

- PTG is concerned that the startup time does not include time required to evaluate the *Final Notice of Capacity Requirements* itself and match up switch capability with law enforcement needs. This is necessary before the template can be populated, and the time does not appear to be included in current estimates of hours required to complete the survey.

Response: CALEA, SEC. 104, (d) CARRIER STATEMENT states in part that, ''Within 180 days after the publication by the Attorney General of a notice of capacity requirements pursuant to subsection (a) or (c), a telecommunications carrier shall submit to the Attorney General a statement identifying any of its systems or services that do not have the capacity to accommodate.'' The PRA Carrier Statement estimates the hour burden for startup time to read the Telecommunications Carrier Statement and determine data sources. It was never intended to include time to evaluate the Final Notice of Capacity.

- PTG contends that it is extraordinarily difficult to determine the county for each prefix served by a switch. The difficulty escalates further for those switches located near county boundaries and which include prefixes that serve multiple counties. The work to make these identifications would be administratively burdensome and labor intensive, and would certainly exceed the ten-minute parameter utilized by TILU. PTG would support a change to the provision of information regarding county in which a switch resides, rather than counties served by each prefix within a switch.

Response: While we agree that county information does not reside in the traditional engineering and planning database, i.e., Local Switch Demand and Facility (LSD&F) database, this information is available in other databases such as E911 and Wirecenter Map Information. Also, software is available that provides information on wirecenter serving areas. One of the RBOCs stated on an ECSP Subcommittee conference call that they were able to extract county information from their E911 database. The mechanized Telecommunications Carrier Statement Template allows for the import of data from a database and provides instructions for dealing with imports from multiple databases.

United States Telephone Association (USTA)

- USTA recommends that the final review and public comment period be provided on this notice following the final promulgation of the Final Notice of Capacity requirements and Cost Recovery Procedures. Since the carrier statement is intended to respond to a notice of capacity requirements, responding to item 3c (''capacity'') is problematic. In short, the ability of carriers to complete column 3c, and the burden imposed by column 3c is directly related to the definition of

capacity in the Final Notice of Capacity requirements.

Response: CALEA, SEC. 104, (d) CARRIER STATEMENT states in part that, ''Within 180 days after the publication by the Attorney General of a notice of capacity requirements pursuant to subsection (a) or (c), a telecommunications carrier shall submit to the Attorney General a statement identifying any of its systems or services that do not have the capacity to accommodate * * *.'' This PRA Carrier Statement requires a minimum of 90 days for comment (one 60 day comment period and the current 30 day comment period). If the PRA Carrier Statement was deferred until after the issuance of the Final Notice of Capacity, the template would be unavailable for most of the 180 days. Furthermore, template item 3c (''capacity'') has been removed from the Telecommunications Carrier Statement Template.

- USTA believes that the template should apply to switches alone.

Response: The ''Equipment Type,'' item 3b, is intended for listing equipment that the carrier believes does not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices as specified in the Final Notice of Capacity to subsection 104(a) of CALEA. As stated in CALEA, SEC. 104, (d) CARRIER STATEMENT ''Within 180 days after the publication by the Attorney General of a Notice of Capacity requirements pursuant to subsection (a) or (c), a telecommunications carrier shall submit to the Attorney General a statement identifying any of its *systems or services* that do not have the capacity to accommodate * * *.'' The telecommunications carrier may need to identify any element in their network or other network (i.e., Service Control Point, Voice Mail System) that provides call identifying information or call content as identified in CALEA Section 103.

- USTA is not convinced that the burden imposed on carriers, especially small companies, by completing the template will be manageable as is implied in the notice [of Information Collection]. Given the lack of certain key definitions and terms upon which the template is based (e.g., capacity, service), this burden in fact could be significant.

Response: The concern about burden is based on lack of definitions such as capacity and service. The request for capacity information has been removed from the Telecommunications Carrier Statement Template. With regard to services, CALEA, SEC. 104, (d) CARRIER STATEMENT states in part that, ''Within 180 days after the publication by the Attorney General of a notice of capacity requirements pursuant to subsection (a) or (c), a telecommunications carrier shall submit to the Attorney General a statement identifying any of its *systems or services* that do not have the capacity to accommodate * * *''. The telecommunications carrier may need to identify any element in their network or other network (i.e., Service Control Point, Voice Mail System) that provides call identifying information or call content as identified in CALEA Section 103.

- CALEA requires carriers to be in compliance with the Act's capabilities requirements by October 1998. However, carriers are given three years following the publication of the Final Notice of Capacity in which to comply with the capacity requirements. USTA understands that TILU considers the operative deadline for compliance with the Act therefore is contingent on capacity requirements deadline, not the capabilities requirements deadline. USTA seeks final clarification of this issue.

Response: The FBI has no statutory authority to countermand the intentions of the Congress, and it has no authority to waive the statutory compliance dates specified in CALEA. There is, however, a provision and mechanism under CALEA, grounded in the principle of reasonableness, that offers relief to telecommunications carriers where there is a prospect that the capability assistance compliance deadline cannot be met. Section 107 of CALEA permits telecommunications carriers to seek an extension(s) of time from the FCC in order to achieve compliance with the assistance capability requirements under circumstances where a carrier can show that compliance with those requirements is not reasonably achievable through the application of available technology during the compliance period specified in Section 111. The Commission may grant such an extension after consultation with the Attorney General in those cases where such an extension is reasonably warranted. Since CALEA was enacted, it is generally understood that various carriers and manufacturers have moved at different paces in pursuing CALEA capability solutions. Given this, there is support for the perspective that CALEA's provisions, which contain mechanisms for reasonable treatment and compliance date extensions in special cases, should be utilized as enacted.

BellSouth Telecommunications, Inc.

- BellSouth is unable to estimate the amount of time required to complete a carrier statement which seeks data concerning the capacity of a system or service that is not a switch with a CLLI code.

Response: The ''Equipment Type'', item 3b, is intended for listing equipment that the carrier believes does not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices as specified in the Final Notice of Capacity to subsection 104(a) of CALEA. As stated in CALEA, SEC. 104, (d) CARRIER STATEMENT ''Within 180 days after the publication by the Attorney General of a Notice of Capacity requirements pursuant to subsection (a) or (c), a telecommunications carrier shall submit to the Attorney General a statement identifying any of its *systems or services* that do not have a capacity to accommodate * * *.'' The telecommunications carrier may need to identify any element in their network or other network (i.e., Service Control Point, Voice Mail System) that provides call identifying information or call content as identified in CALEA Section 103.

Ameritech

- Although the Notice states that carriers should provide information identifying ''systems and services'', the FBI should acknowledge that carriers will be providing information only regarding their switches. More importantly however, although the FBI's Electronic Surveillance Interface Document lists different services which the FBI views as subject to CALEA, the generic requirements [industry standard] currently being finalized, focus exclusively on building 'wiretap capability' within the switch.

Response: The ''Equipment Type'', item 3b, is intended for listing equipment that the carrier believes does not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices as specified in the Final Notice of Capacity to subsection 104(a) of CALEA. As stated in CALEA, SEC. 104, (d) CARRIER STATEMENT ''Within 180 days after the publication by the Attorney General of a Notice of Capacity requirements pursuant to subsection (a) or (c), a telecommunications carrier shall submit to the Attorney General a statement identifying any of its *systems or services* that do not have the capacity to accommodate * * *.'' The

telecommunications carrier may need to identify any element in their network or other network (i.e., Service Control Point, Voice Mail System) that does not have the capacity to accommodate the call identifying information or call content as identified in CALEA Section 103.

• Ameritech points out that the ''capacity'' of the switch has yet to be defined by the FBI.

Response: Law enforcement has defined capacity in the Second Notice of Capacity by geographic area as required in CALEA. The switch capacity is not required in the Telecommunications Carrier Statement. Therefore, template item 3c (''capacity'') has been removed from the Telecommunications Carrier Statement Template.

SBC Communications Inc.

• The estimate of time required to prepare the Telecommunications Carrier Statement, whether using template or not, is potentially understated. It is in the estimation of capacity that most of the work involved in the preparation of a Telecommunications Carrier Statement will occur, not in the preparation of the form itself. SBC estimates that it spent a minimum of 64 hours working on the Initial Capacity Notice developing data that will be used in filling out the Telecommunications Carrier Statement * * *.

Response: The PRA Carrier Statement estimates the hour burden for startup time to read the Telecommunications Carrier Statement and determine data sources. It was never intended to include time to evaluate the Final Notice of Capacity. The hour burden estimates were developed through the consultative process with the ECSP Committee. One of the assumptions was that most of the data could be obtained from the Local Switch Demand and Facilities (LSD&F) database or its equivalent. The concern that most of the work will involve capacity estimation will be eliminated because item 3c (''capacity'') has been removed from the Telecommunications Carrier Statement Template.

• Serving areas extend far beyond the location of the switch or other facility and are not kept by county in the ordinary course of business.

Response: While we agree that county information does not reside in the traditional engineering and planning database (e.g., LSD&F), this information is available in other databases such as E911 and Wirecenter Map Information. Also, software is available that provides information on wirecenter serving areas. One of the RBOCs stated on an ECSP Subcommittee conference call that they were able to extract county information from their E911 database. The mechanized Telecommunications Carrier Statement Template allows for the import of data from a database and provides instructions for dealing with imports from multiple databases.

• Concern was expressed about capacity requirements being stated based upon the conditions at the time of collection and that over time the requirements would change. SBC stated that ongoing collection and validation of data to determine capacity would exceed the time estimates in the Carrier Statement Notice.

Response: The Second Notice of Capacity issues estimated actual and maximum capacity requirements in actual numbers. A change in the requirements would only occur on the issuance of a new Notice of Capacity, which would require a response.

MFS Communications Company, Inc.

• MFS states, ''It is not clear that the information sought will be comprehensive or very useful to the FBI in fulfilling its notice requirements under CALEA for three major reasons'' that are listed.

First, the FBI's survey of existing switches and telecommunications capacity will likely capture only a minority of telecommunications carriers and will provide a distorted view of the industry. With the enactment of the Telecommunications Act, a number of new firms—like MFS—can be expected to enter or greatly expand their operations in the telecommunications market over the next four years. Obviously, those new entrants' capacity and networks, particularly those entrants who have not yet entered the market, will not be included. The Telecommunications Act also permits carriers to enter local telephone markets as resellers of local service capacity (e.g., AT&T buys capacity from NYNEX and resells it as local service). The impact of such resale activities on an aggregate estimate of capacity are unclear.

Second, CALEA includes only public telecommunications networks, and excludes private networks. So long as the definition of private networks is unclear, firms can minimize their CALEA reporting requirements and obligations if they unilaterally classify facilities as ''private network'' facilities. Often there is not a crisp distinction between public and private telecommunications networks and services, so there is a strong possibility that the survey will include a mismatch of services. There are many firms, such as shared tenant services (STS) providers that provide telephone service to the tenants of a building or campus and it is not clear whether the capacity of such offerings should be included.

Third, CALEA excludes information services. Again, a firm's CALEA obligations can be minimized to the extent that it unilaterally classifies its activities as information services. So long as the precise scope of information and telecommunications services is not defined, some firms will report capacity that others would not.

Response: As stated in CALEA, SEC. 104, (d) CARRIER STATEMENT ''Within 180 days after the publication by the Attorney General of a Notice of Capacity requirements pursuant to subsection (a) or (c), a telecommunications carrier shall submit to the Attorney General a statement identifying any of its *systems or services* that do not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the notice under such subsection.'' The Telecommunications Carrier Statement Template is not a survey and is not mandatory. The Telecommunications Carrier Statement Template was developed through the consultative process with industry representatives to facilitate submission of the Carrier Statement. The information requested will be used by law enforcement in conjunction with law enforcement priorities and other factors to determine the specific equipment, facilities, and services that require immediate modification.

In the Second Notice of Capacity, law enforcement provided a notice of estimated capacity requirements by geographic area and has selected counties as the appropriate basis for expressing capacity requirements for telecommunications carriers offering local exchange service (i.e., wireline carriers). Appendix A of the Second Notice of Capacity lists all actual and maximum capacity requirements by county. These requirements represent the simultaneous number of call-content interceptions and wireline interceptions of call-identifying information for each county in the United States and its territories. Wireline carriers may ascertain the actual and maximum capacity requirements that will affect them by looking up in Appendix A the county (or counties) for which they offer local exchange service.

Law enforcement's county capacity requirements are based on historical interception data and represent its interception needs anywhere in the county. The county requirements apply to all existing and any future wireline

carriers offering local exchange service in each county, regardless of equipment type used or customer base.

CALEA applies to all telecommunications carriers as defined in section 102(8). Notices will eventually be issued covering all telecommunications carriers. However, the Second Notice of Capacity and its associated Final Notice of Capacity should be viewed as a first phase application to telecommunications carriers offering services that are of most immediate concern to law enforcement—that is, those telecommunications carriers offering local exchange service and certain commercial mobile radio services, specifically cellular service and personal communications service (PCS).

The exclusion from the notice of certain telecommunications carriers that have services deployed currently or anticipate deploying services in the near term does not exempt them from obligations under CALEA.

- The hour burden depends on how each carrier interprets the meaning of capacity.

Response: The Second Notice of Capacity provides capacity requirements based on geographic area and states the estimated actual and maximum capacity numbers and not a percentage. Also, item 3c (''capacity'') has been removed from the Telecommunications Carrier Statement Template and therefore should not impact the estimated hour burden to respondents.

Synacom Technology, Inc.

- Synacom states, ''Law enforcement should provide some guidance as to which features and services should be accessible and then determine the capacity required for each feature and service. This is to prevent overbuilding the intercept capacity.'' Also, ''The information requested is largely unnecessary, because its resolution is not adequate to accurately measure compliance with neither the CALEA capability requirements nor the capacity notice.''

Response: The Telecommunications Carrier Statement Template was developed through the consultative process with industry representatives. The information requested will be used by law enforcement in conjunction with law enforcement priorities and other factors to determine the specific equipment, facilities, and services that require immediate modification.

- Synacom also states, ''* * * the burden to gather the required information is much more difficult to gather as it requires technical expertise to evaluate whether the systems of the telecommunications service provider collectively provide the required access for each of several independent features and services.''

Response: The Telecommunications Carrier Statement Template was simplified to its present form through the consultative process with the telecommunications industry. The telecommunications carriers need only list systems and services that do not meet the requirements of CALEA subsection 104(d). If any system or service does not meet the requirements of CALEA subsection 104(d), it must be reported.

- Synacom states that, ''There should be a 'jurisdiction' column instead of the 'county', 'city', and 'state' columns.'' Also, ''the 'MSA, RSA, MTA, or BTA' field is largely irrelevant.''

Response: In the Second Notice of Capacity, law enforcement provides a notice of estimated capacity requirements by geographical area and has selected counties and market as the appropriate basis for expressing capacity requirements for telecommunications carriers offering local exchange service. Appendix A of the Second Notice of Capacity lists all estimated actual and maximum capacity requirements by county. The selection of county as a means to define law enforcement requirements takes into consideration, by its very nature, a longstanding territorial location that is unchanged, well documented, is understandable to both law enforcement and industry, and takes into consideration a specific law enforcement jurisdiction. These requirements represent the simultaneous number of call-content interceptions and wireline interceptions of call-identifying information for each county in the United States and its territories. Wireline carriers may ascertain the estimated actual and maximum capacity requirements that will affect them by looking up in Appendix A the county (or counties) or Appendices B, C, D for which they offer local exchange service.

Law enforcement's county or market capacity requirements are based on historical interception data and represent its interception needs anywhere in the county or market. The county or market requirements apply to all existing and any future wireline carriers offering local exchange service in each county, regardless of equipment type used or customer base.

For wireless carriers, individual county boundaries were not considered to be feasible geographic designations for identifying capacity requirements. Instead, law enforcement determined that the wireless market service area would be the most appropriate geographic designations. Although these areas comprise sets of counties, the use of such market service areas best takes into account the greatest inherent mobility of wireless subscribers. What is most important is that historical information on wireless interceptions could only be associated with market service areas.

Therefore, the county(s) field of the Telecommunications Carrier Statement Template is information required for wireline systems and services only.

Dated: April 30, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–11708 Filed 5–5–97; 8:45 am]

BILLING CODE 4410–02–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Meeting of the Board of Directors Operations and Regulations Committee

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 24138 (May 2, 1997)

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on May 9, 1997. The meeting will begin at 10:00 a.m. and continue until the committee concludes its agenda.

CHANGES IN THE MEETING: The agenda has been revised as follows:

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the March 7, 1997, committee meeting.
3. Approval of minutes of the committee's March 7, 1997, executive session.

Closed Session

4. Report by legal counsel on litigation involving the Corporation.

Open Session

5. Consider and act on final revisions to 45 CFR Part 1610, the Corporation's regulation governing the use of non-LSC funds.
6. Consider and act on final revisions to 45 CFR Part 1639, the Corporation's regulation proscribing involvement in welfare reform.
7. Consider and act on a draft personnel rule to be codified at 45 CFR Part 1601.

8. Consider and act on proposed procedures to govern employee grievances filed against either the Inspector General or the President.

9. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Dated: May 2, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–11929 Filed 5–2–97; 3:11 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Corporation's Board of Directors

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 24139 (May 2, 1997).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: The Board of Directors of the Legal Services Corporation will meet on May 10, 1997. The meeting will begin at 9:00 a.m. and continue until conclusion of the Board's agenda.

CHANGES IN THE MEETING: The meeting agenda has been revised as follows:

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the March 8, 1997, Board meeting.
3. Approval of minutes of the March 23, 1997, Board meeting.
4. Approval of minutes of the Board's executive session of March 23, 1997.
5. Chairman's and Members' Reports.
6. President's Report.
7. Inspector General's Report.
8. Consider and act on the report of the Board's Finance Committee.
9. Consider and act on the report of the Board's Operations and Regulations Committee:
   a. Consider and act on final revisions to 45 CFR Part 1610, the Corporation's regulation governing the use of non-LSC funds.
   b. Consider and act on final revisions to 45 CFR Part 1639, the Corporation's regulation proscribing involvement in welfare reform.
   c. Consider and act on a draft personnel rule to be codified at 45 CFR Part 1601.
   d. Consider and act on procedures to govern employee grievances filed against either the Inspector General or the President.
10. Consider and act on the report of the Board's Provision for the Delivery of Legal Services Committee.
11. Consider and act on possible amendment to the Corporation's communications policy, as adopted on March 8, 1997.
12. Consider and act on proposed Report of the Board of Directors to accompany the Inspector General's Semiannual Report to the Congress for the period of October 1, 1996–March 31, 1997.

Closed Session

13. Briefing[1] by the Inspector General on the activities of the OIG, including but not limited to a status report on the OIG's special audits.
14. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

Open Session

15. Consider and act on making available to the incoming President of the Corporation copies of selected executive session transcripts, or excerpts thereof, for the purpose of providing him with background on specific issues relating to the Corporation and its operations.
16. Consider and act on scheduling of board and committee meetings for the period from July through December 1997.
17. Public comment.
18. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Dated: May 2, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–11930 Filed 5–2–97; 3:12 pm]

BILLING CODE 7050–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, May 8, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Faith Coal Co.,* Docket No. SE 91–97, et al. (Issues include whether the judge erred in finding that the operator violated 30 CFR 75.202(a) and 75.220 by permitting work or travel under an unsupported roof and by failing to comply with a requirement of its roof control plan to set cribs prior to splitting a pillar, and that a separate violation of section 75.220, involving cuts of excessive length and a crosscut driven into an area of unsupported roof, was the result of the operator's unwarrantable failure to comply with its roof plan, and whether the judge erred in vacating a citation alleging that the operator improperly operated a scoop loader that contained an inoperative methane monitor and in finding that the operator did not violate 30 CFR 75.203(b) by failing to use sight lines to control the direction of mining).

TIME AND DATE: 10:00 a.m., Thursday, May 15, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. *Contractors Sand & Gravel Supply, Inc.* v. *Secretary of Labor,* Docket No. EAJ 96–3 (Issues include whether the Commission has jurisdiction to review the decision of the administrative law judge issued pursuant to the Equal Access to Justice Act and whether the position of the Secretary was substantially justified in the underlying proceeding).

TIME AND DATE: 10:00 a.m., Thursday, May 29, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor o.b.o. Glover* v. *Consolidation Coal Co.,* Docket No. LAKE 95–78–D (Issues include whether the judge erred in finding that the operator discriminated against two mine representatives when it transferred them from positions as scooter barn mechanics to underground mechanics, and whether he properly assessed the penalty amount for the violation).

TIME AND DATE: 11:30 a.m., Thursday, May 29, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a) (2) and (b). See also 45 CFR § 1622.2 & 1622.3.

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor o.b.o. Glover* v. *Consolidation Coal Co.*, Docket No. LAKE 95–78–D (*See* oral argument listing, *supra*, for issues).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: May 1, 1997.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 97–11937 Filed 5–2–97; 3:39 pm]

BILLING CODE 6735–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that propose the destruction of records not previously authorized for disposal, or reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 20, 1997. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, College Park, MD 20740–6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Records Management Programs, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301) 713–7110.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be fur nished to each requester.

Schedules Pending

1. Department of the Army (N1–AU–96–1). Radiation safety program records.

2. Department of the Army (N1–AU–97–8). Personal financial record folders.

3. Department of the Army (N1–AU–97–9). Individual retirement records.

4. Department of Education (N1–441–97–1). Control correspondence management system and other facilitative records maintained by the Office of the Secretary (substantive program records are designated for permanent retention).

5. Department of Energy (N1–434–96–9). Routine administrative and housekeeping files relating to the management of Research and Development Projects, Project Working Papers, raw data that has been summarized in interim or final reports, and researchers notes. Complete Project Case Files for significant Projects, as well as final and interim reports for all Research and Development Projects will be retained as permanent records.

6. Department of Housing and Urban Development (N1–207–96–9). Records relating to the survey of mortgage lending activity system database (exclusive of electronic and textual output reports designated for preservation).

7. Department of Justice, Federal Bureau of Investigation (N1–65–97–01). Work orders maintained by the Special Projects Section, Laboratory Division.

8. Department of Justice, Immigration and Naturalization Service (N1–85–97–2). Reduction in retention period for alien identification cards, INS Form I–89, Camera Card.

9. Department of Justice, United States Marshals Service (N1–527–97–7). Audiovisual records documenting routine activities and administrative matters.

10. Defense Intelligence Agency (N1–373–96–2). Records relating to the General Intelligence Training System (GITS).

11. Panama Canal Commission (N1–185–97–12). Budgetary records.

Dated: April 28, 1997.

Michael J. Kurtz,

Assistant Archivist, for Record Services—Washington, DC.

[FR Doc. 97–11721 Filed 5–5–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:

Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On March 26, 1997 (62 FR 14448), the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on April 29, 1997 to the following applicant: Ron Koger, Permit #98–001.

Nadene G. Kennedy,

Permit Office.

[FR Doc. 97–11753 5–5–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the Goals 2000: Educate America Act of 1994, Title V, Public Law 103–227. The 27-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups.

TIME & PLACE: The meeting will be held from 8:00 a.m. to approximately 4:00 p.m. on Friday, May 30, 1997, in the Ballroom at the Ritz-Carlton located at 2100 Massachusetts Avenue, NW, Washington, D.C. 20008.

AGENDA: The agenda for the Board Meeting will include: a strategic plan update, progress on Voluntary Partnership start-up, proposed NSSB recognition programs, and a Web Site presentation.

PUBLIC PARTICIPATION: The meeting, from 8:00 a.m. to 4:00 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact Pat Warfield at (202) 254–8628, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT:

Majorie Haas, Director of Communications, at (202) 254–8628.

Signed at Washington, D.C., this 30th day of April, 1997.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 97–11709 Filed 5–5–97; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

[50–388]

Pennsylvania Power and Light Company; Susquehanna Steam Electric Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–22, issued to Pennsylvania Power and Light Company (the licensee), for operation of the Susquehanna Steam Electric Station, located in Luzerne County, PA.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the Technical Specifications for the unit to permit the use of ATRIUM–10 fuel in the reactor. The changes include core flow dependent minimum critical power ratio (MCPR) Safety Limits in Sections 2.1.2 and 3.4.1.1.2, addition of Siemens Power Corporation (SPC) methodology topical report references in Section 6.9.3.2, changes in Section 5.3.1 to reflect new fuel design features, changes in definitions in Section 1 to reflect the new fuel design, and changes to the Bases to correspond to the above changes as appropriate.

The proposed action is in accordance with the licensee's application for amendment dated December 18, 1996, as supplemented by letters dated February 26, 1997, March 12 and 27, April 3, 9, 16, 18, and 24, 1997.

The Need for the Proposed Action

The proposed action will enable the licensee to complete its maintenance and refueling outage on this unit and begin a new fuel cycle which will include a portion of the core consisting of the new ATRIUM–10 nuclear fuel.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that it is acceptable. The safety considerations associated with the use of the ATRIUM–10 fuel in the Susquehanna Steam Electric Station, Unit 2, have been evaluated by the NRC staff and the staff has concluded that this change in the reactor fuel design would not adversely affect plant safety. The proposed change to the fuel design has no adverse effect on the probability of any accident previously analyzed. The increase in fuel enrichment from 4.0% versus 4.5% for an increased fuel cycle of 24 months results in an increase in the projected maximum burnup rate or discharge exposure from the current 45 to 48 MWd/kgU. This increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident, but such changes would not significantly affect the consequences of serious accidents. Routine radiological effluents are not affected. As a result, there is no increase in individual or cumulative radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment and extended irradiation are discussed in the staff assessment entitled, ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation.'' This assessment was published in the **Federal Register** on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322), in connection with the Shearon Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5 weight percent U–235 and irradiation limits of up to 60 Gigawatt Days per Metric Ton (GWd/MT) are either unchanged, or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to the proposed increase in the allowable exposure of SPC ATRIUM–10 fuel for Susquehanna, Unit 2. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change will in no way affect environs located outside the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed change in the fuel exposure limit and the use of the new fuel design.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Susquehanna Steam Electric Station, Unit 2.

Agencies and Persons Consulted

In accordance with its stated policy, on May 1, 1997, NRC staff consulted with the Pennsylvania State official, R. Maiers of the Pennsylvania Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 18, 1996, as supplemented by letters dated February 26, 1997, March 12 and 27, April 3, 9, 16, 18, and 24, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 2nd day of May 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–11868 Filed 5–5–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 92nd meeting on May 20–22, 1997, in Room T–2B3, at 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, May 20, 1997—8:30 a.m. until 6 p.m.

Wednesday, May 21, 1997—8:30 a.m. until 6 p.m.

Thursday, May 22, 1997—8:30 a.m. until 4 p.m.

During this meeting, the Committee plans to consider the following:

A. *Planning for and Meeting with the Nuclear Regulatory Commission*—The Committee will prepare for and meet with the Commission to discuss items of mutual interest. Topics will include the ACNW priority list and past Committee reports on the reference biosphere and critical group, flow and transport models for Yucca Mountain, coupled processes in NRC's high-level waste prelicensing program, igneous activity at Yucca Mountain, and risk informed, performance based regulations. The Committee is currently scheduled to meet with the Commission on May 20, 1997 at 2:00 p.m.

B. *Generic Methodology for Decommissioning Performance Assessment (PA)*—The Committee will review the use of PA in the decommissioning of various facilities.

C. *Meeting with NRC's Director, Division of Waste Management, MSS*—The Committee will hold a current events discussion with the Director of NMSS. Topics might include the status of work at the Yucca Mountain site, and high-level waste standards and regulations.

D. *Meeting with Representatives of the DOE and NRC*—The Committee will meet with representatives of the Department of Energy and the NRC staff to discuss DOE's Performance Integrated Safety Assessment (PISA), experience with the use of expert elicitation in the high-level waste repository program, and comments on the defense-in-depth philosophy.

E. *Spent Fuel Dry Storage Facilities*—The Committee will review a draft version of the NRC staff's Standard Review Plan for a spent fuel dry storage facility.

F. *Central Interim Storage Facility*—The Committee will review DOE's non-site-specific Topical Safety Analysis Report (TSAR) for a Central Interim Storage Facility (CISF).

G. *Federal Guidance Report 13*—The Committee will review the Proposed Federal Guidance Report 13, Health Risk for Environmental Exposure to Radionuclides (tentative).

H. *Waste Classification at Hanford, Washington, and Savannah River, South Carolina*—The Committee will discuss the waste classification methodology used by the DOE for wastes resulting from HLW treatment and from bulk HLW removal and cleaning of tanks (tentative).

I. Preparation of ACNW Reports—The Committee will discuss potential reports, including igneous activity related to the proposed Yucca Mountain Repository, and other topics discussed during the meeting as the need arises.

J. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

K. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 8, 1996 (61 FR 52814). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend

should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8 a.m. and 5 p.m. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: April 30, 1997.

Andrew L. Bates,

Advisory Committee Management Office.

[FR Doc. 97–11717 Filed 5–5–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336, 50–423]

Northeast Utilities; Millstone Nuclear Power Station, Units 1, 2, and 3; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated October 28, 1994, as supplemented January 15, February 8 and 20, and October 14, 1995, submitted by Mr. Anthony J. Ross. The Petition pertains to Millstone Nuclear Power Station, Units 1, 2, and 3.

In the Petition, the Petitioner raised concerns regarding violations at the Millstone Station involving procedure compliance, work control, and tagging control and requested that ''accelerated'' enforcement action be taken against Northeast Utilities for these violations. As grounds for this request, the Petitioner asserted violations in these areas had increased significantly, that many of these violations had never been assigned a severity level by the NRC, and that when these violations are considered collectively, escalated enforcement action is warranted because of the repetitive nature of the violations.

The Director of the Office of Nuclear Reactor Regulation has granted the Petition, in part. In other respects, the Petition is denied. The reasons for this determination are explained in the ''Director's Decision Pursuant to 10 CFR 2.206'' (DD–97–11), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, New London Turnpike, Norwich, Connecticut, as well as at the temporary local public document room located at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision in that time.

Dated at Rockville, Maryland, this 29th day of April 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Director's Decision Pursuant to 10 CFR 2.206

I. Introduction

On October 28, 1994, Mr. Anthony J. Ross (Petitioner) filed a Petition with the Executive Director for Operations pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). By letter dated December 15, 1994, the NRC informed the Petitioner that he had not provided a sufficient factual basis to warrant action under 10 CFR 2.206. The NRC stated that if the Petitioner wished the staff to take action under 10 CFR 2.206, he needed to provide more information describing the specific technical violations that he alleged the NRC had not adequately addressed. By letters dated January 15, February 8, and February 20, 1995, the Petitioner supplemented his Petition by submitting lists of alleged violations. In the Petition, the Petitioner requested that ''accelerated enforcement action'' be taken against Northeast Utilities (NU) for violations at Millstone [1] involving procedure compliance, work control, and tagging control. As a basis for his request, the Petitioner asserted that since August 1993, violations in these areas had increased significantly, that many of these violations had never been assigned a severity level by the NRC, and that when all of the violations are considered collectively, escalated enforcement action is warranted because of the repetitive nature of the violations.

On February 23, 1995, the NRC informed the Petitioner that the Petition had been referred to the Office of Nuclear Reactor Regulation, and that action would be taken within a reasonable time regarding the specific concerns raised in the Petition.

NU responded to the NRC on May 12, 1995, regarding the issues raised in the Petition; the Petitioner submitted a response on July 11, 1995, regarding issues raised in the NU submittal.

On October 14, 1995, the Petitioner submitted a Petition requesting that the NRC take immediate enforcement action consisting of immediate suspension of the licenses to operate the three units at the Millstone Station, and immediate imposition of the maximum daily civil penalty allowed because of the numerous continuing and repetitive violations committed by the licensee since early 1989. The NRC informed the Petitioner by letter dated November 24, 1995, that because his October 14, 1995, Petition did not contain any new information but merely raised again the same issues as in his previous Petition, his October 14, 1995, Petition would be considered as an additional supplement to his January 15, 1995, Petition.[2]

II. Discussion

The Petitioner requested that ''accelerated enforcement action'' be taken against NU for violations at Millstone involving procedure compliance, work control, and tagging control. As a basis for his request, the Petitioner alleged that since August 1993, violations in these areas had increased significantly, that many of these violations had never been assigned a severity level, and that when these violations are considered collectively with violations that had been assigned a severity level, escalated enforcement action is warranted because of the repetitive nature of the violations. In his October 14, 1995, supplement to the Petition, the Petitioner requested that the NRC

[1] Northeast Nuclear Energy Company (NNECO/licensee), an electric-power operating subsidiary of NU, holds licenses for the operation of Millstone Nuclear Power Station, Units 1, 2, and 3.

[2] The Petitioner also asserted in his October 14, 1995, Petition that, since many of the violations had been substantiated by the NRC inspectors and/or the licensee, but have not been identified as violations by the NRC, the Office of the Inspector General (OIG) should conduct a full investigation of the NRC's neglect. In its November 24, 1995, letter, the NRC informed the Petitioner that this assertion would be referred to the OIG. In addition, in this letter, the Petitioner's request for immediate action was denied. The Petitioner's assertion of neglect by the NRC was referred to the OIG.

suspend the licensee's licenses to operate all three Millstone units, and impose a daily civil penalty until the licensee can assure the public and NRC that there will be no more violations in certain areas.

In the Petition and its supplements, the Petitioner provided numerous examples of what he believed were violations in the areas of procedure compliance, work control, and tagging control. The NRC had been aware of the examples described by the Petitioner. These examples were taken from NRC inspection reports dating back to 1989 and from other NRC documents. The NRC considered whether enforcement action should be taken for these violations in accordance with the guidance provided in the ''General Statement of Policy and Procedures for NRC Enforcement Actions'' (Enforcement Policy) in effect at the time that the violations occurred.[3] As provided in the Enforcement Policy, the basic enforcement sanctions available to the NRC include Notices of Violation (NOVs), civil penalties, and orders of various types, including Suspension Orders. As further provided in the Enforcement Policy, for those cases in which a strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty for each day that the violation continues.

In accordance with that guidance, some of the examples cited by the Petitioner were violations for which the NRC issued a NOV, but for the majority of the examples, no NOV was issued. In some instances in which no NOV was issued, the example was considered to be of only minor safety significance because it was not a violation that could reasonably be expected to have been prevented by the licensee's corrective actions for a previous violation, it was or will be, corrected within a reasonable time, and it was not willful, and therefore, was not cited in accordance with the above mentioned Enforcement Policy. With regard to other instances, the examples cited by the Petitioner did not constitute violations of NRC regulatory requirements, but instead were deviations from established procedures in non-safety-related areas, or simply constituted certain equipment problems or weaknesses in certain areas, which required further clarification or the attention of licensee management.

Nonetheless, the NRC shares the Petitioner's concern about the number and duration of these examples of failures in the areas of procedural compliance, work control, and tagging control. If the NRC were to reassess the examples provided by the Petitioner, it is possible that many could be classified as repetitive violations under the Enforcement Policy.[4] However, the NRC has determined that these examples are indicative of a more significant problem; specifically, a programmatic breakdown in management at the Millstone facility.

The NRC has been aware of weaknesses in the licensees operations at Millstone, and has taken significant regulatory action as a result. Specifically, programmatic concerns in the areas of procedural compliance, work control, and tagging control, were among the programmatic weaknesses common to all three Millstone units, which were identified in the most recent systematic assessment of licensee performance (SALP) report of August 26, 1994. These weaknesses included continuing problems with procedure quality and implementation, the informality in several maintenance and engineering programs that contributed to instances of poor performance, and the failure to take proper corrective action at the site. Based on these identified weaknesses, the NRC continued its increased inspection and oversight activities at the facility.

On November 4, 1995, the licensee shut down Millstone Unit 1 for a scheduled refueling outage. During an NRC inspection of licensed activities at Millstone Unit 1 in the fall of 1995, the NRC identified refueling practices and operations regarding the spent fuel pool cooling systems that were inconsistent with the updated Final Safety Analysis Report (UFSAR). The NRC sent a letter to the licensee on December 13, 1995, requiring that, before the restart of Millstone Unit 1, it inform the NRC, pursuant to Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), of the actions taken to ensure that in the future it would operate that facility according to the terms and conditions of the plant's operating license, the Commission's regulations, and the plant's UFSAR.

In January 1996, the NRC designated the units at Millstone as Category 2 plants. Plants in this category have weaknesses that warrant increased NRC attention until the licensee demonstrates a period of improved performance. In February and March 1996, the licensee shut down Millstone Units 2 and 3, respectively, due to design issues. In response to: (1) A licensee root-cause analysis of inaccuracies in the Millstone Unit 1 UFSAR that identified the potential for similar configuration-management conditions at Millstone Units 2 and 3; and (2) design configuration issues identified at these units, the NRC issued letters to the licensee, pursuant to 10 CFR 50.54(f), on March 7 and April 4, 1996. These letters required that the licensee inform the NRC of the corrective actions taken regarding design configuration issues at Millstone Units 2 and 3 before the restart of each unit.[5]

In June 1996, the NRC designated the units at Millstone as Category 3 plants due to additional inspection findings regarding design bases and design control, some of which were similar to the examples the Petitioner raised. Plants in this category have significant weaknesses that warrant maintaining them in a shutdown condition until the licensee can demonstrate to the NRC that it has both established and implemented adequate programs to ensure substantial improvement. Plants in this category require Commission authorization to resume operations.

On August 14, 1996, the NRC issued a Confirmatory Order directing the licensee to contract with a third party to implement an Independent Corrective Action Verification Program (ICAVP) to verify the adequacy of its efforts to establish adequate design bases and design controls. The ICAVP is intended to provide additional assurance, before each of the three Millstone units restart, that the licensee has identified and corrected existing problems in the design and configuration control processes.

The guidelines for approving the restart of a nuclear power plant after a shutdown resulting from a significant event, a complex hardware issue, or a serious management deficiency are found in NRC Inspection Manual Chapter (MC) 0350, ''Staff Guidelines for Restart Approval.'' MC 0350 states that the staff should develop a plant-specific restart action plan for NRC oversight of each plant startup. The restart action plan is to include those issues listed in MC 0350 that the NRC restart panel has deemed applicable to the reasons for the shutdown. In the

[3] The Enforcement Policy in effect at the time that the violations occurred was set forth at 10 CFR Part 2, Appendix C. The Commission's present Enforcement Policy is described in NUREG–1600.

[4] Section IV.B of the Enforcement Policy defines a repetitive violation as a violation that reasonably could have been prevented by a licensee's corrective action for a previous violation normally occurring (1) within the past 2 years of the inspection at issue, or (2) during the period within the last two inspections, whichever is longer.

[5] By letter dated April 16, 1997, the NRC clarified the information it needed pursuant to 10 CFR 50.54(f).

case of Millstone, the restart action plan will include those issues which the Petitioner has raised; specifically, procedure compliance, work control, and tagging control. Therefore, the NRC staff will thoroughly review these areas prior to the restart of each unit.

Following a determination that the relevant issues have been identified and corrected by the licensee, the NRC staff will make its recommendation for restart approval to the Commission regarding restart for each Millstone unit. Upon receipt of the staff's recommendation, the Commission will meet to assess the recommendation and vote on whether to approve the restart of the unit.

In addition, during eight NRC inspections conducted between October 1995 and August 1996, more than 60 apparent violations of NRC requirements were identified at Millstone, some of which were similar to the examples the Petitioner raised. These apparent violations were discussed with the licensee at a public pre-decisional enforcement conference held at the Millstone site on December 5, 1996. During the meeting, the licensee stated that management failed to provide clear direction and oversight, performance standards were low, management expectations were weak, and station priorities were inappropriate. Following its evaluation of the information presented at the enforcement conference, the NRC will determine whether further enforcement action is warranted for these apparent violations.

In sum, the issues raised by the Petitioner are indicative of a more fundamental problem of inadequate management oversight at the Millstone facility. The NRC has been aware of this programmatic problem and weaknesses in numerous areas of the licensee's program, including the areas of procedural compliance, work control, and tagging control, and has taken extensive regulatory action. In particular, as a result of action taken by the NRC, all three units at Millstone will remain shut down until the Commission approves restart of operations. Prior to such approval, the licensee is required to submit a response to the NRC's 10 CFR 50.54(f) letter dated April 16, 1997, identifying what actions the licensee has taken to ensure that in the future it would operate that facility according to the terms and conditions of the plant's operating license, the Commission's regulations, and the plant's UFSAR. This response will encompass the areas identified by the Petitioner and will be thoroughly reviewed by the NRC. In addition, the NRC is currently reviewing the apparent violations which have been identified as a result of inspections conducted at the facility between October 1995 and August 1996, and, following its review, will take such enforcement action as it deems is warranted.

These actions go beyond those requested by the Petitioner. Therefore, to the extent that the Petitioner has requested that the NRC take action against the licensee for violations at Millstone involving procedural compliance, work control, and tagging control, the Petition has been granted. Given the action already taken by the NRC, the NRC has determined that the additional enforcement action requested by the Petitioner is not warranted at this time.

III. Conclusion

The staff has completed its review of the information submitted by the Petitioner in his Petition and its supplements. The staff has concluded that the actions taken by the NRC against NU are appropriate and encompass the Petitioner's examples of violations in the areas of procedure compliance, work control, and tagging control. To this extent, the Petitioner's requests for enforcement action against NU is granted, in part. In other respects, the Petition is denied. As provided for in 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision in that time.

Dated at Rockville, Maryland, this 29th day of April 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–11724 Filed 5–5–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22646; 812–10594]

Core Trust (Delaware), et al.; Notice of Application

April 30, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Core Trust (Delaware) (''Core Trust''), Norwest Advantage Funds (the ''Trust''), and Norwest Bank Minnesota, N.A. (''Norwest'').

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 17(b) of the Act granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order under section 17(b) granting an exemption from section 17 (a) of the Act to permit: (a) A series of Core Trust to acquire all of the assets and assume all of the liabilities of another series of Core Trust; and (b) a series of the Trust to transfer all of its assets to a series of Core Trust in exchange for an interest in that series of Core Trust.

FILING DATE: The application was filed on March 26, 1997.

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 May 27, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Core Trust (Delaware) and Norwest Advantage Funds, Two Portland Square, Portland, Maine 04101, and Norwest Bank Minnesota, N.A., Norwest Center, Sixth and Marquette, Minneapolis, Minnesota 55479–1026.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, 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 at the SEC's Public Reference Branch.

Applicants' Representations

1. Core Trust, organized as a Delaware business trust, is registered under the Act as an open-end management investment company. Core Trust does not offer the securities of its various

series to the public; its securities are offered only in private placement transactions to institutional investors. Five series of Core Trust, including International Portfolio (the ''Target Portfolio''), operate as master funds pursuant to master-feeder arrangements under section 12(d)(1)(E) of the Act. Three other series of Core Trust, including International Portfolio II (the ''Acquiror Portfolio'') and Index Portfolio, are portfolios in which two or more investment companies invest in a fund-of-funds structure established pursuant to an exemptive order issued by the SEC.[1] Schroder Capital Management International Inc. (''Schroder'') serves as investment adviser to both Target Portfolio and Acquiror Portfolio. Norwest, a subsidiary of Norwest Corporation, serves as investment adviser to Index Portfolio. Target Portfolio and Acquiror Portfolio have the same investment objectives and policies.

2. The Trust, organized as a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust offers securities to the public in various series, including Conservative Balanced Fund, Moderate Balanced Fund, Growth Balanced Fund, Diversified Equity Fund and Growth Equity Fund (the ''Blended Funds''), Index Fund, and International fund. In accordance with the 1996 Order, each Blended Fund operates in a fund-of-funds structure and invests that portion of its assets that are allocated to an international style in Acquiror Portfolio and invests that portion of its assets that are allocated to an index style in Index Portfolio. The Blended funds are the only interestholders of Acquiror Portfolio and Index Portfolio.

3. International Fund operates in a master-feeder structure and invests all its investable assets in Target Portfolio. Other than a nominal interest held by Forum Financial Services, Inc., the administrator and placement agent of Core Trust and manager and distributor of the Trust, all of the outstanding interests in Target Portfolio are owned by International Fund.

4. Norwest serves as investment adviser to each series of the Trust. Schroder serves as subadviser to each Blended Fund with respect to that portion of a Blended Fund's assets, if any, that are allocated to an international style but are not invested in Acquiror Portfolio. Schroder also serves as subadviser to International Fund. Norwest and Schroder will provide their services to International Fund only in the event that the Fund's assets are withdrawn from Target Portfolio and invested directly in portfolio securities.

5. Norwest holds approximately 23 percent of the outstanding shares of Growth Equity Fund on behalf of the Norwest Corporation Savings Investment Plan, a defined contribution plan (the ''Norwest Defined Contribution Plan''), which represents an indirect interest in approximately 11 percent of the outstanding voting securities of Acquiror Portfolio and more than 10 percent of the outstanding voting securities of Index Portfolio. Norwest votes those shares of Growth Equity Fund held on behalf of the Norwest Defined Contribution Plan in proportion to the votes cast by other shareholders of the Growth Equity Fund.

6. Norwest owns approximately 68 percent of the total outstanding shares of the International Fund and more than 25 percent of the total outstanding shares of Index Fund on behalf of the Norwest Corporation Pension Plan, the Retirement Income Plan of the United Banks of Colorado, Inc. and the First Minnesota Employer's Pension Plan (collectively, the ''Norwest Pension Plans''). The Norwest Pension Plans are defined benefit plans sponsored by Norwest. Norwest also holds more than 10 percent of the outstanding voting securities of Index Fund on behalf of the Norwest Defined Contribution Plan. Norwest votes those shares of Index Fund held on behalf of the Norwest Defined Contribution Plan in proportion to the votes cast by other shareholders of the Index Fund.

7. As a result of its interests in Growth Equity Fund and International Fund, Norwest indirectly holds with power to vote more than 5 percent of the outstanding voting securities of Acquiror Portfolio in a fiduciary or representative capacity and owns more than 25 percent of the outstanding voting securities of Target Portfolio. In addition, Norwest indirectly holds with power to vote more than 5 percent of the outstanding voting securities of Index Portfolio and owns more than 25 percent of the outstanding voting securities of Index Fund.

8. On March 13, 1997, the Board of Trustees of Core Trust (''Core Board'') unanimously approved the combination of Target Portfolio and Acquiror Portfolio (the ''Reorganization'') to eliminate the duplicative functions and costs associated with operating two separate series of Core Trust that conduct business in substantially the same manner.[2]

9. The Core Board concluded that the Reorganization is in the best interests of the interestholders of Target Portfolio and Acquiror Portfolio and will not result in the dilution of the interests of any of the existing interestholders of Target Portfolio and Acquiror Portfolio. In approving the Reorganization, the Core Board noted that Target Portfolio and Acquiror Portfolio have the same investment objective, investment policies, associated risk profiles, service providers, advisory fees and expense ratios. The Core Board reviewed the annualized expense ratios of Target Portfolio and Acquiror Portfolio and noted that the expense ratio of the pro forma combined portfolio following the Reorganization would be likely to be less than the expense ratio of Target Portfolio prior to the Reorganization. In addition, The Core Board noted Norwest's interests in Target Portfolio and Acquiror Portfolio described above. The Core Board approved the Reorganization based on: (a) The similarities of Target Portfolio and Acquiror Portfolio; (b) the benefits that would accrue to the shareholders of Target Portfolio and Acquiror Portfolio after the Reorganization; (c) the tax-free nature of the Reorganization; (d) the terms and conditions of the Reorganization and the nondilutive effect of the Reorganization; and (e) the costs of the Reorganization.

10. The Plan of Reorganization and Liquidation (the ''Reorganization Agreement'') provides that Target Portfolio will transfer all of its assets and liabilities to Acquiror Portfolio in exchange for an interest in Acquiror Portfolio (the ''Interest''). The Interest will be equal in value to the net value of Target Portfolio's assets computed as of 4:00 p.m. on the date of the closing (as defined in the Reorganization Agreement). Target Portfolio will constructively distribute the Interest to its interestholders of record *pro rata* in exchange for their interests in Target Portfolio. The distribution will be accomplished by opening a capital account on Acquiror Portfolio's books in each interestholder's name, crediting thereto the interestholder's proportionate share of the Interest, and thereafter treating the interestholders for

[1] *See Norwest Bank Minnesota, N.A., et al.*, Investment Company Act Release Nos. 20640 (Oct. 19, 1994) (notice) and 20697 (Nov. 10, 1994) (order) (''Original Order''), superseded by *Norwest Bank Minnesota, N.A., et al.*, Investment Company Act Release Nos. 22056 (July 9, 1996) (notice) and 22120 (Aug. 6, 1996) (order) (the ''1996 Order'').

[2] Prior to being superseded by the 1996 Order, the Original Order prohibited a fund operating as a feeder fund in a master-feeder structure (such as International Fund) from investing its assets in a series of Core Trust in which any assets of a Blended Fund were invested. The 1996 Order now permits the combination of those assets.

all purposes as interestholders of record in Acquiror Portfolio.

11. The Board of Trustees of the Trust (''Trust Board'') and the Core Board unanimously approved, on January 25, 1997 and March 13, 1997, respectively, the investment of all of the investable assets of Index Fund in Index Portfolio (the ''Transfer'') in order to obtain economies of scale and eliminate duplicative functions and costs associated with operating two separate funds that conduct business in the same manner.

12. Each Board concluded that the Transfer is in the best interests of the shareholders of Index Portfolio and Index Fund and will not result in the dilution of the interests of any of the existing shareholders of Index Portfolio or Index Fund. Portfolio and Index Fund have the same investment objective, investment policies, associated risk profiles, service procedures, advisory fees and expense ratios. Each Board reviewed the annualized expense ratios of Index Portfolio and Index fund and the estimated expense ratios of each of Index Portfolio and Index Fund following the Transfer and noted that the estimated expense ratios would be the same as the expense ratios of each of Index Portfolio and Index Fund prior to the Transfer. In addition, each Board noted Norwest's interests in Index Fund and Index Portfolio. Each Board approved the Transfer based on: (a) The similarities of Index Portfolio and Index Fund; (b) the benefits that would accrue to the interestholders of Index Portfolio and Index Fund after the Transfer; (c) the tax-free nature of the Transfer; (d) the terms and conditions of the Transfer and the nondilutive effect of the Transfer; and (e) the costs of the Transfer.

13. The Plan of Division and Liquidation (the ''Transfer Agreement'') provides that Index Fund will transfer all of its assets to Index Portfolio in exchange for an interest in Index Portfolio (the ''Transfer Interest''). The Transfer Interest will be equal in value to the net value of Index Fund's assets computed as of 4:00 p.m. on May 30, 1997. The value of the assets transferred will be determined in accordance with the standard valuation procedures of Index Portfolio.

14. The expenses of the Reorganization, including all expenses related to obtaining exemptive relief from the SEC, will be borne *pro rata* by Target Portfolio and Acquiror Portfolio on the basis of their respective net assets. The expenses of the Transfer, including all expenses related to obtaining exemptive relief from the SEC, will be borne *pro rata* by Index Portfolio and Index Fund on the basis of their respective net assets.

15. Applicants state that no material change that would affect the application will be made to either the Reorganization Agreement or the Transfer Agreement without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, or any company controlled by such registered company, any security or other property.

2. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person, and any person directly or indirectly controlling, controlled by, or under common control with such other person, and if such other person is an investment company, any investment adviser thereof. Section 2(a)(9) of the Act defines ''control'' to mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Under section 2(a)(9), a person who owns 25% or more of the voting securities of a company is presumed to control such company.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

4. Applicants may not rely on rule 17a–8 in connection with the Reorganization because Target Portfolio and Acquiror Portfolio may be deemed to be affiliated in ways other than as permitted in the rule. Norwest controls or holds with power to vote more than 5% of the outstanding shares of Acquiror Portfolio and more than 25% of the outstanding voting securities of Target Portfolio.

5. Applicants may not rely on rule 17a–8 in connection with the Transfer because Index Fund and Index Portfolio may be deemed to be affiliated in ways other than as permitted in the rule. Norwest controls or holds with power to vote more than 25% of the outstanding voting securities of Index Fund and more than 5% of the outstanding shares of Index Portfolio.

6. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

7. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b) of the Act in that they are fair and reasonable and do not involve overreaching on the part of any party concerned, and that the Reorganization is consistent with both the policies of Target Portfolio and Acquiring Portfolio. In addition, applicants submit that the terms of the Transfer satisfy the standards set forth in section 17(b) in that they are fair and reasonable and do not involve overreaching on the part of any party concerned, and that the Transfer is consistent with both the policies of Index Fund and Index Portfolio.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11739 Filed 5–5–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22648; 812–10548]

Enterprise Group of Funds, Inc., et al.; Notice of Application

April 30, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: Enterprise Group of Funds, Inc., (''Enterprise Funds''), on behalf of its series, Enterprise Government Securities Portfolio (''Enterprise Government''), Enterprise Money Market Portfolio (''Enterprise Money''), Enterprise Growth and Income Portfolio (''Enterprise Growth and Income''), and Enterprise Small Company Growth

Portfolio (''Enterprise Small Company Growth'') (the series are collectively, the ''Enterprise Portfolios''); Enterprise Capital Management Inc. (''Enterprise Capital''); Retirement System Fund Inc. (''Retirement Inc.''), on behalf of its series, Intermediate Term Fixed Income Fund (''Retirement Intermediate''), Money Market Fund (''Retirement Money''), Core Equity Fund (''Retirement Core''), and Emerging Growth Equity Fund (''Retirement Emerging'') (the series are collectively, the ''Retirement Funds''); and Retirement System Investors, Inc. (''Retirement Investors'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(f)(1)(A).

SUMMARY OF APPLICATION: Applicants request an exemption from section 15(f)(1)(A) to permit Retirement Investors and its parent corporation to receive compensation in connection with Enterprise Funds' acquisition of the net assets of the Retirement Funds, without having to reconstitute Enterprise Funds' board of directors. Without the requested exemption, Enterprise Funds would have to reconstitute it boards of directors to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) in order to comply with the safe harbor provisions of section 15(f).

FILING DATES: The application was filed on March 7, 1997.

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 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 May 27, 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, NW., Washington, DC 20549. Applicants: Enterprise Group of Funds, Inc. and Enterprise Capital Management Inc., 3343 Peachtree Road, NE., Suite 450, Atlanta, Georgia 30326; Retirement System Fund Inc. and Retirement System Investors Inc., 317 Madison Avenue, New York, New York, 10017.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Staff Attorney, at (202) 942–0553, 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.

Applicants' Representations

1. Enterprise Funds is an open-end management investment company registered under the Act consisting of thirteen investment portfolios, including, Enterprise Government, Enterprise Money, Enterprise Growth and Income, and Enterprise Small Company Growth.

2. Enterprise Capital is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and, pursuant to an investment advisory agreement (''Enterprise Advisory Agreement''), serves as investment adviser for Enterprise Funds. The Enterprise Advisory Agreement authorizes Enterprise Capital to enter into subadvisory agreements with various investment advisers as portfolio managers for Enterprise Portfolios. Applicants state that it is contemplated that Retirement Investors will serve as portfolio manager for Enterprise Growth and Income.

3. Retirement Inc. is an open-end management investment company registered under the Act consisting of seven funds, including Retirement Intermediate, Retirement Money, Retirement Core, and Retirement Emerging. Retirement Investors is registered under the Advisers Act and serves as investment adviser for the Retirement Funds.

4. Applicants request an order under section 6(c) of the Act, exempting Enterprise Funds from the provisions of section 15(f)(1)(A) of the Act with respect to the proposed transaction (the ''Transaction''). The Transaction contemplates, among other things, reorganizations whereby the net assets of each of the Retirement Funds will be acquired by the respective Enterprise Portfolio, in exchange for an equivalent value of Class Y Shares[1] of the Enterprise Portfolio, which shares will be distributed to the shareholders of each Retirement Fund in liquidation thereof (the ''Reorganizations''). Applicants state that Enterprise Capital intends to compensate Retirement Investors and its parent corporation, Retirement Systems Group, Inc. (''Retirement Group'') in connection with the Transaction.

5. Retirement Investors and Retirement Group have executed a letter of intent with Enterprise Capital dated January 7, 1997 (the ''letter of Intent''). The Letter of Intent, among other things, contemplates that Retirement Intermediate be reorganized with Enterprise Government; Retirement Money be reorganized with Enterprise Money; and Retirement Core and Retirement Emerging be reorganized with two newly created portfolios of Enterprise Funds, Enterprise Growth and Income and Enterprise Small Company Growth, respectively. Applicants state that consummation of each of the Reorganizations contemplated by the Letter of Intent is subject to certain conditions, including negotiation and execution of a mutually satisfactory definitive agreement among Enterprise Capital, Retirement Investors and Retirement Group relating to the Transaction (the ''Transaction Agreement'') and receipt of various required approvals, including approval of the boards of directors of the mutual funds involved in the Transaction and approval by the shareholders of the Retirement Funds.

6. Retirement Investors, Retirement Group, and Enterprise Capital have agreed to bear their own expenses in connection with the negotiation and execution of the Transaction Agreement. In addition, Retirement Investors and Retirement Group have agreed to bear any expenses incurred by Retirement Inc. in connection with the Transaction.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to receive ''any amount or benefit'' in connection with a sale of securities of, or sale of any other interest in, such investment adviser (which results in an assignment of an advisory contract with such company) is certain conditions are met. Section 15(f)(1)(A) requires that, for a period of three years after such sale, at least 75 percent of the board of an investment company (or its successor, by reorganization or otherwise) may not be ''interested persons'' with respect to either the predecessor or successor adviser of the investment company.

2. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, or any rule or regulation thereunder, if the exemption is necessary of appropriate in the public interest and consistent with the protection of investors and the

[1] Applicants state that Class Y shares are not subject to any initial or contingent deferred sales charge, or any distribution or service fees pursuant to rule 12b–1 under the Act.

purposes fairly intended by the policy and provisions of the Act. Section 15(f)(3)(B) provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the SEC in determining whether, or to what extent, to grant exemptive relief pursuant to section 6(c) from section 15(f)(1)(A).

3. Applicants state that the net assets of Enterprise Government and Enterprise Money ($79,375,576 and $60,417,051 respectively, as of December 31, 1996) are substantially greater than the net assets of Retirement Intermediate and Retirement Money ($6,487,280 and $1,670,085 respectively, as of December 31, 1996), individually. Applicants also state that the net assets of Enterprise Funds ($952,100,717, as of December 31, 1996) as a whole are far greater than the net assets of the four Retirement Funds ($27,242,022, as of December 31, 1996), even though the two newly created portfolios will initially have no assets other than what is received from the Retirement Funds, making the Retirement Funds' assets less than 3% of Enterprise Funds' assets.

4. Applicants submit that it is appropriate for the assets of Enterprise Funds as a whole, as opposed to the individual Enterprise Portfolios, to be taken into account when considering the ''substantially greater'' test of section 15(f)(3)(B). Applicants contend that any other conclusion would be inconsistent with the literal language of the Act. Applicants state that section 15(f)(3)(B) specifically refers to the sale of assets of one investment company to another ''investment company with assets substantially greater in amount.'' Enterprise Funds is the investment company involved in each Reorganization and, in fact, the board of directors of Enterprise Funds must authorize the Reorganization on behalf of the Enterprise Portfolios.

5. The boards of directors of Retirement Inc. and Enterprise Funds consist of the following, including the respective number of directors who are ''interested persons,'' of Retirement Investors, Retirement Group, or Enterprise Capital, as the case may be, within the meaning of section 2(a)(19) of the Act (''Interested Directors''), and who are not Interested Directors (''Disinterested Directors''):

Investment company	Number of interested directors	Number of disinterested directors	Total
Enterprise Funds	3	4	7
Retirement Inc	3	4	7

In order to comply with section 15(f)(1)(A) following consummation of the transactions, Enterprise Funds would have to add five Disinterested Directors or reduce the number of Interested Directors from three to one. If Enterprise Funds were to add five Disinterested Directors, a vote of shareholders would be required pursuant to section 16(a) of the Act, which requires that at least two-thirds of a fund's trustees be elected by shareholders. Enterprise Funds would not otherwise be required to hold a shareholders meeting under Maryland law. Applicants submit that reconstitution of the board of Enterprise Funds would serve no public interest, and in fact, would be contrary to the interests of shareholders of Enterprise Funds.

6. For the reasons stated above, applicants submit that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11741 Filed 5–5–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22647; 813–162]

Merrill Lynch KECALP L.P. 1997 and KECALP Inc.; Notice of Application

April 30, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Merrill Lynch KECALP L.P. 1997 (the ''1997 Partnership'') and KECALP Inc. (the ''General Partner'').

RELEVANT ACT SECTION: Order requested under section 6(b).

SUMMARY OF APPLICATION: Applicants request an order to amend a prior order [1] (the ''1982 Order''), as previously amended by a subsequent order [2] (the ''1991 Order'' and, together with the 1982 Order, the ''Order''), to permit Merrill Lynch & Co., Inc. and its affiliates (''ML & Co.'') to acquire limited partnership interests in the 1997 Partnership and in any similar partnership commencing operations in the future (collectively, the ''Partnerships''). Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

FILING DATES: The application was filed on December 3, 1996, and amended on April 30, 1997.

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 May 27, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicants, South Tower, World Financial Center, 225 Liberty Street, New York, NY 10080–6123.

FOR FURTHER INFORMATION CONTACT: Suzanne Krudys, Senior Attorney, at (202) 942–0641, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The 1997 Partnership is a Delaware limited partnership registered under the Act as a non-diversified, closed-end management investment company. The

[1] *Merrill Lynch KECALP Ventures Limited Partnership 1982, KECALP Inc.*, Investment Company Act Release Nos. 12290 (Mar. 11, 1982) (notice) and 12363 (Apr. 8, 1982) (order).

[2] *Merrill Lynch KECALP Growth Investments Limited Partnership 1983, et. al.*, Investment Company Act Release Nos. 18081 (Apr. 18, 1991) (notice) and 18137 (May 7, 1991) (order).

1997 Partnership is an ''employees securities company'' within the meaning of section 2(a)(13) of the Act, and will operate pursuant to the terms of the Order. In accordance with the terms of the Order, limited partnership interests in the 1997 Partnership (''Units'') will be offered to certain employees of ML & Co. and its subsidiaries and to non-employee directors of ML & Co. and, to the extent the relief requested herein is granted, to ML & Co.

2. The General Partner is an indirect, wholly-owned subsidiary of ML & Co. The General Partner is registered as an investment adviser under the Investment Advisers Act of 1940. The General Partner was formed to manage each of the partnerships operating in accordance with the terms of the Order (together with the Partnerships, the ''KECALP Partnerships'') and has the authority to make all decisions regarding the acquisition, management, and disposition of the KECALP Partnerships' investments. All investments and dispositions of investments by the KECALP Partnerships are approved by the board of directors of the General Partner.

3. The Order limits the classes of potential investors eligible for participation in the KECALP Partnerships to directors of ML & Co. and key officers and other employees of ML & Co. and its subsidiaries. Key officers and other employees must have earned a gross income from ML & Co. during the most recent calendar year which exceeds the minimum amount specified by the General Partner for each Partnership. The 1991 Order amended the 1982 Order to include conditions relating to the eligibility requirements of investors in any KECALP Partnership.

4. Applicants request an amendment to the Order to permit Units to be acquired by ML & Co. in connection with certain deferred compensation plans offered by ML & Co. to select employees satisfying significant eligibility requirements that will, in all cases, exceed the standards for participation directly in the KECALP program. Pursuant to the deferred compensation plans, eligible employees of ML & Co. and its subsidiaries would be permitted to defer compensation earned during a particular year and to elect to receive a return on such deferred compensation determined by reference to the performance of one of several investment options, including the performance of a Partnership. ML & Co. would acquire Units having a purchase price approximately equivalent to the aggregate amount of compensation deferred under its plan for which the Partnership option was selected. ML & Co. would acquire such Units at the closing of the offering of a Partnership for a purchase price per Unit equal to the price paid by all other limited partners participating in the Partnership's offering. Participants in the plan would not acquire any ownership interest in the Units purchased by ML & Co. The acquisition of Units by ML & Co. would be made solely to mirror the deferred compensation elections of its employees who have elected to receive a return determined by reference to the performance of a Partnership, and not for ML & Co.'s own proprietary investment. ML & Co. will agree to vote its interests in a Partnership in identical proportions as the other limited partners in respect of any matter submitted for a vote of limited partners.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(b) of the Act to amend the Order to permit ML & Co. to acquire Units in the Partnerships in connection with certain deferred compensation programs offered by Merrill Lynch to select highly compensated employees upon the terms set forth in the applications.

2. Section 2(a)(13) of the Act defines ''employees' securities company'' as any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (a) By the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (b) by former employees of such employer or employers, (c) by members of the immediate family of such employees, persons on retainer, or former employees, (d) by any two or more of the foregoing classes of persons, or (e) by such employer or employers together with any one or more of the foregoing classes of persons. Section 6(b) of the Act provides that the SEC may, upon application, exempt an employees' securities company from provisions of the Act if, and to the extent that, the exemption is consistent with the protection of investors. Applicants are not seeking relief from any additional provisions of the Act.

3. Applicants believe the requested relief is consistent with the protection of investors and with the general purposes of the Act. Applicants state that the proposed additional investor is within the class of investors contemplated by section 2(a)(13). Applicants believe that ML & Co. has the community of interest with the existing classes of eligible participants for the KECALP Partnerships as contemplated for employees' securities companies by the Act.

4. ML & Co. has developed the KECALP program as a series of investment vehicles to generate and maintain goodwill by offering its directors, officers and key employees the opportunity to participate in investments that might otherwise by unavailable to them. Applicants submit that ML & Co.'s participation as a limited partner in a Partnership will only serve to further benefit the other limited partners. ML & Co.'s investment may significantly increase a Partnership's assets and thus provide economies for such Partnerships' expenses. In order to ensure that ML & Co.'s participation does not impair the influence that limited partners of a Partnership would otherwise enjoy, ML & Co. will vote its interest in a Partnership in identical proportions as the other limited partners in respect of any matter submitted for a vote of limited partners. In addition, the acquisition by ML & Co. of an interest in the Partnership will be disclosed to prospective limited partners in the prospectuses relating to the Partnerships' offerings.

5. Applicants believe that the terms of the relief requested are consistent with the protection of investors and with the general purposes of the Act. Except as amended herein, applicants will remain subject to the conditions of all prior orders of the SEC applicable to applicants.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following additional conditions:

1. In connection with Section 17(d) transactions, the General Partner and any general partner of any subsequent KECALP Partnerships will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person of the KECALP Partnership, or any affiliated person of such a person.

2. Each KECALP Partnership and its general partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the limited partners, and each annual report of the KECALP Partnership required to be sent to the limited partners, and

agree that all such records will be subject to examination by the Commission and its staff.

3. The General Partner and any general partner of any subsequent KECALP Partnership will send to each limited partner of such Partnership who had an interest in any capital account of such Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the KECALP Partnership's independent accountants. At the end of each fiscal year, the General Partner and the general partner of each subsequent KECALP partnership will make a valuation or have a valuation made of all of the assets of such Partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the KECALP Partnership. In addition within 90 days after the end of each fiscal year of each KECALP Partnership or as soon as practicable thereafter, the general partner of such KECALP Partnership will send a report to each person who was a partner at any time during the fiscal year, then ended, setting forth such tax information as shall be necessary for the preparation by the partner of his or its Federal and state income tax returns and a report of investment activities of such Partnership during the year.

4. If purchases or sales are made by a KECALP Partnership from or to an entity affiliated with the KECALP Partnership by reason of a 5% or more investment in such entity by any director, officer or employee of ML & Co. and its subsidiaries, by any director, officer of the general partner of that KACALP Partnership, such individual will not participate in that general partner's determination of whether or not to effect such purchase or sale.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11740 Filed 5–5–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22649; 812–10564]

New USA Mutual Funds, Inc., et al.; Notice of Application

April 30, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: New USA Mutual Funds, Inc. (''New USA Co.'') on behalf of its series, New USA Growth Fund; New USA Research & Management Co. (''NURM''); O'Neil Data Systems, Inc. (''ODS''); and MFS Series Trust II (''MFS Series II''). on behalf of its series, MFS Emerging Growth Fund (''MFS Growth Fund'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(f)(1)(A).

SUMMARY OF APPLICATION: Applicants request an exemption from section 15(f)(1)(A) to permit ODS to sell its interest in NURM, the investment manager of the New USA Growth Fund, a series offered by New USA Co., to MFS. Without the requested exemption, MFS Series II would have to reconstitute its boards of directors to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) in order to comply with the safe harbor provisions of section 15(f).

FILING DATES: The application was filed on March 11, 1997.

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 May 27, 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, NW., Washington, DC 20549. Applicants: New USA Mutual Funds, Inc., New USA Research & Management Co., and O'Neil Data Systems, Inc., 12655 Beatrice Street, Los Angeles, California 90066; and MFS Series Trust II c/o MFS Emerging Growth Fund, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Staff Attorney, at (202) 942–0553, 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. New USA Co. is an open-end management investment company registered under the Act consisting of one series, the New USA Growth Fund. NURM is the investment manager of the New USA Growth Fund pursuant to an investment management agreement between New USA Co. and NURM (the ''Investment Advisory Agreement''). NURM's sole stockholder and parent company is ODS.

2. MFS Series II is an open-end management investment company registered under the Act consisting of four separate series (the ''MFS Series II Funds''), including the MFS Growth Fund. The MFS Growth Fund is part of the MFS family of funds, which consists of approximately 50 funds (collectively, the ''MFS Funds''). Massachusetts Financial Services Company (''MFS'') is the investment adviser to the MFS Growth Fund.

3. MFS Series II proposes to acquire the assets and liabilities of the New USA Growth Fund in exchange for shares of equal aggregate value of the MFS Growth Fund. In connection therewith, MFS will acquire all of the outstanding shares of the stock of NURM from ODS. The foregoing transactions are referred to as the ''Transaction.''

4. On March 6, 1997, ODS and MFS entered into a Stock Purchase Agreement (the ''Purchase Agreement'') pursuant to which, and subject to certain conditions, MFS agreed to purchase all of the outstanding capital stock of NURM. The consummation of the Purchase Agreement is subject to, among other things, the approval of the shareholders of the New USA Growth Fund of a plan of reorganization by and between New USA Co., on behalf of the New USA Growth Fund, and MFS Series II, on behalf of the MFS Growth Fund (the ''Reorganization Agreement'').

5. The MFS Series II board of trustees approved the Reorganization Agreement on December 11, 1996, and the New USA Co. board of directors unanimously approved it on March 4, 1997. The Reorganization Agreement provides for: (a) The acquisition by the MFS Growth Fund of substantially all of the assets and liabilities of the New USA Growth Fund in exchange for shares of the MFS Growth Fund; (b) the distribution of these MFS Growth Fund shares to the shareholders of the New USA Growth Fund in liquidation of the New USA Growth Fund; and (c) New USA Co.'s

liquidation and termination under state law.

6. Applicants request an exemption under section 6(c) of the Act from the provisions of section 15(f)(1)(A) to permit ODS to receive consideration in compliance with section 15(f) in connection with the Transaction, notwithstanding the fact that, after the Transaction, the MFS Growth Fund will have a board of trustees consisting of fewer than 75% disinterested trustees.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit upon the sale of its business (which results in an assignment of an advisory contract with such company) if certain conditions are met. Section 15(f)(1)(A) requires that, for a period of three years after such a sale, at least 75 percent of the board of the investment company (or its successor, by reorganization or otherwise) may not be ''interested persons'' with respect to either the predecessor or successor adviser of the investment company.

2. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, or any rule or regulation thereunder, if the 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. Section 15(f)(3)(B) provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the SEC in determining whether, or to what extent, to grant exemptive relief pursuant to section 6(c) from section 15(f)(1)(A).

3. Applicants state that at February 24, 1997, the New USA Co. had assets of approximately $203 million, as compared to MFS Series II's assets of approximately $2.649 billion; therefore, the assets of New USA Co. are approximately 7.7% of the assets of MFS Series II. Thus, the transaction involves an acquisition by an investment company with assets ''substantially greater'' than the assets of the acquired fund.

4. Applicants assert that it is appropriate for the assets of each investment company, as opposed to each series, to be taken into account when considering the ''substantially greater'' test set forth in section 15(f)(3)(B). Applicants contend that any other conclusion would be inconsistent with the literal language of the section, which refers to the sale of assets of one investment company to another ''investment company with assets substantially greater in amount.'' Applicants state that MFS Series II and the New USA Co. are the registered investment companies involved in the transaction and, in fact, the board of trustees of MFS Series II and the board of director of New USA Co. authorized the transaction on behalf of their respective series.

5. The board of directors of New USA Co. and the board of trustees of MFS Series II consist of the following (''Interested Directors'' and ''Interested Trustees'' are directors and trustees who are ''interested persons,'' within the meaning of section 2(a)(19) of the Act, of NURM and MFS, respectively):

Investment company	Number of interested directors/ trustees	Number of disinterested directors/ trustees	Total
New USA Co	1	4	5
MFS Series	4	7	11

In order to comply with section 15(f)(1)(A) following consummation of the transactions, MFS Series II would have to add five Disinterested Trustees or reduce the number of Interested Trustees from four to two. If MFS Series II were to add five Disinterested Trustees, a vote of it shareholders would be required pursuant to section 16(a) of the Act, which requires that at least two-thirds of a fund's trustees be elected by shareholders. MFS Series II otherwise would not be required to hold a shareholders meeting under Massachusetts law or the Act to consummate the transaction.

6. For the reasons stated above, applicants assert that the requested relief is necessary and appropriate in the public interest, and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, as required by section 6(c).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–11742 Filed 5–5–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0268]

Centura SBIC, Inc.; Issuance of a Small Business Investment Company License

On March 21, 1996, an application was filed by Centura SBIC, Inc., 200 Queens Road, Suite 100, Charlotte, North Carolina, with the Small Business Administration (SBA) in accordance with § 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 1996) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301 (c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04–0268 on April 8, 1997 to Centura SBIC, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 1, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–11772 Filed 5–5–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2950, Amdt. #2]

State of Arkansas

In accordance with a notice from the Federal Emergency Management Agency, dated April 24, 1997, the above-numbered Declaration is hereby amended to include the Counties of Cleburne, Dallas, Faulkner, Grant, Greene, Sharp, Union, and White as a disaster area due to damages caused by severe storms and flooding beginning on April 4, 1997 and continuing through April 21, 1997.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Ashley, Bradley, Clay, Conway, Fulton, Hot Spring, Independence, Izard, Perry, Randolph, Saline, Stone, Van Buren, and Woodruff in the State of Arkansas; Union in the State of Louisiana; and Oregon in the State of Missouri.

The numbers assigned to this disaster for economic injury are 947400 for Arkansas, 947600 for Louisiana, and 947700 for Missouri.

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 13, 1997, and for loans for economic injury the deadline is January 14, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 29, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–11773 Filed 5–5–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2945, Amdt. #1]

State of Tennessee

In accordance with a notice from the Federal Emergency Management Agency, dated April 22, 1997, the above-numbered Declaration is hereby amended to include the County of Grundy as a disaster area due to damages caused by severe storms and tornadoes on March 28 through March 29, 1997.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Coffee and Franklin in the State of Tennessee. Any counties contiguous to the above-named primary counties and not listed herein have already been covered under a previous declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 1, 1997, and for loans for economic injury the deadline is January 2, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 29, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–11774 Filed 5–5–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–26]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 26, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Agela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 1, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28857.

Petitioner: Cape Smythe Air Service, Inc.

Sections of the FAR Affected: 14 CFR 119.2, 119.33, 119.35, 119.49, 119.65(a)(1), 121.125, 121.127, 121.133, 121.163, 121.400, 121.401, 121.403, 121.411, 121.413, 121.415, 121.417, 121.418, 121.419, 121.424, 121.433, 121.440, 121.441, 121.589, 121.689 (relief requested from preceding sections until September 30, 1997); 121.93, 121.99, 121.101, 121.103, 121.107, 121.113, 121.119, 121.121, 121.422, 121.533, 121.537, 121.593, 121.597, 121.601, 121.617, 121.619, 121.623, 121.631, 121.637, 121.663, 121.683, 121.687, and 121.689 (relief requested from preceding sections until March 31, 2005).

Description of Relief Sought: To permit Cape Smythe Air Service to operate its Beechcraft Model 99 aircraft with 10 or more seats in scheduled passenger service under 14 CFR part 135 until it can transition to part 121 operations.

Dispositions of Petitions

Docket No.: 26877.

Petitioner: General Motors Air Transport Section.

Sections of the FAR Affected: 14 CFR 61.55(b).

Description of Relief Sought/ Disposition: To permit petitioner's pilots serving as second in command to comply with company-required proficiency reviews in lieu of the requirements of 61.55(b). *Grant, April 22, 1997, Exemption No. 5647B.*

Docket No.: 28179.

Petitioner: Washington Flight Program.

Sections of the FAR Affected: 14 CFR 135.251, 135.255, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit petitioner to use the substance abuse and drug testing program mandated by Department of Transportation Order No. 3910.1C ''The Drug and Alcohol-Free Departmental Workplace'' for its management, pilot, and maintenance personnel in lieu of certain drug and alcohol program requirements contained in parts 121 and 135. *Grant, April 23, 1997, Exemption No. 6074A.*

Docket No.: 22690.

Petitioner: Boeing Commercial Airplane Group.

Sections of the FAR Affected: 14 CFR 61.57 (c) and (d).

Description of Relief Sought/ Disposition: To allow petitioner and pilots employed as crewmembers for petitioner to continue to use any type of Boeing airplane or a Level B, C, or D simulator to meet the part 61 takeoff and landing recency of experience requirements. *Grant, April 23, 1997, Exemption No. 4779F.*

Docket No.: 23430.

Petitioner: Douglas Aircraft Company.

Sections of the FAR Affected: 14 CFR 61.57 (c) and (d).

Description of Relief Sought/ Disposition: To allow petitioner and pilots employed as crewmembers by petitioner to continue to use FAA-approved flight simulators to meet the part 61 takeoff and landing recency of experience requirements. *Grant, April 23, 1997, Exemption No. 3754G.*

Docket No.: 28772.

Petitioner: Robert W. Fortnam.

Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).

Description of Relief Sought/ Disposition: To permit petitioner to conduct recurrent flight training in Beechcraft Bonanza, Baron, and Travel Air aircraft, and recurrent flight training in simulated instrument flight in Beechcraft Baron and Travel Air aircraft when those aircraft are equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant, April 21, 1997, Exemption No. 6605.*

Docket No.: 28774.

Petitioner: Mid East Jet, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(3)(ii), 61.57 (c)(3) and (d)(2), 61.64(e)(3), 61.67 (c)(4) and (d)(2), 71.68 (d)(2)(ii)(C) and (e)(2)(i)(B), 61.158(d) (1) and (2), and 125.297(b).

Description of Relief Sought/ Disposition: To allow petitioner to use FAA-approved simulators to meet certain flight experience requirements of 0arts 61 and 125. *Grant, April 24, 1997, Exemption No. 6609.*

Docket No.: 010NM.

Petitioner: Boeing Commercial Airplane Group.

Sections of the FAR Affected: 14 CFR 25.809(f).

Description of Relief Sought/ Disposition: To permit petitioner to use inertia reel descent devices and harnesses for emergency evacuation at the crew entry door on the model 757–200PF (Package Freighter) airplane. *Grant, April 17, 1997, Exemption No. 4808A.*

Docket No.: 28669.

Petitioner: Elsinore LP.

Sections of the FAR Affected: 14 CFR 25.785(d), 25.813(b), and 25.857(e).

Description of Relief Sought/ Disposition: To permit petitioner to carry supernumerary occupants on certain Airbus Model. A300 series airplanes with passenger-to-freighter conversions. *Grant, April 17, 1997, Exemption No. 6602.*

Docket No.: 28672.

Petitioner: Alaska Airlines, Inc.

Sections of the FAR Affected: 14 CFR 43.3, 43.5, 43.7, and 121.709.

Description of Relief Sought/ Disposition: To allow petitioner's certificated flight crewmembers to install and/or remove medevac stretchers, and to make an appropriate entry in the aircraft maintenance records. *Grant, April 16, 1997, Exemption No. 6603.*

Docket No.: 28522.

Petitioner: Bell Helicopter Textron, Inc.

Sections of the FAR Affected: 14 CFR 21.325 (b)(1) and (3).

Description of Relief Sought/ Disposition: To allow petitioner to issue export airworthiness approvals for Class I, II, and III products that are manufactured and located outside of the United States. *Grant, April 23, 1997, Exemption No. 6607.*

Docket No.: 27911.

Petitioner: Linder Taxi Aereo S.A.

Sections of the FAR Affected: 14 CFR 145.47(b).

Description of Relief Sought/ Disposition: To permit petitioner to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial (INMETRO), Brazil's national standards organization, for the calibration standards of the US National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards, to test its inspection and test equipment. *Grant, April 21, 1997, Exemption No. 6606.*

Docket No.: 28559.

Petitioner: Collins Commercial Avionics.

Sections of the FAR Affected: 14 CFR 21.327(a).

Description of Relief Sought/ Disposition: To allow petitioner to use a printout from its Order Management System (OMS) for class II product instead of the Application for Export Certificate of airworthiness (Form 8130–1), even though Collins does not hold a production certificate. *Grant, April 17, 1997, Exemption No. 6604.*

[FR Doc. 97–11761 Filed 5–5–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Joint RTCA Special Committee 180 and Eurocae Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 180 and EUROCAE Working Group 46 meeting to be held June 10–12, 1997, starting at 8:30 a.m. on June 10. (On subsequent days, meeting begins at 8:00 a.m.) The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes of Previous Joint Meeting; (4) Leadership Team Meeting Report; (5) Review Action Items; (6) Review Issue Logs; (7) Issue Team Status; (8) Break into Teams; (9) Issue Team Reports; (10) New Items for Consensus; (11) Other Business; (12) Establish Agenda for Next Meeting; (13) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http:\\www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 30, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–11762 Filed 5–5–97; 8:45 am]

BILLING CODE 4810–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Special Committee 147; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee (SC) 147 meeting to be held May 27–30, 1997, starting at 1 p.m. on May 27 and 9 a.m. on May 28–30. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: May 27, 1–5:30 pm (1) Chairman's Introductory Remarks; (2) Review of Meeting Agenda; (3) Review and Approval of Minutes of the Previous Meeting; (4) Report of Working Group Activities: a. Operations Working Group; b. Requirements Working Group;

(5) Report on SC–186 Activities; (6) Report on FAA TCAS Program Status: a. TCAS I; b. TCAS II; c. Future FAA TCAS Activities; (7) Briefing on Closely Spaced Parallel Approach Project; (8) Discussion of SC–147 Future Status and Plans; May 28, 9 am–5:30 pm (9) Review of Action Items From Last Meeting: a. FAA Response to RTCA Letter Regarding TCAS Training Issues; b. Briefing on Results of Interference Limiting Flight Tests; (10) Review and Consideration of Proposed Change to TCAS I MOPS (DO–197A); (11) Review and Consideration of Proposed Change 7.0 to TCAS II MOPS (DO–185A); May 29, 9 am–5 pm Review and Consideration of Proposed Change 7.0 to TCAS II MOPS (DO–185A) (Continued); May 30, 9 am–1 pm Review and Consideration of Proposed Change 7.0 to TCAS II MOPS (DO–195A) (Continued); (12) Committee Approval of DO–185A and Change 1, DO–197A; (13) Other Business; (14) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 29, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–11763 Filed 5–5–97; 8:45 am]

BILLING CODE 4810–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Special Committee 162; Aviation Systems Design Guidelines for Open Systems Interconnection

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Special Committee 162 meeting to be held May 30, 1997, starting at 9 am. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Approval of Proposed Meeting Agenda; (3) Approval of the Minutes of the Previous Meeting; (4) Review and Incorporation of Comments Received from TMC and Others into the Draft ATN Avionics MOPS; (5) Other Business; (6) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 30, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–11764 Filed 5–5–97; 8:45 am]

BILLING CODE 4810–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Situational Awareness for Safety (SAS) System Requirements Team (SRT) Meeting

May 2, 1997.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of postponement of meeting.

SUMMARY: The System Requirements Team (SRT) meeting on the Automatic Dependent Surveillance-Broadcast (ADS–B) Avionics Management Plan, scheduled for May 7–8 at the Arlington Hilton Hotel in Arlington, Virginia, has been postponed (62 FR 13209, March 19, 1997). Flight 2000, a recently announced program to demonstrate new technology, has an extensive commitment on the part of the Agency. As Flight 2000 will almost certainly use ADS–B technology as a cornerstone, comprehensive planning activities have now begun within the Agency. It would be premature to codify the management plan and achieve consensus on ADS–B concepts and applications until the Flight 2000 operational concept and program structure have matured. Many of those who should attend the SRT would be unavailable because of Flight 2000 activities. The FAA senior management feels that, while it is certainly undesirable to postpone a meeting such as this on short notice, diluting the already limited resources was considered detrimental to both efforts and that such a postponement is in the best interests of both government and industry. It would also be prudent to use the insight gained from the commitment to Flight 2000 in the ADS–B planning process. We apologize for the late postponement, but hope you will concur with the rationale. We intend to reschedule this SRT later in the year.

FOR FURTHER INFORMATION CONTACT: Mr. James McDaniel, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, telephone (202) 260–9899.

Issued in Washington, DC, on May 2, 1997.

James I. McDaniel,

Program Manager, Situational Awareness for Safety.

[FR Doc. 97–11866 Filed 5–5–97; 8:45 am]

BILLING CODE 4810–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33394]

Southern Pacific Transportation Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company has agreed to grant overhead trackage rights to Southern Pacific Transportation Company (SP) over trackage extending from milepost 82.88, near Lathrop, to milepost 94.50, near Stockton, a distance of 11.62 miles in San Joaquin County, CA.

The earliest the transaction can be consummated is May 5, 1997, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the trackage rights is to facilitate efficient train operations during reconstruction of SP's Roseville Yard.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it 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. 33394, must be filed with

the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, # 830, Omaha, NE 68179.

Decided: April 30, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–11759 Filed 5–5–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–42 (Sub–No. 3X)]

Aroostook Valley Railroad Company—Abandonment Exemption—in Aroostook County, ME

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Aroostook Valley Railroad Company of its entire line of railroad between: (1) Milepost 3.04 on Skyway Branch and milepost 4.62 (the end of the main line) at Skyway Industrial Park, including all line and sidings on Skyway Industrial Park; and (2) the connection with Bangor and Aroostook Railroad at AVR milepost 0.0 at Skyway Junction and milepost 3.41 on Skyway Branch, for a total of approximately 3.19 miles,[1] in Aroostook County, ME.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) is received, this exemption will be effective on June 5, 1997. Formal expressions of intent to file an OFA under 1152.27(c)(2) must be filed by May 16, 1997; petitions to stay must be filed by May 21, 1997; requests for public use conditions in conformity with 49 CFR 1152.28(a)(2) must be filed by May 27, 1997; and petitions to reopen must be filed by June 2, 1997.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Docket No. AB–42 (Sub-No. 3X) must be filed with: the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Linda Smith Dyer, Esq., Dyer and Goodall, 45 Memorial Circle, Augusta, ME 04330.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, NW., Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Decided: April 25, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–11760 Filed 5–5–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Actual mileage does not correspond with the milepost numbers.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics; Meeting

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Public Law 72–363; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Friday, May 23, 1997, 10:00 a.m. to 4:00 p.m. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC, in conference room 10234–38 of the Nassif Building.

The Advisory Council, called for under Section 6007 of Public Law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include a review of the last meeting, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Carolee Bush, Council Liaison, on (202) 366–6946 prior to May 22. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Bush.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Bush (202) 366–6946 at least seven days prior to the meeting.

Issued in Washington, DC, on May 1, 1997.

Robert A. Knisely,

Executive Director, Advisory Council on Transportation Statistics.

[FR Doc. 97–11767 Filed 5–5–97; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

April 18, 1997.

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, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1241.

Regulation Project Number: PS–92–90 Final.

Type of Review: Extension.

Title: Special Valuation Rules.

Description: Section 2701 of the Internal Revenue Code allows various elections by family members who make gifts of common stock or partnership interests and retain senior interests. The elections affect the value of the gifted interests and the retained interests.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 25 minutes.

Frequency of Response: Other (one-time election).

Estimated Total Reporting Burden: 496 hours.

OMB Number: 1545–1254.

Regulation Project Number: FI–34–91 Final.

Type of Review: Extension.

Title: Conclusive Presumption of Worthlessness of Debts Held by Banks.

Description: Paragraph (d) (3) of section 1.166–2 of the regulations allows banks and thrifts to elect to conform their tax accounting for bad debts with their regulatory accounting. An election, or revocation thereof, is a change in method of accounting. The collection of information required in section 1.166–2(d)(3) is necessary to monitor the elections.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 50 hours.

OMB Number: 1545–1426.

Regulation Project Number: INTL–21–91 Temporary and Final.

Type of Review: Extension.

Title: Section 6662—Imposition of the Accuracy-Related Penalty.

Description: These regulations provide guidance about substantial and gross valuation misstatements as defined in sections 6662(e) and 6662(h). They also provide guidance about the reasonable cause and good faith exclusion. The regulations apply to taxpayers who have transactions between persons described in section 482 and net section 482 transfer price adjustments.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 2,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 8 hours, 3 minutes.

Estimated Total Reporting/ Recordkeeping Burden: 20,125 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

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. 97–11694 Filed 5–5–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

April 23, 1997.

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, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0066.

Form Number: IRS Form 2688.

Type of Review: Extension.

Title: Application for Additional Extension of Time to File U.S. Individual Income Tax Return.

Description: Internal Revenue Code (IRC) section 6081 permits the Secretary to grant a reasonable extension of time for filing any return, declaration, statement, or other document. This form is used by individuals to ask for an additional extension of time to file U.S. income tax returns after filing for the automatic extension, but still needing more time.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,453,000.

Estimated Burden Hours Per Respondent:

Learning about the law or the form—8 min.

Preparing the form—10 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 929,920 hours.

OMB Number: 1545–0967.

Form Number: IRS Form 8453–F.

Type of Review: Extension.

Title: US Estate or Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing.

Description: This form is used to secure taxpayer signatures and declarations in conjunction with electronic and magnetic media filing of trust and fiduciary income tax returns. This form, together with the electronic and magnetic media transmission, will comprise the taxpayer's income tax return (Form 1041).

Respondents: Individuals or households, business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeepers:

Recordkeeping—7 min.

Learning about the law or the form—5 min.

Preparing the form—18 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 830 hours.

OMB Number: 1545–0970.

Form Number: IRS Form 8453–P.

Type of Review: Extension.

Title: US Partnership Declaration and Signature for Electronic and Magnetic Media Filing.

Description: This form is used to secure the general partners' signature and declaration in conjunction with the electronic/magnetic media filing program. This form, together with the electronic/magnetic media transmission, will comprise the partnership's return.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Burden Hours Per Respondent/Recordkeepers:

Recordkeeping—7 min.

Learning about the law or the form—5 min.

Preparing the form—20 min.

Copying, assembling, and sending the form to the IRS—17 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 410 hours.

OMB Number: 1545–1364.

Regulation Project Number: INTL–372–88 Final and INTL–401–88 Final .

Type of Review: Extension.

Title: Section 482 Cost Sharing Regulations (INTL–372–88); and Intercompany Transfer Pricing Regulations Under Section 482 (INTL–401–88).

Description: INTL–372–88. The information will be used to determine whether an entity is an eligible participant of a qualified cost-sharing arrangement and whether each eligible participant is sharing the costs and benefits of intangible development on an arm's length basis.

INTL–401–88. This document contains regulations relating to the pricing of transfer of tangible property, intangible property, or services between related parties.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 7 hours, 51 minutes.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 7,850 hours.
OMB Number: 1545–1403.
Regulation Project Number: FI–46–93 Final.
Type of Review: Extension.
Title: Hedging Transactions.
Description: The information is required by the IRS to aid it in administering the law and to prevent manipulation. The information will be used to verify that a taxpayer is properly reporting its business hedging transactions.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 110,000.
Estimated Burden Hours Per Recordkeeper: 52 minutes.
Estimated Total Recordkeeping Burden: 95,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
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. 97–11696 Filed 5–5–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 29, 1997.

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, Pub. L. 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 conduct the customer survey described below in a timely manner, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by May 9, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 97–015–G.
Type of Review: Revision.
Title: Houston District Customer Satisfaction Survey.
Description: This survey instrument was designed by the Implementation Team to measure customer satisfaction levels and expectations. The survey is voluntary and brief; customer satisfaction will be measured by function: telephone, walk-in, collection and examination; and the survey will be printed in both English and Spanish.
Respondents: Individuals or households.
Estimated Number of Respondents: 3,600.
Estimated Burden Hours Per Response: 3 minutes.
Frequency of Response: Other (one-time only).
Estimated Total Reporting Burden: 180 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
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. 97–11697 Filed 5–5–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 28, 1997.

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, Pub. L. 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.

Customs Service (CUS)

OMB Number: 1515–0157.
Form Number: None.
Type of Review: Extension.
Title: Exportation of Used Self-Propelled Vehicles.
Description: The Exportation of Self-Propelled Vehicles requires the submission of documents verifying vehicle ownership of exporters for exportation of vehicles in the United States.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 500,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 83,330 hours.
OMB Number: 1515–0189.
Form Number: None.
Type of Review: Extension.
Title: Petroleum Refineries in Foreign Trade Subzones.
Description: This recordkeeping requirement provides special procedures for Petroleum Refineries in Foreign Trade Subzones and requirements governing the operations of crude petroleum and refineries approved as foreign trade zones.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Recordkeepers: 18.
Estimated Burden Hours Per Recordkeeper: 732 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 13,176 hours.
Clearance Officer: J. Edgar Nichols (202) 927–1426, US Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, NW, Washington, DC 20229.
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. 97–11698 Filed 5–5–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: In accordance with the requirements of the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) for review an information collection titled Loan Index Information Collection.

DATES: Comments regarding this information collection should be submitted to both the OMB Reviewer and the OCC. Comments are due on or before June 5, 1997.

ADDRESSES: A copy of the submission may be obtained by calling the OCC Contact listed. Direct all written comments to the Communications Division, Attention: 1557–LOAN, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV. Comments should also be submitted to Alexander Hunt, Office of Management and Budget, Attention: 1557–LOAN, Room 10226, New Executive Office Building, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

OMB Number: 1557–LOAN.
Form Number: Not applicable.
Type of Review: New collection.
Title: Loan Index Information Collection.

Description: Effective implementation of the OCC's Supervision by Risk Program requires the OCC to identify and evaluate movements and trends in the loan underwriting standards applied by national banks. The OCC therefore proposes to collect data on loan underwriting standards or benchmarks on a variety of loan products. Every quarter, the OCC will collect data on loans made or renewed the previous quarter. The data will be collected by examiners who will review bank documents, including loan files. If practicable, information gathered as part of this collection may be used to reduce the scope of loan reviews conducted during regularly scheduled examinations.

This collection will not require banks to gather, maintain, or provide data in a specified format. OCC examiners will gather information from existing bank documents. The estimated burden on banks results from planned examiner discussions with bank management regarding the bank's projections for loan product volume and quality, and examiner requests for assistance in locating files.

Data will be collected for eleven categories of loan products (i.e., real estate project finance, home mortgages and home equity lines, credit cards, direct automobile). Data on more than one category of loan product may be collected from a single bank.

The data will be used by the OCC as a supervisory tool. The OCC will analyze the data to identify benchmarks in underwriting for the loan products it reviews and to assess the impact of changes or trends in underwriting on the national banking system. The OCC's analysis will enhance the effectiveness of the risk-focused approach to supervising banks, enable the OCC to provide useful, aggregate information about underwriting benchmarks and trends to national banks and examiners, and enable the OCC to develop and issue timely system-wide guidance as appropriate.

Respondents: Businesses or other for-profit; individuals
Number of Respondents: 242.
Total Annual Responses: 888.
Frequency of Response: Quarterly, except agriculture loan data which is semiannual.
Estimated Total Annual Burden: 1,332.
OCC Contact: Jessie Gates or Dionne Walsh, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
OMB Reviewer: Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–LOAN, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Comments are invited on: (a) Whether the proposed collection is necessary for the proper performance of the OCC's functions, including whether the information has practical utility; (b) the accuracy of the OCC's estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information; (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide the information.

Dated: April 30, 1997.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 97–11711 Filed 5–5–97; 8:45 am]

BILLING CODE 4810–33–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Notice

Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 USC 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''The Padshahnama (History of the Emperor)'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Arthur M. Sackler, Smithsonian Institution from on or about May 18, 1997 to on or about October 13, 1997, and at the Metropolitan Museum of Art from on or about November 16, 1997 to on or about February 8, 1998, and at Los Angeles County Museum of Art from on or about February 22, 1998 to on or about May 17, 1998, and at the Kimbell Art Museum from on or about May 31, 1998 to on or about August 23, 1998, and at the Indianapolis Museum of Art from on or about September 6, 1998 to on or about November 29, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: May 2, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–11867 Filed 5–2–97; 12:55 pm]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mrs. Jacqueline H. Caldwell, Assistant General Counsel, at 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547–0001.

Federal Register

Tuesday
May 6, 1997

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Hazardous Materials: Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, 176, 178

[Docket No. HM–215B; Amdt Nos. 171–153, 172–154, 173–261, 175–86, 176–43, 178–119]

RIN 2137–AC82

Hazardous Materials: Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations to maintain alignment with corresponding provisions of international standards. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), these revisions are necessary to facilitate the transport of hazardous materials in international commerce.

DATES: *Effective date:* The effective date of these amendments is October 1, 1997.

Compliance date: RSPA is authorizing immediate voluntary compliance. However, persons voluntarily complying with these regulations should be aware that petitions for reconsideration may be received and, as a result of RSPA's evaluation of those petitions, the amendments adopted in this final rule could be subject to further revision.

Incorporation by reference. The incorporation by reference of certain publications listed in these amendments has been approved by the Director of the Federal Register as of October 1, 1997.

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SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1990, the Research and Special Programs Administration (RSPA) published a final rule [Docket HM–181; 55 FR 52402] which comprehensively revised the Hazardous Materials Regulations (HMR), 49 CFR Parts 171 to 180, with respect to hazard communication, classification, and packaging requirements, based on the UN Recommendations. One intended effect of the rule was to facilitate the international transportation of hazardous materials by ensuring a basic consistency between the HMR and international regulations.

The UN Recommendations are not regulations, but are recommendations issued 'by the UN Committee of Experts on the Transport of Dangerous Goods (UNCOE). These recommendations are amended and updated biennially by the UNCOE and are distributed to nations throughout the world. They serve as the basis for national, regional, and international modal regulations (specifically the IMDG Code, issued by the International Maritime Organization (IMO), and the ICAO Technical Instructions, issued by the ICAO Dangerous Goods Panel). In 49 CFR 171.12, the HMR authorize shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel, subject to certain conditions and limitations. Offering, accepting and transporting hazardous materials by aircraft, in conformance with the ICAO Technical Instructions, and by motor vehicle either before or after being transported by aircraft, are authorized in § 171.11 (subject to certain conditions and limitations).

On December 29, 1994, RSPA issued a final rule [Docket HM–215A; 59 FR 67390] amending the HMR by incorporating changes to more fully align the HMR with the seventh and eighth revised editions of the UN Recommendations, Amendment 27 to the IMDG Code and the 1995–96 ICAO Technical Instructions. The final rule provided consistency with international air and sea transportation requirements which became effective January 1, 1995.

In a final rule published December 16, 1996, RSPA incorporated the latest editions of the ICAO Technical Instructions and the IMDG Code into the HMR to ensure that international shippers could begin complying with changes to international air and vessel standards going into effect on January 1, 1997. That final rule authorized compliance with either Amendment 27 or Amendment 28 of the IMDG Code and either the 1995–96 or 1997–98 ICAO Technical Instructions until June 1, 1997.

This final rule amends the HMR based on the ninth revised edition of the UN Recommendations, the 1997–98 ICAO Technical Instructions, and Amendment 28 to the IMDG Code. It is intended to more fully align the HMR with international air and sea transport requirements which became effective January 1, 1997. Other changes are based on feedback from the regulated industry and RSPA initiatives.

II. Summary of Comments

RSPA received over 40 comments in response to the Docket HM–215B Notice of Proposed Rulemaking (NPRM), which was published in the **Federal Register** on October 25, 1996 (61 FR 55364). Comments were submitted by chemical manufacturers, trade associations, packaging manufacturers, and rail and vessel carriers. Commenters were supportive of RSPA's efforts to maintain alignment with international standards. Certain issues proposed in the NPRM received little or no comment. Other issues, including a proposed definition for ''aerosol,'' a proposed approval requirement for certain nitroglycerin mixtures, and various proposed changes for organic peroxides and explosives packagings, were the focus of most comments. Several commenters requested transitional provisions and other amendments to the HMR as part of this initiative. In this final rule, RSPA is providing a delayed compliance period for implementation of these changes; however, many other suggestions are beyond the scope of the proposed changes in this rule and first should be the subject of an NPRM to offer adequate opportunity for notice and comment.

III. Summary of Regulatory Changes by Section

Listed below is a section-by-section summary of changes and, as applicable, a discussion of comments received.

Part 171

Section 171.7

RSPA proposed to add or update various American Society for Testing and Materials (ASTM) standards, including an ASTM standard for flash point determination (ASTM D–3828–93) which establishes whether a material is capable of sustaining combustion in relation to classifying flammable liquids (ASTM D–4206–96), and the ASTM standard for assessing corrosivity to metals (ASTM G 31–72 (Reapproved 1995)). ASTM D–3828–93 is the Standard Test Method for Flash Point by

Small Scale Closed Tester. This method is equivalent to ASTM D–3278 but specifically applies to testing petroleum products and lubricants. ASTM D 4206–96 Standard Test Method for Sustained Burning of Liquid Mixtures Using the Small Scale Open-Cup Apparatus is equivalent to the test method currently provided in Part 173, Appendix H-Method of Testing for Sustained Combustibility.

In addition, RSPA proposed to incorporate the most current versions of the ICAO Technical Instructions, the IMDG Code, the UN Recommendations and the UN Manual of Tests and Criteria. Updated references for the IMDG Code and the ICAO Technical Instructions were adopted in a final rule published December 16, 1996 [61 FR 65958] with an effective date of June 1, 1997. Two references were proposed for incorporation under the Transportation of Dangerous Goods (TDG) Regulations issued by Transport Canada. These new entries reference Schedule 21 and Schedule 22, which were adopted in 1995.

Section 171.8

In the NPRM, RSPA proposed several new definitions, including a definition for ''Aerosol'' which is consistent with provisions of § 173.306(a)(3). As noted in the NPRM, the definition for aerosols in the IMDG Code and the ICAO Technical Instructions includes containers that are filled solely with a gas, whereas aerosol containers authorized in § 173.306(a)(3) may be charged with a gas only for the purpose of expelling a liquid, powder or paste.

RSPA received two comments opposing the proposed definition of ''Aerosol''. Both commenters (a chemical manufacturing company and The Chemical Specialties Manufacturers Association (CSMA)) believed the definition in the HMR should be worded in the same manner as in the UN Recommendations. These commenters also claimed that the proposed definition may not cover foams, pastes, gels and other liquids which are not ejected in suspension in a gas. CSMA further noted that the proposed definition only recognizes metal aerosol containers while international standards authorize glass and plastic as materials of construction for aerosol containers.

RSPA's proposed definition for ''Aerosol'' corresponds to current requirements for aerosols in § 173.306(a)(3). Paragraph (a)(3) contains an authorization for the use of metal nonspecification packagings charged with a solution of materials and compressed gas or gases (*i.e.*, aerosols) with certain restrictions applying to internal pressure, filling limits and testing of the container. The capacity of this container cannot exceed 50 cubic inches or 27.7 fluid ounces. These provisions apply only to *solutions* of materials and compressed gas or gases which are not poisonous (other than Division 6.1, Packing Group III materials). A final rule published October 28, 1991, under Docket HM–210 [56 FR 55471], was issued for clarification and to promote the safe transportation of gases shipped under limited quantity provisions. This final rule stated, in part:

> RSPA is concerned about the serious potential hazards posed by shipping flammable compressed gases, under limited quantity or consumer commodity provisions, when a compressed gas is the primary product and not merely an aerosol propellant additive. RSPA and its predecessor agencies never intended that gases other than those used as a propellant could be excepted from any of the HMR when a package has more than a 4-fluid ounce capacity.

Thus, current aerosol provisions in the HMR do not correspond to the aerosol definition in international standards, which authorizes a gas to be expelled ''without a liquid, paste, or powder.'' Nor does RSPA intend to adopt such a provision, because filling a container solely with a gas, such as butane, poses a significantly greater risk than filling the container with a liquid, paste or powder which is expelled by a butane gas due to greater quantities of gas contained in aerosols that do not contain liquid, paste or powder. Furthermore, in response to commenters' concern that the proposed definition may not cover foams, pastes, gels and other liquids which are not ejected in suspension in a gas, RSPA believes that because foams or gels would be considered liquids expelled by a gas, it is not necessary to specifically list them.

Another difference between domestic requirements for aerosols and international standards is that the HMR authorize only metal containers, while non-metallic (*e.g.*, made from glass or plastic) containers are authorized internationally. A November 13, 1995 response to a petition for reconsideration issued under Docket HM–215A [60 FR 56957] emphasized that only metal aerosol containers are authorized for use. This document noted that ''RSPA is not aware of any proposed industry standards for the manufacture and use of aerosol containers other than those made of metal.'' Nor is RSPA aware of any subsequent ongoing action to propose industry standards for the manufacture and use of non-metallic aerosol containers.

In addition, RSPA proposed corresponding changes in §§ 171.11, 171.12 and 171.12a to clarify the proposed definition of aerosols as it applies to aerosols imported in accordance with the ICAO Technical Instructions, the IMDG Code and the TDG Regulations. These changes, as well as the definition for aerosols, are adopted as proposed in this final rule.

RSPA also proposed definitions for ''SADT'' (self-accelerating decomposition temperature), salvage packagings and intermediate packagings. No comments were received on these proposed definitions, and they are adopted as proposed.

Sections 171.11, 171.12, and 171.12a

These sections authorize shipments prepared under the ICAO Technical Instructions, the IMDG Code, and the TDG Regulations, respectively. RSPA proposed to remove the requirement to include the words ''Dangerous When Wet'' on shipping papers in association with the basic description for Division 4.3 materials. Commenters uniformly supported this proposal, stating that the change was compatible with international standards and that the ''Dangerous When Wet'' hazard is clearly communicated through indication of Division 4.3 as part of the basic shipping description and through use of Division 4.3 labels and placards. Therefore, RSPA is removing the requirement for ''Dangerous When Wet'' to appear on shipping papers in association with the basic description.

RSPA also proposed that the words ''Toxic Inhalation Hazard'' be added as an alternative to ''Poison Inhalation Hazard'' or ''Inhalation Hazard'' and that ''Toxic'' or ''Toxic Gas'' be added as alternatives to ''Poison'' or ''Poison Gas''. A corresponding provision for shipping paper descriptions was proposed for § 172.203(m). Two comments expressing opposing viewpoints were received. One commenter, an international chemical and industrial gases manufacturer, supported this proposal, stating that this alternative will simplify compliance when shipping materials poisonous by inhalation. The other commenter, a vessel carrier, believed consistency could be achieved through use of only the ''Toxic'' designation. This commenter claimed that providing an option for use of either term will confuse people in the field. RSPA does not agree and is adopting the alternative ''Toxic Inhalation Hazard'' as proposed in the NPRM. However, RSPA is not adopting proposed modifications to

POISON and POISON GAS label and placard references. These references were recently modified by the Docket HM–206 final rule [62 FR 1227] and RSPA believes additional modifications to these references are unnecessary.

Also, as discussed above for § 171.8, RSPA is adopting a provision to allow only aerosols meeting the definition of ''aerosol'' in § 171.8 to be imported in accordance with the ICAO Technical Instructions, IMDG Code and TDG regulations.

Section 171.14

A new paragraph (d) is added to provide a delayed implementation date for amendments adopted in this final rule. The effective date of this final rule is October 1, 1997. However, RSPA is authorizing an immediate voluntary compliance date to allow shippers to prepare their international shipments in accordance with the new ICAO, IMDG Code and HMR provisions. RSPA is also authorizing a delayed mandatory compliance with the new requirements, until October 1, 1998. This delay is comparable to the transition provisions provided in the final rule under Docket HM–215A and offers a sufficient phase-in period to implement new provisions and deplete current stocks of shipping papers, labels, placards, and containers affected by the new requirements. In addition, paragraph (d)(2) permits intermixing of old and new hazard communication requirements until October 1, 1998.

Part 172

Section 172.101

A new paragraph (c)(14) is added to allow isomers of materials listed in the Hazardous Materials Table (HMT) which meet the same hazard class, subsidiary risk and packing group to be identified using the listed shipping description. One commenter suggested adding a provision to exclude isomers listed specifically in the HMT. RSPA agrees and is revising this paragraph to reflect the commenter's suggestion.

A new paragraph (c)(15) is adopted to allow hydrates of inorganic substances to be described using the proper shipping name for the equivalent anhydrous material. In this final rule, RSPA is clarifying the proposed regulatory text to indicate that the hydrate must meet the same hazard class or division, subsidiary risk(s) and packing group of the equivalent anhydrous material, unless the hydrate is specifically identified in the Table.

Paragraph (f) is revised to acknowledge that Division 6.2 materials (other than regulated medical waste) do not have packing group assignments.

Changes to the HMT include:

New Packing Group I entries added for certain commodities, including Adhesives, Resin solutions, Paint and Paint-related material, Disinfectants, Dyes, and Oxidizing liquid, n.o.s.

An alternative proper shipping name ''Refrigerant gas'' plus the ''R'' number is added to numerous entries, consistent with the ninth revised edition of the UN Recommendations. Current entries that contain an italicized ''R'' number are revised to include the ''R'' number in Roman type as part of the ''Refrigerant gas'' alternative proper shipping name. One commenter engaged in reselling prepackaged refrigerants expressed concern that some refrigerant manufacturers would use the newly authorized ''Refrigerant gas, R ***'' proper shipping name while others would continue to use the current chemical name; consequently, a shipping paper description, package markings and emergency response information may not match. This commenter recommended that differences in proper shipping names resulting from mixed use of the original and alternative proper shipping name on markings, emergency response information and shipping papers be authorized indefinitely, as long as the same UN or NA identification number appears on the shipping paper, emergency response information, and package markings. RSPA does not agree. The HMT contains numerous entries providing an alternative proper shipping name. It is RSPA's opinion that to offer various mix and match provisions for such entries is impracticable and could result in greater confusion.

Certain Class 1 entries assigned NA numbers for domestic transportation are removed. These include Explosive pest control devices and Propellant explosives (both liquid and solid). Domestic exceptions for these explosives are incorporated into the explosive packing instructions, where applicable.

RSPA proposed a new entry and special provision for a nitroglycerin mixture containing more than 2 percent but not more than 10 percent nitroglycerin. The special provision sets forth a requirement that the Associate Administrator for Hazardous Materials Safety (AAHMS) must specifically authorize the nitroglycerin mixture as a Division 4.1 material, as well as approve the assigned packing group and packaging method before the material may be transported as a Division 4.1 material. A chemical manufacturer and several pharmaceutical manufacturers opposed this proposal. According to these commenters, a preparation consisting of 10% nitroglycerin is used in the treatment of acute angina attacks. They claimed that, unless this proposal is dropped or the domestic supplier of this material is granted an approval to ship the preparation as a Division 4.1 material, transporting this material as a Division 1.1D explosive would have a significant negative impact on the continued production and distribution of this product.

RSPA does not agree. A certain preparation containing 10% nitroglycerin was considered to be a UN 0143, 1.1D explosive by the UNCOE in December 1994, based on the fact that the preparation detonated in the bonfire test prescribed in test series 6(c) of the UN Manual of Tests and Criteria. The UNCOE recognized that not all preparations containing 10% nitroglycerin behave the same. Therefore, the UNCOE adopted UN 3319 with a provision for each competent authority to authorize, either by approval or exemption, a preparation consisting of not more than 10% nitroglycerin as a Division 4.1 material based on test results. This provision is consistent with the existing provisions of § 173.124(a)(1)(ii)(B) for desensitized explosive substances which require authorization, either by approval or exemption, by the AAHMS. RSPA believes that a 10% nitroglycerin preparation that will detonate in a fire should be considered a forbidden material according to § 173.21(h). If the preparation is or may be explosive according to § 173.54(a), it is forbidden for transport unless examined and approved under the provisions of § 173.56. Depending on test results, the same preparation may be approved under § 173.56 as a Division 4.1 material. RSPA does not believe the incorporation of UN 3319 with a lengthy transition period for shippers to obtain an approval or exemption, where appropriate, would seriously threaten the production of nitroglycerin pharmaceutical treatments in the United States.

New entries are added for compressed gases and liquefied gases which are toxic and also meet flammable, corrosive, or oxidizing criteria.

Packaging authorizations for the current entry ''Gas, refrigerated liquid'' are revised to reference the packaging provisions for cryogenic liquids. In addition, two new entries ''Gas, refrigerated liquid, flammable, n.o.s.'' and ''Gas, refrigerated liquid, oxidizing, n.o.s.'' are added. One commenter supported the proposal to change

packaging authorizations for ''Gas, refrigerated liquid'' to reference packagings for cryogenic liquids, but believed that packaging exceptions provided in § 173.320 should be authorized for ''Gas, refrigerated liquid, n.o.s.'' and ''Gas, refrigerated liquid, oxidizing, n.o.s.'' The commenter claimed that this section should apply if the components of the mixture are exclusively various combinations of atmospheric gases and/or helium in cryogenic liquid form. RSPA agrees and is adding an exception in Column (8A) for these two entries.

Several entries, such as Phenyl isocyanate and Phosphorous trichloride, are amended by revising the primary hazard class in Column (3) and/or Packing Group in Column (5). For some entries, such a change in hazard class or packing group also results in a corresponding removal of the ''+'' in Column (1).

In Column (2) of the HMT, several proper shipping names are listed in Roman type, indicating that they are authorized proper shipping names. However, they are not listed as proper shipping names under the UN Recommendations, the ICAO Technical Instructions, or the IMDG Code. For consistency with the international regulations, RSPA is revising a number of proper shipping names, including ''Aircraft evacuation slides'', from Roman type to italics to indicate that they are no longer authorized proper shipping names.

Certain entries, such as Diphenylmethane-4,4'-diisocyanate and Methyl benzoate (which do not meet toxicity criteria for a Division 6.1 Packing Group III material) are removed. These commodities were deleted from the List of Dangerous Goods in the ninth revised edition of the UN Recommendations.

The packing group designation for ''Mercury, contained in manufactured articles'' is revised from Packing Group I to Packing Group III for consistency with the entry for ''Mercury'' and the ICAO Technical Instructions.

To maintain consistency with the UN Recommendations, various proper shipping names are amended by the addition or removal of the word ''compressed'', ''inhibited'', ''liquefied'' or ''solution''. Several commenters indicated that although they generally support the international harmonization effort and overall intent to maintain consistency between the HMR, the UN Recommendations, the IMDG Code, and the ICAO Technical Instructions, they did not understand the basis for the addition or deletion of the words ''compressed,'' ''inhibited,'' '' liquefied'' or ''solution'' relative to clarifying certain existing shipping names. These amendments were adopted by the UNCOE, in part, to more effectively communicate the threat posed by certain materials in their different physical states, e.g., pressurized materials that may be transported as a liquid or as a gas. The description modifications were supported by several large industry groups at the time the UNCOE was considering the amendments.

RSPA recognizes that revising proper shipping names to include or exclude these four modifiers to the key words identifying the hazardous materials poses problems that makes compliance difficult in the one-year period provided in § 172.101(l)(1)(ii). Those difficulties and the associated additional costs of compliance were highlighted in comments provided by several shippers and carriers of industrial gases. In consideration of those comments, RSPA is providing an exception in § 172.101(l)(3) that obviates the need for shippers and carriers to make special arrangements to remark bulk or non-bulk packagings used in the transportation of the affected hazardous materials within one year following the effective date of this rule. Rather, when the proper shipping name of a hazardous material is modified only by the addition or omission of the word ''compressed,'' ''inhibited,'' '' liquefied'' or ''solution,'' its packaging may be marked with the previously prescribed proper shipping name for that material for a period of five years following the effective date of this rule. The extended compliance period is intended to allow re-marking to be accomplished in association with the periodic five-year retest required for most bulk packagings.

To minimize the effects of other amendments, RSPA is incorporating an extended transition period comparable to that provided in Docket HM–215A. This will allow industry time to deplete current stocks of pre-printed shipping papers, labels and packagings affected by the new shipping names and to implement the changes within their respective companies, including providing any necessary training to employees.

Two commenters pointed out a conflict in the proposed addition of a Division 5.1 subsidiary risk label for the entry ''Carbon dioxide and oxygen mixtures''. RSPA has stated previously that this subsidiary risk should be recognized only when a mixture contains a concentration of oxygen greater than 23.5%, requiring a subsidiary risk label for this entry without regard to the amount of oxygen in the mixture is inconsistent. Although the UN Recommendations prescribe a subsidiary 5.1 risk label without any distinctions, RSPA agrees with these commenters. Therefore, a new Special Provision 77 is added to limit the requirement for this subsidiary risk label to mixtures having an oxygen concentration greater than 23.5% for domestic transportation. In addition, RSPA intends to bring this inconsistency to the attention of the UN Committee of Experts.

RSPA is adjusting quantity limits for certain materials identified as poisonous by inhalation when transported by passenger or cargo aircraft or passenger railcar. Many of these changes are consistent with current quantity limits prescribed in the ICAO Technical Instructions. Certain other materials are forbidden for transportation by aircraft or passenger railcar because they have been identified as meeting the criteria for poisonous by inhalation and assigned Hazard Zone A for liquids and Hazard Zones A and B for gases.

Other changes to the HMT include: (1) Creating separate entries for ''Ammonia, anhydrous'' and ''Ammonia solutions''; (2) adding ''First aid kits'' as an alternative proper shipping name for the entry ''Chemical kits'' if the first aid kits contain hazardous materials; (3) combining entries for ''Chlorite solution'' and ''Hypochlorite solutions''; (4) removing ''Methyl alcohol'' as an authorized proper shipping name for ''Methanol'' but retaining it in italics as a cross reference; (5) adding a Class 3 subsidiary risk in Column (6) for several entries; and (6) creating a new entry for ''Aerosols (engine starting fluid)'' to indicate that these aerosols are prohibited on both passenger and cargo only aircraft.

RSPA is not incorporating various entries suggested by commenters that were not proposed in the NPRM. As noted previously, these suggestions are beyond the scope of the proposed changes in this rule and should be subject to notice and comment.

Appendix B to § 172.101

RSPA proposed to add, remove or revise a number of entries in the HMR's List of Marine Pollutants. These changes are based on Amendment 27 (to the extent not already incorporated in HM–215A) and Amendment 28 of the IMDG Code. Currently, Appendix B contains a duplicate entry for ''Maneb *or* Maneb preparations''; however, one entry has supplemental information in Roman type, while the supplemental information in the other entry is shown in italics. RSPA proposed to remove the entry listed in all Roman type. One

commenter indicated that the other entry should be retained for consistency with the IMDG Code. The commenter is correct; RSPA is retaining the entry ''Maneb *or* Maneb preparations *with not less than 60 per cent maneb*.'' In addition, several commenters suggested various other revisions to the list and RSPA has amended the list accordingly.

Section 172.102

A new special provision 15 is added as proposed to prescribe quantity limits and packaging for chemical kits and first aid kits. Other special provisions are added to authorize reclassification for certain commodities and to provide exceptions based on testing, concentrations, or stabilization for materials such as Maneb, aqueous solutions of inorganic solid nitrates, and Ferrocerium.

RSPA proposed to assign Special Provision 30 to the international entry for ''Sulfur'' to indicate that this material is not subject to the HMR when transported in a non-bulk packaging or if formed in a specific shape. The Sulphur Institute strongly supported this change and recommended rewording Special Provision 30 by removing the phrase ''when transported domestically''. RSPA agrees and this special provision is revised accordingly.

One commenter suggested RSPA revise Special Provision 47 to incorporate a special provision adopted in the ICAO Technical Instructions which allows small packagings consisting of sealed packets containing less than 10 ml of a Packing Group II or III flammable liquid absorbed onto a solid material to be excepted from the HMR if no free liquid is present in the packet. The commenter believed this provision is consistent with a previous letter of opinion RSPA issued concerning alcohol wipes and should be adopted as an ''A'' special provision, at a minimum, for consistency with ICAO. RSPA agrees and is incorporating this exception into Special Provision 47 to apply to all modes of transport.

RSPA proposed to add a new special provision A25 to authorize polyester resin kits in certain quantities to be packaged in non-specification packagings for transportation by aircraft. One commenter suggested removing this special provision, as well as Special Provision 40 (which currently is assigned to polyester resin kits), and incorporating all packaging provisions for polyester resin kits in § 173.152. After further consideration, RSPA agrees and is adding specific packaging provisions in § 173.152 applicable to all modes of transport for polyester resin kits.

In addition to revising the proper shipping name ''Aluminum smelting by-products or Aluminum remelting by-products'' (formerly Aluminum processing by-products), a new special provision B115 is assigned to this entry to permit certain non-specification bulk packagings for these products. Commenters representing the aluminum industry responded favorably to this proposal. A commenter suggested two modifications—one to add a new special provision applicable to both non-bulk and bulk packaging to include certain materials which exhibit corrosivity at PG II and III levels and the other to allow both special provisions to apply to ''magnesium granules.'' RSPA is adding a new Special Provision 128 and revising § 172.101 Table entries for UN 3096 and UN 3131 (Packing Groups II and III) to allow aluminum smelting by-products and aluminum remelting by-products which are described by a generic proper shipping name because they meet the criteria for both Division 4.3 and Class 8, to be packaged in accordance with Special Provision B115. However, RSPA is not expanding this provision to include non-bulk packagings, nor will Magnesium granules be assigned B115. In the NPRM, RSPA proposed a special provision for aluminum by-products which would eliminate the need for DOT Exemption DOT–E–11602. RSPA does not believe it appropriate at this time to adopt, without public notice and comment, new provisions which go beyond the relief authorized in DOT–E–11602 and proposed in the NPRM.

Special Provision N50, which provides an exception from Class 9 labeling for marine pollutants that are not hazardous substances or hazardous wastes, is removed. A corresponding change is made in Column 7 of the HMT to remove Special Provision N50 for the entries ''Environmentally hazardous substance, liquid (or solid) n.o.s.''

Section 172.203

RSPA is removing the requirement in paragraph (j) that the words ''Dangerous When Wet'' be annotated on shipping papers. As discussed previously, RSPA believes that the ''Dangerous When Wet'' hazard is adequately communicated through an indication of the Division 4.3 hazard class as part of the basic description on shipping papers. Commenters uniformly supported this proposal and stated that the change was compatible with international standards and that the ''Dangerous When Wet'' hazard is clearly communicated through indication of Division 4.3 as part of the basic shipping description, emergency response information on the shipping paper, and use of Division 4.3 labels and placards.

The list of generic proper shipping names which require inclusion of a technical name in paragraph (k)(3) is amended by adding several entries for hydrocarbon gases, hydrocarbon gas mixtures, and compressed, liquefied or refrigerated gases which have a subsidiary hazard of oxidizer or flammability. In addition, RSPA is adding the entry for ''Organometallic compound, water reactive, flammable, n.o.s.'' which was inadvertently omitted in a previous rulemaking action.

As discussed previously in §§ 171.11, 171.12 and 171.12a, RSPA is adding the word ''Toxic'' and the phrase ''Toxic-Inhalation Hazard'' in paragraph (m)(3) as an alternative to ''Poison''. RSPA proposed the addition of a new paragraph (m)(4) to provide an exception from the requirement to indicate on a shipping paper that a material is toxic if the toxicity of the material is based solely on corrosive destruction of tissue rather than systemic poisoning. One commenter believed this exception should not apply to materials poisonous by inhalation, which require additional shipping paper information to communicate the presence of a fatal inhalation hazard. The commenter believed the proposal was ill conceived and not beneficial to safety. After further consideration, RSPA believes that this proposed exception may not be appropriate for any material meeting toxicity criteria, not just a toxic by inhalation hazard material. Therefore, proposed paragraph (m)(4) is not adopted in this final rule.

Part 173

Section 173.3

Paragraph (c)(3) is amended to authorize the word ''SALVAGE'' as an alternative marking for salvage drums. In addition, a new paragraph (c)(7) is added to allow the use of salvage packagings which have been certified and marked to UN standards. RSPA is not adopting other marking requirements specified in the UN Recommendations such as: (1) Adding the letter ''T'' in the package specification markings following the package identification code (e.g. 1A2T/Y300/...); (2) annotating the words ''SALVAGE PACKAGING'' after the basic description on the shipping papers; and (3) adopting salvage packaging performance tests requiring salvage packagings to be tested at the Packing Group II level using liquid as the test medium. It is RSPA's view that

additional costs incurred by such marking and performance testing requirements are not justified because salvage packaging provisions currently prescribed in the HMR are adequate.

Two commenters addressed proposed changes to this section and both supported RSPA's decision to retain current salvage packaging provisions. For example, the Steel Shipping Container Institute maintained that it could not support complete harmonization with international salvage packaging standards until it has been clearly determined that incidents of failure in salvage packagings meeting the UN standards are less than those meeting current HMR requirements.

Section 173.21

The last sentence of paragraph (f) is amended to correctly reference the UN Manual of Tests and Criteria.

Section 173.32c

Currently an IM portable tank or its compartment having a volume greater than 5000 liters must have a minimum filling density of 80%. RSPA proposed to increase the minimum tank or compartment size to 7500 liters, consistent with international standards. One commenter claimed that RSPA's proposal did not go far enough and indicated that a filling restriction on portable tanks used solely for domestic highway transport is unjustified and precludes shippers from transporting relatively small quantities of hazardous materials in portable tanks. The commenter believed that a filling restriction of less than 80% for IM portable tanks or compartments should not apply to transport by highway. This commenter also stated that the purpose of the ''80% rule'' was to preclude hydraulic surge that could make adequate securing of portable tanks aboard vessels difficult and potentially dangerous, but that surge is not a safety concern in highway transport.

RSPA disagrees that surge is not a safety concern in highway transport of IM portable tanks. Portable tanks, when mounted on a vehicle chassis, may have a higher center of gravity as compared to standard cargo tank trucks. The effects of liquid movement and its destabilizing effect at high speed and during abrupt turning can contribute to roll-over. This effect is most predominant when ullage is greater than 20%. Furthermore, it is RSPA's opinion that information supplied by this commenter does not provide sufficient incentive for RSPA to expand relief beyond that proposed in the NPRM. RSPA may consider this matter further in future rulemaking action on the basis of pertinent technical justification (*e.g.*, data indicating forces experienced during transport of portable tanks as a result of cargo surge).

Section 173.34

Because of a printing error, in the table in paragraph (e)(18)(i), for DOT 8 or 8AL cylinders used to transport acetylene, under ''Porous filler requalification,'' the year ''2001'' is corrected to read ''2011'.

Section 173.60

As proposed, amendments to this section are consistent with the UN Recommendations, are largely editorial and serve to streamline and consolidate general requirements for packaging explosives while eliminating redundant and unnecessary requirements. These amendments are intended to more clearly convey general packaging requirements applicable to packaging explosives for transportation and do not impose new requirements.

RSPA received one comment from a company specializing in explosives regulatory compliance. This commenter recommended adding a reference to § 173.24(e) at the end of § 173.60(b)(8) and dropping proposed (b)(8) because (b)(9) addresses compatibility. RSPA does not agree. Section 173.60(b)(8) specifically addresses loose explosive substances or the explosives substance of a uncased or partly cased article which may present a sifting hazard from the package. However, RSPA believes it may be useful to add the explanatory reference to § 173.24(e) at the end of § 173.60(b)(9).

Section 173.62

RSPA proposed new explosives packaging methods in the Explosives Table which were developed by the UNCOE, based on comments received from the Department of Defense and explosive industry representatives, and on competent authority approvals and exemptions issued to shippers of explosives. These new methods are significantly more flexible than the methods currently prescribed in the Explosives Table and incorporate a broader range of options for authorized inner, intermediate and outer packagings. In several instances, inner and intermediate packagings are no longer required. Explosives Packing Instructions are consistent with those adopted in the ICAO Technical Instructions. In addition, many explosives (particularly those shipped under not otherwise specified (n.o.s.) entries) which currently require competent authority packaging approval are now assigned to specific packing methods eliminating the requirement for the competent authority to approve the packaging for these explosives.

A commenter asked RSPA to revise a provision for jet perforating guns in proposed Packing Instruction US1 to allow a higher total explosives content per tool pallet, based on a current exemption authorizing this higher quantity of explosives. RSPA agrees and is revising US1 to authorize up to 90.8 kg (200 pounds) total explosive contents per pallet.

Another commenter, the Sporting Arms and Ammunition Manufacturers' Institute (SAAMI), recommended several changes to the proposed revisions. First, SAAMI believed the elimination of inner packaging requirements for ''Cartridges, small arms'' (UN0012) is inconsistent with § 173.60 (b)(3) and (b)(5). RSPA does not agree. Only when metal outer packagings are used for UN0012, would § 173.60(b)(3) require a means of prevention from contact with the cartridges. This means could be padding or partitions and not necessarily an inner packaging. These cartridges have their explosives substances enclosed in an outer casing and do not require separation according to § 173.60(b)(3). RSPA believes the recessed primer well design of most cartridges for weapons effectively protects the article from accidental actuation. Shippers should add protection for articles that present an actuation hazard according to § 173.60(b)(5), but that protection can be offered by means other than requiring an inner packaging.

Secondly, SAAMI claimed that ''Small arms ammunition, ORM–D'' would require more stringent packaging under § 173.63(b)(2) than ''Cartridges, small arms'' classed as Division 1.4S and packaged in accordance with Packing Instruction 130. RSPA believes that more stringent packaging requirements for ORM–D materials (which are excepted from most shipping paper, marking, labeling and placarding provisions of the HMR) is appropriate. Furthermore, cartridges for weapons must be clearly identified, marked and labeled as Division 1.4S explosive articles.

SAAMI also claimed that packaging requirements for ''Cases, cartridge, empty with primer'' (UN0055) are more stringent than for ''Cartridges, small arms'' (UN0012). RSPA believes the inner packaging requirement for UN0055, primed cartridge cases, empty in Packing Instruction 136 is appropriate. These cases have an exposed explosive substance coated or deposited on the primer which could loosen and sift out of the outer

packaging without the inner packaging requirement.

RSPA does not agree with SAAMI's contention that the wording in Packing Instruction 133, regarding the authorization of trays as inner packagings for certain explosives, is confusing. RSPA believes that listing UN identification numbers for which the use of trays as inner packagings is prohibited is clearer because nearly 50 percent fewer numbers are listed.

Finally, SAAMI recommended that for ''Primers, cap type'' (UN0044), D9 and D11 limitations assigned to current Packing Method E–142 should be reinstated in Packing Instruction 133. RSPA does not agree. The harmonization of the HMR to international performance-oriented packaging requirements and with general packaging instructions for explosives has resulted in the successful elimination of many explosive quantity limitations per package. As a result, shipper compliance has become easier to achieve without increased risk to the public.

Section 173.120

Paragraphs (a)(3) and (b)(3) are revised to include a reference to ASTM D 4206 and a new paragraph (c)(1)(i)(C) is added to reference test method ASTM D 3828.

Section 173.124

Amendments to the test methods for flammable solids, pyrophoric materials, self heating substances and water reactive materials are adopted as proposed. The Self-Reactive Materials Table is updated to include seven new substances, consistent with the UN Recommendations. In the ninth revised edition of the UN Recommendations, Figure 14.2 (Flow Chart for Self-Reactive Substances) was amended. Paragraph (a)(2)(iv) of that chart is used to determine the generic type for a self-reactive material.

Section 173.125

The criteria for classification and packing group assignment for readily combustible materials of Division 4.1 is amended for consistency with the UN Recommendations. A reference to Appendix E (which is removed in this final rule) is replaced by references to the UN Manual of Tests and Criteria.

In paragraph (b), the UN burning rate test and criteria for classification is incorporated. The classification criteria for readily combustible materials is amended to require powdered, granular and pasty materials to be classified in Division 4.1 when the burning time for one or more of the test runs, according to the UN burning rate test method, is less than 45 seconds or the rate of burning is more than 2.2 mm/s. Powders of metal or metal alloys are classified in Division 4.1 when they can be ignited and the reaction spreads over the whole length of the sample in 10 minutes or less.

Readily combustible solids are assigned to Packing Group II if the burning time is less than 45 seconds and the flame passes the wetted zone. Packing Group II is assigned to powders of metal or metal alloys if the zone of reaction spreads over the whole length of the sample in five minutes or less. Packing Group III is assigned if the burning time is less than 45 seconds and the wetted zone stops the flame propagation for at least four minutes. Packing Group III is assigned to metal powders if the reaction spreads over the whole length of the sample in more than five minutes but not more than ten minutes.

In paragraph (c), Packing Group II and III assignment criteria for self-heating materials is revised to more accurately account for the volume of material being transported. For instance, certain self-heating materials which are packaged and transported in volumes less than 3 cubic meters or in quantities less than 450 liters are not subject to the requirements of the HMR.

In paragraph (d), the packing group assignment criteria is revised for consistency with the UN Recommendations. These amendments do not significantly affect the packing group assignment criteria, but are purely editorial to clarify the meaning of ''spontaneous ignition.''

Section 173.127

RSPA is revising the definition for solid oxidizers and adding a new definition, test and criteria for liquid oxidizers. Liquid oxidizers would not be classified by analogy as currently required in the HMR. The references to Appendix F (which is removed in this final rule) are replaced by a reference to the UN Manual of Tests and Criteria.

Paragraph (b)(1) is revised to include a statement indicating that the material must be tested in the concentration offered for transport. The criteria for packing group assignment is revised to specify the ratios of solid oxidizing material and cellulose used in assessing the burning characteristics for comparison with the burning characteristics of potassium bromate, potassium perchlorate or potassium persulphate and cellulose mixtures.

Paragraph (b)(2) incorporates packing group assignment criteria for liquid oxidizers adopted in the ninth revised edition of the UN Recommendations. Incorporating specific criteria for liquid oxidizers provides a more precise means for shippers to classify these products and eliminates ambiguity involved in classifying these materials by analogy.

Section 173.128

In paragraph (c)(3) the reference to the UN Manual of Tests and Criteria is revised to reflect its correct title. Paragraph (e) is amended to update the reference to Figure 11.1 (Classification and Flowchart Scheme for Organic Peroxides).

Section 173.132

A new paragraph (b)(3)(iii) is added to clarify when solid and liquid materials are required to be tested for acute toxicity by inhalation. One commenter recommended that RSPA remove the second sentence in paragraph (b)(3) because proposed (b)(3)(iii) not only addresses this issue but is more specific. RSPA does not agree. While there is some overlap, current (b)(3) provides more details of testing and new (b)(3)(iii) is more specific as to when tests must be run.

Current paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to authorize three methods for use in classifying and assigning packing groups to mixtures of materials possessing oral and dermal toxicity characteristics. One commenter pointed out that the formula in paragraph (c) is missing a ''+'' between the second and third fractions and also is missing a note found in international standards. In this final rule, RSPA is inserting the ''+'' between the second and third fractions. RSPA intentionally did not propose the additional note referenced by this commenter because the note provides optional information rather than imposing a regulatory requirement. However, for consistency with international standards and convenience of the reader, RSPA is adding the note at the end of paragraph (c).

Section 173.136

A new paragraph (c) is added to clarify that skin corrosion test data developed prior to September 30, 1995, would continue to be valid. This revision is based on a statement in the preamble to the HM–215A final rule (December 29, 1994; 59 FR 67400) that RSPA would not require retesting of materials classified under the previous test method in Appendix A of Part 173.

Section 173.137

Paragraph (b) is revised to clarify that, when determining whether a material

meets Class 8 Packing Group II, the material cannot meet Class 8 Packing Group I .

Section 173.152

Limited quantity provisions are added in paragraph (b)(4)(i) for polyester resin kits for transport by all modes.

Section 173.162

A new sentence is added at the end of the paragraph to provide an exception from the HMR for small quantities of gallium contained in manufactured articles or apparatuses.

Section 173.166

This section is revised to remove all references to ''seat-belt modules'', consistent with changes in the UN Recommendations. Packaging provisions in paragraph (e) are revised to add drums, jerricans, and plastic boxes to the array of authorized packagings. In addition to non-specification containers currently authorized for transporting air bags within a controlled distribution system, RSPA is also specifically authorizing dedicated handling devices.

Section 173.185

This section is revised for consistency with changes adopted in the ninth revised edition of the UN Recommendations and in the ICAO Technical Instructions.

Currently there are different quantity limitations in the HMR for determining whether lithium cells and batteries may be designated as items of Class 9 on the basis of whether they meet the tests and criteria provided in the UN Manual of Tests and Criteria. These limitations also apply to lithium cells and batteries contained in equipment. The limitations are based on whether the cells or batteries will be transported on passenger or cargo aircraft. Consistent with the ICAO Technical Instructions, RSPA is adopting an authorization to allow cells containing not more than 12 grams of lithium or lithium alloy, and batteries containing not more than 500 grams of lithium or lithium alloy, to be designated as Class 9 when transported by passenger or cargo aircraft. This also applies to lithium cells and batteries contained in equipment under specified conditions.

RSPA is also expanding the types of packagings authorized for transporting cells and batteries by aircraft to include an array of boxes, drums and jerricans. Additionally, RSPA is eliminating the requirement for equipment containing lithium cells and batteries to be packaged in waterproof outer packaging if the equipment itself is constructed to be waterproof (*i.e.*, lifesaving equipment designed to function in water).

One commenter indicated that his company's batteries would not pass all the tests specified in the UN Tests and Criteria for lithium batteries. RSPA believes the regulations as adopted provide an adequate alternative for lithium battery manufacturers. Under § 173.185 (i), manufacturers who experience difficulty in meeting the UN Tests and Criteria for lithium batteries may apply for an approval provided they can demonstrate an equivalent level of safety.

Sections 173.201–173.203 and 173.211—173.213

Aluminum jerricans, 3B1 or 3B2, are added as authorized packagings in each of these sections.

Section 173.220

Consistent with proposed changes in § 176.905 for wet batteries transported by vessel, paragraph (c)(1) is amended to remove the reference to § 176.905 and to state that a motor vehicle or mechanical equipment which is electrically powered is not subject to the HMR.

Section 173.224

In paragraph (b), the Self-Reactive Materials Table is amended by adding seven new entries. The Packing Method Table for Generic Types in paragraph (c)(3) is removed because the information is specifically listed in the Self-Reactive Materials Table, and paragraph (c)(4) is redesignated paragraph (c)(3).

Section 173.225

Paragraph (b) explains column headings in the Organic Peroxide table. Specifically, paragraph (b)(2) describes the information comprised in the column entitled ''ID Number.'' The word ''Exempt'' occasionally appears in place of an identification number, but is not defined in § 173.225. In this final rule, paragraph (b)(2) is amended by adding a statement to clarify that the word ''Exempt,'' if it appears in the Organic Peroxide Table, means that the material is not regulated as an organic peroxide.

In paragraph (b)(4)(ii), the use of type B diluents for desensitization of organic peroxides is authorized for all organic peroxides provided that the boiling point is at least 60 °C (140 °F) greater than the SADT of the organic peroxide in a 50 kg package. Paragraph (b)(6) is revised to indicate that lower control temperatures are required when IBCs and bulk packagings are used.

Paragraph (c)(2), which prohibits IBCs and bulk packagings unless authorized through an approval, is removed. The Packing Method Table for Generic Types in paragraph (c)(3) is removed because the information is specifically listed in the Organic Peroxides Table, and paragraph (c)(4) is redesignated paragraph (c)(3).

Paragraph (d) is revised to consolidate two tables specifying packagings for liquid and solid organic peroxides and self-reactive materials into one table for both liquids and solids.

RSPA is authorizing bottom outlets for organic peroxides in bulk packagings by removing the prohibition in the last sentence of paragraph (e)(2) and removing paragraph (e)(3)(i)(B). Paragraph (e)(3)(i)(C) is redesignated paragraph (e)(3)(i)(B).

Paragraph (e)(5) is revised to authorize the transport of stabilized peroxyacetic acid, type F (containing not more than 17 percent peroxyacetic acid) in type 31A IBCs. A similar proposal made by the United States has been approved by the UN Committee of Experts for incorporation into the tenth revised edition of the UN Recommendations.

Section 173.226

Paragraph (c)(1) is amended to add aluminum jerricans as an authorized packaging.

Section 173.315

When the hazard class and division assigned to ''Methylamine, anhydrous'' was changed from Division 2.3 (poisonous gas) to Division 2.1 (flammable gas), RSPA failed to correct the § 173.315 table entry for this material by removing Notes 22 and 24. The table entry is being corrected in this final rule.

Sections 173.316 and 173.318

RSPA proposed the addition of a requirement for mixtures of cryogenic liquids, where charging requirements are not specifically prescribed, to be shipped in packagings approved by the Associate Administrator for Hazardous Materials Safety. A commenter expressed confusion as to whether this proposal would eliminate the need for DOT Exemption DOT–E–10001. RSPA is revising the proposed provisions in paragraphs (d) and (f)(4) of §§ 173.316 and 173.318, respectively, to clarify that an approval, rather than an exemption, is needed.

Appendix E and Appendix F

As proposed, the guidelines for classification and packing group assignment for Classes 4 and 5 are

removed. RSPA believes the UN Manual of Tests and Criteria is a more appropriate reference for these test methods. The NPRM stated that by removing Appendix E and F, RSPA will decrease the number of amendments to the HMR necessary for consistency with the UN Manual and will reduce the number of pages in the HMR. One commenter objected to this proposal, claiming potential difficulty and expense in obtaining copies of the most current version of the UN Test Manual. RSPA does not agree. A copy of the current test manual is part of the HM–215B public record maintained by RSPA's Dockets Unit. Upon request to the RSPA Dockets Unit (202–366–5046), RSPA will reproduce and provide pertinent pages from the most current UN Test Manual.

Part 175

Section 175.10

Paragraph (a)(22) is revised to allow mercury thermometers (in addition to mercury barometers) to be carried in carry-on baggage by a representative of a government weather bureau or similar official agency, provided the individual advises the aircraft operator of its presence in the baggage.

Part 176

Section 176.78

Paragraph (k), which pertains to stowage of power-operated industrial trucks on board a vessel, is revised to correspond to proposed revisions in § 176.905.

Section 176.84

A new code 17 is added to prescribe segregation for a compressed or liquefied gas which is toxic, flammable and corrosive.

Section 176.905

RSPA is revising requirements for transporting motor vehicles or mechanical equipment powered by internal combustion engines by vessel to take account of recent changes which have occurred in the IMDG Code and in response to comments received to the NPRM and during public outreach meetings. In Amendment 27 of the Code, the proper shipping name ''Engines, Internal Combustion'', UN3166, was added in order to regulate motor vehicles and other equipment powered by internal combustion engines. However, this proper shipping name was removed and these materials were deregulated in Amendment 28 of the IMDG Code.

Although RSPA did not propose total relief for the transport of motor vehicles by vessel, it proposed modifying the vessel carriage provisions to allow battery cables to remain connected in transport and allow vehicles transported on roll-on roll-off ships to be transported without being subject to the HMR. Additionally, revised transport provisions for vehicles fueled with compressed gas and for certain battery-powered vehicles were proposed to provide clarity.

One commenter suggested that RSPA remove this section from the HMR and provide total relief for the transport of mechanical equipment powered by internal combustion engine by vessel. RSPA believes that total relief would not be in the best interest of safety and that certain precautions which minimize the potential for hazardous materials incidents involving internal combustion-powered vehicles and equipment are warranted.

Another commenter recommended that the motor vehicle carriage requirements in this section be adopted in the IMDG Code to alleviate the safety and practical problems that could arise with the deregulation of motor vehicles in Amendment 28 of the Code. Work at the International Maritime Organization to amend the IMDG Code is beyond the scope of this rulemaking. The commenter also noted that to require the fuel tank to be no more than one-fourth full is somewhat arbitrary and can be eliminated with an inspection for leaks prior to loading. RSPA does not agree. The purpose of the quarter tank requirement is to limit the amount of flammable vapors which would collect in an enclosed space such as a freight container should a fuel leak occur. Although fuel tanks sizes vary, RSPA believes that limiting the fuel present in a vehicle's tank is a valuable safety measure necessary to alleviate the hazard of an undetected leak during long ocean voyages. Therefore, the proposed requirement will remain unchanged. Finally, this commenter noted that paragraph (f) requires a fire extinguishing system capable of alerting personnel on the bridge of a ship, which should apply instead to the smoke or fire detection system discussed in paragraph (g). RSPA agrees and is revising this provision accordingly.

Several provisions are added to incorporate transport safety measures included in recently issued motor vehicle exemptions that now allow transport of motor vehicles with batteries connected. These provisions include a requirement for an inspection of the vehicle's battery and associated equipment prior to loading and requiring the removal of a vehicle's ignition key.

Part 178

Section 178.511

This section is amended to adopt requirements for aluminum jerricans consistent with the UN Recommendations. Packaging codes 3B1 and 3B2 are added. Paragraph (b) is amended to incorporate construction requirements for aluminum jerricans consistent with the UN Recommendations.

Section 178.703

In paragraph (b)(6), requirements for marking inner receptacles of 31HZ2 composite IBCs are added. All inner receptacles must be marked with the code number designating the intermediate bulk container design type, the name or symbol of the manufacturer, the date of manufacture and the country authorizing the allocation of the mark. In addition, where the outer casing of a 31HZ2 IBC could be dismantled, each of the detachable parts must be marked with the month and year of manufacture and the name or symbol of the manufacturer.

Section 178.707

In paragraph (c)(2), a new requirement is added to indicate that the outer packaging of 31HZ2 composite IBCs must enclose the inner receptacles on all sides. In paragraph (c)(3) a new requirement is added to indicate that inner receptacles of 31HZ2 composite IBCs must consist of at least three plies of film. In paragraph (c)(6), a new requirement is added to indicate that IBCs of type 31HZ2 must be limited to a capacity of not more than 1250 liters.

Section 178.815

In paragraph (c)(3), the words ''which bear the stacking load'' are added to clarify that rigid plastic IBCs and composite IBCs with plastic outer packagings must be tested for 28 days at 40°C (104°F) when the plastic outer packagings bear the stacking load. IBCs with plastic outer packagings that are designed with metal corner posts to bear the stacking load are not required to be tested for 28 days at 40°C (104°F), but must be subjected to the stacking test for 24 hours.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and

Procedures of the Department of Transportation [44 FR 11034].

The economic impact of this final rule is expected to result in only minimal costs to certain persons subject to the HMR and may result in modest cost savings to a small number of persons subject to the HMR and to the agency. Most of the revised requirements adopted in this rulemaking received industry-association support before the United Nations Committee of Experts on the Transport of Dangerous Goods. Of the comments received in this docket, few dealt with increased costs of compliance. Nevertheless, RSPA believes it adequately addressed the concerns of commenters focused on increased costs of compliance through its adoption of a five-year extended compliance period pertaining to package marking requirements. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal hazardous materials transportation law, 49 U.S.C. 5701–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subjects under items (1), (2), (3), and (5) above and, if adopted as final, would preempt State, local, or Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that if DOT issues a regulation concerning any of the covered subjects DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be [insert date 180 days after issuance of final rule] under this docket. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This final rule incorporates changes adopted in the ninth revised edition of the UN Recommendations, the 1997–98 ICAO Technical Instructions, and Amendment 28 to the IMDG Code. It applies to offerors and carriers of hazardous materials and facilitates the transportation of hazardous materials in international commerce by providing consistency with international requirements.

This final rule will affect small business entities that ship or transport hazardous materials, but any adverse economic impact should be minimal. Certain costs incurred through changes to hazard communication and classification requirements will be minimized through a lengthy optional compliance period, which will allow a sufficient phase-in period to implement new provisions and deplete current inventory affected by the new requirements. If changes already incorporated in international standards are not adopted in this final rule, U.S. companies, including numerous small entities competing in foreign markets, will be at an economic disadvantage by being forced to comply with a dual system of regulation.

Based on readily available information concerning the size and nature of entities likely affected by this final rule, I certify this rule will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under OMB control numbers 2137–0034 for shipping papers and 2137–0557 for approvals. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicles safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In the § 171.7(a)(3) Table, two new entries are added in numerical order under the entry for American Society for Testing and Materials and the last entry under the entry for United Nations is revised, to read as follows:

§ 171.7 Reference material.

(a) *Matter incorporated by reference.*

* * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	*
American Society for Testing and Materials	
* * * * * * *	*
ASTM D 3828–93, Standard Test Methods for Flash Point by Small Scale Closed Tester	173.120.
ASTM D 4206–96 Standard Test Method for Sustained Burning of Liquid Mixtures Using the Small Scale Open-Cup Apparatus.	173.120.
* * * * * * *	*
United Nations	
* * * * * * *	*
UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria, Second Revised Edition, 1995.	173.21, 173.56 173.57, 173.124 173.128, 173.166 173.185.

* * * * *

§ 171.7 [Amended]

3. In addition, in § 171.7, in the table in paragraph (a)(3), the following changes are made:

a. In the entry ASTM D 93–90, the wording ''D 93–90'' is revised to read ''D 93–94''.

b. In the entry ASTM D 3278–89, the wording ''D 3278–89'' is revised to read ''D 3278–95''.

c. In the entry ASTM G 31–72, the wording ''(Reapproved 1990)'' is revised to read ''(Reapproved 1995)'.

d. Under Transport Canada, the entry ''Transportation of Dangerous Goods Regulations, 1 July 1985'' is amended by revising the reference ''and SOR/94–264 (English edition)'' at the end of the entry to read '', SOR/94–264 (English edition), SOR/95–241, and SOR/95–547''.

e. Under United Nations, for the entry ''UN Recommendations on the Transport of Dangerous Goods, Eighth Revised Edition (1993)'' the wording ''Eighth Revised Edition (1993)'' is revised to read ''Ninth Revised Edition (1995)''.

4. In § 171.8, the following definitions are added in the appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Aerosol means any non-refillable metal receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a nonpoisonous (other than a Division 6.1 Packing Group III material) liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

* * * * *

Intermediate packaging means a packaging which encloses an inner packaging or article and is itself enclosed in an outer packaging.

* * * * *

SADT means self-accelerated decomposition temperature. See § 173.21(f) of this subchapter.

Salvage packaging means a special packaging conforming to § 173.3 of this subchapter into which damaged, defective or leaking hazardous materials packages, or hazardous materials that have spilled or leaked, are placed for purposes of transport for recovery or disposal.

* * * * *

5. In § 171.11, paragraph (d)(4) is revised and a new paragraph (d)(14) is added, to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(4) When a hazardous material that is regulated by this subchapter for transportation by highway is transported by motor vehicle on a public highway under the provisions of this section, the following requirements apply:

(i) The motor vehicle must be placarded in accordance with subpart F of part 172 of this subchapter; and

(ii) The shipping paper must include an indication that the shipment is being made under the provisions of this section or must include the letters ''ICAO.''

* * * * *

(14) An aerosol must meet the definition for ''Aerosol'' in § 171.8.

§ 171.11 [Amended]

6. In addition, in § 171.11, in paragraph (d)(9)(i), the wording '' 'Poison-Inhalation Hazard' '' is revised to read '' 'Toxic Inhalation Hazard' or 'Poison Inhalation Hazard' ''.

7. In § 171.12, a new paragraph (b)(17) is added to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(17) An aerosol must meet the definition for ''Aerosol'' in § 171.8.

* * * * *

§ 171.12 [Amended]

8. In addition, in § 171.12, the following changes are made:

a. In paragraph (b)(8)(i), the wording '' 'Poison-Inhalation Hazard' '' is revised to read '' 'Toxic Inhalation Hazard' or 'Poison Inhalation Hazard' ''.

b. Paragraph (b)(13) is removed and reserved.

9. In § 171.12a, a new paragraph (b)(16) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(16) An aerosol must meet the definition for ''Aerosol'' in § 171.8.

§ 171.12a [Amended]

10. In addition, in § 171.12a, the following changes are made:

a. In paragraph (b)(5)(i), the wording '' 'Poison-Inhalation Hazard' '' is revised to read '' 'Toxic Inhalation Hazard' or 'Poison Inhalation Hazard' ''.

b. Paragraph (b)(12) is removed and reserved.

11. Section 171.14 is amended by adding a new paragraph (d) to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(d) A rule published in the **Federal Register** on May 6, 1997, effective October 1, 1997, resulted in revisions to this subchapter. During the transition period provided in paragraph (d)(1) of this section, a person may elect to comply with either the applicable requirements of this subchapter in effect on September 30, 1997, or the requirements of this subchapter in the May 6, 1997 final rule, in effect on October 1, 1997.

(1) *Transition date.* On October 1, 1998, all applicable regulatory requirements adopted in the May 6, 1997 final rule in effect on October 1, 1997 must be met.

(2) *Intermixing old and new requirements.* Prior to the transition date in paragraph (d)(1) of this section, it is recommended that the hazard communication requirements be consistent where practicable, *i.e.*, marking, labeling, placarding, and shipping paper descriptions should conform to either the old requirements of this subchapter in effect on September 30, 1997, or new requirements of this subchapter in the May 6, 1997 rule, in effect on October 1, 1997, without intermixing of communication elements. However, intermixing is permitted, during the applicable transition period, for packaging, hazard communication, and handling provisions, as follows:

(i) If either shipping names or identification numbers are identical, a shipping paper may display the old shipping description even if the package is marked and labeled under the new shipping description;

(ii) If either shipping names or identification numbers are identical, a shipping paper may display the new shipping description even if the package is marked and labeled under the old shipping description; and

(iii) Either old or new placards may be used regardless of whether old or new shipping descriptions and package markings are used.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

12. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

13. In § 172.101, new paragraphs (c)(14), (c)(15), and (l)(3) are added to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(14) A proper shipping name that describes all isomers of a material may be used to identify any isomer of that material if the isomer meets criteria for the same hazard class or division, subsidiary risk(s) and packing group, unless the isomer is specifically identified in the Table.

(15) Hydrates of inorganic substances may be identified using the proper shipping name for the equivalent anhydrous substance if the hydrate meets the same hazard class or division, subsidiary risk(s) and packing group, unless the hydrate is specifically identified in the Table.

* * * * *

(l) * * *

(3) The proper shipping name of a hazardous material changed in the May 6, 1997 final rule, in effect on October 1, 1997, only by the addition or omission of the word ''compressed,'' ''inhibited,'' ''liquefied'' or ''solution'' may continue to be used to comply with package marking requirements, until January 1, 2003.

* * * * *

§ 172.101 [Amended]

14. In addition, in § 172.101, in paragraph (f), in the second sentence, the wording ''Classes 2 and 7 materials and ORM–D materials'' is revised to read ''Class 2, Class 7, Division 6.2 (other than regulated medical wastes), and ORM–D materials''.

15. In § 172.101, the Hazardous Materials Table is amended by removing, adding, or revising, in appropriate alphabetical sequence, the following entries to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§173. * * *)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
		*	*		*	*	*		*	*			
	Aluminum processing by-products (both entries).												
		*	*		*	*	*		*	*			
I	Ammonia, anhydrous, liquefied *or* Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.*												
D	Ammonia, anhydrous, liquefied *or* Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.*												
		*	*		*	*	*		*	*			
	n-Amylene												
D	Boosters with detonator		NA0350										
		*	*		*	*	*		*	*			
	2-Bromo-2-nitropropane-1,3-diol.												
		*	*		*	*	*		*	*			
	Butoxyl												
		*	*		*	*	*		*	*			
	n-Butyl bromide												
		*	*		*	*	*		*	*			
	Butylpropionate												
		*	*		*	*	*		*	*			
	Carbon dioxide and oxygen mixtures.												

*	*	*	*	*	*	*				
Chemical kits (*must be classified and labelled according to the hazard class of the constitutent(s) and must meet the requirements of special provision 15 in 172.102(c)(1)).*										
*	*	*	*	*	*	*				
Chlorite solution *with more than 5 percent but less than 16 percent available chlorine.*										
Chlorite solution *with not less than 16 percent available chlorine.*										
*	*	*	*	*	*	*				
Coating solution (both entries).										
*	*	*	*	*	*	*				
Dibromobenzene										
*	*	*	*	*	*	*				
Dichloropropane, see Propylene dichloride.										
*	*	*	*	*	*	*				
Diethylaminoethanol										
*	*	*	*	*	*	*				
Diphenylmethane-4,4′-diisocyanate.										
*	*	*	*	*	*	*				
Engine starting fluid, *with flammable gas.*										
*	*	*	*	*	*	*				
Ethylene glycol monobutyl ether.										
*	*	*	*	*	*	*				
Explosive pest control devices.		NA0006								
Explosive pest control devices.		NA0412								
*	*	*	*	*	*	*				
Firelighters, solid *with flammable liquid* (both entries).										
*	*	*	*	*	*	*				
Furfural										
*	*	*	*	*	*	*				
Gas, refrigerated liquid, n.o.s.										

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173. * * *)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*	*	*		*			
	Halogenated irritating liquids, n.o.s. (all three entries).												
		*	*		*	*	*	*		*			
	Hexaethyl tetraphosphate, liquid (PG I and III).												
		*	*		*	*	*	*		*			
	Hexaethyl tetraphosphate, solid (PG I and III).												
		*	*		*	*	*	*		*			
	Hypochlorite solutions *with more than 5 percent but less than 16 percent available chlorine.*												
	Hypochlorite solutions *with 16 percent or more available chlorine.*												
		*	*		*	*	*	*		*			
	Mannitol hexanitrate, wetted *or Nitromannite, wetted with not less than 40 percent water, by mass or mixture of alcohol and water.*												
		*	*		*	*	*	*		*			
	Methyl benzoate												
		*	*		*	*	*	*		*			
	Methyl vinyl ketone												
		*	*		*	*	*	*		*			
	Nitrosoguanidine												
		*	*		*	*	*	*		*			
	tert-Octyl mercaptan												
		*	*		*	*	*	*		*			
	Pentan-2,4-dione												
		*	*		*	*	*	*		*			
	Percarbonates, inorganic, n.o.s.												

*	*		*	*	*	*	*					
Plastic molding material *in dough, sheet or extruded rope form*.												
*	*		*	*	*	*	*					
Potassium salts of aromatic nitro-derivatives, *explosive*.												
*	*		*	*	*	*	*					
Propellant, explosive, liquid.		NA0474										
*	*		*	*	*	*	*					
Propellant explosive, liquid.		NA0477										
*	*		*	*	*	*	*					
Propylene dichloride												
*	*		*	*	*	*	*					
Selenium powder												
*	*		*	*	*	*	*					
Sodium percarbonate												
*	*		*	*	*	*	*					
Sodium salts of aromatic nitro-derivatives, n.o.s. *explosive*.												
*	*		*	*	*	*	*					
Tributylamine												
*	*		*	*	*	*	*					
Trifluorochloroethylene, inhibited, *R1113*.												
*	*		*	*	*	*	*					
Trifluoromethane and chlorotrifluoromethane mixture (*constant boiling mixture*) (*R503*).												
*	*		*	*	*	*	*					
Triisocyanatoisocyanurate of isophoronediisocyanate, solution, *with 70 percent, by mass*.												
*	*		*	*	*	*	*					
[ADD:]												
*	*		*	*	*	*	*					
Adhesives, *containing a flammable liquid*.	3	UN1133	I	3	B42, T7, T30.	150	201	243	1 L	30 L	B	
*	*		*	*	*	*	*					
Aerosols, flammable, n.o.s. (*engine starting fluid*) (*each not exceeding 1 L capacity*).	2.1	UN1950		2.1	N82	306	None	None	Forbidden	Forbidden	A	40, 48, 85

§172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§173. * * *)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*	*		*	*			
	Aluminum smelting by-products *or* Aluminum remelting by-products.	4.3	UN3170	II	4.3	B106, B115.	None	212	242	15 kg	50 kg	B	85, 103
				III	4.3	B106, B115.	None	213	241	25 kg	100 kg	B	85, 103
		*	*		*	*	*		*	*			
	2-Amino-4,6-Dinitrophenol, wetted *with not less than 20 percent water by mass.*	4.1	UN3317	I	4.1	23,A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36
		*	*		*	*	*		*	*			
I	Ammonia, anhydrous	2.3	UN1005		2.3, 8	4	None	304	314, 315 ..	Forbidden	25 kg	D	40, 57
D	Ammonia, anhydrous	2.2	UN1005		2.2	13	None	304	314, 315 ..	Forbidden	25 kg	D	40, 57
		*	*		*	*	*		*	*			
D	Ammonia solution, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.*	2.2	UN3318		2.2	13	None	304	314, 315 ..	Forbidden	25 kg	D	40, 57
I	Ammonia solution, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.*	2.3	UN3318		2.3, 8	4	None	304	314, 315 ..	Forbidden	25 kg	D	40, 57
		*	*		*	*	*		*	*			
	2-Bromo-2-nitropropane-1,3-diol.	4.1	UN3241	III	4.1	46	151	213	None	25 kg	50 kg	C	12, 25, 40
		*	*		*	*	*		*	*			
	1-Bromobutane	3	UN1126	II	3	T1	150	202	242	5L	60L	B	40
		*	*		*	*	*		*	*			
Dn-Butyl bromide, see 1-Bromobutane												.	
		*	*		*	*	*		*	*			
	Butyl propionates	3	UN1914	III	3	B1,T1	150	203	242	60 L	220 L	A	
		*	*		*	*	*		*	*			
	Calcium chlorate aqueous solution. [ADD]	5.1	UN2429										
				III	5.1	A2, N41, T8.	152	203	241	2.5L	30 L	B	56, 68, 106

	*	*		*	*	*	*	*	*				
	Carbon dioxide and oxygen mixtures, compressed.	2.2	UN1014		2.2, 5.1	77	306	304	314, 315 ..	75 kg	150 kg	A	
	*	*		*	*	*	*	*	*				
	Chemical kits *or* First aid kits (*containing hazardous materials*).	9	UN3316		9	15	None	None	None	10 kg	10 kg	A	
	*	*		*	*	*	*	*	*				
	Chlorite solution	8	UN1908	II	8	A3,A6, A7, B2, N34, T8.	154	202	242	1 L	30 L	B	26
				III	8	A3,A6, A7, B2, N34, T8.	154	203	241	5 L	60 L	B	26
	*	*		*	*	*	*	*	*				
	Coating solution (*includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining*).	3	UN1139	I	3	T42	150	201	243	1 L	30 L	E	
				II	3	T7,T30	150	202	242	5 L	60 L	B	
				III	3	B1,T7,T30	150	203	242	60 L	220 L	A	
	*	*		*	*	*	*	*	*				
1	Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3304		2.3, 8	1	None	192	245	Forbidden	Forbidden	D	40
I	Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3304		2.3, 8	2	None	302, 305 ..	314, 315 ..	Forbidden	Forbidden	D	40
I	Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3304		2.3, 8	3	None	302, 305 ..	314, 315 ..	Forbidden	Forbidden	D	40
I	Compressed gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3304		2.3, 8	4	None	302, 305 ..	314, 315 ..	Forbidden	Forbidden	D	40
I	Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3305	2.3, 2.1, 8	1	None	192	245	Forbidden	Forbidden	D	17, 40.	
I	Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3305	2.3, 2.1, 8	2	None	302, 305 ..	314, 315 ..	Forbidden	Forbidden	D	17, 40.	
I	Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3305	2.3, 2.1, 8	3	None	302, 305 ..	314, 315 ..	Forbidden	Forbidden	D	17, 40.	
I	Compressed gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3305	2.3, 2.1, 8	4	None	302, 305 ..	314, 315 ..	Forbidden	Forbidden	D	17, 40.	
I	Compressed gas, toxic, oxdizing, corrosive, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3306	2.3, 5.1, 8	1	None	192	244	Forbidden	Forbidden	D	40, 89, 90.	

§172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§173. * * *)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
I	Compressed gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3306	2.3, 5.1, 8	2	None	302, 305	314, 315	Forbidden	Forbidden	D	40, 89, 90.	
I	Compressed gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3306	2.3, 5.1, 8	3	None	302, 305	314, 315	Forbidden	Forbidden	D	40, 89, 90.	
I	Compressed gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3306	2.3, 5.1, 8	4	None	302, 305	314, 315	Forbidden	Forbidden	D	40, 89, 90.	
	Compressed gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3303	2.3, 5.1	1	None	192	245	Forbidden	Forbidden	D	40.	
	Compressed gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN3303	2.3, 5.1	2	None	302, 305	314, 315	Forbidden	Forbidden	D	40.	
	Compressed gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3303	2.3, 5.1	3	None	302, 305	314, 315	Forbidden	Forbidden	D	40.	
	Compressed gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3303	2.3, 5.1	4	None	302, 305	314, 315	Forbidden	Forbidden	D	40.	
		*	*	*	*		*	*		*			
	Detonator assemblies, non- electric *for blasting.*	1.4S	UN0500	II	1.4S	104	63(f), 63(g)	62	None	25 kg	100 kg	A	
		*	*	*	*		*	*		*			
	1,2-Dichloropropane	3	UN1279	II	3	N36,T1	150	202	242	5 L	60 L	B	
		*	*	*	*		*	*		*			
	2-Diethylaminoethanol	8	UN2686	II	8,3	B2,T15, T26.	None	202	243	1 L	30 L	A	
	2-Dimethylaminoethyl acrylate.	6.1	UN3302	II	6.1	T8	None	202	243	5 L	60 L	D	25
		*	*	*	*		*	*		*			
	Disinfectant, liquid, corrosive, n.o.s.	8	UN1903	I	8	A7, B10, T42.	None	201	243	0.5 L	2.5 L	B	
		*	*	*	*		*	*		*			
	Dyes, liquid, corrosive, n.o.s. or Dye intermediates, liquid, corrosive, n.o.s..	8	UN2801	I	8	11, B10	None	201	243	0.5 L	2.5 L	A	
		*	*	*	*		*	*		*			
	Firelighters, solid *with flammable liquid.*	4.1	UN2623	III	4.1	A1, A19	None	213	None	25 kg	100 kg	A	
		*	*	*	*		*	*		*			
	Furaldehydes	6.1	UN1199	II	6.1, 3	T15	None	202	243	5 L	60 L	A	
		*	*	*	*		*	*		*			
	Gas cartridges, *(flammable) without a release device,non-refillable.*	2.1	UN2037		2.1		306	304	None	1 kg	15 kg	B	40.

	*	*		*	*		*	*	*					
	Gas, refrigerated liquid, flammable, n.o.s. *(cryogenic liquid)*.	2.1	UN3312		2.1		None	316	318	Forbidden	Forbidden	D		40
	Gas, refrigerated liquid, n.o.s. *(cryogenic liquid)*.	2.2	UN3158		2.2		320	316	318	50 kg	500 kg	D		
	Gas, refrigerated liquid, oxidizing, n.o.s. *(cryogenic liquid)*.	2.2	UN3311		2.2, 5.1		320	316	318	Forbidden	Forbidden	D		
	*	*		*	*		*	*	*					
	Hypochlorite solutions	8	UN1791	II	8	A7, B2, B15, N34, T7.	154	202	242	1 L	30 L	B		26
				III	8	B104, N34, T7.	154	203	241	5 L	60 L	B		26
	*	*		*	*		*	*	*					
I	Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone A*.	2.3	UN3308		2.3, 8	1	None	192	245	Forbidden	Forbidden	D		40
I	Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3308		2.3, 8	2	None	304	314, 315	Forbidden	Forbidden	D		40
I	Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3308		2.3, 8	3	None	304	314, 315	Forbidden	Forbidden	D		40
I	Liquefied gas, toxic, corrosive, n.o.s. *Inhalation Hazard Zone D*.	2.3	UN3308		2.3, 8	4	None	304	314, 315	Forbidden	Forbidden	D		40
I	Liquefied gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone A*.	2.3	UN3309		2.3, 2.1, 8	1	None	192	245	Forbidden	Forbidden	D		17, 40
I	Liquefied gas toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3309		2.3, 2.1, 8	2	None	304	314, 315	Forbidden	Forbidden	D		17, 40
I	Liquefied gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3309		2.3, 2.1, 8	3	None	304	314, 315	Forbidden	Forbidden	D		17, 40
I	Liquefied gas, toxic, flammable, corrosive, n.o.s. *Inhalation Hazard Zone D*.	2.3	UN3309		2.3, 2.1, 8	4	None	304	314, 315	Forbidden	Forbidden	D		17, 40
	*	*		*	*		*	*	*					
I	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone A*.	2.3	UN3310		2.3, 5.1, 8	1	None	192	245	Forbidden	Forbidden	D		40, 89, 90
I	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone B*.	2.3	UN3310		2.3, 2.1, 8	2	None	304	314, 315	Forbidden	Forbidden	D		40, 89, 90
I	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone C*.	2.3	UN3310		2.3, 2.1, 8	3	None	304	314, 315	Forbidden	Forbidden	D		40, 89, 90
I	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. *Inhalation Hazard Zone D*.	2.3	UN3310		2.3, 2.1, 8	4	None	304	314, 315	Forbidden	Forbidden	D		40, 89, 90

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§173. * * *)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Liquefied gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN3307		2.3, 5.1	1	None	192	245	Forbidden	Forbidden	D	40
	Liquefied gas, toxic, oxidizing, n.o.s *Inhalation Hazard Zone B.*	2.3	UN3307		2.3, 5.1	2	None	304	314, 315	Forbidden	Forbidden	D	40
	Liquefied gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN3307		2.3, 5.1	3	None	304	314, 315	Forbidden	Forbidden	D	40
	Liquefied gas, toxic, oxidizing, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN3307		2.3, 5.1	4	None	304	314, 315	Forbidden	Forbidden	D	40
	*	*	*		*	*	*	*	*	*			
	Mannitol hexanitrate, wetted *or* Nitromannite, wetted *with not less than 40 percent water, or mixture of alcohol and water, by mass.*	1.1D	UN0133	II	1.1D	121	None	62	None	Forbidden	Forbidden	B	1E, 5E
	*	*	*		*	*	*	*	*	*			
	2-Methyl-2-heptanethiol	6.1	UN3023	I	6.1, 3	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40, 102
	*	*	*		*	*	*	*	*	*			
	Methyl vinyl ketone, stabilized.	6.1	UN1251	I	6.1, 3, 8	1, 25, B9, B14, B30, B72, T38, T43,T44.	None	226	244	Forbidden	Forbidden	B	40
	*	*	*		*	*	*	*	*	*			
	Nitroglycerin mixture *with more than 2 percent but not more than 10 percent nitroglycerin, by mass, desensitized.*	4.1	UN3319		4.1	118	None	None	None	Forbidden	0.5 kg	E	
	*	*	*		*	*	*	*	*	*			
	Organic pigments, self-heating.	4.2	UN3313	II	4.2	None	None	212	241	15 kg	50 kg	C	
				III	4.2	B101	None	213	241	25 kg	100 kg	C	
	*	*	*		*	*	*	*	*	*			
	Oxidizing liquid, n.o.s	5.1	UN3139	I	5.1	127, A2	None	201	243	Forbidden	2.5 L	D	56, 58, 69, 106

*	*		*	*	*	*	*	*					
Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base.*	3	UN1263	I	3	T8, T31	150	201	243	1 L	30 L	E		
*	*		*	*	*	*	*	*					
Paint related material *including paint thinning, drying, removing, or reducing compound.*	3	UN1263	I	3	T8, T31	150	201	243	1 L	30 L	E		
*	*		*	*	*	*	*	*					
Pentane-2,4-dione	3	UN2310	III	3, 6.1	B1, T1	150	203	242	60 L	220 L	A		
*	*		*	*	*	*	*	*					
1-Pentene (*n-amylene*)	3	UN1108	I	3	T14	150	201	243	1 L	30 l	E		
*	*		*	*	*	*	*	*					
Perchlorates, inorganic, aqueous solution, n.o.s.	5.1	UN3211											
[ADD]			III	5.1	T8	152	203	241	2.5 L	30 L	B		56, 58, 69, 106
*	*		*	*	*	*	*	*					
Plastic molding compound *in dough, sheet or extruded rope form evolving flammable vapor.*	9	UN3314	III	9	32	155	213	None	100 kg	200 kg	A		85, 87
*	*		*	*	*	*	*	*					
Potassium chlorate, aqueous solution.	5.1	UN2427											
[ADD]			III	5.1	A2, T8	152	203	241	2.5 L	30 L	B	.	56, 58, 69, 106
*	*		*	*	*	*	*	*					
Resin solution, *flammable.*	3	UN1866	I	3	B52, T8, T31.	150	201	243	1 L	30 L	E		
*	*		*	*	*	*	*	*					
Sodium borohydride and sodium hydroxide solution, *with not more than 12 percent sodium borohydride and not more than 40 percent sodium hydroxide by mass.*	8	UN3320	II	8	B2, N34, T8.	154	202	242	1 L	30 L	A		26
			III	8	B2, N34, T7.	154	203	241	5 L	60 L	A		
*	*		*	*	*	*	*	*					
Sodium chlorate, aqueous solution.	5.1	UN2428											
[ADD]			III	5.1	A2, T8	152	203	241	2.5 L	30 L	B		56, 58, 69, 106

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173. * * *)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*	*		*	*			
	Tributylamine	6.1	UN2542	II	6.1	B110, T14	None	202	243	5 L	60 L	A	
		*	*		*	*	*		*	*			
	Trifluorochloroethylene, inhibited.	2.3	UN1082		2.3, 2.1	3,B14	None	304	314, 315	Forbidden	Forbidden	D	40
		*	*		*	*	*		*	*			
	[REVISE:]												
		*	*		*	*	*		*	*			
	Chloroacetone, stabilized.	6.1	UN1695	I	6.1,3,8	2, B9, B14, B32, B74, N12, N32, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
		*	*		*	*	*		*	*			
	Cyclohexyl isocyanate	6.1	UN2488	I	6.1, 3	2,B9, B14,B32, B74,B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
		*	*		*	*	*		*	*			
	Methyl chloroacetate	6.1	UN2295	I	6.1, 3	T42	None	201	243	1 L	30 L	D	
		*	*		*	*	*		*	*			
	Methyl isothiocyanate	6.1	UN2477	I	6.1,3	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	A	
		*	*		*	*	*		*	*			
	Phenyl isocyanate	6.1	UN2487	I	6.1,3	2, B9, B14, B32, B74, B77, N33, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95

*	*	*	*	*	*	*	*	*				
Phosphorus trichloride	6.1	UN1809	I	6.1, 8	2, B9, B14, B15, B32, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	C	40
*	*	*	*	*	*	*	*	*				
Vinylpyridines, inhibited	6.1	UN3073	II	6.1, 3, 8	B100, T8	None	202	243	1 L	30 L	B	40
*	*	*	*	*	*	*	*	*				

§ 172.101 [Amended]

16. In addition, in the § 172.101 Hazardous Materials Table, the following changes are made:

16–1. In Column (2), the following hazardous materials descriptions and proper shipping names are revised as follows:

Current column (2) entry	Revise to read:
Air bag inflators *or* Air bag modules *or* Seat-belt pre-tensioners or Seat-belt modules.	Air bag inflators *or* Air bag modules *or* Seat-belt pretensioners.
Aircraft evacuation slides, *see* Life saving appliances *etc.*	*Aircraft evacuation slides, see* Life saving appliances *etc.*
Aircraft survival kits, *see* Life saving appliances *etc.*	*Aircraft survival kits, see* Life saving appliances *etc.*
Alcohols, toxic, n.o.s	Alcohols, flammable, toxic, n.o.s
Aldehydes, toxic, n.o.s	Aldehydes, flammable, toxic, n.o.s.
Amyl methyl ketone	n-Amyl methyl ketone.
Arsenic compounds, liquid, n.o.s. *including arsenates n.o.s.; arsenites, n.o.s.; arsenic sulfides, n.o.s.; and organic compounds of arsenic, n.o.s.*	Arsenic compounds, liquid, n.o.s. *inorganic, including arsenates, n.o.s.; arsenites, n.o.s.; arsenic sulfides, n.o.s.; and organic compounds of arsenic, n.o.s.*
Arsenic compounds, solid, n.o.s. *including arsenates, n.o.s.; arsenites, n.o.s.; arsenic sulfides, n.o.s; and organic compounds of arsenic, n.o.s..*	Arsenic compounds, solid, n.o.s. *inorganic, including arsenates, n.o.s.; arsenites, n.o.s.; arsenic sulfides, n.o.s.; and organic compounds of arsenic, n.o.s.*
Barium selenate, *see* Selenates *or* Selenites	*Barium selenate, see* Selenates *or* Selenites.
Barium selenite, *see* Selenates *or* Selenites	*Barium selenite, see* Selenates *or* Selenites.
Battery-powered vehicle *or* Battery-powered equipment *wet battery*	Battery-powered vehicle *or* Battery-powered equipment.
Boron trifluoride	Boron trifluoride, compressed.
Bromotrifluoromethane, *R13B1*	Bromotrifluoromethane *or* Refrigerant gas, R 13B1.
Butane *or* Butane mixtures *see also* Petroleum gases, liquefied	Butane *see also* Petroleum gases, liquefied.
n-Butyl methacrylate	n-Butyl methacrylate, inhibited.
Butylacrylate	Butyl acrylates, inhibited.
Calcium selenate, *see* Selenates *or* Selenites	*Calcium selenate, see* Selenates *or* Selenites.
Carbon monoxide	Carbon monoxide, compressed.
Carbon monoxide and hydrogen mixture	Carbon monoxide and hydrogen mixture, compressed.
Carbonyl fluoride	Carbonyl fluoride, compressed.
Cartridges, safety, blank, *see* Cartridges for weapons, blank *(UN 0014)*	*Cartridges, safety, blank, see* Cartridges for weapons, blank *(UN 0014).*
Cartridges, safety, *see* Cartridges for weapons, *other than blank or* Cartridges, power device *(UN 0323).*	*Cartridges, safety, see* Cartridges for weapons, *other than blank or* Cartridges, power device *(UN 0323).*
1-Chloro-1,1-difluoroethanes, *R142b*	1-Chloro-1,1-difluoroethane *or* Refrigerant gas R142b.
1-Chloro-1,2,2,2-tetrafluoroethane, *R124*	1-Chloro-1,2,2,2-tetrafluoroethane *or* Refrigerant gas R 124.
1-Chloro-2,2,2-trifluoroethane, *R133a*	1-Chloro-2,2,2-trifluoroethane *or* Refrigerant gas R 133a.
Chlorodifluorobromomethane, *R12B1*	Chlorodifluorobromomethane *or* Refrigerant gas R 12B1.
Chlorodifluoromethane and chloropentafluoroethane mixture *with fixed boiling point, with approximately 49 percent chlorodifluoromethane, R502.*	Chlorodifluoromethane and chloropentafluoroethane mixture *or* Refrigerant gas R 502 *with fixed boiling point, with approximately 49 percent chlorodifluoromethane.*
Chlorodifluoromethane, *R22*	Chlorodifluoromethane *or* Refrigerant gas R 22.
Chloropentafluoroethane, *R115*	Chloropentafluoroethane *or* Refrigerant gas R 115.
Chlorotrifluoromethane and trifluoromethane azeotropic mixture *with approximately 60 percent chlorotrifluoromethane, R503.*	Chlorotrifluoromethane and trifluoromethane azeotropic mixture *or* Refrigerant gas R 503 *with approximately 60 percent chlorotrifluoromethane.*
Chlorotrifluoromethane, *R13*	Chlorotrifluoromethane *or* Refrigerant gas R13.
Coal gas	Coal gas, compressed.
Copper selenate, *see* Selenates *or* Selenites	*Copper selenate, see* Selenates *or* Selenites.
Copper selenite, *see* Selenates *or* Selenites	*Copper selenite, see* Selenates *or* Selenites.
Cyanogen, liquefied	Cyanogen.
Cyclopropane, liquefied	Cyclopropane.
Deuterium	Deuterium, compressed.
Diborane	Diborane, compressed.
Dichlorodifluoromethane and difluoroethane azeotropic mixture *with approximately 74 percent dichlorodifluoromethane, R500.*	Dichlorodifluoromethane and difluoroethane azeotropic mixture *or* Refrigerant gas R 500 *with approximately 74 percent dichlorodifluoromethane.*
Dichlorodifluoromethane, *R12*	Dichlorodifluoromethane *or* Refrigerant gas R 12.
Dichloroethylene	1,2-Dichloroethylene.
Dichlorofluoromethane, *R21*	Dichlorofluoromethane *or* Refrigerant gas R 21.
Dichlorotetrafluoroethane, *R114*	1,2-Dichloro-1,1,2,2-Tetrafluoroethane *or* Refrigerant gas R 114.
1,1-Difluoroethane, *R152a*	1,1-Difluoroethane *or* Refrigerant gas R 152a.
1,1-Difluoroethylene, *R1132a*	1,1-Difluoroethylene *or* Refrigerant gas R 1132a.
Difluoromethane	Difluoromethane *or* Refrigerant gas R 32.
Dimethylaminoethyl methacrylate	2-Dimethylaminoethyl methacrylate.
Dinitrogen tetroxide, liquefied	Dinitrogen tetroxide.
Dipropyl ether	Di-n-propyl ether.
Disodium trioxosilicate, pentahydrate	Disodium trioxosilicate.
Ethane, compressed	Ethane.
Ethyl fluoride	Ethyl fluoride *or* Refrigerant gas R 161.
Ethylene, acetylene and propylene in mixtures, refrigerated liquid *with at least 71.5 percent ethylene with not more than 22.5 percent acetylene and not more than 6 percent propylene.*	Ethylene, acetylene and propylene mixture, refrigerated liquid *with at least 71.5 percent ethylene with not more than 22.5 percent acetylene and not more than 6 percent propylene.*

Current column (2) entry	Revise to read:
Flammable gas in lighters, see Lighters or lighter refills, *containing flammable gas*.	*Flammable gas in lighters, see* Lighters *or* Lighter refills, *cigarettes, containing flammable gas.*
Fuse, instantaneous, non-detonating *or* Quickmatch	Fuse, non-detonating *(instantaneous or quickmatch).*
Heptafluoropropane	Heptafluoropropane *or* Refrigerant gas R 227.
Hexafluoroethane, *R1116*	Hexafluoroethane, compressed or Refrigerant gas R 116.
Hexafluoropropylene, *R1216*	Hexafluoropropylene, compressed *or* Refrigerant gas R 1216.
Hydriotic acid, solution	Hydriotic acid.
Hydrobromic acid solution, *with more than 49 percent hydrobromic acid* (PG II and III).	Hydrobromic acid, *with more than 49 percent hydrobromic acid* (PG II and III).
Hydrobromic acid solution, *with not more than 49 percent hydrobromic acid* (PG II and III).	Hydrobromic acid, *with not more than 49 percent hydrobromic acid* (PG II and III).
Hydrocarbon gases, compressed, n.o.s. *or* Hydrocarbon gases mixtures, compressed, n.o.s.	Hydrocarbon gas mixture, compressed, n.o.s.
Hydrocarbon gases, liquefied, n.o.s. *or* Hydrocarbon gases mixtures, liquefied, n.o.s.	Hydrocarbon gas mixture, liquefied, n.o.s.
Hydrochloric acid, solution	Hydrochloric acid.
Hydrofluoric acid solution, *with more than 60 percent strength*	Hydrofluoric acid, *with more than 60 percent strength.*
Hydrofluoric acid solution, *with not more than 60 percent strength*	Hydrofluoric acid, *with not more than 60 percent strength*.
Hydrogen sulfide, liquefied	Hydrogen sulfide.
Isobutane *or* Isobutane mixtures *see also* Petroleum gases, liquefied	Isobutane see also Petroleum gases, liquefied.
Isobutyl acrylate	Isobutyl acrylate, inhibited.
Isobutyl methacrylate	Isobutyl methacrylate, inhibited.
Isopentane, *see* Pentane	*Isopentane, see* Pentane.
Jet thrust unit (Jato), see Rocket motors	*Jet thrust unit (Jato), see* Rocket motors.
Magnesium bisulfite solution, *see* Bisulfites, aqueous solutions, n.o.s	*Magnesium bisulfite solution, see* Bisulfites, aqueous solutions, n.o.s.
Mercury iodide	Mercury iodide, *solid.*
Methacrylaldehyde	Methacrylaldehyde, inhibited.
Methanol *or* Methyl alcohol (both entries)	Methanol (both entries).
Methyl alcohol, *see* Methanol	*Methyl alcohol see* Methanol.
Methyl chloride	Methyl chloride *or* Refrigerant gas R 40.
Methyl fluoride	Methyl fluoride *or* Refrigerant gas R 41.
Methylmorpholine	4-Methylmorpholine *or* n-methylmorpholine.
Nitric oxide	Nitric oxide, compressed.
Nitrogen dioxide, liquefied *see* Dinitrogen tetroxide, liquefied	Nitrogen dioxide *see* Dinitrogen tetroxide.
Nitrogen trifluoride (both entries)	Nitrogen trifluoride, compressed.
Nitrous oxide, compressed	Nitrous oxide.
2,5-Norbornadiene *or* Dicycloheptadiene	2,5-Norbornadiene *or* Bicyclo[2,2,1]hepta-2,5-diene, inhibited.
Octafluorobut-2-ene	Octafluorobut-2-ene *or* Refrigerant gas R 1318.
Octafluorocyclobutane, *RC318*	Octafluorocyclobutane *or* Refrigerant gas R C318.
Octafluoropropane, *R218*	Octafluoropropane *or* Refrigerant gas R 218.
Oil gas	Oil gas, compressed.
Oxygen difluoride	Oxygen difluoride, compressed.
Pentafluoroethane	Pentafluoroethane *or* Refrigerant gas R 125.
Perfluoroethyl vinyl ether	Perfluoro(ethyl vinyl ether).
Perfluoromethyl vinyl ether	Perfluoro(methyl vinyl ether).
Phosphorus pentafluoride	Phosphorus pentafluoride, compressed.
Polyalkylamines, n.o.s., *see* Amines, *etc*	*Polyalkylamines, n.o.s., see* Amines, *etc.*
Potassium bisulfite solution, *see* Bisulfites, inorganic, aqueous solutions, n.o.s.	*Potassium bisulfite solution, see* Bisulfites, inorganic, aqueous solutions, n.o.s.
Potassium selenate, *see* Selenates *or* Selenites	*Potassium selenate, see* Selenates *or* Selenites.
Potassium selenite, *see* Selenates *or* Selenites	*Potassium selenite, see* Selenates *or* Selenites.
Propane *or* Propane mixtures *see also* Petroleum gases, liquefied	Propane *see also* Petroleum gases, liquefied.
Rare gases and nitrogen mixtures	Rare gases and nitrogen mixtures, compressed.
Rare gases and oxygen mixtures	Rare gases and oxygen mixtures, compressed.
Rare gases, mixtures	Rare gases mixtures, compressed.
Receptacles, small, containing gas *flammable, without release device, not refillable and not exceeding 1 L capacity*.	Receptacles, small, containing gas (gas cartridges) *flammable, without release device, not refillable and not exceeding 1 L capacity.*
Receptacles, small, containing gas *non-flammable, without release device, not refillable and not exceeding 1 L capacity*.	Receptacles, small, containing gas (gas cartridges) *nonflammable, without release device, not refillable and not exceeding 1 L capacity.*
Refrigerating machines, *containing non-flammable, non-toxic, liquefied gas or ammonia solutions (UN2073)*.	Refrigerating machines, *containing non-flammable, non-toxic, liquefied gas or ammonia solution (UN2672).*
Silane	Silane, compressed.
Silicon tetrafluoride	Silicon tetrafluoride, compressed.
Sodium hydrogendifluoride	Sodium hydrogendifluoride, solid.
Steel swarf, *see* Ferrous metal borings, *etc*	*Steel swarf, see* Ferrous metal borings, *etc.*
Sulfur dioxide, liquefied	Sulfur dioxide.
Sulfur trioxide, inhibited	Sulfur trioxide, inhibited *or* Sulfur trioxide, stabilized.
1,1,1,2-Tetrafluoroethane	1,1,1,2-Tetrafluoroethane *or* Refrigerant gas R 134a.
Tetrafluoromethane, *R14*	Tetrafluoromethane, compressed or Refrigerant gas R 14.
Toluene sulfonic acid, *see* Alkyl, *or* Aryl sulfonic acid *etc*	*Toluene sulfonic acid, see* Alkyl, *or* Aryl sulfonic acid *etc.*
Trifluoroethane, compressed, *R143*	1,1,1-Trifluoroethane, compressed *or* Refrigerant gas R 143a.
Trifluoromethane	Trifluoromethane *or* Refrigerant gas R 23.
Vinyl toluene, inhibited, *mixed isomers*	Vinyltoluenes, inhibited.
Vinyltrichlorosilane	Vinyltrichlorosilane, inhibited.

Current column (2) entry	Revise to read:
Xenon	Xenon, compressed.
Zinc bisulfite solution, *see* Bisulfites, inorganic aqueous solutions, n.o.s	*Zinc bisulfite solution, see* Bisulfites, aqueous solutions, n.o.s.
Zinc selenate, *see* Selenates or Selenites	*Zinc selenate, see* Selenates *or* Selenites.
Zinc selenite, *see* Selenates *or* Selenites	*Zinc selenite, see* Selenates *or* Selenites.

16–2. For the entry ''Mercury *contained in manufactured articles*'', in Column (5), the PG designation ''I'' is revised to read ''III''.

16–3. For the following entries, Column (6) is revised as follows:

Column (2) entry	Column (6) entry	Revise to read:
Allyl isothiocyanate, stabilized	6.1	6.1, 3
Bromoacetone	6.1	6.1, 3
n-Butyl chloroformate	6.1, 8	6.1, 8, 3
Cyclobutyl chloroformate	6.1, 8	6.1, 8, 3
Epibromohydrin	6.1	6.1, 3
Epichlorohydrin	6.1	6.1, 3
Ethyl bromoacetate	6.1	6.1, 3
Ethyl chloroacetate	6.1	6.1, 3
Isocyanatobenzotrifluorides	6.1	6.1, 3
Propylene chlorohydrin	6.1	6.1, 3
Trifluoroacetyl chloride	2.3	2.3, 8

16–4. For the following entries, Column (7) is revised as follows:

Column (2) entry	Column (7) entry	Revise to read:
Alkali metal alcoholates, self-heating, corrosive, n.o.s. (PG II and III)		64
Alkaline earth metal alcoholates, n.o.s. (PG II and III)		65
Benzaldehyde		T1
Corrosive liquids, toxic, n.o.s. (PG I)	A7, B10	A7, B10, T18, T27
Corrosive liquids, toxic, n.o.s. (PG II)	B3	B3, T18, T26
Corrosive liquids, toxic, n.o.s. (PG III)		T8
Corrosive solids, n.o.s. (PG II and III)		128
Corrosive solids, water-reactive, n.o.s. (PG II)	B105	128, B105
Environmentally hazardous substances, liquid, n.o.s	8, N50, T1	8, T1
Environmentally hazardous substances, solid, n.o.s	8, N50, B54	8, B54
Explosive, blasting, type C		123
Ferrocerium	A19	59, A19
Isosorbide-5-mononitrate		66
Maneb *or* Maneb preparations *with not less than 60 percent maneb*	A1, A19, B105	57, A1, A19, B105
Methacrylic acid, inhibited	T8	T8, T47
Nitrates, inorganic, aqueous solution, n.o.s. (PG II and III)	T8	58, T8
Nitroglycerin, desensitized *with not less than 40 percent non-volatile water insoluble phlegmatizer, by mass.*		125
Organophosphorus pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C* (PG I).		T42
Organophosphorus pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C* (PG II).		T18
Oxidizing liquid, n.o.s. (PG II and III)	A2	127, A2
Pentaerythrite tetranitrate *or* Pentaerythritol tetranitrate, *or* PETN, *with not less than 7 percent wax by mass.*		120
Pentaerythrite tetranitrate, wetted *or* Pentaerythritol tetranitrate, wetted *or* PETN, wetted *with not less than 25 percent water, by mass, or* Pentaerythrite tetranitrate, *or* Pentaerythritol tetranitrate *or* PETN, desensitized *with not less than 15 percent phlegmatizer by mass.*		121
Polyester resin kit	40	None
Sulfur (UN1350)	A1, N20, T1	30, A1, N20, T1
Urea nitrate *dry or wetted with less than 20 percent water, by mass*		119
Water-reactive solid, corrosive, n.o.s. (PG II)	B101, B106	128, B101, B106
Water-reactive solid, corrosive, n.o.s. (PG III)	B105, B106	128, B105, B106

16–5. For the following entries, Columns (8A), (8B), or (8C) are revised as follows:

Column (2) entry	Column (8A) entry	Revise to read:
Polyester resin kit	None	152
Sulfur (UN1350)	151	None
	Column (8B) entry	Revise to read:
Sulfur (UN1350)	213	None
	Column (8C) entry	Revise to read:
Metal catalyst, dry (PG II)	None	242

Column (2) entry	Column (8A) entry	Revise to read:
Metal catalyst, dry (PG III)	None	241

16–6. For the following entries, Column (9A) is revised as follows:

Column (2) entry	Column (9A) entry	Revise to read:
Cyclohexyl isocyanate	5 L	Forbidden.
Divinyl ether, inhibited	5 L	1 L.
Potassium	1 kg	Forbidden.
Potassium, metal alloys	1 kg	Forbidden.
Sodium	1 kg	Forbidden.

16–7. For the following entries, Column (9B) is revised as follows:

Column (2) entry	Column (9B) entry	Revise to read:
Cyclohexyl isocyanate	60 L	Forbidden.
Ethyl isocyanate	30 L	Forbidden.
Ethylene oxide and carbon dioxide mixture *with more than 87 percent ethylene oxide*	75 kg	25 kg.
Hexafluoroacetone	25 kg	Forbidden.
Isobutyl isocyanate	60 L	Forbidden.
Isopropyl isocyanate	30 L	Forbidden.
Methoxymethyl isocyanate	30 L	Forbidden.
Oil gas	150 kg	25 kg.
Silicon tetrafluoride	25 kg	Forbidden.
Sulfur tetrafluoride	25 kg	Forbidden.
Toxic liquids, oxidizing, n.o.s. *Inhalation hazard, Packing Group I, Zone A*	2.5 L	Forbidden.

16–8. In Column (10A), for the entry ''Battery-powered vehicle *or* Battery-powered equipment *wet battery*'', the ''A'' is removed.

17. In Appendix B to § 172.101, the List of Marine Pollutants is amended by adding the following materials in appropriate alphabetical order:

Appendix B to § 172.101—List of Marine Pollutants

* * * * *

S.M.P (1)	Marine pollutant (2)
[ADD:]	
* * * * *	
	Acetaldehyde.
	Alkyl (C10–C21) sulphonic acid ester of phenol.
	Anisole.
	Azinphos-methyl.
	Benzaldehyde.
	N,N-Bis (2-hydroxyethyl) oleamide (LOA).
	Bromobenzene.
	Butanedione.
	Butyl mercaptans.
	N-tert-butyl-*N*-cyclopropyl-6-methylthio-1,3,5-triazine-2,4-diamine.
	Butyraldehyde.
	Camphor oil.
	Coconitrile.
PP	Cymenes (o-;m-;p-).
	normal-Decaldehyde.
	normal-Decanol.
	1,3-Dibromobenzene.
	Di-*normal*-butyl ketone.
	Dimethyl disulphide.
	Dimethylhydrazine, symmetrical.
	Dimethylhydrazine, unsymmetrical.
	Dipentene.
	2,4-Di-tert-butylphenol.
	2,6-Di-tert-butylphenol.
	Diphenyl ether/biphenyl phenyl ether mixtures.
	Diphenyl/diphenyl ether (mixtures).
	EPTC (ISO).
	2-Ethylhexaldehyde
	2-Ethylbutyraldehyde
	Furathiocarb (ISO).
PP	*normal*-Heptyl aldehyde.
	2,4-Hexadiene aldehyde.
	normal-Hexaldehyde.
	Hydrogen cyanide solution in alcohol, *with not more than* 45% hydrogen cyanide.
	Hydrogen cyanide, stabilized *with less than 3% water*.
	Hydrogen cyanide, stabilized *with less than 3% water and absorbed in a porous inert material*.
	Iron sponge, spent.
	Isooctanol.
	Isodecaldehyde.
	Isodecanol.
	Isononanol.
	Isotetramethylbenzene.
	Isovaleraldehyde.
	Mancozeb (ISO).
	2-Methylbutyraldehyde.
	Nitrobenzene.
	1-Nonanal.
	1-Nonanol.
	normal-Octaldehyde.
	1-Octanol.
	Phenylcyclohexane.
	Propionaldehyde.
	Tallow nitrile.
	Tetrabromoethane.
	Tetrachloroethylene.
	4-Thiapentanal.
	Triphenylphosphate.
	1-Undecanol.
	normal-Valeraldehyde.
* * * * *	

§ 172.101, Appendix B [Amended]

18. In addition, in Appendix B to § 172.101, the List of Marine Pollutants is amended as follows:

a. The entry ''Azenphos-methyl'' is removed.

b. For the entry ''Chlorinated paraffins (C10–C13)'', the designation ''PP'' is added in Column (1).

c. The entry ''Mononitrobenzene (nitro benzene)'' is removed.

d. The entry ''1,1,2,2-Tetrabromoethane'' is removed.

e. The entry ''1,1,2,2-Tetrachloroethylene'' is removed.

f. The designation ''PP'' is added in column (1) for the following materials:

Copper chloride solution
Cupric sulfate
Esfenvalerate
Fenbutatin oxide
1,3-Hexachlorobutadiene

Quizalofop
Quizalofop-p-ethyl
Tetrachlorovinfos
Tetraethyl lead, liquid
Tricresyl phosphate *with more than 3 per cent ortho isomer*

g. The following entries are removed:

Acetylene dibromide
Arsenates, liquid, n.o.s.
Arsenates, solid, n.o.s.
Arsenic bromide
Arsenic chloride
Arsenical pesticides liquid, toxic, flammable, n.o.s.
Biphenyl phenyl ether and diphenyl oxide, mixtures
1-Butanethiol
Carbon bisulphide
Chlorobenzylchlorides
alpha-Chloropropylene
1-Chloropropylene
2-Chloropropylene
Chromyl chloride
Copper arsentate
1,2-Dibromethene
1,2-Dibromoethane
o-Dichlorobenzene
p-Dichlorobenzene
Dichloroether
Dichloroethyl oxide
Dimethylarsinic acid
Ethylene chloride
Ethylene dichloride
Ethylidene dichloride
Hydrogen cyanide, anhydrous, stabilized
Hydrogen cyanide, anhydrous, stabilized *absorbed in a porous inert material*
Isopropyltoluene
Maneb or Maneb preparations with not less than 60% maneb
Mercuric sulphide
Mercury iodide, solution
Metaarsenic acid
3-Methylpyridine
Methylchloroform
Methylene bromide
Methylene dibromide
Naptha, coal tar
Nitrates, inorganic, n.o.s.
Nitrites, inorganic, n.o.s.
Potassium dihydrogen arsenate
Propenyl chloride (cis-; trans-)
Propylene dichloride
Propylidene dichloride
Sodium metaarsenite
Sodium orthoarsenate
Strontium orthoarsenite
Turpentine substitute
White arsenic

19. In § 172.102, in paragraph (c)(1), Special Provisions 40 and 45 are removed, Special Provisions 15, 30 and 32 are revised, the last sentence of Special Provision 38 is revised, a sentence is added at the end of Special Provisions 23, 43 and 47, a sentence is added at the beginning of Special Provision 102, Special Provisions 57, 58, 59, 64, 65, 66, 74, 77, 118, 119, 120, 121, 123, 125, 127 and 128 are added; in paragraph (c)(3), the first sentence of Special Provision B5 is revised and Special Provision B115 is added; in paragraph (c)(5) Special Provision N50 is removed; and in paragraph (c)(7)(ii), Special Provision T47 is added, to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

* * * * *

15. Chemical kits and first aid kits are boxes, cases, etc., containing small amounts of various compatible dangerous goods which are used for medical, analytical, or testing purposes and for which exceptions are provided in this subchapter. For transportation by aircraft, any hazardous materials forbidden in passenger aircraft may not be included in these kits. Inner packagings may not exceed 250 mL for liquids or 250 g for solids and must be protected from other materials in the kit. The total quantity of hazardous materials in any one kit may not exceed either 1 L or 1 kg. The packing group assigned to the kit as a whole must be the most stringent packing group assigned to any individual substance contained in the kit. Kits must be packed in wooden boxes (4C1, 4C2), plywood boxes (4D), reconstituted wood boxes (4F), fiberboard boxes (4G) or plastic boxes (4H1, 4H2); these packagings must meet the requirements appropriate to the packing group assigned to the kit as a whole. The total quantity of hazardous materials in any one package may not exceed either 10 L or 10 kg. Kits which are carried on board transport vehicles for first-aid or operating purposes are not subject to the requirements of this subchapter.

* * * * *

23. * * * Quantities of not more than 500 g per package with not less than 10 percent water by mass may also be classed in Division 4.1, provided a negative test result is obtained when tested in accordance with test series 6(c) of the UN Manual of Tests and Criteria.

* * * * *

30. Sulfur is not subject to the requirements of this subchapter if transported in a non-bulk packaging or if formed to a specific shape (*e.g.*, prills, granules, pellets, pastilles, or flakes).

* * * * *

32. Polymeric beads and molding compounds may be made from polystyrene, poly(methyl methacrylate) or other polymeric material.

* * * * *

38. * * * If the SADT of the technically pure substance is higher than 75 °C, the technically pure substance and formulations derived from it are not self-reactive materials and, if not meeting any other hazard class, are not subject to the requirements of this subchapter.

* * * * *

43. * * * Packagings should be so constructed that explosion is not possible by reason of increased internal pressure.

* * * * *

47. * * * Small inner packagings consisting of sealed packets containing less than 10 ml of a Class 3 liquid in Packing Group II or III absorbed onto a solid material are not subject to this subchapter provided there is no free liquid in the packet.

* * * * *

57. Maneb *or* Maneb preparations stabilized against self-heating need not be classified in Division 4.2 when it can be demonstrated by testing that a volume of 1 m^3 of substance does not self-ignite and that the temperature at the center of the sample does not exceed 200 °C, when the sample is maintained at a temperature of not less than 75 °C ± 2 °C for a period of 24 hours, in accordance with procedures set forth for testing self-heating materials in the UN Manual of Tests and Criteria.

58. Aqueous solutions of Division 5.1 inorganic solid nitrate substances are considered as not meeting the criteria of Division 5.1 if the concentration of the substances in solution at the minimum temperature encountered in transport is not greater than 80% of the saturation limit.

59. Ferrocerium, stabilized against corrosion, with a minimum iron content of 10 percent is not subject to the requirements of this subchapter.

64. The group of alkali metals includes lithium, sodium, potassium, rubidium, and caesium.

65. The group of alkaline earth metals includes magnesium, calcium, strontium, and barium.

66. Formulations of these substances containing not less than 30 percent non-volatile, non-flammable phlegmatizer are not subject to this subchapter.

* * * * *

74. During transport, this material must be protected from direct sunshine and stored or kept in a cool and well-ventilated place, away from all sources of heat.

77. For domestic transportation, a Division 5.1 subsidiary risk label is required only if a carbon dioxide and oxygen mixture contains more than 23.5% oxygen.

* * * * *

102. The ends of the detonating cord must be tied fast so that the explosive cannot escape. * * *

* * * * *

118. This substance may not be transported under the provisions of Division 4.1 unless specifically authorized by the Associate Administrator for Hazardous Materials Safety.

119. This substance, when in quantities of not more than 11.5 kg (25.3 pounds), with not less than 10 percent water, by mass, also may be classed in Division 4.1, provided a negative test result is obtained when tested in accordance with test series 6(c) of the UN Manual of Tests and Criteria.

120. The phlegmatized substance must be significantly less sensitive than dry PETN.

121. This substance, when containing less alcohol, water or phlegmatizer than specified, may not be transported unless approved by the Associate Administrator for Hazardous Materials Safety.

123. Any explosives, blasting, type C containing chlorates must be segregated from explosives containing ammonium nitrate or other ammonium salts.

125. Lactose or glucose or similar materials may be used as a phlegmatizer provided that the substance contains not less than 90%, by mass, of phlegmatizer. These mixtures may be classified in Division 4.1 when tested in accordance with test series 6(c) of the UN Manual of Tests and Criteria and approved by the Associate Administrator for Hazardous Materials Safety. Testing must be conducted on at least three packages as prepared for transport. Mixtures containing at least 90%, by mass, of phlegmatizer are not subject to the requirements of this subchapter. Packages containing mixtures with not less than 98% by mass, of phlegmatizer need not bear a POISON subsidiary risk label.

127. Mixtures containing oxidizing and organic materials transported under this entry may not meet the definition and criteria of a Class 1 material. (See § 173.50 of this subchapter.)

128. Notwithstanding the provisions of § 172.101(c)(12), an aluminum smelting by-product or aluminum remelting by-product described under this entry, in Packing Group II or III, may be packaged in accordance with Special Provision B115 of this section.

* * * * *

(3) * * *

* * * * *

B5. Only ammonium nitrate solutions with 35 percent or less water that will remain completely in solution under all conditions of transport at a maximum lading temperature of 116°C (240°F) are authorized for transport in the following bulk packagings: MC 307, MC 312, DOT 407 and DOT 412 cargo tanks with at least 172 kPa (25 psig) design pressure. * * *

* * * * *

B115. Rail cars, highway trailers, roll-on/roll-off bins, or other non-specification bulk packagings are authorized. Packagings must be sift-proof, prevent liquid water from reaching the hazardous material, and be provided with sufficient venting to preclude dangerous accumulation of flammable, corrosive, or toxic gaseous emissions such as methane, hydrogen, and ammonia. The material must be loaded dry.

* * * * *

(7) * * *

(ii) * * *

T47. Temperature must be maintained between 18°C (64.4°F) and 40°C (104°F) when carried in tanks. Tanks containing solidified methyacrylic acid may not be reheated during transport.

* * * * *

§ 172.102 [Amended]

20. In addition, in § 172.102, in paragraph (c)(1), in special provisions 38 and 46, in the first sentence of each special provision, the wording ''OP6B'' is revised to read ''OP6'' each place it appears.

21. In § 172.203, paragraph (j) is removed and reserved and paragraph (k)(3) is amended by adding 14 new entries in appropriate alphabetical order to the list of proper shipping names, to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(k) * * *

(3) * * *

Compressed gas, toxic, corrosive, n.o.s.
Compressed gas, toxic, flammable, corrosive, n.o.s.
Compressed gas, toxic, oxidizing, corrosive, n.o.s.
Compressed gas, toxic, oxidizing, n.o.s.

* * * * *

Gas, refrigerated liquid, flammable, n.o.s.
Gas, refrigerated liquid, oxidizing, n.o.s.

* * * * *

Hydrocarbon gases, compressed, n.o.s.
Hydrocarbon gases, liquefied, n.o.s.
Hydrogen gases mixtures, compressed, n.o.s.
Hydrocarbon gases mixtures, liquefied, n.o.s.

* * * * *

Liquefied gas, toxic, corrosive, n.o.s.
Liquefied gas, toxic, flammable, corrosive, n.o.s.
Liquefied gas, toxic, oxidizing, corrosive, n.o.s.
Liquefied gas, toxic, oxidizing, n.o.s.

* * * * *

Organometallic compound, water reactive, flammable, n.o.s.

* * * * *

§ 172.203 [Amended]

22. In addition, in § 172.203, in paragraph (m)(3), in the first sentence, the wording ''or 'Toxic-Inhalation Hazard' '' is added immediately following '' 'Poison-Inhalation Hazard' ''; and in the second sentence the wording '' 'Poison' '' is revised to read '' 'Poison' or 'Toxic' ''.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

23. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

24. In § 173.3, paragraph (c)(3) is revised and a new paragraph (c)(7) is added, to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(c) * * *

(3) Each salvage packaging must be marked with the proper shipping name of the hazardous material inside the packaging and the name and address of the consignee. In addition, the packaging must be marked ''SALVAGE'' or ''SALVAGE DRUM''.

* * * * *

(7) A salvage packaging marked ''T'' in accordance with applicable provisions in the UN Recommendations may be used.

§ 173.3 [Amended]

25. In addition, in § 173.3, in paragraph (c)(1), at the beginning of the paragraph, the wording ''The drum'' is revised to read ''Except as provided in paragraph (c)(7) of this section, the drum''.

26. In § 173.21, the last sentence in paragraph (f) introductory text is revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) * * * The SADT may be determined by any of the test methods described in Part II of the UN Manual of Tests and Criteria.

* * * * *

§ 173.32c [Amended]

27. In § 173.32c, in paragraph (j), the wording ''5,000 liters (1,900 gallons)'' is revised to read ''7,500 L''.

§ 173.34 [Amended] 27a.

In § 173.34, in the table in paragraph (e)(18)(i), under the column heading ''Porous filler requalification'', under ''Initial'', the year ''2001'' is revised to read ''2011''.

28. Section 173.60 is revised to read as follows:

§ 173.60 General packaging requirements for explosives.

(a) Unless otherwise provided in this subpart and in § 173.7(a), packaging used for Class 1 (explosives) materials must meet Packing Group II requirements. Each packaging used for an explosive must be capable of meeting the test requirements of subpart M of part 178 of this subchapter, at the specified level of performance, and the applicable general packaging requirements of paragraph (b) of this section.

(b) The general requirements for packaging of explosives are as follows:

(1) Nails, staples, and other closure devices, made of metal, having no protective covering may not penetrate to the inside of the outer packaging unless the inner packaging adequately protects the explosive against contact with the metal.

(2) The closure device of containers for liquid explosives must provide double protection against leakage, such as a screw cap secured in place with tape.

(3) Inner packagings, fittings, and cushioning materials, and the placing of explosive substances or articles in packages, must be such that the explosive substance is prevented from becoming loose in the outer packaging during transportation. Metallic components of articles must be prevented from making contact with metal packagings. Articles containing explosive substances not enclosed in an outer casing must be separated from each other in order to prevent friction and impact. Padding, trays, partitioning in the inner or outer packaging, molded plastics or receptacles may be used for this purpose.

(4) When the packaging includes water that could freeze during transportation, a sufficient amount of anti-freeze, such as denatured ethyl alcohol, must be added to the water to prevent freezing. If the anti-freeze creates a fire hazard, it may not be used. When a percentage of water in the substance is specified, the combined weight of water and anti-freeze may be substituted.

(5) If an article is fitted with its own means of ignition or initiation, it must be effectively protected from accidental actuation during normal conditions of transportation.

(6) The entry of explosive substances into the recesses of double-seamed metal packagings must be prevented.

(7) The closure device of a metal drum must include a suitable gasket; if the closure device includes metal-to-metal screw-threads, the ingress of explosive substances into the threading must be prevented.

(8) Whenever loose explosive substances or the explosive substance of an uncased or partly cased article may come into contact with the inner surface of metal packagings (1A2, 1B2, 4A, 4B and metal receptacles), the metal packaging should be provided with an inner liner or coating.

(9) Packagings must be made of materials compatible with, and impermeable to, the explosives contained in the package, so that neither interaction between the explosives and the packaging materials, nor leakage, causes the explosive to become unsafe in transportation, or the hazard division or compatibility group to change (*see* § 173.24(e)(2)).

(10) An explosive article containing an electrical means of initiation that is sensitive to external electromagnetic radiation, must have its means of initiation effectively protected from electromagnetic radiation sources (for example, radar or radio transmitters) through either design of the packaging or of the article, or both.

(11) Plastic packagings may not be able to generate or accumulate sufficient static electricity to cause the packaged explosive substances or articles to initiate, ignite or inadvertently function. Metal packagings must be compatible with the explosive substance they contain.

(12) Explosive substances may not be packed in inner or outer packagings where the differences in internal and external pressures, due to thermal or other effects, could cause an explosion or rupture of the package.

(13) Packagings for water soluble substances must be water resistant. Packagings for desensitized or phlegmatized substances must be closed to prevent changes in concentration during transport. When containing less alcohol, water, or phlegmatizer than specified in its proper shipping description, the substance is a ''forbidden'' material.

29. Section 173.62 is revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

(a) Except as provided in paragraph (e) of this section, when the § 172.101 Table specifies that an explosive must be packaged in accordance with this section, only non-bulk packagings which conform to the provisions of paragraphs (b), (c) and (d) of this section and the applicable requirements in §§ 173.60 and 173.61 may be used unless otherwise approved by the Associate Administrator. Intermediate bulk packagings may be used for explosives assigned to Packing Instruction 117 in paragraph (b) of this section. Intermediate bulk packagings must conform with the requirements of this subchapter.

(b) Explosives Table. The Explosives Table specifies the Packing Instructions assigned to each explosive. Explosives are identified in the first column in numerical sequence by their identification number (ID #), which is listed in column 4 of the § 172.101 Table, of this subchapter. The second column of the Explosives Table specifies the Packing Instruction (PI) which must be used for packaging the explosive. The Explosives Packing Method Table in paragraph (c) of this section defines the methods of packaging. The Packing Instructions are identified using a 3 digit designation. The Packing Instruction prefixed by the letters ''US'' is particular to the United States and not found in applicable international regulations.

EXPLOSIVES TABLE

ID#	PI
UN0004	112
UN0005	130
UN0006	130
UN0007	130
UN0009	130
UN0010	130
UN0012	130
UN0014	130
UN0015	130
UN0016	130
UN0018	130
UN0019	130
UN0020	101
UN0021	101
UN0027	113
UN0028	113
UN0029	131
UN0030	131
UN0033	130
UN0034	130
UN0035	130
UN0037	130
UN0038	130
UN0039	130
UN0042	132
UN0043	133
UN0044	133
UN0048	130
UN0049	135
UN0050	135
UN0054	135
UN0055	136
UN0056	130
UN0059	137
UN0060	132
UN0065	139
UN0066	140
UN0070	134
UN0072	112(a)
UN0073	133
UN0074	110(a) or 110(b)
UN0075	115
UN0076	112
UN0077	114(a) or 114(b)
UN0078	112
UN0079	112(b) or 112(c)
UN0081	116
UN0082	116 or 117
UN0083	116
UN0084	116
UN0092	135
UN0093	135
UN0094	113
UN0099	134
UN0101	140
UN0102	139
UN0103	140
UN0104	139
UN0105	140
UN0106	141
UN0107	141
UN0110	141
UN0113	110(a) or 110(b)
UN0114	110(a) or 110(b)
UN0118	112
UN0121	142
UN0124	US1
UN0129	110(a) or 110(b)
UN0130	110(a) or 110(b)
UN0131	142
UN0132	114(b)
UN0133	112(a)

EXPLOSIVES TABLE—Continued

ID#	PI
UN0135	110(a) or 110(b)
UN0136	130
UN0137	130
UN0138	130
UN0143	115
UN0144	115
UN0146	112
UN0147	112(b)
UN0150	112(a) or 112(b)
UN0151	112
UN0153	112(b) or 112(c)
UN0154	112
UN0155	112(b) or 112(c)
UN0159	111
UN0160	114(b)
UN0161	114(b)
UN0167	130
UN0168	130
UN0169	130
UN0171	130
UN0173	134
UN0174	134
UN0180	130
UN0181	130
UN0182	130
UN0183	130
UN0186	130
UN0190	101
UN0191	135
UN0192	135
UN0193	135
UN0194	135
UN0195	135
UN0196	135
UN0197	135
UN0204	134
UN0207	112(b) or 112(c)
UN0208	112(b) or 112(c)
UN0209	112
UN0212	133
UN0213	112(b) or 112(c)
UN0214	112
UN0215	112
UN0216	112(b) or 112(c)
UN0217	112(b) or 112(c)
UN0218	112(b) or 112(c)
UN0219	112
UN0220	112
UN0221	130
UN0222	112(b) or 112(c)
UN0224	110(a) or 110(b)
UN0225	133
UN0226	112(a)
UN0234	114(a) or 114(b)
UN0235	114(a) or 114(b)
UN0236	114(a) or 114(b)
UN0237	138
UN0238	130
UN0240	130
UN0241	116 or 117
UN0242	130
UN0243	130
UN0244	130
UN0245	130
UN0246	130
UN0247	101
UN0248	144
UN0249	144
UN0250	101
UN0254	130
UN0255	131
UN0257	141

EXPLOSIVES TABLE—Continued

ID#	PI
UN0266	112
UN0267	131
UN0268	133
UN0271	143
UN0272	143
UN0275	134
UN0276	134
UN0277	134
UN0278	134
UN0279	130
UN0280	130
UN0281	130
UN0282	112
UN0283	132
UN0284	141
UN0285	141
UN0286	130
UN0287	130
UN0288	138
UN0289	139
UN0290	139
UN0291	130
UN0292	141
UN0293	141
UN0294	130
UN0295	130
UN0296	134
UN0297	130
UN0299	130
UN0300	130
UN0301	130
UN0303	130
UN0305	113
UN0306	133
UN0312	135
UN0313	135
UN0314	142
UN0315	142
UN0316	141
UN0317	141
UN0318	141
UN0319	133
UN0320	133
UN0321	130
UN0322	101
UN0323	134
UN0324	130
UN0325	142
UN0326	130
UN0327	130
UN0328	130
UN0329	130
UN0330	130
UN0331	116 or 117
UN0332	116 or 117
UN0333	135
UN0334	135
UN0335	135
UN0336	135
UN0337	135
UN0338	130
UN0339	130
UN0340	112(a) or 112(b)
UN0341	112(b)
UN0342	114(a)
UN0343	111
UN0344	130
UN0345	130
UN0346	130
UN0347	130
UN0348	130
UN0349	101

EXPLOSIVES TABLE—Continued

ID#	PI
UN0350	101
UN0351	101
UN0352	101
UN0353	101
UN0354	101
UN0355	101
UN0356	101
UN0357	101
UN0358	101
UN0359	101
UN0360	131
UN0361	131
UN0362	130
UN0363	130
UN0364	133
UN0365	133
UN0366	133
UN0367	141
UN0368	141
UN0369	130
UN0370	130
UN0371	130
UN0372	141
UN0373	135
UN0374	134
UN0375	134
UN0376	133
UN0377	133
UN0378	133
UN0379	136
UN0380	101
UN0381	134
UN0382	101
UN0383	101
UN0384	101
UN0385	112(b) or 112(c)
UN0386	112(b) or 112(c)
UN0387	112(b) or 112(c)
UN0388	112(b) or 112(c)
UN0389	112(b) or 112(c)
UN0390	112(b) or 112(c)
UN0391	112(a)
UN0392	112(b) or 112(c)
UN0393	112(b)
UN0394	112(a)
UN0395	101
UN0396	101
UN0397	101
UN0398	101
UN0399	101
UN0400	101
UN0401	112
UN0402	112(b) or 112(c)
UN0403	135
UN0404	135
UN0405	135
UN0406	114(b)
UN0407	114(b)
UN0408	141
UN0409	141
UN0410	141
UN0411	112(b) or 112(c)
UN0412	130
UN0413	130
UN0414	130
UN0415	143
UN0417	130
UN0418	135
UN0419	135
UN0420	135
UN0421	135
UN0424	130

EXPLOSIVES TABLE—Continued

ID#	PI
UN0425	130
UN0426	130
UN0427	130
UN0428	135
UN0429	135
UN0430	135
UN0431	135
UN0432	135
UN0433	111
UN0434	130
UN0435	130
UN0436	130
UN0437	130
UN0438	130
UN0439	137
UN0440	137
UN0441	137
UN0442	137
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UN0446	136
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UN0468	101
UN0469	101
UN0470	101
UN0471	101
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UN0473	101
UN0474	101
UN0475	101
UN0476	101
UN0477	101
UN0478	101
UN0479	101
UN0480	101
UN0481	101
UN0482	101
UN0483	112(b) or 112(c)
UN0484	112(b) or 112(c)
UN0486	101
UN0487	135
UN0488	130
UN0489	112(b) or 112(c)
UN0490	112(b) or 112(c)
UN0491	143
UN0492	135
UN0493	135
UN0494	US1
UN0495	115
UN0496	112(b) or 112(c)
UN0497	115
UN0498	114(b)
UN0499	114(b)
UN0500	131
NA0124	US1
NA0276	134
NA0323	134
NA0337	135
NA0349	133
NA0494	US1

(c) Explosives Packing Instruction Table. Explosives must be packaged in accordance with the following table:

(1) The first column lists, in alphanumeric sequence, the packing methods prescribed for explosives in the Explosives Table of paragraph (b) of this section.

(2) The second column specifies the inner packagings that are required. If inner packagings are not required, a notation of ''Not necessary'' appears in the column. The term ''Not necessary'' means that a suitable inner packaging may be used but is not required.

(3) The third column specifies the intermediate packagings that are required. If intermediate packagings are not required, a notation of ''Not necessary'' appears in the column. The term ''Not necessary'' means that a suitable intermediate packaging may be used but is not required.

(4) The fourth column specifies the outer packagings which are required. If inner packagings and/or intermediate packagings are specified in the second and third columns, then the packaging specified in the fourth column must be used as the outer packaging of a combination packaging; otherwise it may be used as a single packaging.

(5) Packing Instruction 101 may be used for any explosive substance or article if an equivalent level of safety is shown to be maintained subject to the approval of the Associate Administrator for Hazardous Materials Safety.

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
101	This Packing Instruction may be used as an alternative to a specifically assigned packing method with the approval of the Associate Administrator for Hazardous Materials Safety prior to transportation. When this packing instruction is used, the following must be marked on the shipping documents: ''Packaging approved by the competent authority of the United States of America (USA)''.		
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. Samples of new or existing explosive substances or articles may be transported as directed by the Associate Administrator for Hazardous Materials Safety for purposes including: testing, classification, research and development, quality control, or as a commercial sample. Explosive samples which are wetted or desensitized must be limited to 25 kg. Explosive samples which are not wetted or desensitized must be limited to 10 kg in small packages as specified by the Associate Administrator for Hazardous Materials Safety			
110(a)	Bags	Bags	Drums.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. The Intermediate packagings must be filled with water saturated material such as an anti-freeze solution or wetted cushioning 2. Outer packagings must be filled with water saturated material such as an anti-freeze solution or wetted cushioning. Outer packagings must be constructed and sealed to prevent evaporation of the wetting solution, except when 0224 is being carried dry	plastics textile, plastic coated or lined rubber textile, rubberized textile	plastics textile, plastic coated or lined rubber textile, rubberized Receptacles plastics metal	steel, removable head (1A2). plastics, removable head (1H2)
110(b)	Bags	Dividing partitions	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS For UN 0074, 0113, 0114, 0129, 0130, 0135 and 0224, the following conditions must be satisfied: a. inner packagings must not contain more than 50 g of explosive substance (quantity corresponding to dry substance); b. each inner packaging must be separated from other inner packagings by dividing partitions; and c. the outer packaging must not be partitioned with more than 25 compartments	rubber, conductive plastics, conductive Receptacles metal wood rubber, conductive plastics, conductive	metal wood plastics fibreboard	natural wood, sift-proof wall (4C2). plywood (4D). reconstituted wood (4F).
111	Bags	Not necessary	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0159, inner packagings are not required when metal (1A2 or 1B2) or plastics (1H2) drums are used as outer packagings	paper, waterproofed plastics textile, rubberized Sheets plastics textile, rubberized	steel (4A). aluminium (4B). natural wood, ordinary (4C1). natural wood, sift proof (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums steel, removable head (1A2). aluminum, removable head (1B2). plywood (1D). fibreboard (1G). plastics, removable head (1H2).	
112(a) This packing instruction applies to wetted solids.	Bags	Bags	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN Nos. 0004, 0076, 0078, 0154, 0219 and 0394, packagings must be lead free 2. Intermediate packagings are not required if leakproof drums are used as the outer packaging 3. For UN 0072 and UN 0226, intermediate packagings are not required	paper, multiwall, water resistant plastics textile textile, rubberized woven plastics Receptacles metal plastics	plastics textile, plastic coated or lined. Receptacles metal plastics	steel (4A). aluminium (4B). natural wood, ordinary (4C1). natural wood, sift proof (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums steel, removable head (1A2). aluminium, removable head (1B2). fibre (1G). plastics, removable head (1H2).
112(b) This packing instruction applies to dry solids other than powders.	Bags	Bags (for UN 0150 only)	Bags.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0004, 0076, 0078, 0154, 0216, 0219 and 0386, packagings must be lead free 2. For UN 0209, bags, sift-proof (5H2) are recommended for flake or prilled TNT in the dry state and a maximum net mass of 30 kg. 3. For UN 0222 and UN 0223, inner packagings are not required	paper, Kraft paper, multiwall, water resistant. plastics textile textile, rubberized plastics. woven plastics	plastics textile, plastic coated or lined.	woven plastics sift-proof (5H2/3). plastics, film (5H4). textile, sift-proof (5L2). textile, water resistant (5L3). paper, multiwall, water resistant (5M2). Boxes steel (4A). aluminium (4B). natural wood, ordinary (4C1). natural wood, sift proof (4C2). plywood (4D) reconstituted wood (4F). fibreboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums steel, removable head (1A2). aluminium, removable head (1B2). fibre (1G). plastics, removable head (1H2).
112(c) This packing instruction applies to solid dry powders.	Bags	Bags	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0004, 0076, 0078, 0154, 0216, 0219 and 0386, packagings must be lead free 2. For UN 0209, bags, sift-proof (5H2) are recommended for flake or prilled TNT in the dry state. Bags must not exceed a maximum net mass of 30 kg. 3. Inner packagings are not required if drums are used as the outer packaging. 4. At least one of the packagings must be sift-proof	paper, multiwall, water resistant. plastics woven plastics Receptacles ..... fibreboard metal plastics wood	paper, multiwall, water resistant with inner lining. plastics Receptacles ..... metal plastics	steel (4A). natural wood, ordinary (4C1). natural wood, sift proof (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2). Drums. steel, removable head (1A2) aluminium, removable head (1B2) . fibre (1G).
113	Bags	Not necessary	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0094 and UN 0305, no more than 50 g of substance must be packed in an inner packaging 2. For UN 0027, inner packagings are not necessary when drums are used as the outer packaging 3. At least one of the packagings must be sift- proof 4. Sheets must only be used for UN 0028	paper plastics textile, rubberized Receptacles ..... fibreboard metal plastics wood Sheets ..... paper, kraft paper, waxed		steel (4A). natural wood, ordinary (4C1). natural wood, sift-proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2). Drums steel, removable head (1A2). aluminium, removable head (1B2). fibre (1G).
114(a) This packing instruction applies to wetted solids.	Bags	Bags	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0077, 0234, 0235 and 0236, packagings must be lead free 2. For UN 0342, inner packagings are not required when metal (1A2 or 1B2) or plastics (1H2) drums are used as outer packagings 3. Intermediate packagings are not required if leakproof removable head drums are used as the outer packaging	plastics. textile woven plastics Receptacles metal plastics	plastics. textile, plastic coated or lined Receptacles metal plastics	steel (4A). natural wood, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2). Drums. steel, removable head (1A2). aluminium, removable head (1B2). plywood (1D). fibre (1G). plastics, removable head (1H2).
114(b) This packing instruction applies to dry solids PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0077, 0132, 0234, 0235 and 0236, packagings must be lead free 2. For UN 0160 and UN 0161, when metal drums (1A2 or 1B2) are used as the outer packaging, metal packagings must be so constructed that the risk of explosion, by reason of increased internal pressure from internal or external causes is prevented 3. For UN 0160 and UN 0161, inner packagings are not required if drums are used as the outer packaging	Bags . paper, kraft. plastics textile, sift-proof woven plastics, sift-proof Receptacles fibreboard metal paper plastics woven plastics, sift-proof	Not necessary natural wood, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). Drums. steel, removable head (1A2).. aluminium, removable head (1B2). plywood (1D). fibre (1G). plastics, removable head (1H2).	Boxes.
115 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For liquid explosives, inner packagings must be surrounded with non-combustible absorbent cushioning material in sufficient quantity to absorb the entire liquid content. Metal receptacles should be cushioned from each other. The net mass of explosive per package may not exceed 30 kg when boxes are used as outer packaging. The net volume of explosive in each package other than boxes must not exceed 120 litres 2. For UN 0075, 0143, 0495 and 0497 when boxes are used as the outer packaging, inner packagings must have taped screw cap closures and be not more than 5 litres capacity each. A composite packaging consisting of a plastic receptacle in a metal drum (6HA1) may be used in lieu of combination packagings. Liquid substances must not freeze at temperatures above −15°C (+5°F) 3. For UN 0144, intermediate packagings are not necessary. Receptacles	Receptacles metal plastics	Bags plastics in metal receptacles Drums metal	Boxes. natural wood, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). Drums. steel, removable head (1A2). aluminium, removable head (1B2). plywood (1D). fibre (1G). Specification MC–200 containers may be used for transport by motor vehicle.
116	Bags	Not necessary	Bags.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0082, 0241, 0331 and 0332, inner packagings are not necessary if leakproof removable head drums are used as the outer packaging 2. For UN 0082, 0241, 0331 and 0332, inner packagings are not required when the explosive is contained in a material impervious to liquid 3. For UN 0081, inner packagings are not required when contained in rigid plastic which is impervious to nitric esters 4. For UN 0331, inner packagings are not required when bags (5H2), (5H3) or (5H4) are used as outer packagings 5. Bags (5H2 or 5H3) must be used only for UN 0082, 0241, 0331 and 0332 6. For UN 0081, bags must not be used as outer packagings	paper, water and oil resistant plastics texitile, plasic coated or lined woven plasics, sift-proof Receptacles ..... fibreboard, water resistant. metal plastics wood, sift-proof Sheets ..... paper, water resistant paper, waxed plastics		woven plastics (5H1/2/3). paper, mulitwall, water resistant (5M2). plastics, film (5H4). textile, sift-proof (5L2). textile, water resistant (5L3). Boxes. steel (4A). aluminium (4B). wood, natural, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2). Drums. steel, removable head (1A2). aluminium, removable head (1B2). fibre (1G). plastics, removable head (1H2). Jerricans. steel, removable head (3A2). plastics, removable head (3H2).
117	Not necessary	Not necessary	IBCs.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. This packing instruction may only be used for explosives of 0082 when they are mixtures of ammonium nitrate or other inorganic nitrates with other combustible substances which are not explosive ingredients. Such explosives must not contain nitroglycerin, similar liquid organic nitrates, liquid or solid nitrocarbons, or chlorates. 2. This packing instruction may only be used for explosives of UN 0241 which consist of water as an essential ingredient and high proportions of ammonium nitrate or other oxidizers, some or all of which are in solution. The other constituents may include hydrocarbons or aluminium powder, but must not include nitro-derivatives such as trinitrotoluene. 3. Metal IBCs must not be used for UN 0082 and 0241. 4. Flexible IBCs may only be used for solids.			metal (11A), (11B), (11N), (21A), (21B), (21N), (31A), (31B), (31N). flexible (13H2), (13H3), (13H4), (13L2), (13L3), (13L4), (13M2). rigid plastics (11H1), (11H2), (21H1), (21H2), (31H1), (31H2). composite (11HZ1), (11HZ2), (21HZ1), (21HZ2), (31HZ1), (31HZ2).
130	Not necessary	No necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. The following applies to UN 0006, 0009, 0010, 0015, 0016, 0018, 0019, 0034, 0035, 0038, 0039, 0048, 0056, 0137, 0138, 0168, 0169, 0171, 0181, 0182, 0183, 0186, 0221, 0238, 0243, 0244, 0245, 0246, 0254, 0280, 0281, 0286, 0287, 0297, 0299, 0300, 0301, 0303, 0321, 0328, 0329, 0344, 0345 0346, 0347, 0362, 0363, 0370, 0412, 0424, 0425, 0434, 0435, 0436, 0437, 0438, 0451, 0459 and 0488. Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged. When such articles have propelling charges or are self-propelled, their ignition systems must be protected against stimuli encountered during normal conditions of transport. A negative result in Test Series 4 on an unpackaged article indicates that the article can be considered for transport unpackaged. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling devices.			steel (4A). aluminium (4B). wood natural, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums. steel, removable head (1A2). aluminium, removable head (1B2). fibre (1G). plastics, removable head (1H2).
131	Bags paper plastics Receptacles fibreboard metal plastics wood Reels	Not necessary	Boxes. steel (4A). aluminium (4B). wood, natural, ordinary (4C1). natural wood, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). Drums. steel, removable head (1A2). aluminium, removable head (1B2). fibre (1G). plastics, removable head (1H2).
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0029, 0267 and 0455, bags and reels may not be used as inner packagings 2. For UN 0030, 0255 and 0456, inner packagings are not required when detonators are packed in pasteboard tubes, or when their leg wires are wound on spools with the caps either placed inside the spool or securely taped to the wire on the spool, so as to restrict freedom of movement of the caps and to protect them from impact forces 3. For UN 0360, 0361 and 0500, detonators are not required to be attached to the safety fuse, metal-clad mild detonating cord, detonating cord, or shock tube. Inner packagings are not required if the packing configuration restricts freedom of movement of the caps and protects them from impact forces			
132(a)	Not necessary	Not necessary	Boxes. steel (4A). aluminium (4B). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2).
132(b)	Receptacles fibreboard metal plastics Sheets paper plastics	Not necessary	Boxes. steel (4A). aluminium (4B). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2).
133	Receptables	Receptables	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0043, 0212, 0225, 0268 and 0306 trays are not authorized as inner packagings 2. Intermediate packagings are only required when trays are used as inner packagings	fibreboard metal plastics wood Trays, fitted with dividing partitions fibreboard plastics wood	fibreboard metal plastics wood	steel (4A). aluminium (4B). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2).
134	Bags water resistant Receptacles fibreboard metal plastics wood Sheets fibreboard, corrugated Tubes fibreboard	Not necessary	Boxes. steel (4A). aluminium (4B). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2). Drums. steel, removable head (1A2). aluminium, removable head (1B2).
135	Bags paper plastics Receptacles fibreboard metal plastics wood Sheets paper plastics	Not necessary	Boxes. steel (4A). aluminium (4B). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums. steel, removable head (1A2). aluminium, removable head (1B2). fibre (1G). plastics, removable head (1H2).
136	Bags. plastics textile Boxes. fibreboard plastics wood Dividing partitions in the outer packagings	Not necessary	Boxes. steel (4A). aluminium (4B) wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2). Drums. steel, removable head (1A2). aluminium, removable head (1B2). fibre (1G). plastics, removable head (1H2).
137	Bags	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0059, 0439, 0440 and 0441, when the shaped charges are packed singly, the conical cavity must face downwards and the package marked ''THIS SIDE UP''. When the shaped charges are packed in pairs, the conical cavities must face inwards to minimize the jetting effect in the event of accidental initiation	plastics Boxes fibreboard Tubes fibreboard metal plastics Dividing partitions in the outer packagings.		steel (4A). aluminium (4B). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G).
138	Bags plastics	Not necessary	Boxes. steel (4A). aluminium (4B). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2). Drums. steel, removable head (1A2). aluminium, removable head (1B2).
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: If the ends of the articles are sealed, inner packagings are not necessary			
139	Bags plastics Receptacles fibreboard metal plastics wood Reels Sheets paper plastics	Not necessary	Boxes. steel (4A). aluminium (4B). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2). Drums. steel, removable head (1A2). aluminium, removable head (1B2). plywood (1D). fibre (1G). plastics, removable head (1H2).
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0065, 0102, 0104, 0289 and 0290, the ends of the detonating cord must be sealed, for example, by a plug firmly fixed so that the explosive cannot escape. The ends of CORD DETONATING flexible must be fastened securely 2. For UN 0065 and UN 0289, inner packagings are not required when they are fastened securely in coils			
140	Bags plastics Reels Sheets paper, kraft plastics	Not necessary	Boxes. steel (4A). aluminium (4B). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2). Drums. steel, removable head (1A2). aluminium, removable head (1B2). fibre (1G).
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. If the ends of UN 0105 are sealed, no inner packagings are required 2. For UN 0101, the packaging must be sift-proof except when the fuse is covered by a paper tube and both ends of the tube are covered with removable caps 3. For UN 0101, steel or aluminium boxes or drums must not be used			

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
141	Receptacles fibreboard metal plastics wood Trays, fitted with dividing partitions. plastics wood Dividing partitions in the outer packagings.	Not necessary	Boxes. steel (4A). aluminium (4B). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2). Drums. steel, removable head (1A2). aluminium, removable head (1B2). fibre (1G). plastics, removable head (1H2).
142	Bags paper plastics Receptacles fibreboard metal plastics wood Sheets paper Trays, fitted with dividing partitions. plastics	Not necessary	Boxes. steel (4A). aluminium (4B). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2). Drums. steel, removable head (1A2). aluminium, removable head (1B2). fibre (1G). plastics, removable head (1H2).
143 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN 0271, 0272, 0415 and 0491 when metal packagings are used, metal packagings must be so constructed that the risk of explosion, by reason of increase in internal pressure from internal or external causes is prevented 2. Composite packagings (6HH2) (plastic receptacle with outer solid box) may be used in lieu of combination packagings	Bag paper, kraft plastics textile textile, rubberized Receptacles fibreboard metal plastics Trays, fitted with dividing partitions. plastics wood	Not necessary	Boxes. steel (4A). aluminum (4B). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, solid (4H2). Drums. steel, removable head (1A2). aluminium, removable head (1B2). plywood (1D). fibre (1G). plastics, removable head (1H2).
144 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0248 and UN 0249, packagings must be protected against the ingress of water. When CONTRIVANCES, WATER ACTIVATED are transported unpackaged, they must be provided with at least two independent protective features which prevent the ingress of water	Receptacles fibreboard metal plastics Dividing partitions in the outer packagings.	Not necessary	Boxes. steel (4A). aluminum (4B). wood, natural, ordinary (4C1) with metal liner. plywood (4D) with metal liner. reconstituted wood (4F) with metal liner. plastics, expanded (4H1).

US 1

1. A jet perforating gun, charged, oil well may be transported under the following conditions:

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings

a. Initiation devices carried on the same motor vehicle or offshore supply vessel must be segregated; each kind from every other kind, and from any gun, tool or other supplies, unless approved in accordance with § 173.56. Segregated initiation devices must be carried in a container having individual pockets for each such device or in a fully enclosed steel container lined with a non-sparking material. No more than two segregated initiation devices per gun may be carried on the same motor vehicle.
b. Each shaped charge affixed to the gun may not contain more than 112 g (4 ounces) of explosives.
c. Each shaped charge if not completely enclosed in glass or metal, must be fully protected by a metal cover after installation in the gun.
d. A jet perforating gun classed as 1.1D or 1.4D may be transported by highway by private or contract carriers engaged in oil well operations.
(i) A motor vehicle transporting a gun must have specially built racks or carrying cases designed and constructed so that the gun is securely held in place during transportation and is not subject to damage by contact, one to the other or any other article or material carried in the vehicle; and
(ii) The assembled gun packed on the vehicle may not extend beyond the body of the motor vehicle.
e. A jet perforating gun classed as 1.4D may be transported by a private offshore supply vessel only when the gun is carried in a motor vehicle as specified in paragraph (d) of this packing method or on offshore well tool pallets provided that:
(i) All the conditions specified in paragraphs (a), (b), and (c) of this packing method are met;
(ii) The total explosive contents do not exceed 90.8 kg (200 pounds) per tool pallet;
(iii) Each cargo vessel compartment may contain up to 90.8 kg (200 pounds) of explosive content if the segregation requirements in § 176.83(b)(3) of this subchapter are met; and
(iv) When more than one vehicle or tool pallet is stowed ''on deck'' a minimum horizontal separation of 3 m (9.8 feet) must be provided.

(d) Class 1 (explosive) materials owned by the Department of Defense and packaged prior to January 1, 1990, in accordance with the requirements of this subchapter in effect at that time, are excepted from the requirements of part 178 of this subchapter provided the packagings have maintained their integrity and the explosive material is declared as government-owned goods packaged prior to January 1, 1990.

30. In § 173.120, paragraph (a)(3) is revised, the last sentence in paragraph (b)(3) is revised, the word ''or'' is removed at the end of paragraph (c)(1)(i)(A), the period at the end of paragraph (c)(1)(i)(B) is removed and ''; or'' is added in its place, and a new paragraph (c)(1)(i)(C) is added, to read as follows:

§ 173.120 Class 3—Definitions.

(a) * * *

(3) Any liquid with a flash point greater than 35°C (95°F) which does not sustain combustion according to ASTM 4206 or the procedure in Appendix H of this part.

* * * * *

(b) * * *

(3) * * * Either the test method specified in ASTM 4206 or the procedure in Appendix H of this part may be used to determine if a material sustains combustion when heated under test conditions and exposed to an external source of flame.

(c) * * *

(1) * * *

(i) * * *

(C) Standard Test Methods for Flash Point by Small Scale Closed Tester, (ASTM D 3828).

* * * * *

§ 173.124 [Amended]

31. In § 173.124, the following changes are made:

a. In paragraph (a)(1) introductory text, the word ''Wetted'' is revised to read ''Desensitized''.

b. In paragraph (a)(2)(i)(D)(*2*) the words ''for a 50 kg package'' is added after the words ''greater than 75°C (167°F)''.

c. In paragraphs (a)(3)(ii) and (iii), the wording ''paragraph 2.c.(2) of appendix E to this part'' is revised to read ''UN Manual of Tests and Criteria'' each place it appears.

d. In paragraph (b)(1), the wording ''paragraph 3.a.(1) or 3.a.(2), as appropriate, of appendix E to this part'' is revised to read ''the UN Manual of Tests and Criteria''.

e. In paragraph (b)(2), the wording ''paragraph 3.b.(1) of appendix E to this part'' is revised to read ''UN Manual of Tests and Criteria''.

f. In paragraph (c), the wording ''paragraph 4 of appendix E to this part'' is revised to read ''UN Manual of Tests and Criteria''.

32. In § 173.125, paragraphs (b), (c)(2)(i), (c)(2)(ii), and (d)(1) through (d)(3) are revised to read as follows:

§ 173.125 Class 4—Assignment of packing group.

* * * * *

(b) Packing group criteria for readily combustible materials of Division 4.1 are as follows:

(1) Powdered, granular or pasty materials must be classified in Division 4.1 when the time of burning of one or more of the test runs, in accordance with the UN Manual of Tests and Criteria, is less than 45 seconds or the rate of burning is more than 2.2 mm/s. Powders of metals or metal alloys must be classified in Division 4.1 when they can be ignited and the reaction spreads over the whole length of the sample in 10 minutes or less.

(2) Packing group criteria for readily combustible materials of Division 4.1 are assigned as follows:

(i) For readily combustible solids (other than metal powders), Packing Group II if the burning time is less than 45 seconds and the flame passes the wetted zone. Packing Group II must be assigned to powders of metal or metal alloys if the zone of reaction spreads over the whole length of the sample in 5 minutes or less.

(ii) For readily combustible solids (other than metal powders), Packing Group III must be assigned if the burning rate time is less than 45 seconds and the wetted zone stops the flame propagation for at least 4 minutes. Packing Group III must be assigned to metal powders if the reaction spreads over the whole length of the sample in more than 5 minutes but not more than 10 minutes.

(c) * * *

(2) * * *

(i) Packing Group II, if the material gives a positive test result when tested with a 25 mm cube size sample at 140°C; or

(ii) Packing Group III, if—

(A) A positive test result is obtained in a test using a 100 mm sample cube at 140°C and a negative test result is obtained in a test using a 25 mm sample cube at 140°C and the substance is transported in packagings with a volume of more than 3 cubic meters; or

(B) A positive test result is obtained in a test using a 100 mm sample cube at 120°C and a negative result is obtained in a test using a 25 mm sample cube at 140°C and the substance is

transported in packagings with a volume of more than 450 liters; or

(C) A positive result is obtained in a test using a 100 mm sample cube at 100°C and a negative result is obtained in a test using a 25 mm sample cube at 140°C and the substance is transported in packagings with a volume of less than 450 liters.

(d) * * *

(1) Packing Group I, if the material reacts vigorously with water at ambient temperatures and demonstrates a tendency for the gas produced to ignite spontaneously, or which reacts readily with water at ambient temperatures such that the rate of evolution of flammable gases is equal or greater than 10 liters per kilogram of material over any one minute;

(2) Packing Group II, if the material reacts readily with water at ambient temperatures such that the maximum rate of evolution of flammable gases is equal to or greater than 20 liters per kilogram of material per hour, and which does not meet the criteria for Packing Group I; or

(3) Packing Group III, if the material reacts slowly with water at ambient temperatures such that the maximum rate of evolution of flammable gases is greater than 1 liter per kilogram of material per hour, and which does not meet the criteria for Packing Group I or II.

33. Section 173.127 is revised to read as follows:

§ 173.127 Class 5, Division 5.1—Definition and assignment of packing groups.

(a) *Definition.* For the purpose of this subchapter, *oxidizer* (Division 5.1) means a material that may, generally by yielding oxygen, cause or enhance the combustion of other materials.

(1) A solid material is classed as a Division 5.1 material if, when tested in accordance with the UN Manual of Tests and Criteria, its mean burning time is less than or equal to the burning time of a 3:7 potassium bromate/cellulose mixture.

(2) A liquid material is classed as a Division 5.1 material if, when tested in accordance with the UN Manual of Tests and Criteria, it spontaneously ignites or its mean time for a pressure rise from 690 kPa to 2070 kPa gauge is less then the time of a 1:1 nitric acid (65 percent)/cellulose mixture.

(b) *Assignment of packing groups.* (1) The packing group of a Division 5.1 material which is a solid shall be assigned using the following criteria:

(i) Packing Group I, for any material which, in either concentration tested, exhibits a mean burning time less than the mean burning time of a 3:2 potassium bromate/cellulose mixture.

(ii) Packing Group II, for any material which, in either concentration tested, exhibits a mean burning time less than or equal to the mean burning time of a 2:3 potassium bromate/cellulose mixture and the criteria for Packing Group I are not met.

(iii) Packing Group III for any material which, in either concentration tested, exhibits a mean burning time less than or equal to the mean burning time of a 3:7 potassium bromate/cellulose mixture and the criteria for Packing Group I and II are not met.

(2) The packing group of a Division 5.1 material which is a liquid shall be assigned using the following criteria:

(i) Packing Group I for:

(A) Any material which spontaneously ignites when mixed with cellulose in a 1:1 ratio; or

(B) Any material which exhibits a mean pressure rise time less than the pressure rise time of a 1:1 perchloric acid (50 percent)/cellulose mixture.

(ii) Packing Group II, any material which exhibits a mean pressure rise time less than or equal to the pressure rise time of a 1:1 aqueous sodium chlorate solution (40 percent)/cellulose mixture and the criteria for Packing Group I are not met.

(iii) Packing Group III, any material which exhibits a mean pressure rise time less than or equal to the pressure rise time of a 1:1 nitric acid (65 percent)/cellulose mixture and the criteria for Packing Group I and II are not met.

§ 173.128 [Amended]

34. In § 173.128, the following changes are made:

a. In paragraph (c)(3), the wording ''United Nations Recommendations on the Transport of Dangerous Goods, Tests and Criteria, part III'' would be revised to read ''UN Manual of Tests and Criteria'.

b. In paragraph (e), the wording ''Figure 11.1 (Classification and Flow Chart Scheme for Organic Peroxides) from the UN Recommendations, Tests and Criteria, part III'' would be revised to read ''Figure 20.1(a) (Classification and Flow Chart Scheme for Organic Peroxides) from the UN Manual of Tests and Criteria''.

35. In § 173.132, a new paragraph (b)(3)(iii) is added, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added, to read as follows:

§ 173.132 Class 6, Division 6.1—Definitions.

* * * * *

(b) * * *

(3) * * *

(iii) A solid substance should be tested if at least 10 percent of its total mass is likely to be dust in a respirable range, e.g. the aerodynamic diameter of that particle-fraction is 10 microns or less. A liquid substance should be tested if a mist is likely to be generated in a leakage of the transport containment. In carrying out the test both for solid and liquid substances, more than 90% (by mass) of a specimen prepared for inhalation toxicity testing must be in the respirable range as defined in this paragraph (b)(3)(iii).

(c) For purposes of classifying and assigning packing groups to mixtures possessing oral or dermal toxicity hazards according to the criteria in § 173.133(a)(1), it is necessary to determine the acute LD_{50} of the mixture. If a mixture contains more than one active constituent, one of the following methods may be used to determine the oral or dermal LD_{50} of the mixture:

(1) Obtain reliable acute oral and dermal toxicity data on the actual mixture to be transported;

(2) If reliable, accurate data is not available, classify the formulation according to the most hazardous constituent of the mixture as if that constituent were present in the same concentration as the total concentration of all active constituents; or

(3) If reliable, accurate data is not available, apply the formula:

$$\frac{C_{A+}}{T_A} + \frac{C_B}{T_B} + \frac{C_Z}{T_Z} = \frac{100}{T_M}$$

where:

C = the % concentration of constituent A, B ... Z in the mixture;

T = the oral LD_{50} values of constituent A, B ... Z;

T_M = the oral LD_{50} value of the mixture.

Note to formula in paragraph (c)(3): This formula also may be used for dermal toxicities provided that this information is available on the same species for all constituents. The use of this formula does not take into account any potentiation or protective phenomena.

* * * * *

36. In § 173.136, a new paragraph (c) is added to read as follows:

§ 173.136 Class 8—Definitions

* * * * *

(c) Skin corrosion test data produced no later than September 30, 1995, using the procedures of Part 173, Appendix A, in effect on September 30, 1995 (see 49 CFR Part 173, Appendix A, revised as of October 1, 1994) for appropriate exposure times may be used for classification and assignment of packing

group for Class 8 materials corrosive to skin.

§ 173.137 [Amended]

37. In § 173.137, the following changes are made:

a. In paragraph (b), the wording ''other than those meeting Packing Group I criteria'' is added immediately following the word ''Materials''.

b. In paragraph (c)(2), at the end of the paragraph, the wording ''(Reapproved 1990)'' is revised to read ''(Reapproved 1995)''.

38. In § 173.152, a new paragraph (b)(4) is added to read as follows:

§ 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).

* * * * *

(b) * * *

(4) For polyester resin kits consisting of a base material component (Class 3, Packing Group II or III) and an activator component (Type C, D, E, or F organic peroxide which does not require temperature control)—

(i) the organic peroxide component must be packed in inner packagings not over 125 ml (4.22 ounces) net capacity each for liquids or 500 g (17.64 ounces) net capacity each for solids;

(ii) The flammable liquid component must be packed in inner packagings not over 1.0 L (0.3 gallons) net capacity each for Packing Group II liquids or 5.0 L (1.3 gallons) net capacity each for Packing Group III liquids; and

(iii) The flammable liquid component and the organic peroxide component may be packed in the same strong outer packaging provided they will not interact dangerously in the event of leakage.

* * * * *

39. In § 173.162, a sentence is added at the end of the section to read as follows:

§ 173.162 Gallium.

* * * Manufactured articles or apparatuses, each containing not more than 100 mg (0.0035 ounce) of gallium and packaged so that the quantity of gallium per package does not exceed 1 g (0.35 ounce) are not subject to the requirements of this subchapter.

40. In § 173.166, the section heading and paragraph (e) are revised to read as follows:

§ 173.166 Air bag inflators, air bag modules and seat-belt pretensioners.

* * * * *

(e) *Packagings.* The following packagings are authorized:

(1) 1A2, 1B2, 1G or 1H2 drums.

(2) 3A2 or 3H2 jerricans.

(3) 4C1, 4C2, 4D, 4F, 4G or 4H2 boxes.

(4) Reusable high strength plastic or metal containers or dedicated handling devices are authorized for shipment of air bag inflators, air bag modules, and seat-belt pretensioners from a manufacturing facility to the assembly facility, subject to the following conditions:

(i) The gross weight of the container or handling device may not exceed 1000 kg (2205 pounds). The container or handling device structure must provide adequate support to allow them to be stacked at least three high with no damage to the containers or devices.

(ii) If not completely enclosed by design, the container or handling device must be covered with plastic, fiberboard, or metal. The covering must be secured to the container by banding or other comparable methods.

(iii) Internal dunnage must be sufficient to prevent movement of the devices within the container.

* * * * *

§ 173.166 [Amended]

41. In addition, in § 173.166, the following changes are made:

a. The last sentence in paragraph (a) is removed.

b. In paragraph (b) introductory text, the wording ''air bag inflator, air bag module, seat-belt pre-tensioner or seat-belt module'' is revised to read ''air bag inflator, air bag module, or seat-belt pre-tensioner''.

c. In paragraph (b)(2), the wording ''Tests and Criteria, Second Edition, 1990'' is revised to read ''Manual of Tests and Criteria, second revised edition, 1995''.

d. In paragraph (b)(4), the wording ''or seat-belt'' and the wording ''or seat-belt pre-tensioner'' are removed.

e. In paragraph (c), in the last sentence, the wording ''or pre-tensioner'' is removed.

f. In paragraph (d)(1), the wording ''An air bag or seat-belt module'' is revised to read ''An air bag module or seat-belt pretensioner''.

g. In paragraph (d)(2), the wording ''or seat-belt'' and the wording ''or pre-tensioner'' are removed.

h. In paragraph (f), in the first sentence, the wording ''or handling device'' is added immediately following ''each package''.

42. Section 173.185 is revised to read as follows:

§ 173.185 Lithium batteries and cells.

(a) Except as otherwise provided in this subpart, a lithium cell or battery is authorized for transportation only if it conforms to the provisions of this section.

(b) *Exceptions.* Cells and batteries are not subject to the requirements of this subchapter if they meet the following requirements:

(1) Each cell with a liquid cathode may contain no more than 0.5 g of lithium or lithium alloy, and each cell with a solid cathode may contain no more than 1.0 g lithium or lithium alloy;

(2) Each battery with a liquid cathode may contain an aggregate quantity of no more than 1.0 g lithium or lithium alloy, and each battery with a solid cathode may contain an aggregate quantity of no more than 2.0 g of lithium or lithium alloy;

(3) Each cell or battery containing a liquid cathode must be hermetically sealed;

(4) Cells and batteries must be packed in such a way so as to prevent short circuits and must be packed in strong packagings, except when installed in equipment; and

(5) If a liquid cathode battery contains more than 0.5 g of lithium or lithium alloy or a solid cathode battery contains more than 1.0 g lithium or lithium alloy, it may not contain a liquid or gas that is a hazardous material according to this subchapter unless the liquid or gas, if free, would be completely absorbed or neutralized by other materials in the battery.

(c) Cells and batteries also are not subject to this subchapter if they meet the following requirements:

(1) Each cell contains not more than 5 g of lithium or lithium alloy;

(2) Each battery contains not more than 25 g of lithium or lithium alloy;

(3) Each cell or battery is of the type proven to be non-dangerous by testing in accordance with tests in the UN Manual of Tests and Criteria, such testing must be carried out on each type prior to the initial transport of that type; and

(4) Cells and batteries are designed or packed in such a way as to prevent short circuits under conditions normally encountered in transportation.

(d) Cells and batteries and equipment containing cells and batteries which were first transported prior to January 1, 1995, and were assigned to Class 9 on the basis of the requirements of this subchapter in effect on October 1, 1993, may continue to be transported in accordance with the applicable requirements in effect on October 1, 1993.

(e) Cells and batteries may be transported as items of Class 9 if they meet the requirements in paragraphs (e)(1) through (e)(9) of this section:

(1) Cells must not contain more than 12 g of lithium or lithium alloy.

(2) Batteries must not contain more than 500 g of lithium or lithium alloy.

(3) Each cell and battery must be equipped with an effective means of preventing external short circuits.

(4) Each cell and battery must incorporate a safety venting device or be designed in a manner that will preclude a violent rupture under conditions normally incident to transportation.

(5) Batteries containing cells or series of cells connected in parallel must be equipped with diodes to prevent reverse current flow.

(6) Cells and batteries must be packed in strong inner packagings containing not more than 500 g of lithium or lithium alloy per inner packaging.

(7) Cells and batteries must be packed in inner packagings in such a manner as to effectively prevent short circuits and to prevent movement which could lead to short circuits.

(8) Cells and batteries must be packaged in packagings conforming to the requirements of part 178 of this subchapter at the Packing Group II performance level: Inner packagings must be packed within metal boxes (4A or 4B), wooden boxes (4C1, 4C2, 4D,or 4F), fiberboard boxes (4G), solid plastic boxes (4H2), fiber drums (1G), metal drums (1A2 or 1B2), plywood drums (1D), plastic jerricans (3H2), or metal jerricans (3A2 or 3B2).

(9) Each cell or battery must be of the type proven to meet the criteria of Class 9 by testing in accordance with tests in the UN Manual of Tests and Criteria.

(10) Except as provided in paragraph (h) of this section, cells or batteries may not be offered for transportation or transported if any cell has been discharged to the extent that the open circuit voltage is less than two volts or is less than ⅔ of the voltage of the fully charged cell, whichever is less.

(f) Equipment containing or packed with cells and batteries meeting the requirements of paragraph (b) or (c) of this section is excepted from all other requirements of this subchapter.

(g) Equipment containing or packed with cells and batteries may be transported as items of Class 9 if the batteries and cells meet all the requirements of paragraph (e) of this section and are packaged as follows:

(1) Equipment containing cells and batteries must be packed in a strong outer packaging that is waterproof or is made waterproof through the use of a liner unless the equipment is made waterproof by nature of its construction. The equipment must be secured within the outer packaging and be packed as to effectively prevent movement, short circuits, and accidental operation during transport; and

(2) Cells and batteries packed with equipment must be packed in inner packagings conforming to paragraph (e)(8) of this section in such a manner as to effectively prevent movement and short circuits. The quantity of lithium contained in any piece of equipment must not exceed 12 g per cell and 500 g per battery. Not more than 5 kg of cells and batteries may be packed with each item of equipment.

(h) Cells and batteries, for disposal, may be offered for transportation or transported to a permitted storage facility and disposal site by motor vehicle when they meet the following requirements:

(1) Cells, when new, may not contain more than 12 g and batteries may not contain more than 500 g of lithium or lithium alloy;

(2) Be equipped with an effective means of preventing external short circuits; and

(3) Be packed in a strong outer packaging conforming to the requirements of §§ 173.24 and 173.24a. The packaging need not conform to performance requirements of part 178 of this subchapter.

(i) Cells and batteries and equipment containing or packed with cells and batteries which do not comply with the provisions of this section may be transported only if they are approved by the Associate Administrator for Hazardous Materials Safety.

(j) For testing purposes, when not contained in equipment, cells containing not more than 12 g of lithium or lithium alloy and batteries containing not more than 500 g of lithium or lithium alloy may be offered for transportation or transported by highway only as items of Class 9. Packaging must conform with paragraph (e)(8) of this section with not more than 100 cells per package.

§§ 173.201, 173.202, 173.203, 173.211, 173.212, 173.213 [Amended]

42a. In addition to the amendments set forth above, part 173 is amended by adding the wording ''Aluminum jerrican: 3B1 or 3B2'' immediately following ''Plastic jerrican: 3H1 or 3H2'' each place it appears in the following sections:

a. Section 173.201 (b) and (c)

b. Section 173.202 (b) and (c)

c. Section 173.203 (b) and (c)

d. Section 173.211 (b) and (c)

e. Section 173.212 (b) and (c)

f. Section 173.213 (b) and (c)

43. In § 173.220, paragraph (c)(1) is revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, and mechanical equipment containing internal combustion engines or wet batteries.

* * * * *

(c) * * *

(1) For transportation by vessel, the provisions of this subchapter do not apply to a motor vehicle or mechanical equipment which is electrically powered by a wet electric storage battery.

* * * * *

44. In § 173.224, the table at the end of paragraph (b) is revised to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

* * * * *

(b) * * *

* * * * *

SELF-REACTIVE SUBSTANCES

Self-reactive substance	Identification No.	Concentration—(%)	Packing method	Control temperature—(°C)	Emergency temperature	Notes
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Azodicarbonamide formulation type B, temperature controlled	3232	<100	OP5	.....	.....	1
Azodicarbonamide formulation type C	3224	<100	OP6	.....	.....	.....
Azodicarbonamide formulation type C, temperature controlled ...	3234	<100	OP6	.....	.....	1
Azodicarbonamide formulation type D	3226	<100	OP7	.....	.....	.....
Azodicarbonamide formulation type D, temperature controlled ...	3236	<100	OP7	.....	.....	1
2,2′-Azodi(2,4-dimethyl-4-methoxyvaleronitrile)	3236	100	OP7	×5	+5	.....
2,2′-Azodi(2,4-dimethylvaleronitrile)	3236	100	OP7	+10	+15	.....
2,2′-Azodi(ethyl 2-methylpropionate)	3235	100	OP7	+20	+25	.....
1,1-Azodi(hexahydrobenzonitrile)	3226	100	OP7	.....	.....	.....

SELF-REACTIVE SUBSTANCES—Continued

Self-reactive substance (1)	Identification No. (2)	Concentration—(%) (3)	Packing method (4)	Control temperature—(°C) (5)	Emergency temperature (6)	Notes (7)
2,2-Azodi(isobutyronitrile)	3234	100	OP6	+40	+45	
2,2-Azodi(2-methylbutyronitrile)	3236	100	OP7	+35	+40	
Benzene-1,3-disulphohydrazide, as a paste	3226	52	OP7			
Benzene sulphohydrazide	3226	100	OP7			
4-(Benzyl(ethyl)amino)-3-ethoxybenzenediazonium zinc chloride	3226	100	OP7			
4-(Benzyl(methyl)amino)-3-ethoxybenzenediazonium zinc chloride.	3236	100	OP7	+40	+45	
3-Chloro-4-diethylaminobenzenediazonium zinc chloride	3226	100	OP7			
2-Diazo-1-Naphthol-4-sulphochloride	3222	100	OP5			
2-Diazo-1-Naphthol-5-sulphochloride	3222	100	OP5			
2,5-Diethoxy-4-morpholinobenzenediazonium zinc chloride	3236	67–100	OP7	+35	+40	
2,5-Diethoxy-4-morpholinobenzenediazonium zinc chloride	3236	66	OP7	+40	+45	
2,5-Diethoxy-4-morpholinobenzenediazonium tetrafluoroborate	3236	100	OP7	+30	+35	
2,5-Diethoxy-4-(phenylsulphonyl)benzenediazonium zinc chloride.	3236	67	OP7	+40	+45	
Diethylene glycol bis(allyl carbonate) + Diisopropylperoxydicarbonate.	3237	≥88+≤12	OP8	−10	0	
2,5-Dimethoxy-4-(4-methylphenylsulphony)benzenediazonium zinc chloride.	3236	79	OP7	+40	+45	
4-Dimethylamino-6-(2-dimethylaminoethoxy)toluene-2-diazonium zinc chloride.	3236	100	OP7	+40	+45	
N,N'-Dinitroso-N, N′-dimethyl-terephthalamide, as a paste	3224	72	OP6			
N,N′-Dinitrosopentamethylenetetramine	3224	82	OP6			2
Diphenyloxide-4,4'-disulphohydrazide	3226	100	OP7			
4-Dipropylaminobenzenediazonium zinc chloride	3226	100	OP7			
2-(N,N-Ethoxycarbonylphenylamino)-3-methoxy-4-(N-methyl-N-cyclohexylamino)benzenediazonium zinc chloride.	3236	63–92	OP7	+40	+45	
2-(N,N-Ethoxycarbonylphenylamino)-3-methoxy-4-(N-methyl-N-cyclohexylamino)benzenediazonium zinc chloride.	3236	62	OP7	+35	+40	
N-Formyl-2-(nitromethylene)-1,3-perhydrothiazine	3236	100	OP7	+45	+50	
2-(2-Hydroxyethoxy)-1-(pyrrolidin-1-yl)benzene-4-diazonium zinc chloride.	3236	100	OP7	+45	+50	
3-(2-Hydroxyethoxy)-4-(pyrrolidin-1-yl)benzenediazonium zinc chloride.	3236	100	OP7	+40	+45	
2-(N,N-Methylaminoethylcarbonyl)-4-(3,4-dimethylphenylsulphonyl)benzene diazonium zinc chloride.	3236	96	OP7	+45	+50	
4-Methylbenzenesulphonylhydrazide	3226	100	OP7			
3-Methyl-4-(pyrrolidin-1-yl)benzenediazonium tetrafluoroborate	3234	95	OP6	+45	+50	
4-Nitrosophenol	3236	100	OP7	+35	+40	
Self-reactive liquid, sample	3223		OP2			3
Self-reactive liquid, sample, temperature control	3233		OP2			3
Self-reactive solid, sample	3224		OP2			3
Self-reactive solid, sample, temperature control	3234		OP2			3
Sodium 2-diazo-1-naphthol-4-sulphonate	3226	100	OP7			
Sodium 2-diazo-1-naphthol-5-sulphonate	3226	100	OP7			
Tetramine palladium (II) nitrate	3234	100	OP6	+30	+35	

NOTES:
1. The emergency and control temperatures must be determined in accordance with § 173.21(f).
2. With a compatible diluent having a boiling point of not less than 150 C.
3. Samples may only be offered for transportation under the provisions of paragraph(c)(4) of this section.

* * * * *

§ 173.224 [Amended]

45. In addition, in § 173.224, the following changes are made:

a. Paragraph (c)(3) is removed.

b. Paragraph (c)(4) is redesignated as paragraph (c)(3).

c. In the first sentence in paragraph (c)(1), the reference ''(c)(4)'' is revised to read ''(c)(3)''.

d. In newly designated paragraph (c)(3)(ii), the wording ''OP2A or OP2B, for a liquid or a solid, respectively'' is revised to read ''OP2''.

46. In § 173.225, paragraph (b)(2) is amended by adding a second sentence, and paragraph (b)(4)(ii), paragraph (b)(6), the Organic Peroxides Table at the end of paragraph (b), paragraphs (d) and (e)(5) are revised, to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(b) * * *

(2) *ID number.* * * * The word ''EXEMPT'' appearing in the column denotes that the material is not regulated as an organic peroxide.

* * * * *

(4) * * *

(ii) The required mass percent of ''Diluent type B'' is specified in Column 4b. A diluent type B is an organic liquid which is compatible with the organic peroxide and which has a boiling point, at atmospheric pressure, of less than 150°C (302°F) but at least 60°C (140°F),

and a flash point greater than 5°C (41°F). Type B diluents may be used for desensitizing all organic peroxides provided that the boiling point is at least 60°C (140°F) above the SADT of the peroxide in a 50 kg (110 lbs) package. A type A diluent may be used to replace a type B diluent in equal concentration.

* * * * *

(6) *Packing method.* Column 6 specifies the highest packing method (largest packaging capacity) authorized for the organic peroxide. Lower numbered packing methods (smaller packaging capacities) are also authorized. For example, if OP3 is specified, then OP2 and OP1 are also authorized. When an IBC or bulk packaging is authorized and meets the requirements of paragraph (e) of this section, lower control temperatures than those specified for non-bulk packagings are required. The Table of Packing Methods in paragraph (d) of this section defines the non-bulk packing methods.

* * * * *

ORGANIC PEROXIDE TABLE

Technical name	ID number	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature(°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Acetyl acetone peroxide	UN3105	≤42	≥48			≥8	OP7			2
Acetyl acetone peroxide [as a paste]	UN3106	≤32					OP7			21
Acetyl benzoyl peroxide	UN3105	≤45	≥55				OP7			
Acetyl cyclohexanesulfonyl peroxide	UN3112	≤82				≥12	OP4	−10	0	
Acetyl cyclohexanesulfonyl peroxide	UN3115	≤32		≥68			OP7	−10	0	
tert-Amyl hydroperoxide	UN3107	≤88	≥6			≥6	OP8			
tert-Amyl peroxyacetate	UN3107	≤62	≥38				OP8			
tert-Amyl peroxybenzoate	UN3105	≤96	≥4				OP7			
tert-Amyl peroxy-2-ethylhexanoate	UN3115	≤100					OP7	+20	+25	
tert-Amyl peroxy-2-ethylhexyl carbonate	UN3105	≤100					OP7			
tert-Amyl peroxyneodecanoate	UN3115	≤77		≥23			OP7	0	+10	
tert-Amyl peroxypivalate	UN3113	≤77		≥23			OP5	+10	+15	
tert-Amylperoxy-3,5,5-trimethylhexanoate	UN3101	≤100					OP5			
tert-Butyl cumyl peroxide	UN3105	–42 − 100					OP7			1, 9
tert-Butyl cumyl peroxide	UN3106	≤42		≥58			OP7			1, 9
n-Butyl-4,4-di-(tert- butylperoxy)valerate	UN3103	>52 − 100					OP5			
n-Butyl-4,4-di-(tert- butylperoxy)valerate	UN3106	≤52			≥48		OP7			
n-Butyl-4,4-di-(tert- butylperoxy)valerate	UN3108	≤42			≥58		OP8			
tert-Butyl hydroperoxide	UN3103	>79 − 90				≥10	OP5			13
tert-Butyl hydroperoxide	UN3105	≤80	≥20				OP7		4, 13	
tert-Butyl hydroperoxide	UN3107	≤79				>14	OP8			13, 16
tert-Butyl hydroperoxide	UN3109	≤72				≥28	OP8			7, 13
tert-Butyl hydroperoxide [and] Di- tert-butylperoxide.	UN3103	<82+>9				≥7	OP5			13
tert-Butyl monoperoxymaleate	UN3102	>52 − 100					OP5			
tert-Butyl monoperoxymaleate	UN3103	≤52	≥48				OP6			
tert-Butyl monoperoxymaleate	UN3108	≤52			≥48		OP8			
tert-Butyl monoperoxymaleate [as a paste]	UN 3108	≥52					OP8			
tert-Butyl monoperoxymaleate [as a paste]	UN 3110	≥42					OP8			7
tert-Butyl monoperoxyphthalate	UN 3102	≤100					OP5			
tert-Butyl peroxyacetate	UN 3101	>52–77	≥23				OP5			
tert-Butyl peroxyacetate	UN 3103	>32–52	≥48				OP6			
tert-Butyl peroxyacetate	UN 3109	≥32	≥68				OP8			10
tert-Butyl peroxyacetate	UN 3119	≥32		≥68			Bulk	+30	+35	7
tert-Butyl peroxyacetate	UN 3109	≥22		≥78			OP8			14
tert-Butyl peroxybenzoate	UN 3103	>77–100	≥23				OP5			
tert-Butyl peroxybenzoate	UN 3105	>52–77	≥23				OP7			1
tert-Butyl peroxybenzoate	UN 3106	≥52			≥48		OP7			
tert-Butyl peroxybutyl fumarate	UN 3105	≥52	≥48				OP7			
tert-Butyl peroxycrotonate	UN 3105	≥77	≥23				OP7			
tert-Butyl peroxydiethylacetate	UN 3113	≤100					OP5	+20	+25	
tert-Butyl peroxydiethylacetate [and] tert-Butyl peroxybenzoate.	UN 3105	≥33+≥33	≥33				OP7			
tert-Butyl peroxy-2-ethylhexanoate	UN 3113	>52–100					OP6	+20	+25	
tert-Butyl peroxy-2-ethylhexanoate	UN 3117	≥52		≥48			OP8	+30	+35	
tert-Butyl peroxy-2-ethylhexanoate	UN 3118	≥52			≥48		OP8	+20	+25	
tert-Butyl peroxy-2-ethylhexanoate	UN 3119	≥32		≥68			OP8	+40	+45	
tert-Butyl peroxy-2-ethylhexanoate	UN 3119	≥32		≥68			1BC	+30	+35	10
tert-Butyl peroxy-2-ethylhexanoate	UN 3119	≤32		≥68			Bulk	+10	+15	14
tert-Butyl peroxy-2-ethylhexanoate [and] 2,2-di-(tert-Butylperoxy)butane.	UN 3115	≥31+≥36		≥33			OP7	+35	+40	
tert-Butyl peroxy-2-ethylhexanoate [and] 2,2-di-(tert-Butylperoxy)butane.	UN 3106	≥12+≥14	≥14		≥60		OP7			
tert-Butyl peroxy-2- ethylhexylcarbonate	UN 3105	≥100					OP7			
tert-Butyl peroxyisobutyrate	UN 3111	>52–77		≥23			OP5	+15	+20	

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID number	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature(°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
tert-Butyl peroxyisobutyrate	UN 3115	≥52		≥48			OP7	+15	+20	
tert-Butylperoxy isopropylcarbonate	UN 3103	≥77	≥23				OP5			
1-(2-. tert-Butylperoxy isopropyl)-3-isopropenylbenzene.	UN 3105	≥77	≥23				OP7			
1-(2-. tert-Butylperoxy isopropyl)-3-isopropenylbenzene.	UN 3108	≥42			≥58		OP8			
tert-Butyl peroxy-2-methylbenzoate	UN3103	≤100					OP5			
tert-Butyl peroxyneodecanoate	UN3115	>77–100					OP7	−5	+5	
tert-Butyl peroxyneodecanoate	UN3115	≤77		≥23			OP7	0	+10	
tert-Butyl peroxyneodecanoate [as a stable dispersion in water].	UN3117	≤42					OP8	0	+10	
tert-Butyl peroxyneodecanoate [as a stable dispersion in water (frozen)].	UN3118	≤42					OP8	0	+10	
tert-Butyl peroxyneoheptanoate	UN3115	≤77	≥23				OP7	+10	+15	
3-tert-Butylperoxy-3-phenylphthalide	UN3106	≤100					OP7			
tert-Butyl peroxypivalate	UN3113	>67–77	≥23				OP5	0	+10	
tert-Butyl peroxypivalate	UN3115	≤67		≥33			OP7	0	+10	
tert-Butyl peroxypivalate	UN3119	≤27		≥73			OP8	+30	+35	
tert-Butyl peroxypivalate	UN3119	≤27		≥73			IBC	+10	+15	10
tert-Butyl peroxypivalate	UN3119	≤27		≥73			Bulk	−5	+5	14
tert-Butylperoxy stearylcarbonate	UN3106	≤100					OP7			
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3105	>32–100					OP7			
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3109	≤32	≥68				OP8			10
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3119	≤32		≥68			Bulk	+35	+40	14
3-Chloroperoxybenzoic acid	UN3102	>57–86			≥14		OP1			
3-Chloroperoxybenzoic acid	UN3106	≤77			≥6	≥17	OP7			
3-Chloroperoxybenzoic acid	UN3106	≤57			≥3	≥40	OP7			
Cumyl hydroperoxide	UN3107	>90–98	≤10				OP8			13
Cumyl hydroperoxide	UN3109	≥90	≥10				OP8			7, 13, 15
Cumyl peroxyneodecanoate	UN3115	≤77		≥23			OP7	−10	0	
Cumyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52					OP8	−10	0	
Cumyl peroxyneoheptanoate	UN3115	≤77	≥23				OP7	0	+10	
Cumyl peroxypivalate	UN3115	≤77		≥23			OP7	−5	+5	
Cyclohexanone peroxide(s)	UN3104	≤91				≥9	OP6			13
Cyclohexanone peroxide(s)	UN3105	≤72		≥28			OP7			5
Cyclohexanone peroxide(s) [as a paste]	UN3106	≤72					OP7			5, 21
Cyclohexanone peroxide(s)	Exempt	≤32			≥68		Exempt.			
Diacetone alcohol peroxides	UN3115	≤57		≥26		≥8	OP7	+40	+45	5
Diacetyl peroxide	UN3115	≤27		≥73			OP7	+20	+25	8,13
Di-tert-amyl peroxide	UN3107	≤100					OP8			
1,1-Di-(tert-amylperoxy)cyclohexane	UN3103	≤82	≥18				OP6			
Dibenzoyl peroxide	UN3102	>51–100			≤48		OP2			3
Dibenzoyl peroxide	UN3102	>77–94				≥6	OP4			3
Dibenzoyl peroxide	UN3104	≤77				≥23	OP6			
Dibenzoyl peroxide	UN3106	≤62			≥28	≥10	OP7			
Dibenzoyl peroxide [as a paste]	UN3106	>52–62					OP7			21
Dibenzoyl peroxide [as a paste]	UN3108	≤56.5				≥15	OP8			
Dibenzoyl peroxide	UN3106	>35–52			≥48		OP7			
Dibenzoyl peroxide [as a paste]	UN3108	≤52					OP8			21
Dibenzoyl peroxide [as a paste]	Exempt	≤50	≥14			≥18	Exempt			
Dibenzoyl peroxide	UN3107	>36–42	≥18			≤40	OP8			
Dibenzoyl peroxide	UN3107	>36–42	≥58				OP8			
Dibenzoyl peroxide [as a stable dispersion in water].	UN3109	≤42					OP8			10
Dibenzoyl peroxide	Exempt	≤35			≥65		Exempt			
Dibenzyl peroxydicarbonate	UN3112	≤87				≥13	OP5	+25	+30	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate.	UN3114	≤100					OP6	+30	+35	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	+30	+35	10
Di-tert-butyl peroxide	UN3107	>32–100					OP8			
Di-tert-butyl peroxide	UN3109	≤52		≥48			OP8			7, 24

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID number	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature(°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Di-tert-butyl peroxyazelate	UN3105	≤52	≥48				OP7			
2,2-Di-(tert-butylperoxy)butane	UN3103	≤52	≥48				OP6			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3101	>80–100					OP5			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3103	>52–80	≤20				OP5			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3105	≤52	≥48				OP7			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3106	≤42	≥13		≥45		OP7			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤42	≥58				OP8			10
1,1-Di-(tert-butylperoxy)cyclohexane	UN3107	≤27	≥36				OP8			22
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤25	≥25	≥50			OP8			7
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤13	≥13	≥74	OP8			7.		
Di-n-butyl peroxydicarbonate	UN3115	>27–52		≥48			OP7	−15	5.	
Di-n-butyl peroxydicarbonate [as a stable dispersion in water (frozen)].	UN3118	≤42					OP8	−15	−5	
Di-n-butyl peroxydicarbonate	UN3117	≤27		≥73			OP8	−10	0	
Di-sec-butyl peroxydicarbonate	UN3113	>52–100					OP4	−20	−10	6
Di-sec-butyl peroxydicarbonate	UN3115	≤52		≥48			OP7	−15	−5	
Di-(2-tert-butylperoxyisopropyl)benzene(s)	UN3106	>42–100			≤57		OP7			1, 9
Di-(2-tert-butylperoxyisopropyl)benzene(s)	Exempt	≤42			≥58		Exempt			
Di-(tert-butylperoxy)phthalate	UN3105	>42–52	≥48				OP7			
Di-(tert-butylperoxy)phthalate [as a paste]	UN3106	≤52					OP7			21
Di-(tert-butylperoxy)phthalate	UN3107	≤42	≥58				OP8			
2,2-Di-(tert-butylperoxy)propane	UN3105	≤52	≥48				OP7			
2,2-Di-(tert-butylperoxy)propane	UN3106	≤42	≥13		≥45		OP7			
1,1-Di-(tert-butylperoxy)-3,5,5-trimethylcyclohexane	UN3101	>90–100					OP5			
1,1-Di-(tert-butylperoxy)-3,5,5-trimethylcyclohexane	UN3103	>57–90	≥10				OP5			
1,1-Di-(tert-butylperoxy)-3,5,5-trimethylcyclohexane	UN3106	≤57			≥43		OP7			
1,1-Di-(tert-butylperoxy)-3,5,5-trimethylcyclohexane	UN3107	≤57	≥43				OP8			
1,1-Di-(tert-butylperoxy)-3,5,5-trimethylcyclohexane	UN3107	≤32	≥26	≥42			OP8			
Dicetyl peroxydicarbonate	UN3116	≤100					OP7	+30	+35	
Dicetyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	+30	+35	10
Di-4-chlorobenzoyl peroxide	UN3102	≤77				≥23	OP5			
Di-4-chlorobenzoyl peroxide [as a paste]	UN3106	≤52					OP7			21
Di-4-chlorobenzoyl peroxide	Exempt	≤32			≥68		Exempt			
Dicumyl peroxide	UN3109	>52–100		≤48			OP8			7, 9, 11
Dicumyl peroxide	UN3110	>52–100			≤48		OP8			7, 9, 11
Dicumyl peroxide	Exempt	≤52	≥48				Exempt			
Dicumyl peroxide	Exempt	≤52			≥48		Exempt			
Dicyclohexyl peroxydicarbonate	UN3112	>91–100					OP3	+5	+10	
Dicyclohexyl peroxydicarbonate	UN3114	≤91				≥9	OP5	+5	+10	
Didecanoyl peroxide	UN3114	≤100					OP6	+30	+35	
2,2-Di-(4,4-di(tert-butylperoxy)cyclohexyl)propane.	UN3106	≤42			≥58		OP7			
2,2-Di-(4,4-di(tert-butylperoxy)cyclohexyl)propane.	UN3107	≤25		≥75			OP8			
Di-2,4-dichlorobenzoyl peroxide	UN3102	≤77				≥23	OP5			
Di-2,4-dichlorobenzoyl peroxide [as a paste with silicone oil].	UN3106	≤52					OP7			
Di-(2-ethylhexyl) peroxydicarbonate	UN3113	>77–100					OP5	−20	−10	
Di-(2-ethylhexyl) peroxydicarbonate	UN3115	≤77					OP7	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water].	UN3119	≤52					OP8	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water (frozen)].	UN3118	≤42					OP8	−15	−5	
Diethyl peroxydicarbonate	UN3115	≤27	≥73				OP7	>10	0	
2,2-Dihydroperoxypropane	UN3102	≤27			≥73		OP5			
Di-(1-hydroxycyclohexyl)peroxide	UN3106	≤100					OP7			
Diisobutyryl peroxide	UN3111	>32–52		≥48			OP5	−20	−10	
Diisobutyryl peroxide	UN3115	≤32		≥68			OP7	−20	−10.	
Diisopropylbenzene dihydroperoxide	UN3106	≤82	≥5			≥5	OP7			17
Diisopropyl peroxydicarbonate	UN3112	>52–100					OP2	−15	−5	

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID number	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature(°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Diisopropyl peroxydicarbonate	UN3115	≤52		≥48			OP7	−10	0	
Diisotridecyl peroxydicarbonate	UN3115	≤100					OP7	−10	0	
Dilauroyl peroxide	UN3106	≤100					OP7			
Dilauroyl peroxide [as a stable dispersion in water].	UN3109	≤42					OP8			10
Di-(2-methylbenzoyl)peroxide	UN3112	≤87				≥13	OP5	+30	+35	
Di-(4-methylbenzoyl)peroxide [as a paste with silicone oil].	UN3106	≤52					OP7			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane.	UN3102	>82–100					OP5			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane.	UN3104	≤82				≥18	OP5			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane	UN3106	≤82			≥18		OP7			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane.	UN3105	>52–100					OP7			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3.	UN3101	>87–100					OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3.	UN3103	>52–86					OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane.	UN3106	≤52			≥48		OP7			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane.	UN3109	≤52	≥48				OP8			7
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3.	UN3106	≤52			≥48		OP7			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane [as a paste].	UN3108	≤47					OP8			
2,5-Dimethyl-2,5-di-(2-ethylhexanoylperoxy)hexane.	UN3115	≤100					OP7	+20	+25	
2,5-Dimethyl-2,5-dihydroperoxyhexane	UN3104	≤82				≥18		OP6		
2,5-Dimethyl-2,5-di-(3,5,5-trimethylhexanoylperoxy)hexane.	UN3105	≤77	≥23				OP7			
1,1-Dimethyl-3-hydroxybutylperoxyneoheptanoate.	UN3117	≤52		≥48			OP8	+0	+10	
Dimyristyl peroxydicarbonate	UN3116	≤100					OP7	+20	+25	
Dimyristyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	+20	+25	
Dimyristyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					IBC	+15	+25	10
Di-(2-neodecanoylperoxyisopropyl)benzene	UN3115	≤52	≥48				OP7	−10	0	
Di-n-nonanoyl peroxide	UN3116	≤100					OP7	0	+10	
Di-n-octanoyl peroxide	UN3114	≤100					OP5	+10	+15	
Diperoxy azelaic acid	UN3116	≤27			≥73		OP7	+35	+40	
Diperoxy dodecane diacid	UN3116	>13–42			≥58		OP7	+40	+45	
Diperoxy dodecane diacid	Exempt	≤13			≥87		Exempt			
Di-(2-phenoxyethyl)peroxydicarbonate	UN3102	>85–100					OP5			
Di-(2-phenoxyethyl)peroxydicarbonate	UN3106	≤85				≥15	OP7			
Dipropionyl peroxide	UN3117	≤27		≥73			OP8	+15	+20	
Di-n-propyl peroxydicarbonate	UN3113	≤100					OP4	-25	-15	
Distearyl peroxydicarbonate	UN3106	≤87			≥13		OP7			
Disuccinic acid peroxide	UN3102	>72–100					OP4			18
Disuccinic acid peroxide	UN3116	≤72				≥28	OP7	+10	+15	
Di-(3,5,5-trimethyl-1,2-dioxolanyl-3)peroxide [as a paste].	UN3116	≤52					OP7	+30	+35	21
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3115	>38–82	≥18				OP7	0	+10	
Di-(3,5,5-trimethylhexanoyl)peroxide [as a stable dispersion in water].	UN3117	≤52					OP8	+10	+15	
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62				OP8	+20	+25	
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62				IBC	+10	+15	10
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62				Bulk	−10	0	14
Ethyl 3,3-di-(tert- amylperoxy)butyrate	UN3105	≤67	≥33				OP7			
Ethyl 3,3-di-(tert- butylperoxy)butyrate	UN3103	>77 - 100					OP5			
Ethyl 3,3-di-(tert- butylperoxy)butyrate	UN3105	≤77	≥23				OP7			
Ethyl 3,3-di-(tert- butylperoxy)butyrate	UN3106	≤52			≥48		OP7			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane.	UN3102	>52 - 100					OP4			

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID number	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature(°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane.	UN3105	≤52	≥48				OP7			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane.	UN3106	≤52		≥48		OP7				
Isopropyl sec-butyl peroxydicarbonate + di-sec-butyl peroxydicarbonate + di-isopropyl peroxydicarbonate.	UN3111	≤52 + ≤28 + ≤22.					OP5	−20	−10	
Isopropylcumyl hydroperoxide	UN3109	≤72	≥28				OP8			7, 13
p-Menthyl hydroperoxide	UN3105	> 72 - 100.					OP7			13
p-Menthyl hydroperoxide	UN3109	≤72	≥28				OP8			7,25
Methylcyclohexanone peroxide(s)	UN3115	≤67		≥33			OP7	+35	+40	
Methyl ethyl ketone peroxide(s)	UN3101	≤52	≥48				OP5			5, 13
Methyl ethyl ketone peroxide(s)	UN3105	≤45	≥55				OP7			5
Methyl ethyl ketone peroxide(s)	UN3107	≤40	≥60				OP8			5
Methyl isobutyl ketone peroxide(s)	UN3105	≤62	≥19				OP7			5, 23
Organic peroxide, liquid, sample	UN3103						OP2			12
Organic peroxide, liquid, sample, temperature controlled.	UN3113						OP2			12
Organic peroxide, solid, sample	UN3104						OP2			12
Organic peroxide, solid, sample, temperature controlled.	UN3114						OP2			12
Peracetic acid with not more than 20% hydrogen peroxide.	Exempt	≤6				≥60	Exempt			
Peracetic acid with not more than 26% hydrogen peroxide.	UN3109	≤17				≥27	OP8			10, 13
Peracetic acid with 7% hydrogen peroxide	UN3107	≤36				≥15	OP8			13
Peroxyacetic acid, type D, stabilized	UN3105	≤43					OP7		13, 20.	
Peroxyacetic acid, type E, stabilized	UN3107	≤43					OP8			13, 20
Peroxyacetic acid, type F, stabilized	UN3109	≤43					OP8			13, 20
Pinanyl hydroperoxide	UN3105	≥56–100					OP7			13
Pinanyl hydroperoxide	UN3109	<56	>44				OP8			7
Tetrahydronaphthyl hydroperoxide	UN3106	≤100					OP7			
1,1,3,3-Tetramethylbutyl hydroperoxide	UN3105	≤100					OP7			
1,1,3,3-Tetramethylbutylperoxy-2-ethylhexanoate.	UN3115	≤100					OP7	+20	+25	
2,4,4-Trimethylpentyl-2-peroxyneodecanoate.	UN3115	≤72		≥28			OP7	−5	+5	
2,4,4-Trimethylpentyl-2-peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52					OP8	−5	+5	
2,4,4-Trimethylpentyl-2-peroxy phenoxyacetate.	UN3115	≤37		≥63			OP7	−10	0	

NOTES:
1. For domestic shipments, OP8 is authorized.
2. Available oxygen must be <4.7 percent.
3. For concentrations <80 percent OP5 is allowed. For concentrations of at least 80 percent but <85 percent, OP4 is allowed. For concentrations of at least 85 percent, maximum package size is OP2.
4. The diluent may be replaced by di-tert-butyl peroxide.
5. Available oxygen must be ≤9 percent.
6. For domestic shipments, OP5 is authorized.
7. This material may be transported in intermediate bulk containers and bulk packagings under the provisions of paragraph (e) of this section.
8. Only non-metallic packagings are authorized.
9. For domestic shipments, this material may be transported in bulk packagings under the provisions of paragraph (e)(3)(ii) of this section.
10. This material may be transported in intermediate bulk containers under the provisions of paragraph (e) of this section.
11. Up to 2000 kg per container authorized.
12. Samples may only be offered for transportation under the provisions of paragraph (c)(4) of this section.
13. ''Corrosive'' subsidiary risk label is required.
14. This material may be transported in bulk packagings under the provisions of paragraph (e) of this section.
15. No ''Corrosive'' subsidiary risk label is required for concentrations below 80%.
16. With <6% di-tert-butyl peroxide.
17. With ≥8% 1-isopropylhydroperoxy-4-isopropylhydroxybenzene.
18. Addition of water to this organic peroxide will decrease its thermal stability.
19. [Reserved]
20. Mixtures with hydrogen peroxide, water and acid(s).
21. With diluent type A, with or without water.
22. With >36 percent, by mass, ethylbenzene.

23. With >19 percent, by mass, methyl isobutyl ketone.
24. Diluent type b with boiling point >100 C.
25. No ''Corrosive'' subsidiary risk label is required for concentrations below 56%.

* * * * *

(d) *Packing Method Table.* Packagings for organic peroxides and self-reactive substances are listed in the Maximum Quantity per Packing Method Table. The packing methods are designated OP1 to OP8. The quantities specified for each packing method represent the maximum that is authorized.

(1) The following types of packagings are authorized:

(i) Drums: 1A1, 1A2, 1B1, 1B2, 1D, 1G, 1H1, 1H2;

(ii) Jerricans: 3A1, 3A2, 3B1, 3B2, 3H1, 3H2;

(iii) Boxes: 4C1, 4C2, 4D, 4F, 4G, 4H1, 4H2, 4A, 4B; or

(iv) Composite packagings with a plastic inner receptacle: 6HA1, 6HA2, 6HB1, 6HB2, 6HC, 6HD1, 6HD2, 6HG1, 6HG2, 6HH1, 6HH2.

(2) Metal packaging (including inner packagings of combination packagings and outer packagings of combination or composite packagings) are used only for packing methods OP7 and OP8.

(3) In combination packagings, glass receptacles are used only as inner packagings with a maximum content of 0.5 kg or 0.5 liter.

(4) The maximum quantity per packaging or package for Packing Methods OP1–OP8 must be as follows:

MAXIMUM QUANTITY PER PACKAGING/PACKAGE FOR PACKING METHODS OP1 TO OP8

Maximum quantity	Packing method							
	OP1	OP2[1]	OP3	OP4[1]	OP5	OP6	OP7	OP8
Solids and combination packagings (liquid and solid) (kg)	0.5	0.5/10	5	5/25	25	50	50	[2]200
Liquids (L)	0.5	.....	5	.....	30	60	60	[3]225

[1] If two values are given, the first applies to the maximum net mass per inner packaging and the second to the maximum net mass of the complete package.
[2] 60 kg for jerricans and 100 kg for boxes.
[3] 60 L for jerricans.

(e) * * *

(5) *Intermediate bulk containers.* Intermediate bulk containers that are tested at the Packing Group II performance level in accordance with subpart O of part 178 of this subchapter are authorized as follows:

(i) Composite: 31HA1;

(ii) Rigid plastic: 31H1; and

(iii) Metal: 31A.

§ 173.225 [Amended]

47. In addition, in § 173.225, the following changes are made:

a. Paragraphs (c)(2) and (c)(3) are removed.

b. Paragraphs (c)(4) and (c)(5) are redesignated as paragraphs (c)(2) and (c)(3).

c. In the first sentence in paragraph (c)(1), the reference ''(c)(4)'' is revised to read ''(c)(2)''.

d. In newly designated paragraph (c)(2)(ii), the wording ''OP2A or OP2B, for a liquid or a solid, respectively'' is revised to read ''OP2''.

e. In paragraph (e)(2), the last sentence is removed.

f. Paragraph (e)(3)(i)(B) is removed and paragraph (e)(3)(i)(C) is redesignated as paragraph (e)(3)(i)(B).

§ 173.226 [Amended]

48. In § 173.226, in paragraph (c)(1), the entry ''Aluminum jerrican: 3B2'' is added immediately following ''Plastic jerrican: 3H2''.

§ 173.315 [Amended]

49. In § 173.315, in the paragraph (a) table, for the entry ''Methylamine, anhydrous'', the following changes are made:

a. In Column 4, the punctuation and wording ''; See Note 24.'' is removed and a period is added in its place.

b. In Column 5, the wording ''See Note 22.'' is removed.

50. In § 173.316, a new paragraph (d) is added to read as follows:

§ 173.316 Cryogenic liquids in cylinders.

* * * * *

(d) *Mixtures of cryogenic liquid.* Where charging requirements are not specifically prescribed in paragraph (c) of this section, the cryogenic liquid must be shipped in packagings and under conditions approved by the Associate Administrator for Hazardous Materials Safety.

51. In § 173.318, a new paragraph (f)(4) is added to read as follows:

§ 173.318 Cryogenic liquids in cargo tanks.

* * * * *

(f) * * *

(4) *Mixtures of cryogenic liquid.* Where charging requirements are not specifically prescribed in this paragraph (f), the cryogenic liquid must be shipped in packagings and under conditions approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

Appendix E—[Removed and Reserved]

52. Appendix E to Part 173 is removed and reserved.

Appendix F—[Removed and Reserved]

53–54. Appendix F to Part 173 is removed and reserved.

PART 175—CARRIAGE BY AIRCRAFT

55. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 175.10 [Amended]

56. In § 175.10, in paragraph (a)(22), the wording ''or thermometer'' is added immediately following ''barometer'' each place it appears.

PART 176—CARRIAGE BY VESSEL

57. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

58.In § 176.78, paragraph (k) is revised to read as follows:

§ 176.78 Use of power-operated industrial trucks on board vessels.

* * * * *

(k) *Stowage of power-operated industrial trucks on board a vessel.* Trucks stowed on board a vessel must meet vessel stowage requirements in § 176.905.

* * * * *

59. In § 176.84, in the paragraph (b) table, a new entry for code 17, currently reserved, is added in numerical order to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(b) * * *

Code	Provisions
* * * * *	
17	Segregation same as for flammable gases but ''away from'' dangerous when wet.
* * * * *	

* * * * *

60. Section 176.905 is revised to read as follows:

§ 176.905 Motor vehicles or mechanical equipment powered by internal combustion engines.

(a) A motor vehicle or any mechanized equipment powered by an internal combustion engine is subject to the following requirements when carried as cargo on a vessel:

(1) Before being loaded on a vessel, each motor vehicle or mechanical equipment must be inspected for fuel leaks and identifiable faults in the electrical system that could result in short circuit or other unintended electrical source of ignition. A motor vehicle or mechanical equipment showing any signs of leakage or electrical fault may not be transported.

(2) The fuel tank of a motor vehicle or mechanical equipment powered by liquid fuel may not be more than one-fourth full.

(3) Whenever possible, each vehicle or mechanical equipment must be stowed to allow for its inspection during transit.

(4) Motor vehicles or mechanical equipment may be refueled when necessary in the hold of a vessel in accordance with § 176.78.

(5) When a motor vehicle or mechanical equipment with fuel in its tanks is stowed in a closed freight container, a warning, displayed on a contrasting background and readily legible from a distance of 8 meters (26 feet), must be affixed to the access doors to read as follows:

WARNING–MAY CONTAIN EXPLOSIVE MIXTURES WITH AIR—KEEP IGNITION SOURCES AWAY WHEN OPENING

(6) A motor vehicle or mechanical equipment's ignition key may not be in the ignition while the vehicle or mechanical equipment is stowed aboard a vessel.

(b) All equipment used for handling vehicles or mechanical equipment must be designed so that the fuel tank and fuel system of the vehicle or mechanical equipment are protected from stress that might cause rupture or other damage incident to handling.

(c) Two hand-held, portable, dry chemical fire extinguishers of at least 4.5 kg (10 pounds) capacity each must be separately located in an accessible location in each hold or compartment in which any motor vehicle or mechanical equipment is stowed.

(d) ''NO SMOKING'' signs must be conspicuously posted at each access opening to the hold or compartment.

(e) Each portable electrical light, including a flashlight, used in the stowage area must be an approved, explosion-proof type. All electrical connections for any portable light must be made to outlets outside the space in which any vehicle or mechanical equipment is stowed.

(f) Each hold or compartment must be ventilated and fitted with an overhead water sprinkler system or fixed fire extinguishing system.

(g) Each hold or compartment must be equipped with a smoke or fire detection system capable of alerting personnel on the bridge.

(h) All electrical equipment in the hold or compartment other than fixed explosion-proof lighting must be disconnected from its power source at a location outside the hold or compartment during the handling and transportation of any vehicle or mechanical equipment. Where the disconnecting means is a switch or circuit breaker, it must be locked in the open position until all vehicles have been removed.

(i) *Exceptions.* A motor vehicle or mechanical equipment is excepted from the requirements of this subchapter if the following requirements are met:

(1) The motor vehicle or mechanical equipment has an internal combustion engine using liquid fuel that has a flashpoint less than 38 °C (100°F), the fuel tank is empty, and the engine is run until it stalls for lack of fuel;

(2) The motor vehicle or mechanical equipment has an internal combustion engine using liquid fuel that has a flashpoint of 38 °C (100 °F) or higher, the fuel tank contains 418 liters (110 gallons) of fuel or less, and there are no fuel leaks in any portion of the fuel system;

(3) The motor vehicle or mechanical equipment is stowed in a hold or compartment designated by the administration of the country in which the vessel is registered to be specially suited for vehicles. *See* 46 CFR 70.10–44 and 90.10–38 for U.S. vessels;

(4) The motor vehicle or mechanical equipment is electrically powered by wet electric storage batteries; or

(5) The motor vehicle or mechanical equipment is equipped with liquefied petroleum gas or other compressed gas fuel tanks, the tanks are completely emptied of liquid and the positive pressure in the tank does not exceed 2 bar (29 psi), the line from the fuel tank to the regulator and the regulator itself is drained of all trace of (liquid) gas, and the fuel shut-off valve is closed.

(j) Except as provided in § 173.220(f) of this subchapter, the provisions of this subchapter do not apply to items of equipment such as fire extinguishers, compressed gas accumulators, airbag inflators and the like which are installed in the motor vehicle or mechanical equipment if they are necessary for the operation of the vehicle or equipment, or for the safety of its operator or passengers.

PART 178—SPECIFICATIONS FOR PACKAGINGS

61. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

62. In § 178.511, the section heading, paragraph (a), paragraph (b) introductory text, and paragraph (b)(1) are revised, paragraphs (b)(2) through (b)(6) are redesignated as paragraphs (b)(3) through (b)(7) and a new paragraph (b)(2) is added, to read as follows:

§ 178.511 Standards for aluminum and steel jerricans.

(a) The following are identification codes for aluminum and steel jerricans:

(1) 3A1 for a non-removable head steel jerrican;

(2) 3A2 for a removable head steel jerrican;

(3) 3B1 for a non-removable head aluminum jerrican; and

(4) 3B2 for a removable head aluminum jerrican.

(b) Construction requirements for aluminum and steel jerricans are as follows:

(1) For steel jerricans the body and heads must be constructed of steel sheet of suitable type and adequate thickness in relation to the capacity of the jerrican and its intended use. Minimum thickness and marking requirements in §§ 173.28(b)(4) and 178.503(a)(9) of this subchapter apply to jerricans intended for reuse.

(2) For aluminum jerricans the body and heads must be constructed of

aluminum at least 99% pure or of an aluminum base alloy. Material must be of a type and of adequate thickness in relation to the capacity of the jerrican and to its intended use.

* * * * *

63. In § 178.703, a new paragraph (b)(6) is added to read as follows:

§ 178.703 Marking of intermediate bulk containers.

* * * * *

(b) * * *

(6) For each composite intermediate bulk container, the inner receptacle must be marked with at least the following information:

(i) The code number designating the intermediate bulk container design type, the name and address or symbol of the manufacturer, the date of manufacture and the country authorizing the allocation of the mark as specified in paragraph (a) of this section;

(ii) Where the outer casing of a composite intermediate bulk container can be dismantled, each of the detachable parts must be marked with the month and year of manufacture and the name or symbol of the manufacturer.

64. In § 178.707, in paragraphs (c)(2) and (c)(3) introductory text, a new sentence is added at the end of each paragraph, and a new paragraph (c)(6) is added, to read as follows:

§ 178.707 Standards for composite intermediate bulk containers.

* * * * *

(c) * * *

(2) * * * The outer packaging of 31HZ2 composite intermediate bulk containers must enclose the inner receptacles on all sides.

(3) * * * The inner receptacle of 31HZ2 composite intermediate bulk containers must consist of at least three plies of film.

* * * * *

(6) Intermediate IBCs of type 31HZ2 must be limited to a capacity of not more than 1,250 liters.

§ 178.815 [Amended]

65. In § 178.815, in paragraph (c)(3), the wording ''which bear the stacking load'' is added immediately following ''and 31HH2)''.

Issued in Washington, DC on April 17, 1997 under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 97–10481 Filed 5–5–97; 8:45 am]

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Federal Register

Tuesday
May 6, 1997

Part III

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 301

Karnal Bunt; Compensation for the 1995–1996 Crop Season; Final Rule

Karnal Bunt Regulatory Flexibility Analysis and Regulatory Impact Analysis; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–17]

RIN 0579–AA83

Karnal Bunt; Compensation for the 1995–1996 Crop Season

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with changes, an interim rule that amended the regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of Karnal bunt in the 1995–1996 crop season. In this final rule, we are adding compensation provisions for handlers of wheat that was tested and found negative for Karnal bunt, handlers and growers with wheat inventories for past crop seasons, and participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found positive for Karnal bunt. The payment of compensation is necessary in order to reduce the economic impact of the Karnal bunt quarantine on affected wheat growers and other individuals, and to help obtain cooperation from affected individuals in Karnal bunt eradication efforts.

EFFECTIVE DATE: April 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States would have significant consequences with regard to the export of wheat to international markets. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14.

In an interim rule effective on June 27, 1996, and published in the **Federal Register** on July 5, 1996 (61 FR 35102–35107, Docket No. 96–016–7), we amended the regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of actions taken by the Secretary to prevent the spread of Karnal bunt (§ 301.89–12, redesignated as § 301.89–14 in a final rule published on October 4, 1996 (61 FR 52189–52213, Docket No. 96–016–14)).

We solicited comments concerning the interim rule for 60 days ending September 3, 1996. We received 15 comments by that date. They were from wheat growers, handlers, harvesters, railroad companies, seed producers, a member of Congress, and a State department of agriculture. We have carefully considered all of the comments we received. The comments generally supported the interim rule offering compensation to certain groups affected by the Karnal bunt quarantine and emergency actions. However, all the comments recommended additions or revisions to the compensation provisions. Each of these recommendations is discussed below by topic.

The Karnal bunt regulations that were initially established were necessarily broad due to the lack of data available at the time as to the extent of the infestation. The discovery of Karnal bunt and subsequent quarantine and emergency actions occurred after production and marketing decisions had been made. Producers and other affected individuals had little time or ability to avoid the unexpected costs or pass those costs on to others in the marketing chain. The impact was particularly severe on the wheat industry in the regulated area because much of the crop is grown under contract at specified amounts and prices.

In order to alleviate some of these hardships and to ensure full and effective compliance with the Karnal bunt regulatory program, compensation to mitigate certain losses was offered to producers and other affected parties in a regulated area. The payment of compensation is in recognition of the fact that while benefits from regulation accrue to a large portion of the wheat industry outside the regulated areas, the regulatory burden falls predominantly on a small segment of the affected wheat industry within the regulated area.

The Agency has identified three principles for deciding whether to provide compensation. First, compensation may be appropriate where quarantine and emergency actions cause losses over and above those that would result from the normal operation of market forces. Payment of compensation would reflect the incremental burdens of complying with regulatory requirements insofar as market forces would not otherwise impose similar or analogous costs. Second, compensation may be appropriate where parties undertake actions that confer significant benefits on others. Under this principle, payment of compensation would be intended to overcome the usual disincentives to produce such benefits. Third, compensation may be appropriate where a small number of parties necessarily bears a disproportionate share of the burden of providing such benefits. This principle rests on the widely shared belief that burden-sharing is a fundamental principle of equity.

Individual decisions regarding what specific losses to compensate and how much compensation to offer in each case were made in line with the above basic principles which describe the goals of compensation. A top equity priority was compensation for costs of plowing down fields, and for wheat and other articles the Agency ordered destroyed or prohibited movement. Compensation amounts took into account the need to mitigate real losses caused by the regulations, so that regulated parties would not have a strong economic incentive to avoid compliance. At the same time, amounts were not set at a high enough rate to establish a ''bounty'' that would encourage fraudulent claims or behavior that would result in increases in contaminated wheat or other articles eligible for compensation.

The interim rule establishing compensation for the Karnal bunt program provided compensation in the 1995–1996 crop season for the plow-down of infected fields in New Mexico and Texas; the loss in value of nonpropagative wheat grown in the regulated area (this was provided for producers and handlers); decontamination of grain storage facilities; and the cost of heat-treating millfeed made from wheat produced in the quarantined area. Several commenters requested compensation for costs that were not provided for in the interim rule. These comments are discussed below.

The interim rule provided compensation for handlers who sell nonpropagative wheat only if the wheat is positive for Karnal bunt, and under the following circumstances: (1) Handlers who honor contracts by paying

the grower full contract price on nonpropagative wheat grown in the quarantined area that was tested by the Animal and Plant Health Inspection Service (APHIS) and found positive for Karnal bunt; or (2) handlers who purchase contracted or noncontracted nonpropagative wheat grown in the quarantined area that was tested by APHIS and found negative for Karnal bunt prior to purchase but that was tested by APHIS and found positive for Karnal bunt after purchase. As explained in the interim rule, we expected that handlers who purchase negative wheat that continues to test negative after purchase would not experience a loss in value for the wheat compared to the price they paid for it.

Some commenters, however, said that handlers who purchased negative-testing wheat after the Karnal bunt quarantine was imposed, but purchased it for the price that was contracted before Karnal bunt was discovered (in Arizona in March 1996), did experience a loss in value of the wheat compared to the price they paid for it. Even though the wheat was negative for Karnal bunt, handlers had to sell it for a lower price than anticipated because the wheat was from the quarantined area. Some handlers adjusted their purchase price to account for the loss in value; others honored the prices agreed on in their contracts prior to March 1996. Commenters said that handlers who honored their contracts on negative wheat by paying the price that was agreed on before the discovery of Karnal bunt in March 1996, should be compensated.

We believe that compensating these handlers would be consistent with our compensation to other individuals who experience a loss in value of their wheat because of the regulations for Karnal bunt. Therefore, we are amending the regulations at § 301.89–14(b) to provide compensation to handlers under the following additional circumstance: Except as explained below, handlers who honored contracts by paying the grower or another handler full contract price on nonpropagative wheat grown in the regulated area that was tested by APHIS and found negative for Karnal bunt if a price was determined in the contract before March 1, 1996. The exception to this compensation eligibility is handlers who had contracted to sell the wheat (for example, to another handler, a mill, or a foreign country) at a price determined in the contract before March 1, 1996, and who received the full contract price. Such handlers would not have experienced any loss in value of their wheat due to Karnal bunt. To claim compensation under this new circumstance, we are requiring that, in addition to the documents already required for handlers (see § 301.89–14(b)(4)), handlers who had contracted to sell the wheat at a price determined in the contract before March 1, 1996, must submit to FSA a copy of the contract the handler has for the sale of the wheat.

Handlers who honored contracts on negative wheat will be eligible for compensation using the same calculation provided in the interim rule for growers of negative wheat not grown under contract—the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the higher of either the salvage value or the actual price received by the handler (see § 301.89–14(b)(1)(iii)). We explained in the interim rule that the estimated market price is intended to represent what the market price would have been if there were no quarantine for Karnal bunt, and will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs.

For the 1995–1996 crop season, estimated market prices were calculated for durum wheat and hard red winter wheat. The estimated market prices for durum wheat were calculated based on the following: the daily closing cash prices for choice milling durum wheat traded on the Minneapolis Grain Exchange during the period of May 1 to June 30, 1996, adjusted to account for the handling and transportation charges incurred in getting the wheat from the regulated area in California and Arizona to the central market in Minneapolis. These adjustments were based on the average difference between the Minneapolis cash price and the cash prices within the regulated area for 1995. Estimated market prices for hard red winter wheat were calculated in a similar manner, based on the daily closing futures prices for the July hard red winter wheat contract traded on the Kansas City Board of Trade during the period of May 1 to June 30, 1996, adjusted to account for the handling and transportation charges incurred in getting the wheat from a central point in the regulated area to the market in Kansas City. These adjustments were based on the average difference between the Kansas City futures price and the cash prices within the regulated area for 1995.

The estimated market prices used to calculate compensation for handlers who honored their contracts on negative wheat will be determined in the same manner. However, if the salvage value is used in the calculation, the rate of compensation will be different than the rate that has been paid to other handlers under the interim rule, because the salvage value appropriate for negative wheat will be used in the calculation. Compensation payments will be issued by the Farm Service Agency (FSA).

One commenter requested that we provide compensation for lost income due to the quarantine on wheat straw. Many growers sell wheat straw to supplement their wheat grain income. Straw is sold for use at places such as racetracks, highway shoulders, feed yards, and parks for erosion control and to minimize muddy conditions. Wheat straw is listed in the Karnal bunt regulations as a regulated article and is prohibited from being moved outside of the regulated area. This has prevented many wheat straw producers from shipping their 1995–1996 crop season straw to the intended markets. Some wheat straw was sold to alternative markets within the regulated area for a lower price; other wheat straw was not able to be sold.

We are considering what, if any, compensation should be provided for lost income due to the restrictions that have been placed on the movement of 1995–1996 crop season wheat straw. We will publish any proposed compensation for wheat straw producers in a future edition of the **Federal Register**.

The interim rule did not provide compensation for any losses concerning wheat grown outside the area regulated for Karnal bunt. APHIS is conducting a National Karnal Bunt Survey to demonstrate to our trading partners that areas producing wheat for export are free of the disease. APHIS is receiving voluntary cooperation from many grain storage facilities in wheat producing areas both within and outside the States in which the Secretary of Agriculture has declared an extraordinary emergency.

Some commenters asked that we clarify what compensation we plan to offer to participants in the National Karnal Bunt Survey who are found to have positive grain or whose grain storage facility outside of the regulated area is found to have Karnal bunt. We have every intention of making sure that all participants in the survey whose wheat or grain storage facilities are found to be positive for Karnal bunt will be compensated for the loss in value of their wheat and for the costs for part of

decontaminating their grain storage facilities.

The declarations of extraordinary emergency authorize the Secretary of Agriculture to take emergency action in those States with regard to Karnal bunt, and authorize the Secretary to compensate growers and other persons in those States for economic losses incurred by them as a result of those emergency actions. USDA is not authorized to pay compensation to individuals who are not in States for which an extraordinary emergency has been declared. If a grain storage facility participating in the National Survey in one of the States for which an extraordinary emergency has been declared tests positive for Karnal bunt, USDA will regulate the facility under an Emergency Action Notification (PPQ Form 523), and will compensate the owner of the grain storage facility for the loss in value of the wheat and for up to 50 percent of the direct cost of decontaminating the facility (not to exceed $20,000) on a one time only basis for wheat harvested in 1996, if the facility is required to be decontaminated. In the event that a grain storage facility participating in the National Survey that is in a State not covered by a declaration of extraordinary emergency should test positive for Karnal bunt, the State may offer to compensate the owner of the facility for the loss in value of the positive wheat and for the cost of decontamination. If the State is unwilling or unable to offer compensation at a level equal to that offered by USDA, USDA will consider, after consultation with the State Department of Agriculture, declaring an extraordinary emergency in that State. USDA could then compensate the owner of the facility.

We completed the National Survey for the 1995–1996 crop season in the fall of 1996. In this final rule, we are adding a new paragraph § 301.89–14(f) to the 1995–1996 crop season compensation regulations stating that if a grain storage facility participating in the National Karnal Bunt Survey tests positive for Karnal bunt, the facility will be regulated under an Emergency Action Notification (PPQ Form 523), and the owner may be required to decontaminate the facility to remove the quarantine. If a Declaration of Extraordinary Emergency has been declared in the State in which the grain storage facility is located, the owner of the facility will be compensated for the loss in value of the wheat. Compensation will equal the estimated market price for the relevant class of wheat minus the salvage value (as described in § 301.89–14(b)(3)). The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between October 1 and November 30, 1996, with adjustments for transportation and other handling costs. However, compensation will not exceed $2.50 per bushel under any circumstances. Compensation payments for loss in value of wheat will be issued by FSA. To claim compensation, the owner of the facility must submit to the local FSA office a copy of the Emergency Action Notification under which the facility is or was quarantined. The owner must also submit to the FSA office verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to a mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification).

The owner of the facility will also be compensated for the direct cost of decontamination at the same rate provided by the interim rule for decontamination of grain storage facilities (a maximum of $20,000 per facility, paid on a one time only basis for wheat harvested in 1996). Compensation payments for decontamination of grain storage facilities will be issued by APHIS.

A few commenters requested compensation for damage to harvesting equipment caused by disinfection in accordance with the Karnal bunt regulations. We are still considering what compensation would be appropriate for grain harvesters and are continuing to gather information to help us make that determination. If we determine to take regulatory action to compensate grain harvesters, we will publish proposed compensation regulations in a future edition of the **Federal Register**.

Commenters also requested compensation for loss in value of 1995–1996 crop season seed. We stated in the interim rule that we do intend to compensate seed producers for the loss in value of their seed. That intention has not changed, and we plan to publish proposed compensation regulations for seed producers in a future edition of the **Federal Register**.

Several commenters requested that we add compensation provisions to cover numerous circumstances other than those provided for in the interim rule and those discussed previously in this document. These include requested compensation for demurrage charges on railcars; the cost of cleaning and sanitizing railcars prior to loading; declines in transporter operations due to delays caused by the Karnal bunt regulations; extra labor to clean and disinfect combines; loss in customers for harvesters due to delays in waiting for field test results; loss in wheat income and soil nutrients due to a 5-year quarantine on wheat production; and loan interest on funds borrowed to see producers through delays in selling 1996 wheat. Commenters also requested several other changes to the compensation provisions in the interim rule. Two commenters requested that we lower the $3.60 minimum salvage value because they do not believe it adequately reflects the costs to handlers of freight charges and railcar cleaning. One commenter said that the maximum $20,000 per premises compensation for decontamination of grain storage facilities is inadequate. Another commenter said that the same compensation offered to flour millers for heat-treating millfeed should be available to all producers, grain handlers, and millers regardless of whether or not the wheat originated in the quarantined area.

We have considered all of these comments very carefully, but we are not making any changes to the compensation regulations in response to these comments. We recognize that the compensations we have offered do not fully account for every loss or expense due to the Karnal bunt quarantine and emergency actions. However, we believe the compensation provisions in this final rule do significantly mitigate losses and expenses due to the actions taken to control Karnal bunt. We are continuing to consider the effects of the Karnal bunt quarantine and emergency actions on all affected individuals. If we make any further determinations as to additional compensations, we will publish another document in the **Federal Register**.

Miscellaneous Changes

We are making a number of miscellaneous changes to the interim rule. Many of these changes are necessary to clarify the intent of the regulations and to deal with circumstances identified during implementation of the interim rule.

The compensation regulations established by the interim rule were intended to apply to the 1995–1996 crop season. Therefore, we are revising the heading and introductory text for the compensation regulations in this rule to make it clear that they apply only to the 1995–1996 crop season. For the same reason, we are revising § 301.89–14(d) to clarify that compensation for

decontamination of grain storage facilities under this rule will be made on a one time only basis for each covered crop year wheat.

This final rule will add a requirement to § 301.89–14 that all claims for compensation for the 1995–1996 crop season must be made by May 31, 1997. In addition, we are adding a provision that the Administrator may extend this deadline upon request in specific cases when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

The term ''contract price'' is used several times in § 301.89–14. In some cases, the contract price is a determining factor in the amount of compensation received by a claimant. Some contracts provide for adjustments in the contract price contingent on grain quality or other factors. To ensure that growers or handlers are not paid compensation for quality issues not related to Karnal bunt, and to clarify what we intended to mean by the term ''contract price,'' we are adding a definition to § 301.89–1 of the regulations, to read as follows:

Contract price. The net price after adjustment for any premiums or discounts stated in the contract.

Paragraph (b)(1) of § 301.89–14 contains compensation calculations for growers who sell nonpropagative wheat; one for wheat grown under contract, and one for wheat not grown under contract. In implementing the interim rule, it became apparent that different calculations were needed to account for other contracting circumstances. For example, not all contracted wheat had a price in the contract prior to the discovery of Karnal bunt in March 1996. Therefore, even though the wheat was contracted prior to the discovery of Karnal bunt, the price eventually agreed on may have reflected the loss-in-value of wheat due to Karnal bunt.

Contracts without prices set before March 1996 normally stipulated that the price was to be determined at harvest. The 1996 harvest began in April 1996 and was not complete in all regulated areas until August 1996. Compensation regulations were not in effect until June 27, 1996 (see Docket No. 96–016–7, published in the **Federal Register** on July 5, 1996), mid-way through the 1996 harvest, and claims for compensation could not be processed for several more weeks. Because growers and handlers did not know what compensation APHIS would offer, some contract prices set at harvest reflected the loss-in-value of wheat due to the Karnal bunt regulations, while some contract prices set at harvest were based on what market prices would have been without the presence of Karnal bunt. This situation warranted calculating compensation using the higher of either the contract price or the estimated market price. This procedure for calculating compensation would not unfairly disadvantage growers whose contract prices set at harvest reflected the loss-in-value of wheat due to the Karnal bunt regulations. Contract prices settled after August 1996 may have reflected the compensation offered by APHIS, and would not have been consistent with the original intent of the contract that the price be determined at harvest. For these reasons, we are changing the compensation calculations for growers who sell nonpropagative wheat to accommodate three circumstances, as follows:

If the wheat was grown under contract and a price was determined in the contract before March 1, 1996, compensation will equal the contracted price minus the higher of either the salvage value or the actual price received by the grower. If the wheat was grown under contract and a price was determined in the contract on or after March 1, 1996, and on or before August 1, 1996, compensation will equal the higher of either the contract price or the estimated market price minus the higher of either the salvage value or the actual price received by the grower. If the wheat was not grown under contract or the price was determined in the contract after August 1, 1996, compensation will equal the estimated market price for the relevant class of wheat minus the higher of either the salvage value or the actual price received by the grower.

We are also revising the requirements for growers and handlers for claiming compensation to ensure that growers and handlers supply all the information necessary to determine the amount of compensation for which they are eligible. In addition to the documentation already required by § 301.89–14(b), growers will have to submit a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold, total bushels sold, and the total amount paid to the grower by the handler. Handlers will have to submit a copy of the receipt for the purchase of the wheat from the grower, showing the total bushels purchased and the amount the handler paid to the grower, and a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold. Both growers and handlers must submit a copy of the Karnal bunt certificate issued by APHIS that shows Karnal bunt test results.

At the time that Karnal bunt was discovered in Arizona in March 1996, some handlers and growers in the regulated area had wheat inventories on hand from past crop seasons. These inventories became subject to the same restrictions as 1995–1996 crop season wheat from the regulated area, and handlers and growers with such inventories experienced a loss in value of that wheat. For this reason, we are revising § 301.89–14(b)(2) to clarify that handlers and growers in the regulated area are eligible to be compensated for 1995–1996 crop season wheat and for wheat inventories in their possession that were unsold as of March 1, 1996.

We are revising the provision in § 301.89–14(c) of the regulations for growers and handlers who do not sell their wheat. The interim rule stated that compensation will only be paid to growers and handlers on wheat that is not sold if the wheat has been buried in a sanitary landfill. In implementing the regulations, APHIS has approved sites for burying wheat other than a sanitary landfill. These sites were determined to be acceptable because they were in areas where burying the wheat would not pose a risk of spreading Karnal bunt (for example, the desert). To accommodate these situations, we are amending paragraph (c) to state that unsold wheat must be buried in a landfill or other site that has been approved by APHIS. To claim compensation, the interim rule required that a grower or handler must submit verification of how much wheat was buried, in the form of a receipt from the landfill. We are adding that the verification may also be in the form of a document signed by an APHIS inspector.

The interim rule stated at § 301.89–14(d) that compensation for decontamination of grain storage facilities will not exceed $20,000 per premises. The term premises has proven to be confusing to both affected entities and inspectors in determining the amount of compensation for which an owner is eligible. We believe the term ''facility'' would be more clear. To clarify our intent, we are revising paragraph (d) to state that compensation will not exceed $20,000 per grain storage facility. We are also removing the definition of *premises* from § 301.89–1 of the regulations and adding a definition for *grain storage facility*, to mean ''That part of a grain handling operation or unit of a grain handling operation, consisting of structures, conveyances, and equipment that receive, unload, and store grain, and that is able to operate as an independent unit from other units of the grain handling operation. A grain handling

operation may be one grain storage facility or may be comprised of many grain storage facilities on a single premises.''

We are revising the provisions at § 301.89–14(e) by which flour millers must claim compensation. The interim rule provided that, to claim compensation, flour millers must submit verification that the millfeed was heat-treated, in the form of a copy of the limited permit under which the wheat was moved to a treatment facility. However, some flour millers have purchased their own heat treating equipment and do not need to move the wheat under a limited permit to a treatment facility. To accommodate this, we are stating that verification of treatment may also be provided in the form of a copy of PPQ Form 700, which includes a certification of processing, signed by the inspector who monitors the mill.

We are adding sentences to § 301.89–14(a), (b)(4), and (c), concerning growers and handlers, to clarify that these compensation payments will be issued by FSA. We are also adding sentences to § 301.89–14(d) and (e), concerning grain storage facilities and flour millers, to clarify that these compensation payments will be issued by APHIS.

The interim rule requires certain claimants to file three forms: ASCS Form 574, ASCS Form 578, and FCI Form 73. The correct names for ASCS Form 574 and ASCS Form 578 are FSA Form 574 and FSA Form 578, respectively. We are making this change in this final rule.

A final rule published in the **Federal Register** on October 4, 1996, and effective on November 4, 1996 (61 FR 52189–52213, Docket No. 96–016–14), established ''regulated areas'' to replace the areas previously called ''quarantined areas.'' To reflect this change, we are removing the term ''quarantined area'' each time it appears in § 301.89–14 and replacing it with the term ''regulated area.''

Further, the interim rule provided that growers and handlers will be compensated for wheat ''grown in the quarantined area.'' In addition to changing the term to ''regulated area,'' we would add a provision that growers and handlers in States where the Secretary has declared an extraordinary emergency would also be compensated for wheat grown in an area for which an Emergency Action Notification (PPQ Form 523) has been issued by an inspector, in accordance with § 301.89–3(d) of the regulations. Section 301.89–3(d) of the regulations allows the Administrator or an inspector to temporarily designate any nonregulated area as a regulated area. When this occurs, an inspector provides written notice of this action to the owner or person responsible for the management of the area, in the form of an Emergency Action Notification. Areas temporarily regulated under an Emergency Action Notification will not necessarily be listed in the regulations as ''regulated areas,'' but are subject to the same restrictions (and potential losses or expenses) as areas that are listed in the regulations.

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

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule provides compensation to individuals who were and are required to take emergency actions to eliminate the spread of Karnal bunt or who experience economic losses because of the quarantine for Karnal bunt. Immediate action is necessary to compensate these losses and expenses. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon signature.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This rule has been determined to be economically significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This action makes final with certain changes an interim rule that amended the regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred in the 1995–1996 crop season because of the Karnal bunt quarantine and emergency actions. The quarantine and regulations for Karnal bunt were established by a series of interim rules and a final rule published in the **Federal Register** on October 4, 1996. The interim rules and the final rule were published on an emergency basis. We stated in those rules that the emergency situation made timely compliance with section 6, subsections (3)(B)(ii) and (3)(C), of Executive Order 12866 impracticable. We also stated that we would complete the required cost-benefit analysis for those rules as soon as possible and make the information available to the public. Elsewhere in the ''Rules'' section of this issue of the **Federal Register**, we are publishing a companion docket (Docket No. 96–016–20) to this final rule that includes a Regulatory Impact Analysis that analyzes the costs and benefits of the interim rules and the final rule we have already published, as well as those of the provisions of this final rule.

On April 3, 1997, we published in the **Federal Register** a Regulatory Flexibility Analysis for the interim rules and the final rule we have already published regarding the Karnal bunt quarantine and regulations (62 FR 15809–15819, Docket No. 96–016–18).

In accordance with 5 USC 604, we have performed a Final Regulatory Flexibility Analysis regarding the impact of this final rule on small entities, and are publishing that analysis in a companion docket (Docket No. 96–016–20) to this final rule elsewhere in the ''Rules'' section of this issue of the **Federal Register**.

Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, USC 801–808)

This rule has been designated by the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, as a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (Act). The Administrator of the Animal and Plant Health Inspection Service has determined, however, that there is good cause for making this rule effective less than 60 days after submission of the rule to each House of Congress and to the Comptroller General because a delay in the implementation of this rule would be contrary to the public interest. This final rule adds handlers of negative grain, handlers with past crop season wheat inventories, and participants in the National Karnal Bunt Survey to the list of individuals eligible for compensation. It is necessary to make this rule effective upon publication in the **Federal Register** in order that these individuals can be compensated for economic losses and expenses in the 1995–1996 crop season resulting from the quarantine and emergency actions taken by the Department because of Karnal bunt. Section 808 of the Act provides that rules which would be exempted from the notice and comment provisions of the Administrative Procedure Act may be excepted from

section 801(a)(1)(A), and the delay in the effective date for major rules under section 801(a)(3). Such rules may be made effective as the agency promulgating the rule determines. A 60-day or longer delay of the effective date for this final rule would clearly be contrary to the public interest, since it would delay compensation for affected handlers and National Survey participants.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control numbers or, if approval is denied, providing notice of what action we plan to take.

The information collection or recordkeeping requirements included in the interim rule that preceded this final rule were approved by OMB. However, this final rule contains an information collection requirement that was not included in the interim rule. Specifically, this final rule requires a claimant to make a request in order to be granted an extension of the deadline for filing compensation claims.

Estimate of burden: Public reporting burden for this collection of information is estimated to average .166 hours per response.

Respondents: 10.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 2 hours.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, the interim rule amending 7 CFR part 301 which was published at 61 FR 35102–35107 on July 5, 1996, is adopted as a final rule with the following changes:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 USC 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.89–1, the definition for *Premises* is removed and definitions for *Contract price* and *Grain storage facility* are added in alphabetical order to read as follows:

§ 301.89–1 Definitions.

* * * * *

Contract price. The net price after adjustment for any premiums or discounts stated in the contract.

* * * * *

Grain storage facility. That part of a grain handling operation or unit of a grain handling operation, consisting of structures, conveyances, and equipment that receive, unload, and store grain, and that is able to operate as an independent unit from other units of the grain handling operation. A grain handling operation may be one grain storage facility or may be comprised of many grain storage facilities on a single premises.

* * * * *

3. Section 301.89–14 is revised to read as set forth below.

§ 301.89–14 Compensation for the 1995–1996 crop season.

The following individuals are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1995–1996 crop season to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Growers who have destroyed crops.* Growers in New Mexico and Texas who have destroyed crops of wheat pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector are eligible to be compensated at the rate of $300 per acre of destroyed crop. Compensation payments will be issued by the Farm Service Agency (FSA). To claim compensation, the grower must complete and submit to a local FSA county office whichever of the following three forms are applicable, as determined by FSA: FSA Form 574, FSA Form 578, and FCI Form 73. The forms will be furnished by FSA. Claims for compensation must be received by FSA on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

(b) *Growers and handlers who sell nonpropagative wheat.* Growers and handlers in a State where the Secretary has declared an extraordinary emergency, and who sell nonpropagative wheat grown in the regulated area or in an area for which an Emergency Action Notification (PPQ Form 523) has been issued in accordance with § 301.89–3(d), are eligible to be compensated for the loss in value of their wheat due to the Karnal bunt regulations, as follows:

(1) *Growers who sell nonpropagative wheat.* Growers are eligible to be compensated for nonpropagative 1995–1996 crop season wheat and for nonpropagative wheat inventories in their possession that were unsold as of March 1, 1996, as described in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section. However, compensation will not exceed $2.50 per bushel under any circumstances.

(i) If the wheat was grown under contract and a price was determined in the contract before March 1, 1996, compensation will equal the contracted price minus the higher of either the salvage value, as described in paragraph (b)(3) of this section, or the actual price received by the grower.

(ii) If the wheat was grown under contract and a price was determined in the contract on or after March 1, 1996, and on or before August 1, 1996, compensation will equal the higher of either the contract price or the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the higher of either the salvage value, as described in paragraph (b)(3) of this section, or the actual price received by the grower. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs.

(iii) If the wheat was not grown under contract or a price was determined in the contract after August 1, 1996, compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the higher of either the salvage value, as described in paragraph (b)(3) of this section, or the actual price received by the grower. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs.

(2) *Handlers who sell nonpropagative wheat.* Handlers are eligible to be compensated for nonpropagative 1995–1996 crop season wheat and for nonpropagative wheat inventories in their possession that were unsold as of March 1, 1996, only under the circumstances described in paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this section. Compensation for the

circumstances in paragraphs (b)(2)(i) and (b)(2)(ii) will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the salvage value, as described in paragraph (b)(3) of this section. Compensation for the circumstance in paragraph (b)(2)(iii) will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the higher of either the salvage value, as described in paragraph (b)(3) of this section, or the actual price received by the handler. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs. However, compensation will not exceed $2.50 per bushel under any circumstances.

(i) Handlers who honor contracts by paying the grower full contract price on wheat grown for nonpropagative purposes in the regulated area that was tested by APHIS and found positive for Karnal bunt;

(ii) Handlers who purchase contracted or noncontracted wheat grown for nonpropagative purposes in the regulated area that was tested by APHIS and found negative for Karnal bunt prior to purchase but that was tested by APHIS and found positive for Karnal bunt after purchase; or

(iii) Except as explained in this paragraph, handlers who honor contracts by paying the grower or another handler full contract price on nonpropagative wheat grown in the regulated area that was tested by APHIS and found negative for Karnal bunt if a price was determined in the contract before March 1, 1996. Handlers who had contracted to sell the wheat at a price determined in the contract before March 1, 1996, and who received the full contract price, are not eligible for compensation.

(3) *Salvage value*. Salvage values will be as follows:

(i) If the wheat is positive for Karnal bunt and is sold for use as animal feed, salvage value equals $6.00 per hundredweight or $3.60 per bushel for all classes of wheat.

(ii) If the wheat is positive for Karnal bunt and is sold for a use other than animal feed, salvage value equals whichever is higher of the following: the average price paid in the region of the regulated area where the wheat is sold for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) for the period between May 1 and June 30, 1996; or, $3.60 per bushel.

(iii) If the wheat is negative for Karnal bunt and is sold for any use, salvage value equals whichever is higher of the following: the average price paid in the region of the regulated area where the wheat is sold for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) for the period between May 1 and June 30, 1996; or, $3.60 per bushel.

(4) *To claim compensation*. Compensation payments will be issued by the Farm Service Agency (FSA). Claims for compensation must be received by FSA on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997. To claim compensation, a grower or handler must complete and submit to the local FSA county office the following documents:

(i) *Both growers and handlers*. A grower or handler must submit whichever of the following three forms are applicable, as determined by FSA: FSA Form 574, FSA Form 578, and FCI Form 73. A grower or a handler must also submit a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold, and a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results.

(ii) *Growers*. In addition to the documents required in paragraph (b)(4)(i), growers must submit a copy of the contract the grower has for the wheat, if the wheat was under contract; and a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold, total bushels sold, and the total amount paid to the grower by the handler.

(iii) *Handlers*. In addition to the documents required in paragraph (b)(4)(i), handlers must submit a copy of the contract the handler had with the grower for the wheat, if the wheat was under contract; a copy of the receipt for the purchase of the wheat from the grower or handler, showing the total bushels purchased and the amount the handler paid for the wheat; and a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold. Handlers who had contracted to sell the wheat at a price determined in the contract before March 1, 1996, must submit a copy of the contract for the sale of the wheat.

(c) *Nonpropagative wheat that is not sold*. If a grower or handler of nonpropagative wheat grown in the regulated area in a State where the Secretary has declared an extraordinary emergency is not able to or elects not to sell their wheat, they will be eligible to receive compensation at the rate of $2.50 per bushel. Compensation will only be paid if the grower or handler has destroyed the wheat by burying it in a sanitary landfill or other site that has been approved by APHIS. Compensation claims will be issued by the Farm Service Agency (FSA). To claim compensation, the grower or handler must complete and submit to the local FSA county office whichever of the following three forms are applicable, as determined by FSA: FSA Form 574, FSA Form 578, and FCI Form 73. In addition, the grower or handler must submit verification of how much wheat was buried, in the form of a receipt from the sanitary landfill or verification signed by an APHIS inspector. Claims for compensation must be received by FSA on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

(d) *Decontamination of grain storage facilities*. Owners of grain storage facilities that are in States where the Secretary has declared an extraordinary emergency, and who have decontaminated their grain storage facilities pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector, are eligible to be compensated, on a one time only basis for each facility and each covered crop year wheat, for up to 50 percent of the cost of decontamination. However, compensation will not exceed $20,000 per grain storage facility (as defined in § 301.89–1). General clean-up, repair, and refurbishment costs are excluded from compensation. Compensation payments will be issued by APHIS. To claim compensation, the owner of the grain storage facility must submit to an inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered to be decontaminated by the Emergency Action Notification on the facility. The records must include a copy of the Emergency Action Notification, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time

sheets for employees of the grain storage facility who performed activities connected to the decontamination, and any other documentation that helps show the cost to the owner and that decontamination has been completed. Claims for compensation must be received by APHIS on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

(e) *Flour millers.* Flour millers who, in accordance with a compliance agreement with APHIS, heat-treat millfeed made from wheat produced in regulated areas that require such treatment are eligible to be compensated at the rate of $35.00 per short ton of millfeed. The amount of millfeed compensated will be calculated by multiplying the weight of wheat from the regulated area received by the miller by 25 percent (the average percent of millfeed derived from a short ton of grain). Compensation payments will be issued by APHIS. To claim compensation, the miller must submit to an inspector verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to the mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification). Flour millers must also submit verification that the millfeed was heat treated (such as a copy of the limited permit under which the wheat was moved to a treatment facility and a copy of the bill of lading accompanying that movement; or a copy of PPQ Form 700 (which includes certification of processing) signed by the inspector who monitors the mill). Claims for compensation must be received by APHIS on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

(f) *National Karnal Bunt Survey participants.* If a grain storage facility participating in the National Karnal Bunt Survey tests positive for Karnal bunt spores, the facility will be regulated and may be ordered decontaminated pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector. If a Declaration of Extraordinary Emergency has been declared for the State in which the grain storage facility is located, the owner of the grain storage facility will be eligible for compensation as follows:

(1) *Loss in value of positive wheat.* The owner of the grain storage facility will be compensated for the loss in value of positive wheat. Compensation will equal the estimated market price for the relevant class of wheat minus the salvage value, as described in paragraph (b)(3) of this section. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between October 1 and November 30, 1996, with adjustments for transportation and other handling costs. However, compensation will not exceed $2.50 per bushel under any circumstances. Compensation payments for loss in value of wheat will be issued by the Farm Service Agency (FSA). To claim compensation, the owner of the facility must submit to the local FSA office a copy of the Emergency Action Notification under which the facility is or was quarantined and verification as to the actual (not estimated) weight of the wheat (such as a copy of the limited permit under which the wheat was moved to a mill or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification). Claims for compensation must be received by FSA on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

(2) *Decontamination of grain storage facilities.* The owner of the facility will be compensated on a one time only basis for each grain storage facility and each covered crop year wheat for the direct costs of decontamination of the facility at the same rate described under paragraph (d) of this section (up to 50 per cent of the direct costs of decontamination, not to exceed $20,000 per grain storage facility). Compensation payments for decontamination of grain storage facilities will be issued by APHIS, and claims for compensation must be submitted in accordance with the provisions in paragraph (d) of this section. Claims for compensation must be received by APHIS on or before May 31, 1997. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before May 31, 1997.

Done in Washington, DC, this 30th day of April 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–11719 Filed 5–1–97; 11:27 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–20]

RIN 0579–AA83

Karnal Bunt Regulatory Flexibility Analysis and Regulatory Impact Analysis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; regulatory flexibility analysis and regulatory impact analysis.

SUMMARY: We are publishing in this document the regulatory flexibility analysis prepared for a final rule, which is published elsewhere in this issue of the **Federal Register**, that adopts, with changes, an interim rule that provided compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of Karnal bunt in the 1995–1996 crop season. The final rule also adds compensation provisions for handlers of wheat that was tested and found negative for Karnal bunt, for handlers and growers with wheat inventories for past crop seasons, and for participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found positive for Karnal bunt. We are also publishing in this document a regulatory impact analysis for the interim rules and final rules that established the Karnal bunt quarantine, regulations, and compensation provisions, including a final rule on compensation published elsewhere in this issue of the **Federal Register**.

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SUPPLEMENTARY INFORMATION: Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is

caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores. The establishment of Karnal bunt in the United States would have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14.

On October 4, 1996, we published in the **Federal Register** (61 FR 52189–52213, Docket No. 96–016–14) a final rule that amended a series of interim rules establishing a program to control and eradicate Karnal bunt in the United States, and also made final a proposed rule establishing criteria for levels of risk for areas with regard to Karnal bunt and criteria for seed planting and movement of regulated articles based on those risk levels. Elsewhere in this issue of the **Federal Register** we are publishing a companion docket (Docket No. 96–016–17) to this document, in order to adopt as a final rule, with changes, an interim rule that amended the Karnal bunt regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of Karnal bunt in the 1995–1996 crop season. Additionally, the final rule adds compensation provisions for handlers of wheat that was tested and found negative [1] for Karnal bunt, for handlers and growers with wheat inventories for past crop seasons, and for participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found positive [1] for Karnal bunt.

On April 3, 1997, we published in the **Federal Register** a regulatory flexibility analysis (62 FR 15809–15819, Docket No. 96–016–18) for the interim rules and the October 4, 1996, final rule that established the Karnal bunt quarantine and regulations. In this document, we are publishing a Final Regulatory Flexibility Analysis for Docket No. 96–016–17. Additionally, in this document, we are publishing a Regulatory Impact Analysis that analyzes the costs and benefits of the Karnal bunt interim rules and final rule we have already published, as well as those of the provisions in Docket No. 96–016–17.

I. Introduction

In accordance with Executive Order 12866, this analysis examines the economic impacts, including costs and benefits of the Karnal bunt regulations published to date, including Docket No. 96–016–17. Additionally, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we have conducted an analysis of the economic impact, costs, and benefits the provisions of Docket No. 96–016–17 will have on small entities. That analysis is set forth below under the heading ''VIII. Regulatory Flexibility Analysis—Impacts on Small Entities Within the Regulated Area.''

On March 8, 1996, Karnal bunt was detected in Arizona during a seed certification inspection done by the Arizona Department of Agriculture. On March 20, 1996, the Secretary of Agriculture signed a ''Declaration of Extraordinary Emergency'' authorizing the Secretary to take emergency action under 7 U.S.C. 150dd with regard to Karnal bunt within the States of Arizona, New Mexico, and Texas. In an interim rule effective on March 25, 1996, and published in the **Federal Register** on March 28, 1996 (61 FR 13649–13655, Docket No. 96–016–3), the Animal and Plant Health Inspection Service (APHIS) established the Karnal bunt regulations (7 CFR 301.89–1 through 301.89–11), and quarantined all of Arizona and portions of New Mexico and Texas because of Karnal bunt. The regulations define regulated articles and restrict the movement of these regulated articles from the quarantined areas.

After the regulations were established, Karnal bunt was detected in seed lots that were either planted or stored in California. On April 12, 1996, the Secretary of Agriculture signed a ''Declaration of Extraordinary Emergency'' authorizing the Secretary to take emergency action under 7 U.S.C. 150dd with regard to Karnal bunt within California. In an interim rule effective on April 19, 1996, and published in the **Federal Register** on April 25, 1996, APHIS also regulated portions of California because of Karnal bunt (61 FR 18233–18235, Docket No. 96–016–5). In an interim rule effective on June 27, 1996, and published in the **Federal Register** on July 5, 1996 (61 FR 35107–35109, Docket No. 96–016–6), we removed certain areas in Arizona, New Mexico, and Texas from the list of areas regulated because of Karnal bunt. That list was amended in a technical amendment effective on July 9, 1996, and published in the **Federal Register** on July 15, 1996 (61 FR 36812–36813, Docket No. 96–016–8). In an interim rule effective June 27, 1996, and published in the **Federal Register** on July 5, 1996 (61 FR 35102–35107, Docket No. 96–016–7), we amended the regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of actions taken by the Secretary to prevent the spread of Karnal bunt.

In a proposed rule published in the **Federal Register** on August 2, 1996 (61 FR 40354–40361, Docket No. 96–016–10), we proposed to amend the regulations to establish criteria for levels of risk for areas with regard to Karnal bunt and for the movement of regulated articles based on those risk levels, and to establish criteria for seed planting. A rule finalizing these provisions was published in the **Federal Register** on October 4, 1996 (61 FR 52189–52213, Docket No. 96–016–14). In Docket No. 96–106–17, published elsewhere in this issue of the **Federal Register**, we make final the interim rule on compensation published in the **Federal Register** on July 5, 1996, and establish compensation provisions for handlers of wheat that was tested and found negative for Karnal bunt, for handlers and growers with wheat inventories for past crop seasons, and for participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found positive for Karnal bunt.

II. Need for Regulation

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*). Upon detection of Karnal bunt in Arizona, the imposition of Federal quarantine and emergency actions was a necessary, short-run, measure taken to prevent the interstate spread of the disease to other wheat producing areas in the country. The intent of the quarantine was to immediately contain the disease in the outbreak area, so that eradication could be eventually

[1] Throughout this document, in discussing tests for Karnal bunt, ''found negative'' means that no Karnal bunt spores were found, and ''found positive'' means that Karnal bunt spores were found. This applies whether the tests involved were of propagative wheat or nonpropagative wheat, in fields, conveyances, or grain storage facilities.

On May 1, 1997, we published an interim rule in the **Federal Register** (Docket No. 96–016–19, 62 FR 23620–23628) that established a new standard for defining regulated areas for Karnal bunt based on finding bunted wheat kernels rather than just spores. That change does not affect any of the activities analyzed in this document.

achieved. In dealing with a new disease outbreak, eradication is a reasonable first objective as long as national disease-prevalence data indicate that eradication remains a viable option. The establishment of Karnal bunt in the United States would have significant economic ramifications on the U.S. wheat export market, given that approximately 50 percent of exports are to countries that maintain restrictions against wheat imports from countries where Karnal bunt is known to occur. The benefits of the regulatory program can thus be viewed as the avoidance of potential losses to the wheat export market in the absence of regulation. The economic significance of the wheat industry required swift and coordinated action, which in this case was most efficiently achieved under Federal coordination.

Wheat intended for domestic processing and export is often blended at elevators to establish lots of uniform quality. Except for those occasions where a specific producer's wheat is processed separately under contract to a miller, the elevator's supply of wheat usually consists of a mix of many varieties from many producers and areas. For this reason, Federal oversight is needed to safeguard against cross-contamination and to instill confidence from both domestic and foreign buyers. Thus, it is conceivable that, without Federal intervention, individual States and importing countries would place their own, perhaps more severe, restrictions on wheat shipments.

As additional information from sampling and testing became available in subsequent months following the outbreak, the Agency was able to ease the quarantine in order to minimize disruption to affected entities. Those changes, which were detailed in the October 4, 1996, final rule, established various risk categories for wheat planting for the 1996–97 crop, relieving unnecessary restrictions as the regulatory actions that are imposed on each category are based on the level of risk.

Subsequent sections of this analysis are structured as follows: Section III addresses the benefits of regulation to provide a perspective against which the regulatory policies were formed. Section IV addresses the impact on the affected industry of the disease and subsequent quarantine actions. Section V analyzes compensation the Agency expects to pay to partially mitigate losses caused by Agency actions. Section VI provides a projection of the impact in the regulated areas based on risk categories for wheat planting in 1996–97. Other alternatives to the rule are discussed in section VII. The wheat industry within the regulated area is composed largely of small entities that can be classified as small according to definitions established by the Small Business Administration (SBA). Thus, the impacts discussed throughout this analysis are directly applicable to small entities. As required by the Regulatory Flexibility Act, the characteristics of and impacts on small entities within the regulated areas are examined in section VIII. A summary of the analysis is provided in section IX.

III. Benefits of the Federal Quarantine Program

The disease Karnal bunt causes production losses to wheat in the form of yield reduction due to the infestation of kernels, and reduction in the quality of grain. Roughly 4 percent of wheat fields in Arizona, and 0.04 and 14 percent of fields in Imperial and Riverside counties in California, respectively, were found to be infected with Karnal bunt.

The most economically significant impact of the disease, however, is inarguably its effect on the export market. This is because about half of U.S. wheat exports are to countries that maintain restrictions against wheat imports from countries where Karnal bunt is known to occur.[2] Eliminating the quarantine currently in place would jeopardize trade with those countries. Benefits of Federal quarantine, therefore, can be regarded largely as the avoided losses to the export market.

A 50-percent reduction in U.S. wheat exports would likely reduce U.S. wheat prices by 30 percent, and lower net sector income by $2.7 billion. This estimate takes into account the dampening effect on domestic wheat prices, as wheat for export is diverted into the domestic consumption market, animal feed outlets, and ending stocks.

The reduction in U.S. wheat exports, however, would likely be less than 50 percent. First, not all countries that have restrictions against Karnal bunt would, in practice, strictly prohibit wheat imports from the United States. (Italy and Germany currently import wheat from countries where Karnal bunt is known to occur despite European Union regulations to the contrary). Second, while some markets would be captured by exports from countries that are free of Karnal bunt, U.S. wheat exports to countries that have no restrictions against Karnal bunt would likely increase. Lastly, substitution across domestic markets could provide added flexibility in meeting export demands. In the long run, the effects could be minimal depending on whether the market were to treat Karnal bunt as a quality issue and develop discounts for Karnal bunt.

It is estimated that the impact of Karnal bunt on exports, because of substitution effects, would likely result in a 10-percent reduction in U.S. wheat exports. A decrease of 10-percent in exports would cause a 22-cent per bushel drop in the wheat prices and a drop in wheat sector income of over $500 million. The effects of decreases in wheat exports of various percentages are presented in Table 1.

TABLE 1.—EFFECT OF A DECREASE IN WHEAT EXPORTS DUE TO KARNAL BUNT, 1997/98 CROP YEAR

Item	Unit	Reduction in exports			
		0%	10%	25%	50%
Exports	mil. bu.	1,200	1,080	900	600
Total use	mil. bu.	2,462	2,394	2,295	2,138
Price	$/bu	3.85	3.63	3.29	2.68
Value of production	mil. dol.	9,543	8,898	8,146	6,637
Gross income [1]	mil. dol.	11,358	10,813	9,961	8,580
Variable expenses	mil. dol.	4,823,823	4,823	4,823	
Net income	mil. dol.	6,536	5,990	5,138	3,758

[1] Includes market transition payments.

[2] About 1.2 billion bushels of wheat are exported from the U.S. annually, at a value of $4 billion.

The 1996 Federal quarantine and emergency actions served to contain Karnal bunt in the initial outbreak area of the Southwest United States. The Federal program provided assurances to wheat importing countries that wheat from uninfected areas were monitored for Karnal bunt under the National Survey program, by sampling and testing of all wheat fields in the United States. Countries that are willing to accept wheat from the affected areas are also assured that grain originating from those areas are tested negative twice for the disease. Through these means, the Federal Karnal bunt program served to maintain and preserve the economic viability of the U.S. wheat export.

IV. Impact on the Affected Industry of Karnal Bunt and Regulatory Actions

The wheat industry within the regulated area is largely composed of businesses who can be considered as ''small'' according to guidelines established by the Small Business Administration (SBA). The characteristics of these firms as well as other small affected entities are provided in detail in section VIII, the Regulatory Flexibility analysis of impacts on small entities. The following discussion on impacts is directly applicable to these entities.

The 1995–96 Karnal bunt regulations primarily affect persons or entities that produce wheat in a regulated area and/or move certain articles associated with wheat out of a regulated area. These articles are subject to certain regulatory actions to minimize the risk of spreading the causal agent of the disease to other uninfected areas. Regulated articles include:

1. Farm machinery and equipment used to produce wheat;
2. Conveyances from field to handler, such as farm trucks and wagons;
3. Grain elevators, equipment and structures at facilities that store and handle grain;
4. Conveyances from handler to other marketing channels, such as railroad cars;
5. Plant and plant parts, such as grain for milling, grain for seed, and straw;
6. Flour and milling byproducts;
7. Manure from animals fed wheat/wheat byproducts from quarantine area;
8. Used sacks;
9. Seed-conditioning equipment;
10. Byproducts of seed cleaning;
11. Soil-moving equipment;
12. Root crops with soil;
13. Soil.

As part of the Karnal bunt program, grain that tests positive for Karnal bunt is prohibited from moving out of the regulated areas. Other contaminated articles must be cleaned and sanitized before such movement. Millfeed must be treated to render inactive any disease causal agent before its addition into animal feed. Grain that tests negative may move under limited permit to approved mills. Commercial seed intended for planting is prohibited movement outside the regulated areas. Wheat seed to be planted within the regulated areas must be sampled and tested for Karnal bunt, and, for seed originating in a regulated area, treated prior to planting. Wheat growers in New Mexico and Texas whose wheat fields were planted with contaminated seed were ordered to destroy their crops.

These requirements have resulted in additional costs and claims of losses to affected individuals. Wheat producers and handlers had loss in market value of their grain; seed companies and researchers have had similar losses, including lost royalties due to the disruption in the development of seed varietals. Other costs were for cleaning and disinfecting equipment and facilities, and damages to machinery caused by required treatment. Some of these losses are presented in Table 2.

TABLE 2.—IMPACT OF KARNAL BUNT QUARANTINE ACTIONS

Action	Regulated article	affected entities	Numbers affected	Types of impacts due to KB and quarantine actions
Plow-down & Seed Plot destruction ...	• Fields planted with infected seed at pre-boot stage	• Certain producers in Texas and New Mexico	• 4100 acres • 73 producers	• Loss in value of wheat crop destroyed.
Cleaning/Disinfection	• Tools and Farm Equipment	• Wheat producers in RA	• 145 growers	• cost of cleaning.
	• Harvesters	• Farmer owned and custom combines	• 389 combines	• cost of cleaning.
	• Grain Trucks	• Grain haulers from field to grain elevators	• 976 trucks	• cost of cleaning.
	• Grain storage and loadout facilities	• Grain handling firms	• 17 elevators	• cost of cleaning.
	• Harvesters	• Combine harvester owners	• 36 to 40 combines	• Excess wear and tear on equipment.
	• Harvesters	• Combines involved in pre-harvest sampling	• 5 to 10 combines	• Down-time on harvesters due to field testing.
	• Harvesters	• Custom combine companies	• 5 companies	• Loss of income due to termination of contracts outside the RA.
	• Railcars	• Grain handling firms	• 10,880 cars (511 for positive grain)	• cost of cleaning.
Restriction on Use or Marketings	• KB-postive milling wheat	• Producers • Grain handling firms	• 145 growers • 6 handlers	• Loss in value of KB-positive wheat.
	• KB-negative milling wheat	• Producers in RA • Handlers in RA	• 664 producers • 26.7 million bushels	• Loss in value of KB-negative wheat in RA.
	• Millfeed	• Millers, millfeed processors	• 108 mills • 45,644 tons	• Millers reluctance to mill KB-negative wheat from RA.
	• Movement restrictions on wheat seed	• Seed producers, researchers, and companies	• 15 producers • 9 research firms • 20 seed marketers	• Loss in premiums • Loss in market value • Loss in royalties.

TABLE 2.—IMPACT OF KARNAL BUNT QUARANTINE ACTIONS—Continued

Action	Regulated article	affected entities	Numbers affected	Types of impacts due to KB and quarantine actions
	• Straw, Manure, Millfeed	• Straw producers and Handlers-Users of Straw • Livestock producers using wheat or straw produced in the RA • Flour millers • Millfeed processors/ users	• 25 growers • 3 contractors • 1 straw user, making of straw mats for erosion control • 7 millers in 5 States • 2 millfeed processors	• Loss in income • Increased cost of production.
	• Moratorium on wheat production on KB-positive fields	• Producers with KB-positive properties	• 109 growers • 13,674 acres	• Loss in income from wheat.
	• Soil on root crops grown on infected properties	• Vegetable producers on KB-positive properties	• Unknown number	• Increased cost of production.
	• Used seed sacks • Seed-conditioning equipment • Byproducts of seed	• Seed research and marketing companies	• 9 research firms • 20 seed marketers	• Increased cost of production.

RA—Regulated Area.

Estimated losses in value to the affected wheat industry in the Southwest are discussed below. The major identified categories of losses include:

Plow-down of infected fields in New Mexico and Texas;

Loss in value of wheat testing positive for Karnal bunt for producers and handlers;

Loss in value of wheat testing negative for Karnal bunt for producers and handlers;

Cost of millfeed treatment;

Cleaning and disinfecting of grain storage facilities;

Loss in product value to handlers and growers with wheat inventories for past crop seasons;

Loss in product value to participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found positive for Karnal bunt;

Loss in value of wheat seed and straw; and

Losses Related to Cleaning and Disinfecting Combine Harvesters and Other Losses.

These areas of economic loss are discussed below. Please note that losses have not been identified for participants in the National Survey, because Karnal bunt has not been discovered outside the original outbreak area of the Southwest. Also, losses to handlers and growers with wheat inventories for past crop harvest are included in the discussion of loss in value of negative testing grain.

With regard to wheat inventories for past crop harvest, historical data and field staff observations suggest that pre-1996 produced wheat inventories in the quarantine areas represent a small fraction of the losses for negative testing grain, as leftover inventories are less than 5 percent of the annual production (1–2 million bushels).

1. *Order to Plow Down Fields Planted with Infected Seed at Pre-Boot Stage.* Most of the acreage ordered to be plowed down in April 1996 was farm production acreage located in four counties in New Mexico (Dona Ana, Hidalgo, Luna, and Sierra) and in two counties in Texas (El Paso and Hudspeth). This acreage amounted to approximately 4,100 acres. Other affected acreage were small seed experimental plots in Washington, California, and South Dakota that totaled perhaps 50 acres in all.

Many affected growers were able to plant immediately with vegetables and recover some losses by farming alternative crops on affected land. Fertilizer carry-over on destroyed wheat fields was possible for crops grown on affected fields. The impact on farm income that could have been derived from wheat, however, is uncertain, as it is unclear what the market returns to wheat grown on known affected fields would have been if the plow-down order had not occurred.

2. *Cost of Sanitizing Grain Storage.* The purpose of this requirement was to destroy spores and thereby reduce the likelihood of cross-contamination of grain storage facilities that came into contact with infected kernals or spores. The sanitization of facilities involves primarily fumigation with methyl bromide. Records of APHIS surveys in the regulated area indicate that 16 facilities were subject to cleaning. The average cleaning cost of each facility is estimated at $16,750, for a total cleaning cost of $268,000 incurred to facility owners.

3. *Loss in Value of Wheat Testing Positive for Karnal Bunt.* Wheat testing positive for Karnal bunt (either by pre-harvest sample or by testing at the elevator site) was required to go into sealed storage. This movement of wheat out of the regulated area was restricted (exiting only with a limited permit) and most went into local animal feed uses after treatment that rendered ineffective any Karnal bunt spore. This involved a heat-roll-flaking process commonly in use for small grains for feed formulas in California. Infected wheat lost value as it was diverted from its original purposes to the animal feed markets where it had to compete against lower-priced feed grains. Similar discounts would have likely existed in the absence of regulatory actions.[3]

Eight percent of wheat production in the regulated area was found to be KB-positive. This level of production amounted to 2.32 million bushels of wheat taking a loss on average of $1.80 per bushel, with an estimated total loss in value of positive wheat to producers and handlers of $4.2 million.

4. *Loss in Value of Wheat Testing Negative for Karnal Bunt.* At harvest, many wheat buyers refused to honor purchase contracts with producers for

[3]Price discounts on both KB-positive and negative wheat could have been greater in the absence of regulatory action. While this may justify the regulatory action taken, the more convincing evidence is the large benefits of regulations to the greater part of the U.S. wheat industry outside of the regulated area.

their grain, most of which had been tested negative for Karnal bunt by pre-harvest sample. These contracts had been agreed upon before the discovery of the disease and the declaration of quarantine. Also, wheat millers inside and outside the regulated areas became reluctant to buy wheat from grain handlers due to the increased cost of handling wheat from the regulated areas. Prices for wheat produced within the regulated areas, therefore, dropped regardless of its disease status.

A total of approximately 26 million bushels of KB-negative wheat produced in the quarantine areas apparently suffered price losses. Ninety-two percent of the quantity produced for domestic milling (approximately 13 million bushels), plus the diverted quantity of KB-negative wheat that was originally intended to be exported (6 million bushels) could have experienced a price reduction. A portion of the remaining 7 million bushels intended for export that could not be sold at contract price could also experience a similar loss. We estimate that negative grain would suffer an average price drop of $1.10 per bushel. Thus, total losses due to the decline in market value of KB-negative wheat held by producers and handlers could total $28 million. This amount would be reduced by the amount of grain sold on contract which received full contract price. Producers would not have realized any losses on such production. Handlers may have incurred the full drop in value of their wheat sales depending on their previous contract prices. Given that information on contracts of individual producers and handlers is unknown, it is estimated that $28 million is the potential maximum amount of economic loss due to a drop in value of uninfected wheat grown in the regulated area. However, the actual amount of grain that would experience a loss in value is expected to be lower.

5. *Cost of Millfeed Treatment.* Millfeed is a byproduct of wheat milling (the outer husk of the wheat kernel and other byproducts from milling). Approximately 25 percent of the raw wheat going into milling comes out as millfeed, while the remaining 75 percent is converted into flour. The sale of this milling byproduct contributes around 10 percent towards their gross income from milling. With the higher likelihood of Karnal bunt being present in the millfeed rather than the flour, restrictions were placed on the movement of millfeed produced from wheat grown in the regulated areas. These restrictions stated that millfeed, before their addition into animal feeds, were to be treated in order to render inactive any presence of Karnal bunt spores. For whole wheat kernels, this normally means that wheat undergo a heating-rolling-and-flaking process. Similar procedures, except for flaking, were assumed to be required in treating millfeed.

Many animal feed manufacturers commonly heat and treat ingredients in their feed products. The treatment requirements would not add any additional costs for them. For others, that restriction would place an additional processing cost of around $35 per ton to their operation. Based on requests for compensation from millers in Minnesota, Missouri, Oregon, Wisconsin, and Virginia who are processing KB-negative wheat produced in a regulated area, we estimate the additional cost of mill feed treatment in response to the Karnal bunt quarantine to total $1.6 million.

6. *Loss in Value of Seed*. Under the 1996 quarantine and emergency actions, wheat seed produced in the regulated areas was prohibited from sale outside of the regulated areas. Wheat seed intended for planting within the regulated areas must be sampled and tested for Karnal bunt, and for seed originating in a regulated area, treated prior to planting. These restrictions are estimated to have a significant impact on the seed industry, largely due to the high value that is commanded by propagative seed. Seed companies contract with growers to produce seed wheat at about 30 to 50 cents per bushel premium over non-propagative wheat. This premium reflects the added precautions in production to ensure seed integrity and cleanliness. These companies were affected by the decline in market value resulting from the inability to move seed out of the regulated areas. It is estimated that 1.5 million bushels of wheat seed sustained loss in value of between $5 and 6 million. Seed developers, who earn returns on their investment in research and development of wheat varieties, also claim potential long-term losses in royalties; by receiving plant variety protection (or patent rights), seed developers then obtain royalties on future sales of wheat that are developed and sold for propagative purposes. Other economic losses suffered by the seed industry, but are difficult to quantify, include additional handling, storage, and finance costs on seed that could no longer be sold outside the regulated areas and costs to relocate wheat breeding operations outside of the regulated areas.

7. *Loss in Value of Straw*. Many growers sell wheat straw to supplement their wheat grain income. Straw is sold for use at places such as racetracks, highway shoulders, feed yards, and parks for erosion control and to minimize muddy conditions. Wheat straw is listed in Karnal bunt regulations as a regulated article and is prohibited from being moved outside of the regulated areas. This has prevented many wheat straw producers from shipping their 1995–96 crop season straw to the intended markets. Some wheat straw was sold to alternative markets within the regulated areas for a lower price; other wheat straw was not able to be sold. These losses are estimated at about $200,000.

8. *Losses Related to Cleaning and Disinfecting Combine Harvesters and Other Losses*. A number of costs have been claimed by about 220 combine harvesters operating within the regulated areas, and those who travel outside of the regulated areas to harvest crops. These losses are related to the cleaning and disinfecting requirements of combine harvesters, which particularly affected custom harvesters who contracted with the Agency to do pre-harvest sampling for Karnal bunt. These losses involved: (1) Excess damage to machines caused by treatment protocols; (2) cleaning and disinfecting costs; (3) down time and extra operational costs associated with testing of samples and treatment protocols; and (4) loss of business as wheat producers inside and outside the regulated areas switched to custom harvesters that were not associated with the 1996 wheat harvest in the regulated areas. The most serious of these claims that can be directly attributed to the regulations involves the excess wear and tear due to the subsequent corrosion on combines that underwent extensive cleaning and disinfecting treatments according to protocol. The loss in value of these combines is estimated at $2 million.

Other economic losses that have been claimed by affected individuals in the regulated areas but that are difficult to quantify include additional handling, storage, and finance charges incurred by handlers of nonpropagative wheat and various other claims by producers and handlers in the regulated areas such as cleaning and disinfecting railcars and trucks and buying wheat from alternate sources to fulfill contracts that originally stipulated wheat produced from the regulated area. The Agency continues to gather information for quantifying costs to seed producers and others impacted by Karnal bunt or the Agency programs to limit it.

In sum, the quarantine and regulatory measures in the southwestern United

States were necessary to protect the wheat industry from a $500 million loss in net sector income due to a drop in wheat export. The Southwest produces 3 percent of the U.S. wheat supply and its share of those losses would have been $15 million, if the export losses were evenly distributed across the country. It is likely that although the export losses would become evenly distributed over time, the Southwest would suffer higher proportionate losses the first year since in the absence of a quarantine it would be perceived as the focus of a spreading infestation.

The impact of Karnal bunt and the subsequent quarantine actions on market value within the regulated area, as estimated in this analysis, should not exceed $44 million (Table 3). As discussed in Section V below, $39 million in compensation has been made available through budget apportionment to mitigate these losses.

While certain losses described above are clearly linked to the quarantine and emergency actions, it is likely that individuals suffering these losses alternatively would have shared the projected $500 million in export losses which would have occurred in the absence of a quarantine. The costs incurred in destroying immature wheat fields in New Mexico and Texas are more clearly associated with complying with regulatory directives. It is unlikely that producers who planted with suspect wheat seed would have plowed under their fields without the order, because unless producers surveyed their fields or tested their grain the disease may not have become evident until several years in the future. The cleaning and disinfecting protocols for grain storage facilities and farm equipment, which resulted in additional operating expenses, can also be linked to regulatory requirements.

Regulatory requirements to sanitize railcars and treat millfeed caused many domestic mills to drop contracts with producers and handlers of grain from the affected areas, resulting in a decline in wheat prices within the regulated areas. In the absence of the regulatory requirement on millfeed, domestic wheat millers would have likely purchased negative-testing grain from the infected areas. Although some millers were reluctant, the high quality of the durum wheat produced within this area, coupled with a regulatory program that required testing, would have helped counter their reluctance. However, in addition to requiring testing the regulations required that millfeed be treated and railcars sanitized, which increased the costs of milling wheat from the regulated area by $35–40 per ton, and prompted many contracts with grain producers and handlers to be canceled.

It is reasonable to expect, however, that in the absence of regulation some portion of the losses would have resulted as the market responded to the disease. A number of importers refused to honor purchase contracts with handlers for negative-testing grain. This is due in part to the perceived risk of the product, and also due to the increased costs of taking precautionary measures in handling grain from the infected areas. Some decline in the value of uninfected wheat within the regulated area would have likely occurred upon discovery of Karnal bunt, even if quarantine actions were not invoked. The actual share of losses that is directly attributable to the presence of the disease itself is difficult to quantify. Based upon the quantifiable losses calculated in this analysis, it is estimated that roughly 12 percent of the $44 million in losses (those associated primarily with the plow-down, cleaning and disinfecting of storage facilities and combine harvesters, and treating millfeed) were incurred due to regulatory actions and requirements. The remaining 88 percent of the losses (composed of loss in value of negative-testing grain, seed and straw, and positive-tested wheat) occurred in the regulated area as the market concentrated its restrictions to those areas identified as having Karnal bunt.

Based upon the export experience of this past year, it is estimated that 25 percent of the wheat intended for export was diverted to other markets because countries refused to import wheat from the regulated area, despite APHIS'' assurances the wheat had twice tested negative for Karnal bunt. These losses would have occurred if no regulations had been put into place and arguably more exports would have been diverted to other markets in the absence of regulation.

TABLE 3.—ESTIMATED LOSS IN VALUE DUE TO KARNAL BUNT REGULATIONS, 1995–96 CROP YEAR

[In million dollars]

Action	Estimated loss in value
1. Plowdown of NM and TX fields planted with infected seed	$1.2
2. KB-positive grain diverted to animal feed market	4.2
3. KB-negative grain that experience loss in value	[1] 28.0
4. Cost of sanitizing storage facilities	0.3
5. Millfeed treatment of KB-negative grain	1.6
6. Loss in value of seed	6.0
7. Loss in value of straw	0.2
8. Loss related to cleaning and disinfecting of combine harvesters	2.0
Total	44.0

[1] $28 million is the potential *maximum* amount of loss in value of uninfected wheat.

V. Federal Compensation To Mitigate Losses

The Karnal bunt quarantine that was initially established was necessarily broad due to the lack of data available at the time as to the extent of the infestation. The discovery of Karnal bunt and subsequent quarantine and emergency actions occurred after production and marketing decisions had been made. Producers and other affected individuals had little time or ability to avoid the unexpected costs or pass those costs on to others in the marketing chain. The impact was particularly severe on the wheat industry in the affected area because much of the crop is grown under contract at specified amounts and prices.

In order to alleviate some of these hardships and to ensure full and effective compliance with the quarantine program, compensation to mitigate certain losses was offered to producers and other affected parties in a regulated area. The payment of compensation is in recognition of the fact that while benefits from regulation accrue to a large portion of the wheat industry outside the regulated areas, the regulatory burden falls predominantly on a small segment of the affected wheat industry within the regulated area.

For the 1996 wheat crop, $39 million in compensation funding, including pending compensation actions, has been made available to USDA through budget apportionment.

The Agency has identified three principles for deciding whether to provide compensation. First, compensation may be appropriate where quarantine and emergency actions cause losses over and above those that would result from the normal operation of market forces. Payment of compensation would reflect the

incremental burdens of complying with regulatory requirements insofar as market forces would not otherwise impose similar or analogous costs. Second, compensation may be appropriate where parties undertake actions that confer significant benefits on others. Under this principle, payment of compensation would be intended to overcome the usual disincentives to produce such benefits. Third, compensation may be appropriate where a small number of parties necessarily bears a disproportionate share of the burden of providing such benefits. This principle rests on the widely shared belief that burden-sharing is a fundamental principle of equity.

The Agency compensation plan for Karnal bunt proceeds from these three principles. Individual decisions regarding what specific losses to compensate and how much compensation to offer in each case were made in line with the above basic principles which describe the goals of compensation. A top equity priority was compensation for costs of plowing down fields, and for wheat and other articles the Agency ordered destroyed or prohibited movement. Compensation amounts took into account the need to mitigate real losses caused by the regulations, so that regulated parties would not have a strong economic incentive to avoid compliance. At the same time, amounts were not set at a high enough rate to establish a ''bounty'' that would encourage fraudulent claims or behavior that would result in increases in contaminated wheat or other articles eligible for compensation.

The compensation committed to date for the 1995–96 crop year, as published as an interim rule in the **Federal Register** on July 5, 1996, and adopted in a final rule published in this issue of the **Federal Register**, included compensation for:

- Plow-down of infected fields in New Mexico and Texas;
- Loss in value of wheat testing positive for Karnal bunt for producers and handlers;
- Loss in value of wheat testing negative for Karnal bunt for producers and handlers;
- Cost of millfeed treatment;
- Cleaning and disinfecting of grain storage facilities;
- Compensation for handlers and growers with wheat inventories for past crop seasons;
- Compensation for participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found positive for Karnal bunt.

These areas of compensation are discussed below. Please note that compensation has not been necessary for participants in the National Survey, because Karnal bunt has not been discovered outside the original outbreak area of the Southwest. Also, losses to handlers and growers with wheat inventories for past crop harvest are included in the discussion of loss in value of negative testing grain.

To offset for costs related to the plow-down, compensation was offered to 74 producers to cover the $25 per acre plowing cost plus the $275 per acre in average cost of production expenses (up until the time the crop was destroyed). In total, these producers received compensation of $1.02 million to cover operating costs incurred for growing wheat.

Compensation is committed to owners of contaminated grain storage facilities on a one-time only basis for up to 50 percent of the cost of decontamination, not to exceed $20,000. Total cost of compensation, as of March 14, 1997, is estimated at $134,000, with an average compensation per facility of $8,375.

The total compensation expected to be paid for the loss of value of both KB positive wheat and KB negative wheat from the regulated areas is approximately $25 million. Compensation paid as of March 14, 1997, is estimated at $12,409,000. The categories of wheat eligible for compensation are discussed below.

Program guidelines limited maximum compensation rates for KB positive wheat to $2.50 per bushel; producers were asked to establish financial losses by calculating the difference between their contract price and actual prices received (if production was pre-contracted) or the difference between the estimated market value in May-June 1996 and their actual prices received (if production was not pre-contracted). Handlers were limited by the same maximum compensation amount, but determination of financial loss was based on the difference between their wheat purchase price and a $3.60 per bushel salvage value. They may have had additional costs to sort and treat their KB-positive wheat (after finding their KB-negative wheat was, in fact, KB-positive). Moreover, many handlers were reluctant to accept wheat from affected areas. This expedited procedure was offered to handlers in order to reduce administrative and recordkeeping costs by not addressing their losses on a contract-by-contract basis. It provided assistance that avoided a market collapse.

For those growers who grew wheat under contract but who did not receive full contract price, compensation for loss in value of wheat testing negative for Karnal bunt is made based on the difference between the contracted price and the higher of the actual price received by the producer or the salvage value. (Salvage value was to equal whichever price was higher of the following: The average price paid in the region of the regulated area where the wheat was sold for the period between May 1 and June 30, 1996; or $3.60 per bushel.)

Compensation for growers of nonpropagative wheat not grown under contract is based on the difference between the estimated market price for the relevant class of wheat and the higher of the actual price received or its salvage value. (Salvage value was to be the same as above for contracted wheat.) The estimated market price is what the market price would have been if there were no quarantine for Karnal bunt, and is calculated for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs. The compensation formula for negative grain would suggest an average price drop of $1.10 per bushel.

In order to encourage wheat marketings from the regulated areas and reassure millers that they would not incur any additional costs in handling uninfected wheat from a regulated area, a $35 per ton cost offset for heat treatment was offered to millers using KB-negative wheat produced in a regulated area. As of March 14, 1997, 108 requests have been made from millers in Minnesota, Missouri, Oregon, Wisconsin, and Virginia for a total of $1.7 million.

It should be noted that, as stated in the interim rule of July 5, 1996, the Agency is developing a compensation plan for the loss in value of 1995–96 crop season seed. This plan will be published in a future edition of the **Federal Register**. Compensation for loss in income due to the restrictions placed on movement of straw and damaged custom harvesters will also be addressed in a future edition of the **Federal Register**.

Compensation payments for loss in value, while not accounting for every loss or expense due to the disease or regulation, limited the adverse impact on wheat sector income of affected individuals within the regulated areas. The final amount of compensation for grain testing negative and for millfeed treatment will depend on the marketing distribution of the 1996 wheat crop and

will be proportionately lower the greater the amount of wheat that is exported.

VI. Conditions for Wheat Production and Utilization in a Regulated Area for the 1996–97 Crop Year

Based upon survey data identifying the location of fields that have tested positive, the regulations in effect during the 1996 harvest were modified in 1997 for some areas within the initial quarantine. The final rule published on October 4, 1996, set forth criteria by which fields in regulated areas would be classified into two risk classes in the 1996–97 crop year. The effects of being classified in a particular category are outlined in Table 4.

In each regulated area, all or a portion of that regulated area is designated as either being a restricted area or a surveillance area. There are two differences between being designated a restricted area and a surveillance area. First, grain from a restricted area that tests negative for Karnal bunt may move under a limited permit from the regulated area to designated facilities under safeguard and sanitation conditions; grain from a surveillance area that tests negative for Karnal bunt may move under a certificate to any destination without restriction. Additionally, millfeed from grain produced in a restricted area is required to be treated, whereas millfeed from grain produced in a surveillance area is not required to be treated.

Each restricted and surveillance area is further divided into individual fields within the respective areas. Each field within a restricted area will fall into one of three categories: (1) A field in which preharvest samples tested positive; (2) a field planted with known contaminated seed in 1995; or (3) any other field within the restricted area. In a surveillance area, each field will be designated as (1) a field planted with known contaminated seed in 1995; or (2) any other field in the surveillance area. In a restricted area, in fields in which preharvest samples tested positive, no Karnal bunt host crops may be planted in the 1996–97 crop season. The same prohibition applies to fields in both restricted areas and surveillance areas which were planted with known contaminated seed in 1995. Also, as noted above, millfeed from grain from a field in the ''any other field'' category in a restricted area must be treated; millfeed from a surveillance area need not be treated.

TABLE 4.—CONDITIONS FOR WHEAT PRODUCTION AND UTILIZATION IN A REGULATED AREA

	Definition	Host planting	Seed	Decontamination	Millfeed	Survey	Disposition of grain
Restricted Area Category:							
1	Fields in which preharvest samples tested positive.	No host planting in 1996–97 crop season.	N/A	Equipment movement outside regulated area: cleaned and sanitized. Movement within: no restrictions.	N/A	N/A	N/A.
2	Fields planted with known contaminated seed in 1995.	No host planting in 1996–97 crop season.	N/A	Equipment movement outside regulated area: cleaned and sanitized. Movement within: no restrictions.	N/A	N/A	N/A.
3	All other fields within restricted area.	No restrictions	Tested and, if from regulated area, treated prior to planting only within regulated area.	Equipment movement outside regulated area: cleaned and sanitized. Movement within: no restrictions.	Required, unless destination State controls disposition /movement.	Double tested: Sampled in field at harvest; composite sample prior to movement.	Movement of grain testing positive restricted; grain testing negative may move under limited permit to designated facilities under safeguard and sanitation conditions.
Surveillance Area:							
4	Fields planted with known contaminated seed in 1995.	No host planting in 1996–97 crop season.	N/A	Equipment movement outside regulated area: cleaned and sanitized. Movement within: no restrictions.	N/A	N/A	N/A.

TABLE 4.—CONDITIONS FOR WHEAT PRODUCTION AND UTILIZATION IN A REGULATED AREA—Continued

	Definition	Host planting	Seed	Decontamination	Millfeed	Survey	Disposition of grain
5	All other fields located in definable area where no fields in risk level 1 are located.	No restrictions	Tested and, if from regulated area, treated prior to planting only within regulated area.	Equipment movement outside regulated area: cleaned and sanitized. Movement within: no restrictions.	Not required	Double tested: Sampled in field at harvest; composite sample prior to movement.	Movement of grain testing positive restricted; grain testing negative may move under certificate. Safeguard and sanitation of railcars not required.

The number of wheat acres that is estimated to fall into the various risk categories in the 1996–97 crop season is presented in Table 5. The amount of wheat acres in the regulated area is estimated to be greatly reduced from the previous years largely due to factors affecting the wheat industry as a whole (in particular, the projected decline in export demand for U.S. wheat). Wheat acres are estimated to decline by 36 percent in the regulated areas of Arizona, an average of 24 percent in the three affected counties of California, and 20 percent each in New Mexico and Texas.

TABLE 5.—PROJECTED 1997 REGULATED WHEAT ACREAGE, BY RISK CATEGORIES [1]

Risk category	Arizona	California			New Mexico	Texas	Total acres
		Imperial Valley	Bard/ Winterhaven	Blythe			
	Acres						
Restricted Area	9,200	.....	40	450	3,239	494	13,423
Surveillance Area	105,800	90,000	3,960	4,050	4,128	3,906	211,844
Total 1997 Regulated Area	115,000	90,000	4,000	4,500	7,367	4,400	225,267
1996 Regulated Area	180,000	106,592	8,909	14,000	9,209	5,494	324,204

[1] Estimates obtained from the Karnal Bunt Task Force, Arizona.

Overall, the impact of the Karnal bunt restrictions is likely to be lessened for many growers and other individuals, as a large portion of the regulated acres falls into the less restrictive surveillance category. Additionally, an interim rule published in the **Federal Register** on May 1, 1997 (Docket No. 96–016–19, 62 FR 23620–23628), established a new standard for defining regulated areas for Karnal bunt based on finding bunted wheat kernals rather than just spores. That interim rule substantially reduced the size of the harvested wheat area regulated for Karnal bunt, in addition to the market-based decline in wheat acres in the regulated areas above. Wheat production can still occur on fields in the regulated areas (in restricted category 3), on land which was not previously planted with wheat in 1996. Growers who choose to plant wheat in these areas are minimally restricted by regulations as grain that tests negative for Karnal bunt can move under limited permit to designated facilities.

Approximately 10,000 acres in risk categories 1 and 4 are prohibited from planting wheat. The value of wheat production that could have been harvested from these fields, calculated at an average price for durum wheat before the disease outbreak of $5.50 per bushel, would have been less than $6 million.[4] The impact on growers with fields in these categories, however, is uncertain. While the restrictions deny income that could be earned from wheat, they do not preclude the planting of other non-host crops, such as barley, alfalfa, cotton, and vegetables. In many of the infected areas, especially on irrigated operations, wheat is either double-cropped or grown on rotation with other non-host crops. The impact on producers in these risk categories would therefore be minimized with rotation. Barley would likely be grown on these fields: county crop budget data from Arizona indicate that, except for barley, the historical net returns obtained from wheat production are actually lower than the net returns for all other crops.[5]

It should be noted that changes in the compensation plan to remunerate for certain losses are being developed and will be published in a future edition of the **Federal Register**. Information received through public comments and other forums is invaluable in refining regulatory policies regarding Karnal bunt. With no prior experience in regulating the disease, the improvement of the Karnal bunt program requires ongoing input from the public. This process will enable the Agency to better protect the wheat growing areas of the United States, while causing the least possible disruption to the affected areas.

[4] The estimate is based on an average yield of 100 bushels per acre for durum wheat produced in the desert Southwest.

[5] Other rotational crops include alfalfa hay, sudan hay, upland and pima cotton, safflower, and lettuce.

VII. Consideration of Alternatives to the Rule

A number of alternatives to the quarantine were considered by the Agency in controlling the disease outbreak. One alternative was to limit the scope of the 1996 quarantine by regulating only fields that tested positive for Karnal bunt. This option was rejected for the following reasons. Karnal bunt was originally detected in many certified wheat seed lots produced in Arizona, as well as in some grain in storage from a previous harvest. The information available to the Agency indicated that seed from the infected lots were planted widely in parts of Arizona and California, and in a few counties in Texas and New Mexico. This infected seed could not be traced to specific fields because the process of seed certification in Arizona allows seed from different fields to be commingled in making a seed lot. Because Karnal bunt spores can remain viable in soil for as long as 4 to 5 years, and because wheat is planted in rotation in the Southwest, the actual infestation would not be apparent until fields came into rotation with wheat. Moreover, the detection of Karnal bunt spores in some grain in storage from the 1993 harvest indicated that the disease had been present for at least several years. Given that there is currently no feasible soil test, the disease, in this situation, could only be detected as wheat is planted. The unknown extent of the infestation in Arizona and California necessitated broader control actions than those offered by quarantining infected fields. In New Mexico and Texas, where wheat acreage planted with suspect seed was limited and the wheat crop was immature, regulatory actions were directed at plow-down of those fields.

Another alternative available to the Agency would be not to quarantine. This alternative was rejected as it could not be justified given the risk of spread of Karnal bunt to uninfected areas and the potential for significant losses in the wheat export market. The quarantine actions to prevent disease spread serve to instill domestic and foreign consumer confidence in the integrity of U.S. wheat. The 1995–96 Karnal bunt program provided pre-harvest sampling of all wheat fields; compensation for losses as a result of Agency actions; and remuneration to offset part of the additional costs in handling and treating wheat produced in the regulated area (through a millfeed cost offset and a cost-share facility clean-up program with grain handlers). Without Federal intervention, it is conceivable that farm income of wheat producers both within the affected area, and outside the regulated area, would have been more negatively impacted. Therefore, it is also conceivable that Federal intervention to prevent the spread of KB beyond the regulated areas and to identify the KB status of acres within the regulated areas may have had a salutary effect on the market and a beneficial impact on prices both within and outside the regulated areas.

When the treatment protocols for regulated articles were established, few options to the requirements were made available to affected wheat growers, handlers, and combine owners. These specific protocols were based on the best scientific information available on disease management in other countries affected by Karnal bunt. Furthermore, the decision to require millfeed treatment, as with other treatment requirements, was based on risk assessments that were conducted to determine the acceptable level of risk of the various modes of transportation of the disease. Compensation is thus being considered to offset unanticipated losses and damages caused by the regulatory requirements.

VIII. Regulatory Flexibility Analysis—Impacts on Small Entities Within the Regulated Area

The Regulatory Flexibility Act requires that agencies assess the impact of regulations on small businesses, organizations, and governments. A majority of the firms in the affected area can be classified as small based on criteria established by the Small Business Administration (SBA). Much of the analysis on impacts discussed in the previous sections are therefore applicable to these firms. Unless otherwise noted, the SBA's characterization of a small business for the categories of interest in this analysis is a firm that employs at most 500 employees, or has sales of $5 million or less. The SBA defines a ''small'' wheat producer as having sales of less than $500,000.

In addition to private businesses that produce and handle grain in the regulated area, there were a number of other parties, such as governmental and quasi-governmental entities and industry organizations, that were also affected by the quarantine. For example, farm organizations that represented producer interests were impacted by the reduced activity due to a change in farm receipts. Local governments may also have experienced a change in the business activity level, and thus tax receipts, due to lower farmer spending. Seed certification boards are expected to see lower levels of seed certification as the demand for seed is reduced. State and county departments of agriculture could also have experienced increased financial burdens as regulatory responsibilities related to Karnal bunt surveillance and protocol monitoring increased on the local level. The magnitude of these effects, however, are not quantifiable. The information below describes the number of firms affected and provides insight into the impact on small entities due to Federal regulations.

Number of Producers and Acreage in Regulated Area (RA): There were 5,657 farms in the counties of the RA as reported in 1992 with 1,501,089 acres.[6] About ⅓ of the reported total acreage was irrigated. There were 598 wheat growers in the counties of the RA: 236 in California (out of 2,236 wheat growers in the State); 310 in Arizona; 40 in New Mexico (out of 892 in the State); and 12 in Texas (out of 14,877 in the State). Total wheat acreage reported in these counties in 1992 was 176,753 acres producing 13.3 million bushels. Wheat acreage represented less than 12 percent of total farm acreage.

Characteristics of Producers in the RA: Similar cotton and vegetable production data suggest that the primary source of income in these areas is derived from cotton and vegetable production. Cotton acreage in the counties of the RA was reported at 496,284 acres on 1,301 farms in 1992. Vegetables grown for harvest was reported on 509 farms with 202,694 acres. The acreage and number of producers growing wheat, cotton, and other crops vary from year to year depending on rotations, price and weather expectations, and other factors. Wheat is often a rotation crop in cotton and vegetable crop production providing a more stable income while ''resting the soil'' and providing weed control. Common rotations call for wheat in one year in three. Data for the Pacific region indicate that the previous crop on 57 percent of the wheat acres in 1989 had crops other than wheat.[7] Forty-percent had wheat, while 2 percent had corn and 1 percent had sorghum as the previous crop.

Of the total 598 wheat farms in the counties of the RA, 577 (or 96.5 percent) were growing wheat on irrigated fields. Of the 598 wheat producers in the RA, 86 percent of producers harvested 499 acres or less of wheat. These 514 wheat producers are assumed to be classified in the SBA business classification as

[6] Source: 1992 Census of Agriculture.

[7] Source: Economic Research Service, *Characteristics and Production Costs of U.S. Wheat Farms, 1989*, October, 1993.

being ''small entities.'' It is assumed that the other 84 growers are excluded from this business classification. Wheat growers in the RA typically lack on-farm storage.

Acreage Affected: By 1995/96, the amount of planted wheat acreage in the counties of interest had increased; the total number of growers in the RA was reported at 882 growers (455 in Arizona, 354 in California, 72 in New Mexico, and 1 in Texas), with wheat acreage totaling over 300,000 acres. Approximately 145 growers were found to have grown KB-positive wheat, and 73 growers were issued plow-down orders. As a percentage of the total in the four States of the RA, quarantine actions affected less than 3.3 percent of producers, 3.75 percent of wheat acreage, but almost 8 percent of wheat production.

Based on the SBA's size definition, 86 percent of producers (514 out of 598) are assumed to be classified within the small business category. Thus, the major part of any impact from Karnal bunt or Karnal bunt regulations is assumed to fall on these individuals.

Harvesters: Harvesting equipment is expensive and specialized for many agricultural crops. With a cost of over $130,000 for a new combine and only a limited time of use, many wheat growers in the regulated area depend on custom operators or ''custom cutters'' to harvest their wheat crop. It is estimated that about 390 combines were needed to harvest the 1995/96 wheat crop in the regulated area, with much of it being supplied by custom cutters. There were probably 20 to 30 firms engaged in this business activity (not including individuals who may have done some custom cutting of neighboring properties). All firms are assumed to be classified in the SBA classification as being a ''small business.'' It is assumed that only a few of these firms, namely those that were subjected to extensive cleaning and disinfection if they had harvested many KB-positive fields, suffered losses to their machinery as a result of quarantine actions. Additional losses occurred because some harvesters were not allowed to bring their equipment to certain States.

Wheat Seed Dealers: Wheat seed dealers sell seed to growers to produce their crop for milling. They also represent seed wheat research firms in that they sell wheat seed that is grown to be used as seed for the next growing season or for export. This wheat seed is called private variety seed as it was developed by a private firm and has a plant variety protection ''patent'' on that variety. There are approximately 25 to 30 seed marketing firms in the RA; some specialize in acquiring seed production from the RA for export. Probably 3 to 4 seed wheat dealers have over 80 percent of the seed business in the RA. These firms were affected by quarantine actions, i.e. by the restriction on selling or transferring seed out of the RA. Some of these firms derive their income from other enterprises such as vegetable production, rather than solely from wheat production and marketing. The number of firms that can be classified as ''small'' cannot be determined due to the proprietary nature of sales records.

Seed Wheat Research Firms: Seed wheat research firms take the risk and have the expertise to develop new wheat varieties for future use. Many develop a relationship with a seed wheat dealer (who is then called an ''associate'') to market the developers' specific varieties. Seed wheat research firms use seed production in the RA as a basis for seed to be used in climates similar to the RA, e.g. the Mediterranean, or use production in the RA as seed increases'' to be used in Northern climates the following spring. There are approximately 5 to 9 commercial seed wheat research firms engaged in the RA, with perhaps 3 to 4 major firms conducting over 70 percent of research activity. Also, there are small firms in the RA that specialize in ''seed increases'' for varieties being developed by universities, private companies, and foreign countries. The number of firms that can be classified as ''small'' according to SBA standards cannot be determined due to the proprietary nature of sales records.

Custom Haulers: There are approximately 130 to 140 individuals in the RA that haul grain from fields directly after harvest to storage and load-out locations (referred to as grain handlers). Some of these individuals also haul farm machinery from field to field to prepare or harvest wheat and other crops. The number of firms that can be categorized as a ''small business'' is unknown.

Grain Handlers: Grain handlers store and unload nonpropagative wheat received from growers. Wheat is received by trucks, pickups, and farm tractors pulling either grain buggies or farm wagons. Ownership of the wheat is usually transferred from the grower to the grain handler. It is estimated that there are 92 such assembly sites in the RA (50 in Arizona, 33 in California, 8 in New Mexico, and 1 in Texas). Off-farm storage capacities are only available on a State-wide basis[8]: Arizona (22.3 million bushels), California (98.04 million bushels), New Mexico (15.63 million bushels); and Texas (840.2 million bushels). The SBA defines a small grain elevator as one that employs fewer than 100 employees. It is estimated that nearly all of the elevators in the regulated areas can be classified as ''small.''

Wheat Millers: The number of wheat millers for the four States are[9]: California (12, with 1 processing durum); Arizona (2, with 1 processing durum); New Mexico (none); Texas (7, with 1 processing rye). There were 24 millers in and around the RA that entered into limited permits with APHIS: 2 in Arizona, 1 in New Mexico, and 21 in California. Limited permit data indicate that millers in the following States were also affected: Minnesota, Oregon, Virginia, Missouri, and Wisconsin. The size of these operations could not be estimated in terms of their SBA classification as ''small'' or ''large'' businesses. However, these firms are likely to be classified as a ''small'' business.

Prepared Feed Manufacturers: The number of animal feed manufacturers and/or millfeed processors in the Riverside-San Bernardino primary metropolitan statistical area (PMSA) is 15, and there are 11 in Arizona.[10] Only 12 of these 26 establishments employed over 20 employees. The Riverside-San Bernardino PMSA data indicates that the 15 establishments in that area collectively employed a total of 600 workers with a $20.5 million payroll (8 establishments of the 15 employed more than 20 employees). Based on these data, it is estimated that these larger firms employ about 62 workers on average and smaller firms had 15 workers per firm. Similar data for Arizona show that 4 of the 11 establishments in that State employed more than 20 employees. Given these scant data and SBA's definition of a ''small business'' in this group (SIC 2048)—i.e., an establishment with fewer than 500 employees—it is assumed that all firms fall in SBA's ''small'' business category.

Feedlots: It is estimated that about 24 feedlots in the RA (presumably feeding beef cattle) were affected by the regulations. They were found in Arizona (16), New Mexico (3), and California (5). SBA's definition of a ''small business'' in this group (SIC 0211) is an establishment with sales less than $1.5

[8] Source: Grain and Milling Annual 1996. Off-farm capacities may also reflect storage capacities of millers.

[9] See footnote 8.

[10] Source: U.S. Department of Commerce, Economics and Statistics Administration, Bureau, Bureau of Census, various State reports on California and Arizona, Manufacturers—Geographic Area Series, 1992.

million. No sales data on these firms were available, so it is not possible to estimate the number of firms that do not fall in SBA's small business category.

Based on the above information, we have concluded that the majority of the impact of Karnal bunt and subsequent regulations falls on small businesses. It is conceivable, however, that without Federal intervention, individual States and importing countries would place their own, perhaps more severe, restrictions on wheat shipments from the regulated areas. The 1996 Karnal bunt program provided pre-harvest sampling of fields and other measures to ensure the quality of wheat from the regulated areas. The use of limited permits for uninfected wheat further facilitated the marketing flow of wheat, thereby enabling the wheat industry within the regulated areas to be preserved.

IX. Summary and Conclusions

The imposition of quarantine and emergency actions against Karnal bunt was a necessary, short-run measure taken to prevent the artificial spread of the disease to other wheat-producing areas in the United States. The establishment of Karnal bunt would have had serious adverse impact on the wheat export market, as over half of U.S. wheat exports are to countries that maintain restrictions against imports from countries where Karnal bunt is known to occur. In the absence of regulatory action, it is conceivable that farm income both within and outside the regulated areas could have been further jeopardized.

Given the regulatory objective of disease eradication, the quarantine measures to control a new disease outbreak such as Karnal bunt is necessarily broad due to the lack of information on the extent of the outbreak. These actions, enacted after production and marketing decisions were in place, undoubtedly had an adverse impact on growers and other affected individuals; many were likely unable to recover unexpected costs. The loss in market value due to the quarantine is estimated at $44 million. The majority of affected individuals and firms can be classified as ''small'' based on criteria established by the Small Business Administration.

In order to reduce the economic impact of the quarantine on affected wheat growers and other individuals, compensation was provided to mitigate certain losses and expenses. The payment of compensation is in recognition of the fact that while a large portion of the benefits of regulation accrue to others outside the regulated area, the regulatory burden falls disproportionately on a small segment of the industry. Indeed, it could be argued that without compensation, the regulatory actions would not have been economically justified, as the costs of disease control that are borne now could have a greater weight than benefits that are received in the future.

Based upon our analysis, we have concluded that our quarantine measures were appropriate and justifiable when compared with the magnitude of the benefits achieved. Even a 10-percent reduction in wheat exports would have a significant effect on wheat sector income. It is estimated that a 10-percent decrease in U.S. wheat exports would cause a decline in wheat sector income of over $500 million.

As of April 4, 1997, $39 million in compensation funding has been made available to USDA through budget apportionment. While not accounting for every loss or expense due to the disease or regulation, compensation for loss in value lessened the adverse impact on wheat sector income within the regulated areas.

As more information is obtained on disease prevalence, the number of regulated acres are reduced and restrictions for the 1996–97 crop season are modified to be commensurate with the level of risk. The impact on those that are affected by regulation would also likely be reduced; unlike in 1996, the 1997 restrictions on wheat planting are known in advance and can, therefore, be taken into account when cropping decisions are made.

Wheat acreage in the regulated areas is projected to decline from 1995–96 levels, largely due to decreased demand for U.S. wheat exports. Less than 5 percent of the acres in the regulated areas is prohibited from planting wheat. The impact on farm income due to this prohibition is uncertain, as wheat is normally rotated with other crops. Overall, the impact of the Karnal bunt restrictions on wheat production in the regulated areas is likely to be small, as wheat can still be grown on ample, available land that was not planted with wheat in 1996.

Done in Washington, DC, this 30th day of April 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

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Federal Register

Tuesday
May 6, 1997

Part IV

Department of Education

Safe and Drug-Free Schools and Communities National Programs—Grants to Institutions of Higher Education (Validation Competition); Federal Activities Grants Program; and Inviting Applications for New Awards for Fiscal Year 1997; Notices

DEPARTMENT OF EDUCATION

Safe and Drug-Free Schools and Communities National Programs—Grants to Institutions of Higher Education (Validation Competition)

AGENCY: Department of Education

ACTION: Notice of final priorities and selection criteria for fiscal year 1997.

SUMMARY: The Secretary announces final priorities and selection criteria for fiscal year (FY) 1997 under the Safe and Drug-Free Schools and Communities (SDFSC) National Programs Grants to Institutions of Higher Education (IHEs) Validation Competition. The Secretary takes this action to focus Federal financial assistance on an identified national need. The priorities are intended to increase knowledge about effective programs by validating model strategies, policies, and activities to prevent violent behavior and the illegal use of alcohol and other drugs by college students. To achieve this goal, the Department will fund projects designed to work in partnership with neighborhood campus-communities to correct students' normative beliefs about their peers' illegal use of alcohol and other drugs or limit access and availability of illegal alcohol and other drugs in the campus-community.

EFFECTIVE DATE: These priorities take effect June 5, 1997.

FOR FURTHER INFORMATION CONTACT: Safe and Drug-Free Schools Program, U.S. Department of Education, 600 Independence Ave., SW, Room 604 Portals, Washington, DC. 20202–6123. Telephone: (202) 260–3954. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 am and 8 pm, Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Despite progress, enabled in part by a significant ongoing commitment of Federal financial resources to support programs designed to prevent college students' illegal use of alcohol and other drugs, recent national data reflect high rates of use by college students, resulting in negative consequences, including violence on campus. Little research has been conducted on prevention programs in higher education, resulting in a lack of useful information to guide prevention professionals in the design and implementation of effective programs on college campuses. While information about promising alcohol and other drug prevention programs and strategies is gradually becoming more available, most programs still are neither based on solid research nor evaluated rigorously. Only recently have data been collected about the incidence of violence and crime on college campuses. Little information is available about the effectiveness of violence prevention programs on college campuses.

The results of these validated projects may be used by the Secretary of Education to identify and disseminate to IHEs successful programs that prevent violent behavior and illegal use of alcohol and other drugs by college students. Applicants should be prepared to provide statistics and information on crimes occurring on campus, especially liquor law violations, drug abuse violations, and weapons possession, as required under current law.

Under previously funded priorities under this program, Federal funds have supported the development and implementation of a wide range of prevention activities. The priorities supported in this year's competition will focus on the validation of two promising, research-based approaches that have yet to be tested rigorously in the campus-community. Research shows that students who perceive a permissive campus alcohol use environment tend to drink more heavily than they would otherwise based on their personal attitudes (Perkins, Wechsler, Journal of Drug Issues, Vol. 26 No.4, pp. 961–974, 1996). Also, considerable research at the community level shows that access to and availability of alcohol strongly influence the rate of alcohol problems within a given population among both moderate and heavy drinkers (Gruenewald, Millar, and Roeper, Alcohol Health and Research World, Vol. 20, No. 4, pp. 244–245, 1996). Research also shows that there is a correlation between heavy alcohol consumption and violence. Binge drinkers were more likely than their non-binging counterparts to encounter actual physical violence, experience forced sexual touching, and endure unwanted sexual intercourse. (Presley, Meilman, Cashin, and Leichliter, in press)

IHEs need to reassess the alcohol, other drug, and violence prevention programs they are currently conducting and modify or replace programs that fail to show a measurable impact on reducing alcohol, other drug use, and violence with programs that are effective or promising. To promote effective prevention programming, the Department of Education encourages IHEs to: design programs based on an assessment of objective data (such as needs assessments, student-use surveys, assessments of students' dispositions toward drug use); develop measurable goals and objectives linked to the identified needs; use prevention approaches that research or evaluation has shown to be effective in preventing or reducing violent behavior or the illegal use of alcohol and other drugs; and use evaluation results as part of a continuous improvement process to correct approaches that are not working and strengthen approaches that are working.

Applicants should show the ability to start their campus-community program soon after receiving federal funding in order to maximize the time available to show impact within the grant period of two years. Projects supported through this competition should be designed to demonstrate and document significant reductions in alcohol and other drug use and violence at colleges and universities over the grant period. Because of the need for a sound evaluation plan, applicants are advised to obtain outside expert consultation prior to submitting applications.

For additional information or data about college drug prevention programs, policies, strategies, and activities, contact the Department of Education's Higher Education Center for Alcohol and Other Drug Prevention. The Center is a national resource for training and technical assistance to postsecondary institutions. The Center can be contacted at 1–800–676–1730 or through its web site at www.edc.org/hec/

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Applications for this competition must be received at the address specified in the notice inviting applications for this competition no later than 4:30 p.m. on the deadline date in the notice inviting application. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

In making awards under this program, the Secretary may take into consideration the geographic distribution and diversity of activities addressed by the projects, in addition to the rank order of applications.

Contingent upon the availability of funds, the Secretary may make additional awards in fiscal year 1998 from the rank-ordered list of unfunded applicants from this competition.

Absolute Priorities

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary

gives an absolute preference to applications that meet one or both of the following priorities. The Secretary funds under this competition only applications that meet one or both of these absolute priorities: *Absolute Priority* #1—Correcting Misperceptions of Student Alcohol and Other Drug Use by Students Attending Institutions of Higher Education

Under this priority, applicants must propose projects that develop, implement, and validate approaches to prevent violent behavior and the illegal use of alcohol and other drugs by students attending institutions of higher education by correcting misperceptions of student alcohol and drug use norms. Projects must:

(a) Correct the misperceptions among the campus-community population (including college students, faculty, administrators, and parents) about levels of student campus alcohol and drug use, student alcohol and drug use norms, and the consequences of student alcohol and drug use;

(b) implement a rigorous evaluation of the project, using outcome-based performance indicators, that documents strategies used and measures the effectiveness of the program or strategy in reducing student drug use and violent behavior;

(c) use a campus-community coalition to plan and implement the project; and

(d) at the request of the Secretary, coordinate with any report being prepared under section 204(a)(4)(B) of the Student Right-to-Know and Campus Security Act on policies, procedures and practices which have proven effective in the reduction of campus crime.

Absolute Priority #2—Limiting Student Access to and Availability of Alcohol and Other Drugs at Institutions of Higher Education

Under this priority, applicants must propose projects that develop, implement, and validate approaches to prevent violent behavior and the illegal use of alcohol and other drugs by students attending institutions of higher education by limiting student access to and availability of alcohol and other drugs. Projects must:

(a) Establish or expand, and enforce policies that limit student access to, and availability of, alcohol and other drugs in the campus-community for college students;

(b) implement a rigorous evaluation of the project, using outcome-based performance indicators, that documents strategies used and measures the effectiveness of the program or strategy in reducing student drug use and violent behavior;

(c) use a campus-community coalition to plan and implement the project; and

(d) at the request of the Secretary, coordinate with any report being prepared under section 204(a)(4)(B) of the Student Right-to-Know and Campus Security Act on policies, procedures and practices which have proven effective in the reduction of campus crime.

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 or factor under that criterion is indicated in parentheses.

(b) *The criteria.—*

(1) *Need for project.* (10 points)

(i) The Secretary considers the need for the proposed project.

(ii) In determining the need for the proposed project, the Secretary considers the magnitude or severity of the problem to be addressed by the proposed project.

(2) *Significance.* (25 points)

(i) The Secretary considers the significance of the proposed project.

(ii) In determining the significance of the proposed project, the Secretary considers the following factors:

(A) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study. (5 points)

(B) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (10 points)

(C) The likelihood that the proposed project will result in system change or improvement. (5 points)

(D) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings. (5 points)

(3) *Quality of the project design.* (20 points)

(i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (5 points)

(B) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project. (5 points)

(C) The quality of the proposed demonstration design and procedures for documenting project activities and results. (5 points)

(D) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (5 points)

(4) *Quality of the management plan.* (20 points)

(i) The Secretary considers the quality of the management plan for the proposed project.

(ii) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timeliness, and milestones for accomplishing project tasks. (4 points)

(B) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (8 points)

(C) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of students, faculty, parents, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate. (8 points)

(5) *Quality of the project evaluation.* (25 points)

(i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the evaluation, the Secretary considers the following factors:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives and outcomes of the proposed project. (5 points)

(B) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (10 points)

(C) The extent to which the evaluation will provide guidance about effective

strategies suitable for replication or testing in other settings. (10 points)

Paperwork Reduction Act of 1995

The selection criteria for this program contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 USC 3504(h)), the Department of Education will submit a copy of this notice to the Office of Management and Budget (OMB) for its review.

Collection of Information: Safe and Drug-Free Schools and Communities National Programs—Grants to Institutions of Higher Education Validation Competition.

These selection criteria will affect the following types of entities eligible to apply for a grant under this program: institutions of higher education, and consortia thereof. The Department needs, and will use, the information related to the selection criteria for this program to enable the Secretary to determine which applicants would most likely develop, implement, and validate successful model projects for demonstration throughout the nation. Annual public reporting and record-keeping burden for this collection of information is estimated to average 32 hours per response for 100 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating 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;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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.

OMB is required to make a decision concerning the information collection requirements between 30 and 60 days after publication in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed rules. Ordinarily, this practice would have applied to the rules in this notice. However, the Secretary waives rulemaking under section 553(b)(B) of the Administrative Procedure Act. This section provides that rulemaking is not required when the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The Secretary believes that, in order to make timely grant awards using Fiscal Year (FY) 1997 funds, public comment on those rules is impracticable. Congress did not provide FY 1997 funds for SDFSC National Program until March 1997. The Secretary must make new awards no later than September 30, 1997, and recipients should be able to implement projects as early as possible in the 1997–98 school year.

Therefore, in order to give applicants enough time to prepare their applications and the Department sufficient time to conduct the lengthy review process in this notice, it is now impracticable to receive public comments and still allow FY 1997 awards to be made by September 30, 1997.

Program Authority: 20 U.S.C. 7132.

(Catalog of Federal Domestic Assistance Number 84.184H Safe and Drug-Free Schools and Communities Act National Programs—Grants to Institutions of Higher Education)

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 97–11769 Filed 5–5–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program

AGENCY: Department of Education.

ACTION: Notice of final priorities and selection criteria for fiscal year 1997.

SUMMARY: The Secretary announces final priorities and selection criteria for fiscal year 1997 under the Safe and Drug-Free Schools and Communities National Programs Federal Activities Grants Program. The Secretary takes this action to focus Federal financial assistance on identified needs to improve programs to prevent drug use and violence among youth.

EFFECTIVE DATE: These priorities and selection criteria take effect June 5, 1997.

DEADLINE FOR RECEIPT OF APPLICATIONS: Applications for these competitions must be received at the address specified in the application package for these competitions no later than 4:30 p.m. on the deadline date in the notice inviting applications. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

FOR FURTHER INFORMATION CONTACT: For further information about the two priorities under the Safe and Drug-Free Schools and Communities National Programs Federal Activities Grants Program, contact the U.S. Department of Education, Safe and Drug-Free Schools Program, 600 Independence Ave., SW, Washington, DC 20202–6123. Telephone: (202) 260–3954. FAX (202) 260–7767. Internet: http//www.Bryan__Williams@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 am and 8 pm, Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice contains two final priorities and related selection criteria under the Safe and Drug-Free Schools and Communities National Programs Federal

Activities Grant Program. The purpose of the program is to prevent the illegal use of drugs and violence among, and promote safety and discipline for, students at all educational levels from preschool through the postsecondary level.

Note: Contingent upon the availability of funds, the Secretary may make additional awards in fiscal year 1998 from the rank-ordered list of unfunded applicants from these competitions. In making awards under these grant competitions, the Secretary may take into consideration the geographic distribution and diversity of activities addressed by the projects, in addition to the rank order of applications.

Absolute Priorities

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary will fund under these competitions only those applications that meet one of these absolute priorities:

Absolute Priority 1 and Selection Criteria—Replication of Effective Programs or Strategies to Prevent Youth Drug Use, Violent Behavior, or Both (CFDA # 84.184F)

Absolute Priority 1

Under this priority, applicants must propose projects that—

(1) Will replicate, with fidelity, a program or strategy that has demonstrated sustained reductions in youth drug use, violent behavior, or both, over at least a two-year period;

(2) Are clearly responsive to identified needs of the student population that will be served; and

(3) Will include a rigorous evaluation of the project that focuses on measurement and analysis of behavior change among students as a direct result of the program.

Programs or strategies eligible for replication under this competition are those that (1) Have been evaluated and found effective in research studies funded by the National Institute on Drug Abuse or another Federal agency, or (2) have findings demonstrating effectiveness published in a peer-reviewed journal of national distribution. Locally developed programs are also eligible for replication if they have been tested within a single population (cohort) of students over at least a two-year period and have demonstrated measurable reductions in student drug use, violent behavior, or both. Applicants proposing a locally developed project must provide evaluation data that is well documented and clearly demonstrates the program's effectiveness as of the date of this notice.

For purposes of this competition, fidelity of implementation means implementing the program in the same manner as the program was implemented when it was proven to be effective in preventing or reducing drug use, or violent behavior, or both, inclusive of all components of the program or strategy that the developer and evaluator consider to be key, unique, and necessary features. These components may include, but need not be limited to, the use of specified materials, teaching techniques, and approaches; involvement of specified persons or stakeholders with particular functions or roles; and performing specified activities according to a specified sequence or schedule.

Additional Information

This priority supports the implementation of drug and violence prevention programs and strategies that are data-driven—that is, are based on analysis of objective data about problems that need to be addressed, have measurable goals and objectives, and use prevention approaches that research has demonstrated to be effective in preventing or reducing drug use, violent behavior, or both.

Examples of some drug prevention programs that have been proven effective may be found in Preventing Drug Use Among Children and Adolescents published by the National Institute on Drug Abuse. The document is available from the National Clearinghouse for Alcohol and Drug Information (NCADI), PO Box 2345, Rockville, MD 20874–2345; 1–800–729–6686. Examples of some approaches to violence prevention are contained in abstracts of programs evaluated by the Centers for Disease Control. The abstracts are available from the National Clearinghouse for Alcohol and Drug Information.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Significance.* (30 points)

(i) The Secretary considers the significance of the proposed project.

(ii) In determining the significance of the proposed project, the Secretary considers the following factors:

(A) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (15 points)

(B) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings. (10 points)

(C) The importance or magnitude of the results or outcomes likely to be attained by the proposed project. (5 points)

(2) *Quality of the project design.* (20 points)

(i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (3 points)

(B) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project. (7 points)

(C) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (10 points)

(3) *Adequacy of resources.* (20 points)

(i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (5 points)

(B) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits. (5 points)

(C) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding. (10 points)

(4) *Quality of the management plan.* (5 points)

(i) The Secretary considers the quality of the management plan for the proposed project.

(ii) In determining the quality of the management plan for the proposed

project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5 points)

(5) *Quality of the project evaluation.* (25 points)

(i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the evaluation, the Secretary considers the following factors:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives and outcomes of the proposed project. (5 points)

(B) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (10 points)

(C) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings. (10 points)

Absolute Priority 2 and Selection Criteria—State and Local Educational Agency Drug and Violence Prevention Data Collection (CFDA #84.184Γ)

Absolute Priority 2

Under this priority, applicants must propose projects that—

(1) Develop, improve, expand, or enhance the collection of data related to youth drug use and violence; and

(2) Develop and implement processes that ensure that high-quality data is used to assess needs, select interventions, and assess success of drug and violence prevention activities funded under the SDFSCA State Grants Program. Projects may be state-wide in scope or limited to an individual local educational agency with a student enrollment that exceeds 30,000.

To be considered for funding under this competition, a project must include—

(1) Concrete plans, with timelines, that detail how the results of new or improved data collection efforts will be incorporated into State and local educational agency efforts to inform policy, assess needs, select interventions, and assess success of drug and violence prevention efforts;

(2) Outcomes-based performance indicators that will be used to judge the success of the project; and

(3) A description of how efforts proposed as part of the project have been coordinated with and will not duplicate data collection efforts being implemented by other State or local agencies.

Additional Information

This priority supports development and improvement of the capacity of State and local educational agencies to collect and use objective data to make informed decisions about drug and violence prevention programming in schools. The Secretary expects that projects funded under this priority will emphasize the collection and use of outcomes measures, such as reduced rates of drug use and violence, rather than relying solely on process measures that simply describe the implementation of a program or participants' levels of satisfaction with the activity. State and local educational agencies are expected to use the data to develop baseline information about the nature and extent of the drug and violence problems in their schools; to use SDFSCA State Grant and other funds to design and implement appropriate programs and activities to address those problems; and to assess the success of those programs and activities following implementation.

Selection Criteria

The Secretary uses the following criteria to evaluate proposals submitted under this priority.

The maximum score for all of the criteria in this section is 100 points.

The maximum score for each criterion is indicated in parentheses with the criterion.

(1) *Need for project.* (15 points)

(i) The Secretary considers the need for the proposed project.

(ii) In determining the need for the proposed project, the Secretary considers the following factors:

(A) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(B) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Significance.* (25 points)

(i) The Secretary considers the significance of the proposed project.

(ii) In determining the significance of the proposed project, the Secretary considers the following factors:

(A) The significance of the problem or issue to be addressed by the proposed project.

(B) The likelihood that the proposed project will result in system change or improvement.

(C) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(3) *Quality of the project design.* (25 points)

(i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(C) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State and Federal resources.

(4) *Adequacy of resources.* (15 points)

(i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(B) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(5) *Quality of the management plan.* (10 points)

(i) The Secretary considers the quality of the management plan for the proposed project.

(ii) In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(6) *Quality of the project evaluation.* (10 points)

(i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the evaluation, the Secretary considers the extent to which the methods of

evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Paperwork Reduction Act of 1995

The selection criteria for this program contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)), the Department of Education will submit a copy of this notice to the Office of Management and Budget (OMB) for its review.

Collection of Information: Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program

These selection criteria will affect the following types of entities eligible to apply for a grant under this program: State and local educational agencies, institutions or higher education, other nonprofit agencies, organizations, and institutions; and any combinations of these types of entities. The Department needs, and will use, the information related to the selection criteria for this program to enable the Secretary to determine which applicants would most likely develop, implement, and validate successful model projects for demonstration throughout the Nation. Annual public reporting and record-keeping burden for this collection of information is estimated to average 20 hours per response for 300 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating 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;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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.

OMB is required to make a decision concerning the information collection requirements between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed rules. Ordinarily, this practice would have applied to the rules in this notice. However, the Secretary waives rulemaking under section 553(b)(B) of the Administrative Procedure Act. This section provides that rulemaking is not required when the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The Secretary believes that, in order to make timely grant awards using Fiscal Year (FY) 1997 funds, public comment on these rules is impracticable. Congress did not provide authority to use FY 1997 funds for Safe and Drug-Free Schools and Communities National Programs until March 1997. The Secretary must make new awards no later than September 30, 1997, and recipients should be able to implement projects as early as possible in the 1997–98 school year. Therefore, in order to give applicants enough time to prepare their applications and the Department sufficient time to conduct the lengthy review process in this notice, it is now impracticable to receive public comments and still allow FY 1997 awards to be made by September 30, 1997.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Note: This notice of final priorities and selection criteria does *not* solicit applications. A notice inviting applications under these competitions is published elsewhere in this issue of the **Federal Register**.

Program Authority: 20 U.S.C. 7131.

(Catalog of Federal Domestic Assistance Number 84.184F and 84.184G Safe and Drug-Free Schools and Communities Act National Programs—Federal Activities Grants Program)

Dated: May 1, 1997.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 97–11771 Filed 5–5–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.184F, 84.184G, 84.184H]

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs; Combined Notice Inviting Applications for New Awards for Fiscal Year 1997

Summary: The Secretary invites applications for new awards for fiscal year (FY) 1997 under three direct grant competitions supported by Safe and Drug-Free Schools and Communities Act (SDFSCA) National Programs.

Purpose of Program: The National Programs portion of the SDFSCA supports the development of innovative programs that (1) demonstrate effective new methods of ensuring safe and drug-free schools, colleges, and communities, and (2) provide models or proven effective practices that will assist schools and communities around the Nation to improve their programs funded under the State Grants portion of the SDFSCA.

Applications Available: June 13, 1997.

Deadline for Receipt of Applications: August 1, 1997.

Deadline for Intergovernmental Review: September 1, 1997.

Fiscal Information:

CFDA number and name	Estimated range of awards	Estimated average size of awards	Estimated number of awards	Estimated available funds	Project Period
84.184F Replication of Effective Programs or Strategies to Prevent Youth Drug Use, Violent Behavior, or Both.	$250,000 to $450,000	$350,000	6	$2,000,000	Up to 36 months
84.184G State and Local Educational Agency Drug and Violence Prevention Data Collection.	400,000 to 600,000 ...	500,000	10	5,000,000	Up to 24 months
84.184H Drug and Violence Prevention Programs in Higher Education: Validation Competition.	150,000 to 300,000 ...	265,000	5	1,325,000	28 months

Note: Range of awards, average size of awards, number of awards and available funding in this notice are estimates only. The Department is not bound by any estimates in this notice. Funding estimates for competitions 84.184F and 84.184G represent the first year of the project period only. Funding for the second and third years of projects under competitions 84.184F and 84.184G is subject both to the availability of future years' funds and the approval of continuation (see 34 CFR 75.253). Estimates for competition 84.184H represent funding for both the first and second years of the project period. Projects funded under competition 84.184H will not be subject to approval of continuation or to the availability of future years' funds.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86

(Note: The regulations in 34 CFR part 86 apply to institutions of higher education only); (b) 34 CFR parts 98 and 99; and (c) the notices of final priorities and selection criteria, as published elsewhere in this issue of the **Federal Register** apply to these competitions.

Federal Activities Grants Program Competitions (CFDA #84.184F and #84.184G)

Absolute Priority #1—Replication of Effective Programs or Strategies to Prevent Youth Drug Use, Violent Behavior, or Both (CFDA# 84.184F)

Eligible Applicants

State and local educational agencies, institutions of higher education, other nonprofit agencies, organizations, and institutions; and any combination of these types of entities.

Program Authority: 20 U.S.C. 7131.

Absolute Priority #2—State and Local Educational Agency Drug and Violence Prevention Data Collection (CFDA #84.184G)

Eligible Applicants

State and local educational agencies, institutions of higher education, other nonprofit agencies, organizations, and institutions; and any combination of these types of entities.

Program Authority: 20 U.S.C. 7131.

Drug and Violence Prevention Programs in Higher Education: Validation Competition (CFDA #84.184H)

Absolute Priority #1—Correcting Misperceptions of Student Alcohol and Other Drug Use by Students Attending Institutions of Higher Education

Absolute Priority #2—Limiting Student Access to and Availability of Alcohol and Other Drugs at Institutions of Higher Education

Eligible Applicants

Institutions of higher education, or consortia thereof.

Program Authority: 20 U.S.C. 7132.

For Applications or Information Contact: Safe and Drug-Free Schools Program, 600 Independence Avenue, SW, Suite 604 Portals, Washington, DC 20202–6123. Telephone: (202) 260–3954. By facsimile (202) 260–7767. Internet: http://www.bryan__williams@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service 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 Service (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**.

Dated: May 1, 1997.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 97–11770 Filed 5–5–97; 8:45 am]

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Federal Register

Tuesday
May 6, 1997

Part V

Environmental Protection Agency

40 CFR Part 80

Regulation on Fuels and Fuel Additives; Baseline Requirements for Gasoline Produced by Foreign Refiners; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5821–5]

RIN 2060–AH48

Regulation of Fuels and Fuel Additives: Baseline Requirements for Gasoline Produced by Foreign Refiners

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise the requirements for imported gasoline. The Agency is proposing that a foreign refiner could choose to petition EPA to establish an individual baseline reflecting the quality and quantity of gasoline produced at a foreign refinery in 1990 that was shipped to the United States. The foreign refiner would be required to meet the same requirements relating to the establishment and use of individual refinery baselines as are met by domestic refiners. Additional requirements are also being proposed to address issues that are unique to refiners and refineries located outside the United States, related to tracking the movement of gasoline from the refinery to the United States border, monitoring compliance with the requirements that apply to parties outside the United States, and imposition of appropriate sanctions for violations. EPA is also proposing that it would monitor the quality of imported gasoline, and if it exceeded a specified benchmark, EPA would apply appropriate remedial action. EPA is proposing that the baseline for gasoline imported from refiners without an individual baseline would be adjusted to remedy the exceedance.

EPA believes the proposed rulemaking would be consistent with the Agency's commitment to fully protect public health and the environment, and with the U.S. commitment to ensure that the regulation is consistent with the obligations of the United States under the World Trade Organization.

DATES: The Agency will hold a public hearing on today's proposal if one is requested by May 13, 1997. If a public hearing is held, it will take place on May 20, 1997. If a public hearing is held on today's proposal, comments must be received by June 19, 1997. If a hearing is not held, comments must be received by June 5, 1997.

ADDRESSES: To request a hearing or to find out if and where a hearing is being held, please call Karen Smith at (202) 233–9674. Send comments to Public Docket A–97–26 at the address below. It is also requested that two duplicate copies of comments be sent to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Materials relevant to this NPRM are contained in Public Dockets A–91–02 and A–92–12, A–94–25 and A–96–33 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. The docket may be inspected from 8 a.m. until 5:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Karen Smith, Fuels and Energy Division, U.S. EPA (6406J), 401 M Street, SW., Washington, DC 20460, Telephone: (202) 233–9674.

SUPPLEMENTARY INFORMATION: *Regulated entities.* Entities potentially regulated by this action are those foreign refiners and importers which produce, import or distribute gasoline for sale in the United States. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Foreign Refiners, Importers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially 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 company or facility may potentially be regulated by this action, you should carefully examine the applicability criteria of Part 80, Subpart D, of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Copies of this proposed rule are available on the Internet at www.epa.gov., and also on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, 9600, or 14400 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(T) GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. The individual foreign refinery baseline proposed rule is identified by the title: ''FORBASE.ZIP.'' To download this file, type the instructions below and transfer according to the appropriate software on your computer: <D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D FORBASE.ZIP

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. Then go into your own software and tell it to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers.

I. Background

A. Current Requirements for Imported Gasoline

On December 15, 1993, EPA issued the final regulations that establish requirements for reformulated gasoline (RFG) and conventional gasoline (CG) (together the Gasoline Rule), as prescribed by section 211(k) of the Clean Air Act (the Act). See 59 FR 7716 (February 16, 1994). Under the Gasoline Rule, compliance by refiners and importers with the CG requirements and certain RFG requirements is measured against baselines that are intended to reflect a refinery or importer's 1990 gasoline quality. Domestic refiners are required to establish individual refinery baselines of the quality and quantity of the gasoline produced at each refinery in 1990. Domestic refinery baselines are calculated using, in hierarchical order based on the availability of data, 1990 gasoline test data (Method 1), 1990 blendstock test data (Method 2), or post-1990 blendstock and/or gasoline test data (Method 3). Under the Gasoline Rule domestic blenders of gasoline and importers of foreign-produced gasoline are treated differently than domestic refiners in that they are required to establish baselines of the quality and quantity of gasoline they produced or imported in 1990 using Method 1 data,

if available. However, almost all blenders and importers lack the actual 1990 test data necessary to establish a baseline using Method 1 data. As a result, blenders and importers are assigned the statutory baseline, a baseline established by EPA in 1993 to approximate average gasoline quality in the United States in 1990,[1] with the consequence that almost all gasoline produced at foreign refineries is evaluated using the statutory baseline.[2] The baseline-setting scheme is specified in 40 CFR 80.91 through 80.93, and is discussed in the Preamble to the final rule at 59 FR 7791 (February 16, 1994).

In preparing the Gasoline Rule, EPA focused on three major issues regarding the use of individual baselines for foreign refiners in the RFG and CG programs. EPA's overriding consideration was the ultimate environmental consequences of the baseline-setting scheme. The three issues that EPA focused on were: (1) The technical difficulty of using baseline-setting Methods 2 and 3 to accurately predict the quality of the subset of a foreign refinery's gasoline that was exported to the U.S. in 1990; (2) the ability of the Agency to adequately verify and enforce the use of individual foreign refinery baselines, including problems identifying the refinery of origin of imported gasoline and enforcing gasoline content requirements against a foreign refiner; and (3) the risk of adverse environmental effects from providing refiners or importers with options in establishing baselines.

In developing the Gasoline Rule, EPA considered but did not go forward with allowing foreign refiners the option of petitioning EPA to establish individual baselines using Methods 1, 2, and 3, or defaulting to the statutory baseline. EPA's reasons for not adopting the option at that time are discussed at 59 FR 7785–88 (February 16, 1994). When EPA issued the final rule on December 15, 1993, however, it was not fully satisfied that the baseline-setting scheme applicable to importers and foreign refiners was the optimum solution and continued to consider the issue.

B. May 1994 Proposal

In May 1994, EPA proposed to amend the Gasoline Rule to define criteria and procedures by which foreign refiners would be allowed to establish individual refinery baselines that reflected the properties and volume of the gasoline that was produced at a foreign refinery in 1990 and exported for use within the United States. Under this proposal, if a foreign refiner made the requisite showing through a petition process EPA would establish an individual foreign refinery baseline. U.S. importers of RFG produced at the foreign refinery would have used the individual foreign refinery baseline values to demonstrate compliance with the limited number of RFG requirements that are based on individual baselines. Importers would not have been allowed to use individual foreign refinery baselines for the CG requirements. Foreign refinery baselines would have been used only during the period 1995 through 1997[3] and only up to a volume of gasoline each year that equaled the foreign refinery's 1990 baseline volume. The proposal also included detailed enforcement and verification procedures.

Subsequent to the May 1994 proposal, Congress included limitations on EPA's appropriations related to the May 1994 proposal. Based on this EPA did not conclude the rulemaking process.

C. The WTO Dispute Settlement Proceeding

In 1995, the governments of Venezuela and Brazil initiated dispute settlement proceedings before the World Trade Organization (WTO), challenging as discriminatory the different treatment applied by the Gasoline Rule to imported gasoline and that produced by U.S. refiners. Among other defenses, the United States argued that the rule was justified by the difficulties associated with implementing and enforcing individual baseline requirements with respect to foreign refiners and by the environmental risk resulting from providing foreign refiners the choice of employing individual baselines. The initial dispute settlement panel reviewing the matter found the regulation discriminatory under the General Agreement on Tariffs and Trade 1994 (GATT) and that the United States had not shown that the GATT's health, environment, or conservation exceptions applied. The WTO Appellate Body, reviewing the U.S. arguments regarding the GATT conservation exception, recognized that the United States had legitimate concerns, but concluded the rule did not satisfy all the requirements for this exception. The Appellate Body based this conclusion on its views that (1) the United States had not adequately explored options available to deal with its concerns, in particular international cooperative arrangements and (2) the United States had been concerned about the costs of the various regulatory options to domestic refiners but not to foreign refiners. The Appellate Body recommended that the United States bring EPA's regulations into conformity with WTO obligations, leaving the United States to determine how it would comply.

On June 19, 1996 after the Administration had consulted with Congress, the United States advised the WTO that the United States intended to meet U.S. obligations with respect to the results of the WTO dispute settlement proceedings, that the EPA had initiated an open process to examine any and all options for compliance, and that a key criterion in evaluating options would be fully protecting public health and the environment. On June 28, 1996, EPA issued an invitation for public comment in the **Federal Register** (61 FR 33703), seeking input and suggestions from all interested parties. The comment period closed on September 26, 1996.

D. Invitation for Public Comment

The invitation for public comment was an attempt to identify any and all options available to the Agency to meet U.S. international obligations in response to the WTO decision. EPA's goal was to identify all feasible options that are consistent with EPA's commitment to fully protect public health and the environment, and at the same time are consistent with the obligations of the United States under the WTO.

Specifically, EPA invited comment on: (1) How to accurately establish a reliable and verifiable individual baseline for a foreign refinery; (2) how EPA could adequately monitor compliance with and enforce any baseline requirements; (3) how EPA could effectively determine the refinery of origin of imported gasoline, so as to determine the appropriate baseline to apply to the imported gasoline; (4) the potential environmental impacts from

[1] The statutory baseline is calculated pursuant to section 211(k)(10)(B) of the Act which specifies the properties of summertime statutory baseline gasoline, and instructs the EPA to establish the average properties of 1990 wintertime gasoline. The Gasoline Rule specifies the properties of 1990 wintertime gasoline in § 80.45(b)(2), and the combined summer and winter, or annual, statutory baseline gasoline properties in § 80.91(c)(5).

Importers are required to meet various conventional gasoline requirements by comparing the annual average quality of the gasoline they import against the statutory baseline. An individual batch of imported conventional gasoline is not subject to any requirements, only the annual average of gasoline imported by the importer. Foreign refiners are not subject to the requirements of the current Gasoline Rule.

[2] Only one importer had the Method 1 data necessary to establish an individual baseline.

[3] Individual refinery baselines are used to set certain content requirements for RFG only through 1997. See 40 CFR 80.41.

implementing any suggested options; and (5) a method by which EPA could better quantify or characterize potential environmental impacts of any options proposed. EPA also requested that commenters provide information and analysis on the public health, environmental and economic impact associated with any option presented.

EPA received sixteen comments from various interested parties during the comment period.

Many comments stated that EPA's action on the WTO dispute could impact the requirements only for CG and not for RFG, because beginning in January 1998, individual baselines cease having any relevance for RFG requirements, and it would be difficult to implement any rule change before January 1998.

Comments by domestic refiners and certain domestic refiner associations highlighted four major concerns:

(1) The necessity for adequate compliance, audit, and enforcement requirements. The comments questioned EPA's ability to establish reliable and verifiable baselines, and to effectively monitor compliance by foreign refiners with requirements and enforce violations that are documented.

(2) The technical difficulties associated with establishing a foreign refinery's baseline that would reflect the quality only of the subset of the refinery's gasoline that was exported to the U.S. in 1990, because the quality of this subset may differ from the refinery's overall average gasoline quality.

(3) The possibility that the quality of imported gasoline would decline if foreign refiners are given the option of establishing individual refinery baselines because foreign refiners whose 1990 gasoline was dirtier than the statutory baseline would have an incentive to seek an individual baseline, whereas refineries whose 1990 gasoline was cleaner than the statutory baseline would not have such an incentive. This concern, according to some commenters, should be avoided by requiring all foreign refiners to establish individual refinery baselines. This scenario is often called ''gaming''.

(4) The U.S. does not impose requirements on gasoline produced at a foreign refinery that is not exported to the U.S. Domestic refiners must produce clean gasoline for RFG areas without degrading the CG sold elsewhere in the United States, essentially controlling all gasoline produced at a domestic refinery. Foreign refiners have the flexibility to produce clean gasoline for the U.S. market by disposing of dirty components in gasoline sold into markets outside the U.S., according to the comments.

One domestic refiner proposed that a single national baseline replace individual baselines for conventional gasoline.

Venezuelan and Brazilian refiners affirmed their ability to accurately establish reliable and verifiable individual baselines in the same manner as domestic refiners, and commented that EPA's gaming concern has no merit particularly if all foreign refiners establish individual refinery baselines.

A European refiner urged EPA to allow foreign refineries to establish individual baselines if they have the necessary supporting data.

Independent gasoline marketers in the U.S. strongly urged quick compliance with the WTO decision to increase competition in the gasoline market. State and local air management districts asked EPA to commit to adopt measures that would protect public health and the environment.

EPA received additional comments from representatives of independent refiners and representatives of independent importers and blenders following the close of the comment period. The independent refiners suggested that foreign refiners should be required to establish individual baselines and should not be allowed to default to the statutory baseline. Foreign refiners that do not establish an individual baseline should be excluded from the U.S. market. Foreign refiners should be subject to the full range of compliance and enforcement measures necessary to secure compliance by foreign parties. Importers should no longer be allowed to use the statutory baseline, but would have to use the individual baseline applicable to the gasoline they imported, to avoid gaming by foreign refiners with clean individual baselines.

Independent importers and blenders suggested that all market participants that are similarly situated should be treated in the same manner, that it is important to preserve the ability of independent importers to reblend and reclassify imported CG as RFG, that the use of individual baselines should not restrict the ability to import other gasoline under the importer's statutory baselines, that liability for the use of an individual baseline should fall on the foreign refiner not the importer, and that mandatory use of individual baselines by foreign refiners should not be imposed as it would limit gasoline supplies coming to the United States.

E. Requiring Individual Baselines for Foreign Refiners

In preparing this proposal EPA attempted to identify any and all options available to the Agency to meet U.S. international obligations in response to the WTO decision. EPA's goal was to identify all feasible options that are consistent with EPA's commitment to fully protect public health and the environment, and at the same time are consistent with the obligations of the United States under the WTO. Comments submitted to EPA during and after the public comment period, and EPA's prior investigations on this issue, identified two broad approaches for consideration involving individual baselines for foreign refineries.[4]

One approach would require the use of individual baselines (IB) by foreign refiners. It would be mandatory, not optional. Under this approach, EPA would apply basically the same requirements that apply to domestic refiners to foreign refiners.

This approach would require foreign refiners who market gasoline to the U.S. to submit petitions to establish an individual refinery baseline, using the same methods and procedures currently in the regulations. Once an IB was assigned for a refinery, that IB would be used in developing a volume weighted compliance baseline. Under one approach, the foreign refiner would meet the exhaust toxics and NO_x requirements for CG exported to the U.S. by that foreign refinery, in the same manner as domestic refiners. Under an alternative approach the domestic importer would establish a volume weighted compliance baseline reflecting the quantity and IBs of gasoline imported from various foreign refineries, and the domestic importer would meet the applicable CG requirements. In either case, the use of a foreign refinery IB would be subject to a volume cap, as for domestic refiners. Foreign refiners would be subject to audits and inspections to verify the IB and to verify the quantity and quality of gasoline sent to the U.S. from that foreign refinery.

Significant additional requirements would also need to be imposed on gasoline imported under a foreign refiner's IB. For domestic refiners, almost all gasoline is produced for the U.S. market and the very small volume that is exported can be readily tracked and subtracted from the domestic refiner's compliance calculations. The domestic refiner then bases its CG compliance calculations on the quality and quantity of finished gasoline when it leaves the refinery. At that point it has entered the U.S. gasoline market, and there is no need to track the gasoline or

[4] The discussion in the preamble will focus on imports of CG, as compared to imports of RFG. After January 1, 1998, individual baselines have no application in the RFG program. For CG, however, individual baselines will continue to be used in setting the compliance requirement for all CG. The application of the proposal to RFG prior to January 1, 1998 is discussed separately in this notice at section II.F.

to segregate it from gasoline produced by another refinery.

For a foreign refiner, only a portion of the refinery's total production is likely to be sent to the U.S., ranging from a very small percentage to a significant minority of production. The gasoline also may travel through a long and complicated distribution system from the point it leaves the refinery gate to the point it enters the U.S. market. However the IB for a specific foreign refinery would properly apply only to gasoline produced at that foreign refinery, and would not apply to gasoline produced at a different foreign refinery.

Several facts would therefore need to be clearly established to properly apply a foreign refinery's IB to a batch of imported gasoline. First, the refinery that produced the specific batch of imported gasoline must be identified. Second, it must be demonstrated that this batch of gasoline has not been mixed with gasoline produced by a different foreign refinery with a different IB, from the point it left the refinery-of-origin to the point it entered the U.S. market. Third, the total amount of CG and RFG produced by the foreign refinery and sent to the U.S. market must be determined, to establish when the volume cap is exceeded. As with domestic refiners, it would also be important to track blendstocks produced and sent to the U.S. from a foreign refinery, so a foreign refiner could not avoid a stringent IB by shipping blendstocks instead of finished gasoline. Tracking and segregation requirements would need to be adopted to implement this.

A certain amount of gasoline is imported from fungible gasoline supplies, where the refinery of origin is not known. This occurred in 1990, and would be expected to continue to occur in the future. It would be reasonable to allow the practice to continue, and gasoline imported from such sources would continue to be subject to the statutory baseline (SB). However a mechanism would need to be imposed so that this supply of fungible gasoline could not be used as a way to avoid a more stringent IB.

Under this approach, EPA would need to establish IBs for all foreign refineries, most of which sent only a small volume of gasoline to the U.S. in 1990. The methods used to set IBs for domestic refiners could still be used to establish the quality and quantity of gasoline sent to the U.S. by a foreign refiner in 1990. Given the large number of foreign refineries involved and the potential for widely varying technical and other ability to establish IBs, it is not clear that all foreign refiners would have the information necessary to establish an accurate IB for gasoline sent to the U.S. in 1990.

The Department of Energy (DOE) has advised EPA that this approach could seriously affect the supply and price of gasoline in the U.S. market. Currently gasoline is imported into the U.S. market from a free moving and fungible distribution system for imported gasoline. The volume of imported gasoline, while small compared to the total U.S. gasoline supply, can have a significant impact on gasoline prices. Imported gasoline tends to moderate price increases by increasing the sources of gasoline to meet U.S. demand, whether in response to a trend of increasing demand over time, or a short term supply problem based on local or temporary changes in domestic supply or demand.

The approach outlined above would significantly change the way gasoline is imported to the U.S. market, greatly increasing the complexity and making it more likely that gasoline could not be quickly and readily diverted to the U.S. market to meet demand. This would make it more likely that imported gasoline would not play the same role that it currently does in moderating price increases. The long term supply implications are harder to predict.

The increase in complexity from this approach is based on the need to ensure that the right IB is applied to a batch of imported gasoline, that an IB is only used up to the applicable volume cap, and that parties do not circumvent the appropriate IB by shifting gasoline or blendstocks through other parties. Modifying the tracking and monitoring restrictions described above to try and resolve the supply concerns would increase the risk of adverse environmental effect from this approach.

EPA is also concerned that this approach might produce incentives that would tend to reduce the average quality of imported CG. For example, gasoline from refiners with cleaner IBs would be measured against a more stringent baseline than under the current rules, while gasoline from refiners with dirtier IBs would be measured against a less stringent baseline than under the current rules. Additional costs would be associated with segregation, tracking, and other requirements described above. To the extent these changes put refiners with clean IBs at an economic disadvantage compared to refiners with either the SB or an IB dirtier than the SB, it could potentially push the supply of gasoline away from refiners with clean IBs.

After evaluating this approach, EPA has decided to not propose it. While it appears generally neutral in requiring individual baselines for both domestic and foreign refiners, upon full consideration this approach presents too great a risk of adverse effects on gasoline supply and prices. EPA also has questions as to its environmental neutrality. The Agency is instead proposing the optional use of individual baselines, with specific provisions for monitoring gasoline quality and remedying any adverse environmental effects.

II. Description of Proposal

A. Introduction

Today's proposed approach involves the use of optional IBs for foreign refiners. Specific regulatory provisions would be implemented to ensure that the optional use of an IB would not lead to adverse environmental impacts. This would involve monitoring the average quality of imported gasoline, and if a specified benchmark is exceeded, remedial action would be taken. The remedial action proposed is that the requirements for imported gasoline would be made more stringent. This would ensure the environmental neutrality of this approach.

Under this approach, the procedures and methods for setting an IB, as well as the tracking, segregation and other compliance related provisions described below would all apply. However, they would only apply where a foreign refiner chose to apply for an IB.

Under this approach, the volume of gasoline that could be imported under the IB for a foreign refinery would be limited in the same manner as for domestic refiners, relative to a refinery's 1990 baseline volume. Since the foreign refiner sought an IB in order to specifically produce gasoline for the U.S. market, the tracking and segregation requirements noted above should not have a significant impact on the ready availability of gasoline for import. The current requirements for imported gasoline would continue to apply for all of the other gasoline imported into the U.S. DOE does not believe this approach has the potential to adversely impact gasoline supply and prices.

There is however some concern about the possible environmental impact of such an approach. A foreign refiner may seek an IB only if it would be less stringent than the SB. Gasoline produced by this foreign refiner would then be measured against this less stringent IB. Other imported gasoline would be measured against the SB. As

compared to the situation in 1990, there would be the potential for the quality of imported gasoline to degrade from an emissions perspective.

The size and amount of this impact, however, is difficult to quantify. It would depend on the number of foreign refiners that received an IB, the specific emissions levels of the IBs assigned, and the volume of gasoline included in the IB.[5] It would also depend on the source and amount of CG and RFG imported into the U.S. in a specific year. It is also hard to quantify to what extent, if any, foreign refiners who produced gasoline in 1990 that was cleaner that the SB would ship gasoline that is dirtier than what they shipped in 1990. These circumstances, as well as the existence of a volume cap on the use of IB's, and the large variation in the total levels of CG and RFG imports each year make it difficult to assess in advance the risk of an adverse environmental impact.

EPA is proposing to address the potential environmental concerns with this approach by (1) establishing a benchmark for the quality of imported gasoline that would reasonably identify when the factors identified above have led to an adverse environmental impact, (2) monitoring imported gasoline to determine whether the benchmark has been exceeded, and (3) if an exceedance of the benchmark occurs, imposing a remedy that compensates for the adverse environmental impact.[6]

As discussed below, the proposed benchmark for imported gasoline quality would be the volume-weighted average of the IBs for domestic refiners. As discussed below, EPA is proposing a benchmark for exhaust NO_X set at the volume weighted average for domestic baselines. No benchmark would be set at this time for toxics, as there does not appear to be the same potential for environmental degradation that there could be for NOx.

EPA would monitor the quality of imported gasoline based on the annual compliance reports filed by importers and foreign refiners producing gasoline that is exported to the U.S. Each year EPA would evaluate the volume weighted annual average quality of the three prior years and compare it to the benchmark. If the average quality of imported gasoline exceeded the benchmark, NOx requirements for gasoline imported from refiners without an IB (currently set at the SB) would increase in stringency the following year by an amount equivalent to the exceedance. This would occur each time the annual monitoring indicated that the benchmark was exceeded. If the amount of an exceedance either increased or decreased, the amount of the remedy would be correspondingly adjusted. If the annual monitoring showed that imported gasoline did not exceed the benchmark, the compliance requirements would be reduced to the SB for the following year. The more stringent requirement would apply to all imported gasoline except for gasoline produced by foreign refiners with an IB.

EPA's proposed approach meets the goals announced in the Invitation for Public Comment, and avoids the potential supply, price and environmental consequences of the alternative approaches considered by EPA.

B. Requirements for Foreign Refiners with Individual Refinery Baselines

1. Establish Refinery Baselines

Under this proposal, a foreign refiner would have the option of submitting an individual refinery baseline petition to EPA. The refinery baseline would reflect the quality and quantity of gasoline produced at the foreign refinery in 1990 that was exported to the U.S.

The procedures for establishing individual refinery baselines are listed in §§ 80.90 through 80.93. These procedures were used by domestic refiners to predict their overall gasoline quantity and quality for 1990. The procedures require the use of data from 1990 gasoline or gasoline blendstocks where available. If this data is not available, post-1990 gasoline must be sampled and tested. The refiner must then compare its 1990 and post-1990 refinery operations, and identify all changes in operations that could cause the 1990 and post 1990 fuel parameters to differ in quality or volume. The refiner must then adjust the post-1990 data to account for these differences, thereby deriving the quality and volume of the gasoline produced in 1990.

EPA is proposing that foreign refiners that elect to develop individual refinery baselines would also follow these procedures. Additionally, EPA is proposing that foreign refiners would use these procedures to determine the quality and quantity of gasoline they produced in 1990 that was exported to the U.S. Specifically, in today's proposed regulations, EPA has included requirements that baseline submittals for foreign refineries would have to include information that would estimate the refinery's overall 1990 gasoline quantity and quality, and the quantity and quality of the subset of the refinery's gasoline that was exported to the United States in 1990. Under § 80.92 baseline petitions would have to be supported by the report of an EPA-approved baseline auditor.

i. *Required Information.* The requirements for establishing individual foreign refinery baselines would be basically the same as the baseline establishment requirements for domestic refineries. EPA is proposing additional requirements for foreign refineries that address the unique circumstances associated with establishing the quality and quantity only of gasoline sent to the U.S. in 1990.

The procedures for developing individual refinery baselines, set forth in §§ 80.90 through 80.93, are highlighted below and discussed with respect to foreign refineries. Comments are requested on EPA's extension of the baseline development procedures to foreign refineries, especially where modifications have been proposed to account for the unique circumstances associated with foreign refinery baselines.

- A foreign refinery's individual baseline (i.e., quality and quantity information) would be calculated using, in hierarchical order based on the availability of data, 1990 gasoline test data (Method 1), 1990 blendstock test data (Method 2), or post-1990 blendstock and/or gasoline test data (Method 3) for its total 1990 gasoline production in the same manner required of domestic refiners. Foreign refineries have the additional requirement of using these methods to determine the quality and quantity of the subset of gasoline exported to the United States in 1990.
- All data collected beginning in 1990 and through the last date of any data collection under § 80.91(d)(1)(I)(B) must be used in the development of both the overall refinery baseline and the baseline of the gasoline exported to the U.S. in 1990.
- Baseline petitions would have to be submitted in the same manner as is

[5] To date, only a limited number of foreign refineries have indicated an interest in establishing an IB. However, under the proposal any foreign refiner could apply for an IB.

[6] EPA has adopted an analogous approach in the RFG program. Domestic refiners may chose to meet certain RFG requirements on average, instead of meeting the RFG per-gallon requirements. However a refiner who chooses the averaging requirements must implement a compliance survey for the covered areas involved. In a compliance survey the emissions quality of the retail gasoline in a covered area is tested, and the average gasoline quality is compared to a preestablished benchmark. If the average quality falls short of the benchmark, the compliance requirements for RFG used in that covered area are increased in stringency by a specified amount. Surveys are conducted each year, and the requirements are increased in stringency each time the area fails an annual compliance survey. The stringency of the requirements can be reduced if the area does not fail a compliance survey for a specified number of years. See 40 CFR 80.41, 80.68.

required of domestic refiners under § 80.93, except that EPA is proposing that baseline petitions would have to be submitted before January 1, 2002. This would allow for the collection of both summer and winter data and the preparation of a baseline petition subsequent to June 1, 2000, the scheduled date EPA would announce the average quality of imported gasoline for the first monitoring period of 1998 and 1999. EPA would require the same type and quality of information and level of accuracy in establishing a baseline no matter when a foreign refiner applies for a baseline. Comments are requested on the appropriateness of this deadline.

- EPA is also proposing that in order for a refinery to receive an approved baseline, the refinery would have to commit to give EPA's auditors full access to the foreign refinery to conduct announced and unannounced inspections and audits related to the baseline development and submission. EPA baseline audits could occur at any time after a baseline petition has been submitted, either before or after EPA approves a refinery baseline.
- Under § 80.93(b)(1)(I) foreign refiners would have to provide any additional information requested by EPA to support a baseline submittal or petition, as is true for domestic refiners.
- Under § 80.93(c) a separate baseline would be established for each foreign refinery. However, as is the case of U.S. refiners a foreign refiner could petition EPA for a single refinery baseline for two closely integrated facilities under § 80.91(e)(1). In addition, as is the case for U.S. refiners a foreign refiner who operates more than one refinery with individual baselines would be able to aggregate the baselines of some or all of its refineries under § 80.101(h).
- EPA is proposing that all documentation included in a baseline submission or petition would have to be in the English language or include an English language translation.

EPA requests comments on any aspects of the baseline development regulations, §§ 80.90 through 80.93, relative to the development of foreign refinery baselines, particularly concerning any unique aspects of developing or verifying foreign refinery baselines for a refinery's total 1990 gasoline production and for the subset of gasoline exported to the U.S. in 1990.

ii. *EPA Action on Baseline Submissions.* As for the domestic refiner baseline approval process, EPA would subject foreign refinery baseline submissions to an in-depth analysis and review. EPA would also reserve the right to inspect, audit and review all records or facilities used to generate data submitted to the Agency prior to acting on a baseline submission or petition.

After conducting its review of the data and analysis in a baseline submission, EPA would assign an individual baseline that represents the quality and quantity of gasoline exported to the U.S. in 1990. EPA will consider all information submitted and the analysis performed by the refiner and the baseline auditor in assigning a foreign refinery baseline. EPA expects the refiner's submission to consider all relevant factors in determining the quality and quantity of the subset of gasoline sent to the U.S. in 1990. This would include consideration of the grades of gasoline sent to the U.S., the season for which the gasoline was produced, the types of crude oil and blendstocks used, the effect of fuel requirements in the U.S. in 1990, and any other factors that would affect how the quality and quantity of a refinery's U.S. market gasoline might vary from other gasoline produced at that refinery.

EPA believes individual refinery baselines can be established for foreign refineries for which individual baselines are sought to the same degree of confidence as the baselines established for domestic refineries, through use of all available data, and the ability to use current data and operating conditions to estimate 1990 gasoline quality and quantity.

The baseline approval process is an iterative one, beginning with the submission of the baseline or a baseline petition. EPA, any EPA contractors, representatives of the foreign refinery knowledgeable of the refinery's baseline development, and the refinery's baseline auditor will all be closely involved throughout. EPA expects that its questions regarding the baseline submission or petition will receive quick and adequate response from the refinery's representatives. To this end, EPA believes it would be useful to have an English-speaking foreign refinery representative knowledgeable about the baseline development of the refinery as the main contact.

EPA would not assign an individual refinery baseline where an individual refinery baseline submission is significantly incomplete, or inadequate to establish an accurate baseline, and the refiner fails to cure the defect after a request for more information. In such a case the refinery would not receive an individual baseline.

2. Compliance with CG Exhaust Toxics and NO_X Requirements

EPA is proposing that foreign refiners who obtain individual foreign refinery baselines would have to meet the exhaust toxics and NO_X emissions performance requirements for CG produced at the foreign refinery that is exported to the United States. In addition, foreign refiners with an individual refinery baseline would be required to meet all requirements used to demonstrate compliance with the CG performance requirements. These are the same requirements that apply to domestic refiners, and include the following:

- To register with EPA, § 80.103.
- To designate each batch of CG or RFG, § 80.65(d).
- To determine the volume and properties of each CG batch through sampling and testing, § 80.101(I).
- To determine the volume of each RFG batch in order to complete the CG compliance baseline calculation in § 80.101(f).
- To prepare product transfer documents for RFG and CG, §§ 80.77 and 80.106.
- To keep certain records for five years, §§ 80.74 and 80.104.
- To submit reports to EPA on each batch of RFG and CG, on the volume of RFG, and on the annual average quality of CG, §§ 80.75 and 80.105.
- To comply with an annual cap on the volume of specified blendstocks that are transferred to others and used to produce gasoline for the U.S., § 80.102.
- To have an independent audit performed of refinery operations each year to review certain activities related to the RFG and CG requirements, §§ 80.125 through 80.130. However, the audit procedures for RFG would be limited to the procedures that evaluate the quantity of RFG, and audits would not be required to include procedures intended to verify information about RFG that is unrelated to the compliance baseline calculation, such as RFG quality or VOC-control designations.
- To not combine CG with RFG and classify the mixture as RFG, § 80.78(a)(10).

Certain adjustments to these provisions are specified in the proposed regulations to apply them to foreign refiners.

EPA believes that foreign refiners with individual baselines should be able to meet these requirements as do domestic refiners, and EPA would intend to monitor compliance with, and enforce violations of these requirements with regard to foreign refiners just as for domestic refiners.

Under § 80.101(f) a compliance baseline for exhaust toxics and NO_X compliance is calculated for each calendar year averaging period based on a refinery's 1990 baseline volume and baseline exhaust toxics and NO_X values, and the total gasoline volume (CG and RFG[7]) produced at the refinery during the averaging period.[8] As a result, a foreign refiner with an individual refinery baseline would be required to establish the volume of U.S. market gasoline that is RFG in order to calculate the refinery's compliance baseline for the exhaust toxics and NO_X CG requirements.[9]

Therefore, a foreign refiner with an individual refinery baseline would be required to designate each batch of U.S. market gasoline as CG or RFG, to establish the volume and properties of U.S. market batches that are designated as CG, and to establish the volume of U.S. market batches that are designated as RFG. The CG and RFG produced at a foreign refinery with an individual baseline is called ''Foreign Refiner Gasoline,'' or ''FRGAS,'' in this proposal.

All foreign refiners with individual refinery baselines would be required to submit annual reports to EPA that demonstrate the average exhaust toxics and NO_X emissions for CG FRGAS meets the refinery's compliance baseline for the averaging period.

Additional requirements, described below, would allow EPA to monitor that the specific barrels of gasoline identified by the foreign refiner as U.S. market gasoline actually is delivered for use in the United States, and to conduct enforcement audits and inspections of foreign refinery operations.

Under today's proposal, CG FRGAS would be treated basically under the same rules as gasoline produced for the U.S. market at a domestic refinery. The CG FRGAS would be subject to the same CG requirements as the CG produced by domestic refiners. Starting in 1998 a refinery's annual average CG exhaust toxics and NO_X emissions could not exceed its individual baseline for these fuel characteristics. In order to evaluate compliance, however, CG FRGAS would need to be designated as such at the point of production, and would need to be tracked to determine that it in fact is exported to the U.S.

In order to determine compliance with the CG requirements for FRGAS, the quality and quantity of each batch of CG must be determined. The volume of RFG FRGAS also would have to be determined, because the compliance baseline applicable to a refinery depends on the total volume of gasoline produced at a refinery for the U.S. market, including both CG and RFG. To determine the quality and/or quantity of this gasoline, a foreign refiner would have to designate FRGAS when it is produced. It also is important that gasoline used in a foreign refinery's compliance calculation all be designated as FRGAS and actually imported into the U.S.

EPA expects foreign refiners would be able to determine how much FRGAS they intend to produce, and would be able to institute reasonable distribution and marketing changes to implement the proposed requirements. A foreign refiner of FRGAS would need to monitor the gasoline quality to ensure it meets the CG requirements, and this gasoline normally would be subject to emissions requirements that are different from those in other markets. The additional requirements proposed today all flow from this and could be implemented in a reasonable fashion.

However, a major change could occur in a foreign refiner's ability to change the destination of FRGAS after the gasoline has left the foreign refinery and has entered the distribution system. Under the current regulations, such gasoline could at any time be sent to the U.S. market, including after it has left the foreign refinery. Gasoline currently may be taken from a fungible distribution system and sent to the U.S., as long as the importer's annual average meets their compliance baseline. This would not be possible for FRGAS under the requirements discussed above. Unless a foreign refiner designates FRGAS at the point of production, it would not meet the requirements described above for export of FRGAS to the U.S.

EPA requests comment on whether foreign refiners with individual baselines should be allowed to divert to non-U.S. markets gasoline shipments that originally were intended for the U.S. market where the foreign refiner can demonstrate the gasoline in fact was not imported into the U.S., and if so, the type of showing that should be required.

EPA also requests comment on whether a foreign refiner with an individual refinery baseline should be given the option of classifying CG as FRGAS or as non-FRGAS. If this option were allowed a foreign refiner could have two categories of CG: CG that is classified as FRGAS, and CG that is not classified as FRGAS.

In the case of CG that is classified as FRGAS the foreign refiner would include the gasoline in the refinery CG compliance calculations, and would meet the refinery tracking requirements, described below. CG that is not classified as FRGAS would be excluded from the refinery CG compliance calculations, and the refiner would not be required to meet the refinery tracking requirements.

However, the foreign refiner would continue to be required to include all RFG produced in compliance baseline calculations and to meet the refinery tracking requirements for all RFG, i.e., all RFG would have to be classified as FRGAS. This distinction between RFG and CG is necessary in order to prevent adverse environmental effects. As in the case of domestic refiners, all RFG must be included in a refinery's compliance baseline calculation because a larger RFG volume results in a larger volume of CG that is subject to the statutory baseline. In contrast, there is no adverse environmental effect if a refiner classifies CG as non-FRGAS, because the non-FRGAS CG would be subject to the statutory baseline by default.

Under the option of allowing foreign refiners to elect to classify CG as FRGAS, the U.S. importer would meet

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[7] The compliance baseline equation at § 80.101(f) requires a refiner to include the volumes of all gasoline used in the U.S., including CG, RFG, RFG blendstock for oxygenate blending (RBOB), and California gasoline under § 80.81. Thus, a foreign refiner would be required to include each of these products in the compliance baseline calculations, and to meet the refinery of origin tracking requirements that are described below. However, for ease of discussion this preamble will collectively refer to all non-CG products as RFG.

[8] Under § 80.101(f) compliance baselines are calculated for a refinery each calendar year using an equation that caps use of individual refinery baselines based on the refinery's total gasoline production (RFG and CG) during an averaging period, as compared to the refinery's 1990 baseline volume. Thus, where a foreign refinery's volume of gasoline for the U.S. (CG and RFG) during an averaging period is equal to or less than the refinery's 1990 baseline volume, the refinery's compliance baseline emission values for CG for the averaging period would be the refinery's 1990 baseline emission values. However, where a refinery's gasoline volume during an averaging period exceeds the refinery's 1990 baseline volume, the refinery's compliance baseline emission values for the averaging period would move in the direction of the statutory baseline emission values. In the case of foreign refiners, these calculations would use only the volumes of gasoline that were exported to the U.S. in 1990 and during the averaging period.

Section 80.101(b) requires use of compliance baselines only for the simple model requirements that apply before 1998. However, in another rulemaking EPA will be proposing to require use of compliance baselines for the complex model requirements that apply beginning in 1998, and EPA believes any change to the compliance baseline provision will be final before 1998. As a result, this foreign refiner proposal assumes that compliance baselines will be required for exhaust toxics and NO_X compliance. In any case, the same provision would apply to both domestic and foreign refiners.

[9] EPA is proposing that if a foreign refiner begins using an individual refinery baseline on a date other than on January 1, the compliance baseline calculation for the initial year would use a reduced baseline volume to reflect the portion of the year the individual refinery baseline is in use.

the tracking requirements, described below, only for the CG batches that are identified as FRGAS. EPA would be able to monitor foreign refinery compliance by comparing the volume of each refinery's gasoline identified as FRGAS as reported by U.S. importers, with the volume reported by the foreign refiner.

Requirements for Tracking Refinery of Origin

The proposed requirements concerning CG FRGAS are premised on foreign refiners accurately identifying the gasoline (both CG and RFG) that is exported to the U.S. There is the potential for adverse environmental results if a foreign refiner includes in CG compliance calculations gasoline that is not exported to the U.S. In addition, there is environmental risk if a foreign refiner fails to include in CG compliance calculations gasoline that is exported to the U.S.

For this reason EPA is proposing requirements to ensure that gasoline is properly identified as FRGAS at the U.S. port of entry, and that all gasoline designated as FRGAS by a foreign refiner is in fact delivered to the U.S. These proposed requirements also would give U.S. importers the information necessary to demonstrate that imported CG is in fact FRGAS in order to exclude the gasoline from the importer's CG compliance calculations. EPA would be provided the information necessary to monitor compliance by foreign producers of FRGAS.

Test results at the U.S. port of entry, in the absence of additional information, are inadequate to distinguish between gasoline that is FRGAS, and other gasoline. In addition, without additional requirements EPA would have scant ability to know if all the gasoline included in a foreign refiner's CG compliance calculations in fact was delivered to the U.S.

The requirements proposed today to address this issue involve segregation of FRGAS produced at each foreign refinery; documentation prepared by the foreign refiner certifying that FRGAS is being included in the foreign refinery's compliance calculations; sampling and testing at the load port and the port of entry; independent attest engagements by the foreign refiner to verify the volumes claimed by the foreign refiner; and determinations by an independent party of the volume, quality and refinery of origin of FRGAS loaded onto a ship.

i. *Segregation of FRGAS.* In the absence of restrictions, FRGAS from multiple foreign refineries could be stored, transported, combined and recombined, and sold and resold, by parties other than the foreign refiner in locations other than those controlled by the foreign refiner, and in countries other than those where the foreign refinery is located. EPA would have to rely on assertions and records of third party owners or custodians that gasoline imported into the U.S. as FRGAS contains only FRGAS. EPA is concerned that it would be unable to routinely conduct the types of inspections and audits of these third parties that would be necessary to ensure that non-FRGAS is not mixed with FRGAS, and that FRGAS is not diverted to non-U.S. markets.

The factors giving rise to these concerns are not present in the case of gasoline produced at domestic U.S. refineries, because there is little question of which gasoline produced at domestic refineries is used in the U.S. Gasoline produced at U.S. refineries is sampled and tested before leaving the refinery, and almost all then immediately enters U.S. commerce. Gasoline to be exported from the U.S. normally is identified at the time of production, and always is identified when actually leaving the U.S. As a result, and in contrast to the situation for foreign refineries, EPA can enforce the requirements for CG produced at domestic refineries based on refinery gate testing and reporting, with no need to track the gasoline after leaving the refinery.

EPA is proposing that the FRGAS produced at each foreign refinery must remain physically segregated from the FRGAS produced at other foreign refineries, from the foreign refinery to the U.S. port of entry. As a result of this requirement, when a foreign refiner loads FRGAS onto a ship for transport to the U.S. the foreign refiner must know the gasoline is exclusively FRGAS that is being included in the refinery compliance calculations, or compliance baseline calculations in the case of RFG.

This segregation requirement would not prohibit a foreign refiner from combining batches of CG FRGAS, or combining batches of RFG FRGAS, that are produced at a single refinery into larger volumes for shipment. In addition, EPA is proposing that the FRGAS produced at multiple refineries that have been aggregated under § 80.101(h) could be combined, because aggregated refineries must be operated by the same refiner.

EPA requests comment on whether a foreign refiner with more than one refinery should be allowed to mix FRGAS produced at its different refineries prior to shipment to the U.S.

Under today's proposal there is no need to track gasoline produced at foreign refineries after the gasoline leaves the U.S. port of entry, and foreign-produced gasoline then could be fungibly mixed in the same manner as gasoline produced at domestic refineries.

ii. *Foreign Refiner Certification of FRGAS.* EPA is proposing that foreign refiners of FRGAS would be required to prepare a certification, signed by an appropriate foreign refiner official, for FRGAS when it is loaded onto a ship for transport to the U.S. This certification would identify the gasoline as being FRGAS, the foreign refinery where the FRGAS was produced, the volume and properties of the FRGAS being transported, and a declaration that CG FRGAS is being included in the CG exhaust toxics and NOx compliance calculations for the foreign refinery. The volume and properties of CG, and the volume of RFG, contained in each ship compartment would have to be separately identified.

The foreign refiner certification would have to be supported by an inspection by an independent, EPA-approved third party such as an independent laboratory. The independent party would review documents that reflect the transportation and storage of the FRGAS in question from the point of production at the foreign refinery to the point of ship loading. The inspector thus would confirm the refinery of origin and that there was no fungible mixing of the FRGAS with any gasoline produced at any other refinery. The independent party also would be required to confirm the volume and properties of the CG FRGAS, and the volume of RFG FRGAS, loaded onto the ship, through inspection of the ship prior to loading, and measurement and sampling of the gasoline contained in each ship compartment subsequent to loading.

The independent party would prepare a report on these inspections that would become a part of the foreign refiner's certification. EPA is proposing that the independent party also would submit an inspection report to EPA.

iii. *U.S. Importer Receipt of FRGAS.* A U.S. importer would classify imported CG as FRGAS if the gasoline is accompanied by a foreign refiner certification that is properly supported by an independent party's report. In addition, the volume and properties of the CG measured by the U.S. importer at the U.S. port of entry would be compared with the load port volume and property measurements, and this comparison would have to indicate that the FRGAS loaded onto the ship was not mixed with other gasoline or otherwise changed en route to the U.S. The same

would apply for RFG FRGAS, but only the volume would be reviewed.[10]

The proposed regulations include criteria for comparing the load port and port of entry testing. The test results would have to agree, for each relevant Complex Model parameter, within the limits used for comparing domestic refiner and independent laboratory test results in § 80.65(e). EPA also is proposing that the two volume determinations, corrected for temperature and density, would have to agree within one percent. EPA believes this level of volume correlation is appropriate because it is well within the level of correlation normally expected in commercial transactions. EPA understands that protests normally are initiated if ship volume determinations in commercial dealings differ by 0.5%.

EPA requests comment on the proposed requirements for comparing load port and port of entry testing, and on any other approach for these comparisons that would be preferable to those proposed. In particular, EPA requests comment on whether load port and port of entry testing could rely on a subset of the properties listed in § 80.65, and whether the test-to-test differences allowed in § 80.65 are more or less stringent than necessary.

Importers would be required to include in their CG compliance calculations any imported CG for which the importer does not obtain a certificate by the foreign refiner supported by a report prepared by an independent third party.

In the case of CG for which the importer obtains a properly supported foreign refiner certificate, but where the volume and/or parameter results from the load port and port of entry do not meet the correlation requirements, the gasoline nevertheless would be imported as FRGAS. However, the *foreign refiner* would have to adjust its CG compliance calculations to reflect the exhaust toxics and NO_X emissions of the FRGAS as tested at the U.S. port of entry if these emissions results, in grams per mile, are higher than at the load port, and based on the larger of the two volume measurements if the volumes do not properly correlate. If the parameter results correlate but the volumes do not, the *foreign refiner* would have to adjust its CG compliance calculations to reflect the volume measured at the U.S. port of entry.

EPA is proposing that U.S. importers would report to EPA on each batch of FRGAS imported, that would identify the foreign refinery, whether the FRGAS is CG or RFG, the volume and properties of CG FRGAS, and the volume of RFG FRGAS.

iv. *Attest Engagement Requirements. Under today's proposal* foreign refiners of FRGAS would be required to meet the independent attest engagement requirements in §§ 80.125 through 80.130, the same as domestic refiners, although the attest requirements for RFG are limited to those related to the volume of RFG produced at a foreign refinery.[11] EPA is proposing additional attest requirements that relate to the FRGAS requirements. These attest requirements would supplement the requirements regarding an independent party determination of the refinery that produced FRGAS loaded onto a ship. The focus of the attest requirements would be on the foreign refinery operations while the independent party's primary focus would be on the transportation and storage of gasoline from the refinery to the point of ship loading.

Under the proposed procedures, the auditor would be required to confirm the overall production for the refinery in question, and that the gasoline claimed to be RFG and CG FRGAS was part of that overall production. The attester would confirm the transfer of FRGAS from the refinery to ships and would identify the ships. In addition, the auditor would use commercial publications that list vessel sailings to confirm that ships used to transport FRGAS traveled to the U.S.

EPA is proposing that the attest requirements would be fulfilled either by auditors who are independent under § 80.65(f)(2)(ii), and who either are U.S. certified public accountants (CPA's) or who are approved by EPA. EPA approval would be based on the ability to perform the required work as demonstrated through a petition process.

Independent auditors would have to agree to allow EPA inspections and audits relative to their work under the Gasoline Rule for the foreign refiner in a manner similar to the commitments required by foreign refiners, described below.

v. *Requirements for Third Parties.* EPA is proposing that FRGAS sampling, testing, volume determinations and determinations of refinery of origin at the loading port would have to be performed by an independent party. The proposed criteria for independence would be the same criteria that apply for the independent sampling and testing requirement for domestic refiners and importers, and that are specified at § 80.65(f)(2)(ii). In addition, EPA is proposing that persons performing this work would have to be EPA approved. EPA approval would be based on the ability to perform the required work as demonstrated through a petition process.

EPA also is proposing that independent parties would have to agree to allow EPA inspections and audits relative to their work under the Gasoline Rule for the foreign refiner that are similar to the commitments required by foreign refiners, described below.

4. Measures Related to Monitoring Compliance and Enforcement

i. *Introduction.* EPA believes the proposed requirements for foreign refiners with individual refinery baselines must be subject to strong measures for monitoring compliance and enforcing violations. However, there are a number of unique problems associated with monitoring compliance and enforcing requirements for parties and transactions that occur overseas. EPA is proposing a range of provisions designed to address these concerns in a comprehensive manner. These provisions are intended to promote EPA's ability to monitor compliance with the requirements related to foreign refinery baselines, to conduct enforcement actions when violations of these requirements are found, and to impose sanctions that would constitute a deterrent to future violations.

The purpose of the proposed provisions is to assure EPA's compliance and enforcement activities with regard to foreign refiners will be on the same footing as domestic refiners, in order to assure achievement of the environmental objectives of the gasoline programs.

ii. *Inspections and audits.* EPA would intend to inspect and audit foreign refineries with individual baselines and other facilities located overseas to determine compliance with requirements related to establishing a baseline, identifying refineries or origin, and other requirements proposed today. Foreign refiner inspections and audits would be like domestic refiner inspections and audits with regard to types of facilities visited, types of information reviewed, and types of persons who conduct the inspections and audits. In addition, the inspections

[10] However, an importer of RFG is required under § 80.65 to determine the volume and properties of imported RFG.

[11] ''Attest engagement'' is a term of art used by auditors to describe the conduct of specified audit procedures—the auditor attests to the conduct and results of the specified audit, or attest, procedures completed during the attest engagement. The requirements in §§ 80.125 through 80.130 consist of specified attest procedures dealing with the Gasoline Rule and instructions for the conduct of these procedures.

and audits would be both announced and unannounced, as with domestic inspections and audits.

Inspections and audits would be conducted at foreign refineries with individual baselines, at laboratories where the foreign refineries' gasoline is tested, at offices of pipelines, terminals and other third parties who had title or custody to gasoline between its production and arrival in the U.S., and at offices of independent third parties and independent auditors who have tested the refineries' gasoline or audited the refineries' operations under EPA requirements. The inspections and audits would be conducted by EPA employees and by contractors to EPA.

Refinery baseline audits would include reviews of records that were used to prepare baseline petitions, including refinery production, testing and shipment records that are relevant to baseline establishment, reviews of independent baseline auditor work papers, and interviews with refinery employees and others with knowledge about these records.

Inspections and audits for compliance with requirements such as those related to identifying the source refinery for gasoline exported to the U.S. would focus on the sampling and testing requirement, and on gasoline movements from the foreign refinery to the foreign load port. Sampling and testing would be evaluated by reviewing sampling and testing records, observing samples being collected and analyzed, by interviewing persons involved in sampling and testing, and by collecting gasoline samples for analysis by EPA. Source refinery assertions would be audited by reviewing records related to gasoline production, storage and transport at all locations from the foreign refinery to the foreign load port, and by interviewing persons at these locations. In addition, EPA would review the work papers of the independent third party, and the independent auditor, who verify the source refinery identification, and would interview these individuals.

EPA is proposing that foreign refiners would have to agree to allow full and complete access to EPA employees and contractors to conduct inspections and audits as a condition to establishment of a baseline, and would have to use independent third parties and independent auditors who agree to give EPA full and complete access as well.

The agreements would have to specify that EPA inspections and audits may be either announced or unannounced, and may be conducted by any authorized representative of EPA, including EPA employees and contractors. The foreign refiner, third parties, and auditors would have to agree to supply documents requested by an EPA inspector or auditor, and to make available for interview, within a reasonable time, any employee identified by EPA. The foreign refiner would have to agree to supply English language translations of documents requested during an audit, and to supply English language translators and/or interpreters to assist the EPA employees and contractors. The cost of supplying the English language translations, translators and interpreters would have to be borne by the foreign refiner.

The foreign refiner agreement would have to be signed by the president or owner of the foreign refiner, and in the case of independent third parties and auditors by the president or owner of these companies.

The foreign refiner would have to agree that authorized representatives of EPA would be allowed to enter the relevant facilities for the purpose of inspecting and auditing foreign refineries that export gasoline to the U.S., and facilities where gasoline exported to the U.S. are analyzed. These inspections could be for the following purposes:

- The inspection of gasoline production facilities;
- The collection of gasoline samples;
- The inspection of records related to gasoline production, sale, transfers, transport, storage, and sampling and testing; and
- The taking of testimony or statements of persons.

The foreign refiner and third party commitments also would specify that EPA representatives would not be subject to civil liability that would result from any actions by the EPA representatives within the scope of their audit and inspection work, including any findings or conclusions regarding compliance or noncompliance by the foreign refiner with requirements that are the subject of the audits and inspections.

The refiner agreement also would include a limited waiver of sovereign immunity with regard to refineries that are state owned, and with regard to any employees of state owned refineries. This waiver of sovereign immunity would include both civil and criminal liability, and would be limited to violations of Clean Air Act section 211(k) and the regulations promulgated thereunder at 40 CFR Part 80, subparts D, E and F, and other relevant laws and regulations including but not limited to Clean Air Act sections 113, 114, 211 (c) and (d), and Title 18 United States Code. This waiver of sovereign immunity also will apply to any employee or agent of a refinery owned or operated by the foreign government.

Where a foreign refiner failed to abide by the terms of the foreign refiner agreement, or a foreign government failed to allow entry for the purpose of EPA inspections and audits, EPA could withdraw or suspend the refiner's individual refinery baseline.

iii. *Civil and criminal enforcement actions.* A foreign refiner with an individual refinery baseline who submits false documents to EPA or who fails to meet other requirements would be subject to civil, and in certain cases criminal, enforcement, and EPA is proposing requirements that would facilitate prosecution of such violations. These requirements would consist of certain waivers and agreements by the foreign refiner that would be included in the agreement submitted to EPA, discussed above.

EPA is proposing that each foreign refiner seeking an individual refinery baseline would be required to identify an agent for service in the U.S. and agree that service on this agent constitutes service on the foreign refiner and its employees. EPA also is proposing that the agent for service must be located in the District of Columbia.

EPA is proposing that foreign refiners would have to agree that the forum for civil enforcement actions would be governed by Clean Air Act (CAA) section 205. CAA section 205(b) specifies that the venue for district court actions is either the district where the violation occurred or where the defendant resides or in the Administrator's principal place of business. However, EPA believes that the U.S. district court for the District of Columbia would be the appropriate court for violations related to the requirements proposed today that are committed by defendants who reside outside the U.S. Administrative assessment of civil penalties is allowed under CAA section 205(c) where the penalty amount does not exceed $200,000, or where the EPA Administrator and the Attorney General jointly determine that a case involving a larger penalty is appropriate for administrative penalty assessment.

EPA is proposing that foreign refiners of FRGAS would have to agree that civil and criminal enforcement actions would use the same U.S. civil and criminal substantive and procedural laws that apply in enforcement actions against domestic refiners.

iv. *Sanctions for civil and criminal violations.* The sanctions for civil and

criminal violations committed by foreign refiners with individual refinery baselines or employees of such foreign refiners would include the sanctions specified in the Clean Air Act. Under CAA section 211(d) the penalty for civil violations of the RFG and conventional gasoline requirements is up to $25,000 per day of violation plus the amount of economic benefit or savings resulting from the violation. Injunctive authority is included under section 211(d)(2) as well. CAA section 113(c) specifies that the criminal penalty for first violations of knowingly making false statements or reports is a fine pursuant to title 18 of the U.S. Code, or imprisonment for up to 5 years, or both. The period of maximum imprisonment and the maximum fine are doubled for repeat convictions.

EPA is proposing that foreign refiners seeking an individual refinery baseline would be required to post a bond with the U.S. Treasury that would be available to satisfy any civil penalty or criminal fine that is imposed against the refiner or its employees. The amount of this bond would be $0.01 per gallon of conventional gasoline exported by the refiner to the U.S. per year, based on the maximum annual volume of conventional gasoline exports during the most recent five year period during which the foreign refiner exported conventional gasoline to the U.S. using an individual refinery baseline. However, the initial bond amount would be based on the volume of conventional gasoline produced at a foreign refinery that was exported to the U.S. during the year immediately preceding the year the baseline petition is submitted.[12] The foreign refiner would be required to submit with its baseline petition a bond to reflect this volume, and to include with its baseline petition information necessary to accurately establish the conventional gasoline volume for the preceding year. The foreign refiner then each year would take into account in its bond amount calculation the conventional gasoline volume for an additional year until there is a five year history, at which time the conventional gasoline volume review would include only the most recent five years.

As an alternative to posting the bond with the U.S. Treasury, a foreign refiner could meet the bond requirement by obtaining a bond in the proper amount from a third party surety agent that would be payable to satisfy U.S. administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement.

As with domestic refiners, any violation of a regulatory requirement by a foreign refiner could result in the imposition of penalties. For foreign refiners with individual refinery baselines the assessment of a penalty also could result in the forfeiture of a bond to satisfy the penalty. This would, for example, include a failure to allow EPA inspections and audits; failure to submit required audit reports prepared by an independent auditor; or failure to properly identify the source refinery for FRGAS.

EPA is proposing that if a foreign refiner with an individual refinery baseline fails to meet the requirements proposed today, including those that apply to all refiners under the current regulations, and/or the additional requirements that would apply only to foreign refiners, then EPA could administratively withdraw or suspend its individual refinery baseline.

EPA is proposing that withdrawal or suspension of an individual refinery baseline could be imposed for all of the refineries operated by a foreign refiner, or for a subset of a foreign refiner's refineries where appropriate. EPA would impose this sanction in a particular case only after evaluating the circumstances and exercising its discretion based on factors such as egregiousness, willfulness and prior violations. The withdrawal or suspension could be imposed for a limited time.

C. Baseline Adjustment for Imported Gasoline that is Not FRGAS

1. Introduction

Allowing foreign refiners to choose whether to establish an IB creates a potential for adverse environmental impact. This would be addressed by monitoring the quality of imported gasoline, comparing it to a benchmark, and taking remedial action if the benchmark is exceeded. The details of this proposal are described below.

2. Monitoring

Under the current regulations, importers submit an annual report concerning the quality of the CG they import. See 40 CFR 80.105. Importers submit an annual report after the end of the calendar year, comparing the quality of the gasoline they imported against the applicable annual average requirements. Starting in 1998, these requirements are for exhaust toxics and NO_X emission performance, determined under the Complex Model.

Under the current rules, the annual report is due by the last day of February following the end of the annual averaging period. An attest engagement report is due by May 30th. The importer's report must include the total gallons of CG imported, the annual average compliance baseline, and the annual average for the gasoline imported that calendar year. The importer must also include the volume, grade and qualities for each batch of imported gasoline.

Under today's proposal, importers would continue to submit the reports described above for CG produced by foreign refiners without an IB. For gasoline produced by a foreign refiner with an IB, both the importer and the foreign refiner would submit reports to EPA. In combination these reports would contain all of the information submitted for gasoline produced by refiners without an IB.

These annual reports submitted by importers and foreign refiners would provide EPA with batch by batch information for all CG imported during that year. From these, EPA could determine the volume weighted average quality for all imported CG. This would be a simple and straightforward way to monitor imported gasoline quality. Additional sampling and testing by EPA would be duplicative, as the importer must sample and test each batch of imported gasoline. 40 CFR 80.101(I).

3. An Appropriate Benchmark

The purpose of the benchmark is to reasonably determine when allowing foreign refiners the option to use an IB or to not use an IB has caused degradation of the quality of imported gasoline from 1990 quality of imported gasoline.

Ideally, EPA would use the volume weighted average of the quality of gasoline sent to the U.S. by foreign refineries in 1990. EPA does not have this information, but does have information on the volume weighted average baselines for domestic refineries. This average accounts for approximately 95% of the U.S. gasoline market in 1990, and reflects a wide diversity in types and kinds of refineries. There is no available data indicating that gasoline imported from foreign refineries was not consistent with this average, and absent evidence to the contrary it is not unreasonable to assume that average foreign gasoline quality in 1990 was generally equivalent to domestic gasoline quality. Also it would not be reasonable to measure overall quality for gasoline produced by

[12] A foreign refinery's 1990 baseline volume would not be appropriate for setting the bond amount, because in 1990 the Gasoline Rule was not in effect, so there was no gasoline identified as conventional or RFG.

foreign refiners using stricter criteria than that applied to domestic refiners, in the absence of evidence indicating otherwise.

The benchmark should be set at a point such that an exceedance of the benchmark reasonably indicates that the average quality of imported gasoline has degraded from 1990 levels because of the option provided to foreign refiners in using or not using an IB. Many additional factors also affect the average quality of imported gasoline. For example, there is a wide variety in the level of imports from year to year. The source and volume of imports from specific countries and refineries also varies significantly from year to year. Despite general trends in amount and source of imported gasoline, there remains a lot of year to year variability. A change in average gasoline quality during any particular year therefore might indicate the effects of allowing the option for IBs, or it might reflect the unique circumstances of that year, which may well change the next year.

Since the existence of an exceedance of the benchmark is designed to detect a multi-year trend, EPA is proposing that a three year average be compared against the benchmark. This would be a rolling average; e.g. the average for years 1 through 3 would be compared to the benchmark one year, the next year the average for years 2 through 4 would be compared, and so on.

EPA is proposing to set a benchmark for exhaust NO_X at the volume weighted baseline average for domestic refiners. This would be 1465 mg/mile for NO_X.[13]

For toxics, the evidence to date tends to show there would not likely be an adverse impact from allowing the option to use IBs. In 1995, the volume weighted annual average of imported gasoline for exhaust toxics was 86.64 mg/mile. This was cleaner than both the statutory baseline (104.5 mg/mile) and the volume weighted average for domestic baselines (97.34 mg/mile).[14] In addition, one foreign refiner that is a major supplier to the U.S. market has submitted detailed information to EPA on their expected IB, and the information submitted by the foreign refiner to date indicates that their IB for exhaust toxics would be cleaner than the SB.[15] EPA believes the present circumstances may not lead to a risk of adverse environmental impact, and a benchmark and provisions for remedial action may not be needed for exhaust toxics. Instead, EPA would monitor the average quality of imported gasoline for exhaust toxics as it would for NO_X, and if an adverse trend were to occur EPA would develop a benchmark and remedial provisions analogous to that proposed for NO_X.

At the start of the program, EPA is proposing that the volume weighted average for 1998 and 1999 be compared to the benchmark, and then the average for 1998, 1999 and 2000, to start the three year rolling average. A one year average for 1998 alone would not by itself appear adequate to detect a multi-year trend, while a two year average would be more effective in this regard. The effects of imports in 1998 would be still be fully accounted for, in the two year average including 1999. Since an IB might start to be used in 1997, EPA also is proposing to include with the 1998 imports all gasoline imported in 1997 after the date any gasoline subject to an IB is imported in 1997.

EPA invites comment on an alternative involving comparing the 1998 average to the benchmark, then the 1998 and 1999 combined average, and then the three year average starting with 1998, 1999 and 2000.

4. Remedial Action Upon an Exceedance

If a volume weighted three year annual average for imported CG exceeds the benchmark for NO_X then EPA would take remedial action. Under the proposal, the remedial action would be an adjustment applied to the compliance baseline for CG not included in the CG compliance calculations of a foreign refiner with an IB. EPA is proposing an adjustment to the baseline that would equal the amount of the exceedance of the benchmark.

This would be reevaluated each year by comparing the average for the three prior years to the benchmark. If there were no exceedance, then a prior adjustment would be terminated. If there were an exceedance, then a new adjustment would be imposed that equals the amount of the current exceedance. For example, if the three year annual average exceeded the NO_X benchmark by 5 mg/mile, then the compliance baseline for NO_X would be adjusted by 5 mg/mile. If there were no exceedance in the next years comparison, then the adjustment would be dropped.[16]

EPA also invites comment on whether there should be some minimum level of an exceedance above the benchmark before remedial action is taken. Such a level would need to be set at a point where the benefits from taking a remedial action are de minimis, given the likelihood that the next year's comparison to the benchmark would in all likelihood show whether or not there is a clear exceedance of the benchmark, and any appropriate action would be taken at that point.

5. Imported Gasoline Subject to the Remedial Action

A foreign refiner using an IB would follow the same procedures as a domestic refiner—the quality of its CG would be measured against the IB of the refiner that produced it. Foreign refiners without an IB would have chosen to have their gasoline measured against the SB instead of an IB, and reasonably could be expected to include refiners whose IB would have been more stringent than the SB. It is the use of IBs by some refiners, and the degradation below 1990 quality in CG produced by foreign refiners without an IB, that causes the average CG quality to be adversely affected when other refiners are at their IB. Since the foreign refiner with an IB would be acting no differently than domestic refiners with an IB, it is appropriate to only apply the remedial action to CG imported from refiners without an IB.

D. Requirements for U.S. Importers

Under today's proposal U.S. importers would be required to meet exhaust toxics and NO_X requirements for all imported CG that is not designated as FRGAS, and would exclude from importer CG compliance calculations all CG that is designated as FRGAS. A mechanism is proposed by which U.S. importers would demonstrate that imported CG is FRGAS. The baseline that would apply to U.S. importers would be the statutory baseline or any adjusted baseline as discussed in section II.C above. EPA is not proposing to change the current requirement that U.S. importers meet all requirements for imported RFG.

EPA also is requesting comment on an option where U.S. importers would meet the exhaust toxics and NO_X requirements for CG produced at a foreign refinery with an individual refinery baseline using the foreign refinery's baseline, taking into account

[13] This value applies under the Phase 2 Complex Model.

[14] In 1995 the volume weighted average for NO_X for imported gasoline was 1415.9 mg/mile, while the SB was 1461 mg/mile, and the volume weighted average for domestic baselines was 1465 mg/mile.

[15] See 59 FR 22809 (May 3, 1994).

[16] For the initial years of the program, EPA is proposing that an exceedance for 1998 and 1999 lead to a remedial adjustment that equals the exceedance, but no more than 1% of the SB for NO_X. This would also apply if EPA were to compare 1998 separately to the benchmark. The 1% cap is designed to avoid imposing an unnecessarily stringent adjustment that could result from the absence of data from a complete three year cycle.

the volume cap on use of the foreign refinery's individual baseline.

1. Imported CG FRGAS

Imported CG FRGAS would be excluded from the U.S. importer's CG compliance calculations. This would prevent the double counting that would result if FRGAS were included in the CG compliance calculations of both the foreign refiner and the U.S. importer. However, the U.S. importer would determine the quality and quantity of CG FRGAS at the U.S. port of entry, which the importer would report to the foreign refiner and to EPA in order to be compared with the foreign load port testing.

A U.S. importer would classify an imported CG batch as FRGAS if the gasoline is accompanied by a certification prepared by the foreign refiner that identifies the gasoline as FRGAS to be included in the foreign refinery CG compliance calculations, and a report on the FRGAS batch prepared by an independent third party. These procedures are described in greater detail in section II.B.3 of this preamble. In this way the U.S. importer would act like a domestic distributor and would not be responsible for meeting the exhaust toxics and NO_X requirements for CG. The U.S. importer would not be responsible for whether the foreign refiner meets the annual exhaust toxics and NO_X requirements for CG, including whether the foreign refiner properly calculates the refinery's compliance baseline each year.

However, the U.S. importer would be responsible for ensuring the foreign refiner certification was in fact prepared by the foreign refiner named on the certificate, and that the foreign refinery has been assigned an individual refinery baseline by EPA. If a CG FRGAS certification was not prepared by the named foreign refiner, for example if it is a forgery, the U.S. importer would be required to include the CG in the importer's CG compliance calculations. Similarly, if the certificate accompanying a batch of CG FRGAS names a foreign refinery that has not been assigned an individual baseline, the U.S. importer would be required to include the CG in the importer's CG compliance calculations. It is necessary to make U.S. importers responsible for accounting for imported CG in these situations, because otherwise EPA would be unable to enforce the CG requirements. EPA would have great difficulty enforcing requirements with regard to a foreign party who may have created fraudulent FRGAS certification documents, or a foreign refiner who does not have an individual refinery baseline.

EPA believes U.S. importers can easily protect themselves against this type of liability. EPA would publish on the RFG computer bulletin board the identity of foreign refineries that have been assigned individual baselines, that could be used by importers to identify legitimate foreign refiners of FRGAS. Importers can avoid relying on false certificates by selecting reliable business partners, or by contacting the foreign refiner to ensure the authenticity of the certificate for any particular FRGAS batch.

The U.S. importer would use an independent laboratory to determine information about each CG FRGAS batch. The batch quality and quantity would be determined through sampling and testing prior to off loading the ship, that could be compared with the quality and quantity determined at the load port after the ship was loaded. The independent lab also would use the product transfer documents to determine the identity of the foreign refinery where the FRGAS was produced. The importer would submit a report to the foreign refiner and to EPA containing the batch information.

U.S. importers would not be able to classify CG FRGAS as ''gasoline treated as blendstock,'' (GTAB), because to do so would result in the same CG being included in two compliance calculations.[17] In addition, U.S. importers could not use GTAB procedures to convert FRGAS that is CG into RFG, for the same reason that domestic regulated parties are not allowed to convert CG into RFG. Conversion of CG into RFG is prohibited because of concern such conversions could result in degradation of the CG gasoline pool. For example, in the absence of this constraint a refiner could produce very clean CG that in fact meets the RFG requirements, include this gasoline the refiner's CG compliance calculations to offset other dirty CG, and then convert this gasoline into RFG. The effect of this form of gaming would be degradation in the average quality of the refiner's CG. This same effect would be possible if importers could convert CG FRGAS into RFG.

2. Imported CG That Is Not FRGAS

U.S. importers would meet all current requirements for imported CG that is not FRGAS, including requirements for annual average exhaust toxics and NO_X. However, the baseline used by importers would be the baseline described in section II.C of this preamble. In the case of CG that is not FRGAS, importers would have no requirements related to tracking the refinery of origin. In addition, importers would be able to use the current GTAB procedures to reblend or reclassify imported CG that is not FRGAS.

3. Imported RFG

U.S. importers would include all imported RFG in the importers' RFG compliance calculations as is currently required, including imported RFG FRGAS and imported RFG that is not FRGAS. However, in the case of imported RFG FRGAS the importer would have to meet additional requirements related to tracking the refinery of origin. The importer would have an independent laboratory determine the volume of each RFG FRGAS batch, and report this volume to the foreign refiner and to EPA to be compared with the load port volume. The volume of RFG produced at a foreign refinery with an individual baseline is used to calculate the refinery's CG compliance baseline, which constitutes a volume cap on use of an individual refinery baseline.

U.S. importers would be able to use GTAB procedures for imported RFG that is both FRGAS and non-FRGAS, because foreign refiners would not have included the RFG in RFG compliance calculations. As a result, an importer could use GTAB procedures to blend additional blendstocks with RFG or to reclassify RFG as CG.

4. Alternative Option of U.S. Importer Accounting for FRGAS

EPA requests comment on an alternative option where U.S. importers, and not foreign refiners, would meet the exhaust toxics and NO_x requirements for CG produced at foreign refineries with an individual baseline. The importer would use the baseline that applies to the foreign refiner for this gasoline. This alternative would require the foreign refiner to specify the baseline values that apply to each CG batch, based on the volume of CG and RFG produced at the foreign refinery for the U.S. market each year as compared to the refinery's

[17] EPA has issued guidance under the current regulations that allows importers to classify imported gasoline as blendstock, called GTAB, that the importer must use to produce gasoline at a refinery operated by the importer-company. The purpose of the GTAB procedures is to enable importers to conduct remedial blending of imported gasoline, or to reclassify gasoline with regard to RFG or CG, before imported gasoline is introduced into U.S. commerce. This puts importers on a more equal footing with refiners, who are able to reblend or reclassify gasoline prior to shipping gasoline from the refinery.

baseline volume.[18] In addition, the U.S. importer and foreign refiner would be required to track the refinery of origin for the CG produced at foreign refineries with individual baselines using procedures similar to those described in section II.B.3 of this preamble.

Under this alternative U.S. importers would calculate an annual compliance baseline for exhaust toxics and NO_x, based on the volume-weighted baselines of all CG imported during the year—the assigned baseline values for CG produced at foreign refineries with individual baselines, and the statutory baseline for other CG.

Under this alternative foreign refiners with individual refinery baselines, and U.S. importers, would be required to track movements of blendstock produced at foreign refineries with individual baselines, to ensure the foreign refiner abides by the blendstock transfer requirements specified in § 80.102. However, under § 80.102 blendstock tracking is required only of refiners with a baseline parameter that is more stringent than the statutory baseline for that parameter. As a result, blendstock tracking would be required for any foreign refinery with an individual baseline value for either exhaust toxics or NO_x that is more stringent than the statutory baseline values for exhaust toxics or NO_x.

U.S. importers would be allowed to use the GTAB procedures for CG produced at a foreign refinery with an individual baseline under this alternative, because the foreign refiner would not have included the gasoline in refinery CG compliance calculations. In this way, imported CG could be reblended or reclassified as RFG. Like under current GTAB procedures the baseline applicable to each imported CG batch, i.e., the baseline assigned by the foreign refiner, would be carried over to the importer-company's refinery for that batch.

Under this alternative, the U.S. importer would be responsible for using the proper baseline for each imported CG batch. If a foreign refiner assigns an improper baseline to a batch and the U.S. importer uses the improper baseline values, the U.S. importer would be required to recalculate its CG compliance using the proper baseline. This recalculation would be necessary regardless of when the improper baseline values are discovered, and if the recalculation results in a violation of the exhaust toxics and NO_x requirements the importer would be liable for the violation. Similarly, if the foreign refinery for imported CG is improperly identified and the U.S. importer uses the improper baseline values, the U.S. importer would be required to recalculate its compliance baseline using the proper baseline values, and would be liable for any resulting penalties.

E. Early Use of Individual Foreign Refinery Baselines

EPA is proposing that a foreign refiner who submits a petition for an individual refinery baseline could begin using the individual baseline prior to EPA approval of the baseline petition, provided EPA makes a preliminary finding the baseline petition is complete, and the foreign refiner also has completed certain requirements proposed today. However, any gasoline imported under a requested IB would be subject to the actual IB assigned by EPA.

EPA would conduct a completeness evaluation as the first step in baseline review process, and would notify a foreign refiner of the results of the completeness review on request. However, the initial completeness review would not bar EPA from requiring a foreign refiner to submit additional information later in the baseline review process.

The additional requirements a foreign refiner would have to complete in order to use an individual baseline early are related to ensuring EPA's ability to monitor and enforce compliance by the foreign refiner with all applicable requirements during the early use period. The particular requirements that would have to be met are: (1) The commitments regarding EPA inspections and the forum for enforcement actions, and (2) the requirements related to bond posting.

If these conditions are met, the foreign refiner could begin classifying CG and RFG as FRGAS, and could use the individual refinery baseline to demonstrate compliance with the CG parameter and emissions requirements.[19] However, EPA is proposing that a foreign refiner would be required to meet the CG requirements for FRGAS using the refinery baseline values that ultimately are approved by EPA. Thus, if a foreign refiner elects to use an individual refinery baseline early, and uses baseline values that are less stringent than the baseline values ultimately approved by EPA, the refiner's compliance with the CG exhaust toxics and NO_x requirements will nevertheless be measured relative to the approved baseline values. If this evaluation results in a violation of the CG requirements, the foreign refiner will be held liable.

F. Requirements for RFG Before 1998

The focus of this proposal is on the requirements for CG, because the CG requirements rely on refinery baselines both now and in the future. The RFG requirements for sulfur, T–90 and olefin content also rely on individual refinery baselines, but only until the Complex Model applies beginning in January, 1998. EPA believes an approach similar to that proposed for CG could be used to allow foreign refiners to use individual refinery baselines for these RFG requirements until January, 1998. However, the comments received during the comment period indicated that there is little if any interest in this matter given that the complex model will apply in the very near future.

EPA requests comment on whether the provisions for this rule should include the provisions necessary to allow use of foreign refinery baselines for the RFG requirements, and whether any foreign refiner believes it would be able to take advantage of these requirements if they were promulgated.

III. Public Participation

EPA believes these proposed requirements would be consistent with the Agency's commitment to fully protect public health and the environment, and with the U.S. commitment to ensure that the Gasoline Rule is consistent with the obligations of the U.S. under the WTO. EPA invites comment on all aspects of today's notice and also seeks comment on whether or not the proposal meets the goal stated above. EPA invites comment on the need for the proposed provisions, the environmental impact of the provisions, and the costs for all parties, foreign and domestic, who would be affected by the proposed changes to the Gasoline Rule. The Agency invites any alternative approaches to regulating imported gasoline that would achieve the same goal.

IV. Administrative Designation and Regulatory Analysis

A. 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

[18] For example, foreign refiners could be required to assign the individual refinery baseline to CG batches that are produced at a foreign refinery each year before the refinery's total volume of U.S. market gasoline (RFG plus CG) equals the refinery's baseline volume, and to assign the adjusted statutory baseline to subsequent CG batches.

[19] During 1997, under § 80.101(b)(1) the CG requirements are for sulfur, T–90, olefins and exhaust benzene emissions. Beginning in 1998 the CG requirements are for exhaust toxics and NO_x emissions.

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 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action,'' as such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) general requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because only a limited number of domestic entities would be affected by this proposal and would be small entities. In addition, today's proposal would not significantly change the requirements applicable to importers of gasoline produced by foreign refineries.

Of the entire population of importers currently reporting to the EPA, somewhat less than 100 importers that would be subject to today's proposed rule are small entities. Under 40 CFR. 80.65 and 80.101 the requirements for imported CG must currently be met by the importer. The current requirements are based on the statutory baseline while today's proposed rule would require either foreign refiners or importers to meet the CG requirements using the baselines of the various foreign refineries. Other importers would continue to meet the CG requirements using the statutory baseline or an adjusted baseline. This would not, however, have a significant impact on the importer, as the importer would continue to only import gasoline that allows it to meet the annual average requirements, and such gasoline would continue to be available from the foreign refineries. The provision generally corresponds with existing requirements. This proposal would continue the requirement that importers be responsible for sampling and testing for foreign gasoline imported into the U.S. Importers will be responsible for this activity at the port of entry in the U.S. Importers would rely on the foreign refiners and the independent party's to establish refinery of origin. Importers can accomplish this by making private arrangements with the importing foreign refiner and the independent party. The Agency believes that, in general, exercising good business practices with reputable foreign refiners would tend to eliminate any impact on the importer. The impact of today's proposal would therefore either not increase an importers cost, or would do so only marginally.

The issue of baselines for imported gasoline is discussed generally in section VII–C of the Regulatory Impact Analysis that was prepared to support the Final Rule for gasoline. A copy of this document may be found in the RFG docket, number A–92–12, at the location identified in the **ADDRESSES** section of this document.

Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. The Paperwork Reduction Act

The information collection requirements in this proposed rule has 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. 1591.08) and a copy may be obtained from Sandy Farmer, Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740.

This proposal would allow foreign refiners to establish individual baselines to demonstrate compliance with the Agency's gasoline rule. The information collected would enable EPA to evaluate imported gasoline in a manner similar to gasoline produced at domestic refineries. Section 211(k) specifically recognizes the need for recordkeeping, reporting and sampling/testing requirements for enforcement of this program. Because of the complex nature of the gasoline rule, EPA cannot determine compliance merely by taking samples of gasoline at various facilities.

For purposes of this document, EPA expects that at most approximately three foreign refiners will petition the agency annually.[20] The EPA estimates that approximately 66 batches of CG would be imported into the United States annually subject to an individual baseline. These batches of CG must be sampled and tested by an independent laboratory making the total cost burden shared by the independent importers approximately $24,000 a year. The collection of information has an estimated recordkeeping and reporting burden averaging 4.1 hours per respondent, or a total estimated burden of 812 hours shared by all respondents annually. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the 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, 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.

The Agency requests comments on the 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

[20] To date, only a limited number of foreign refiners have indicated an interest in establishing an IB. However, under the proposal any foreign refiner could apply for an IB.

collection techniques. Send comments on the ICR to the Director, Regulatory Information Division; U.S. Environmental Protection Agency (2136); 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 May 6, 1997, a comment to OMB is best assured of having its full effect if OMB receives it by June 5, 1997. The final rule will respond to any OMB or public comments on the information collection request.

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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector.

V. Statutory Authority

The statutory authority for the rules proposed today is granted to EPA by sections 114, 211 (c) and (k), and 301 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7545 (c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: April 29, 1997.

Carol M. Browner,

Administrator.

40 CFR Part 80 is proposed to be amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.94 is proposed to be added to subpart E to read as follows:

§ 80.94 Requirements for gasoline produced at foreign refineries.

(a) *Definitions.* (1) *A foreign refinery* means a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as ''the United States'').

(2) A *foreign refiner* means a refiner of a foreign refinery.

(3) *FRGAS* means gasoline produced at a foreign refinery that has been assigned an individual refinery baseline, and that is included in the foreign refinery's conventional gasoline compliance calculations, or compliance baseline calculations.

(b) *Baseline establishment.* Any foreign refiner may submit to EPA a petition for an individual refinery baseline, under §§ 80.90 through 80.93, for any foreign refinery that produced gasoline in 1990 that was exported to the United States.

(1) The provisions for baselines as specified in §§ 80.90 through 80.93 shall apply to a foreign refinery, except where provided otherwise in this section.

(2) The baseline for a foreign refinery shall reflect only the volume and properties of gasoline produced in 1990 that was imported into the United States.

(3) A baseline petition shall establish the volume of conventional gasoline produced at a foreign refinery and exported to the United States during the calendar year immediately preceding the year the baseline petition is submitted.

(4) In making determinations for foreign refinery baselines EPA will consider all information supplied by a foreign refiner, and in addition may rely on any and all appropriate assumptions necessary to make such a determination.

(5) Where a foreign refiner submits a petition that is incomplete or inadequate to establish an accurate baseline, and the refiner fails to cure this defect after a request for more information, then EPA shall not assign an individual refinery baseline.

(6) Baseline petitions under this paragraph (b) must be submitted before January 1, 2002.

(c) *General requirements for foreign refiners with individual refinery baselines.* Any foreign refiner of a refinery that has been assigned an individual baseline under paragraph (b) of this section shall designate all gasoline produced at the foreign refinery that is exported to the United States as FRGAS.

(1)(i) In the case of conventional gasoline FRGAS the foreign refiner shall meet all requirements that apply to refiners under subparts D, E and F of this part.

(ii) If the foreign refinery baseline is assigned, or a foreign refiner begins early use of a refinery baseline under paragraph (q) of this section, on a date other than January 1, the compliance baseline for the initial year shall be calculated under § 80.101(f) using an adjusted baseline volume, as follows:

$$AV_{1990}=(D/365)xV_{1990}$$

where:

AV_{1990}=Adjusted 1990 baseline volume;

D=Number of days remaining in the year beginning with the day the foreign refinery baseline is approved or the day the foreign refiner begins early use of a refinery baseline;

V_{1990} = Foreign refinery's 1990 baseline volume.

(2) In the case of reformulated gasoline and RBOB FRGAS, the foreign refiner shall meet the following requirements:

(i) The designation requirements in § 80.65(d)(1);

(ii) The recordkeeping requirements in §§ 80.74(a), (b)(1) and (b)(3);

(iii) The reporting requirements in §§ 80.75(a), (m), and (n);

(iv) The registration requirements in § 80.76;

(v) The product transfer document requirements in §§ 80.77 (a) through (f), and (j);

(vi) The prohibition in §§ 80.78(a)(10), (b) and (c); and

(vii) The independent audit requirements in §§ 80.125 through 80.127, 80.128 (a) through (c), and (g) through (i), and § 80.130.

(d) *Designation, product transfer documents, and foreign refiner certification.* (1) Any foreign refiner of a foreign refinery that has been assigned an individual baseline shall designate each batch of FRGAS as such at the time the gasoline is produced, in addition to the designations required in § 80.65(d).

(2) On each occasion when any person transfers custody or title to any FRGAS prior to its being imported into the United States, the following information shall be included as part of the product transfer document information in §§ 80.77 and 106:

(i) Identification of the gasoline as FRGAS; and

(ii) The name and EPA refinery registration number of the refinery where the FRGAS was produced.

(3) On each occasion when FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner shall prepare a certification for each batch of the FRGAS that meet the following requirements:

(i) The certification shall include the following information:

(A) The identification of the gasoline as FRGAS;

(B) The volume of FRGAS being transported, in gallons;

(C) In the case of conventional gasoline FRGAS, the exhaust toxics and NOx emissions performance in mg/mile;

(D) A declaration that the FRGAS is being included in the compliance calculations under § 80.101(g) for the refinery that produced the FRGAS; and

(E) The name and EPA registration number of the refinery that produced the FRGAS;

(ii) The certification shall be signed by the president or owner of the foreign refiner company, or by that person's immediate designee, with a declaration as to the truth and accuracy of the certification; and

(iii) The certification shall be made part of the product transfer documents for the FRGAS.

(e) *Contracts for sale or transfer.* Any foreign refiner shall include as part of each contract for sale or transfer of any FRGAS:

(1) The following requirements:

(i) Delivery of the FRGAS is restricted to the United States;

(ii) The FRGAS may not be combined with any other gasoline, except that, subject to the segregation restrictions in § 80.78(a), FRGAS may be combined with other FRGAS produced at the same refinery or at other refineries that are aggregated under § 80.101(h); and

(iii) Any subsequent transfers of custody or title to FRGAS must include these restrictions; and

(2) Commercial penalties for any violations of the FRGAS requirements that are sufficiently large to ensure compliance with the requirements.

(f) *Load port independent sampling, testing and refinery identification.* (1) On each occasion FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Inspect the vessel prior to loading;

(ii) Collect a representative sample of the FRGAS subsequent to loading on the vessel and prior to departure of the vessel from the port serving the foreign refinery;

(iii) Analyze the sample for each property specified in § 80.65(e)(1) using the methodologies specified in § 80.46;

(iv) Determine the volume of FRGAS loaded onto the vessel;

(v) Review original documents that reflect movement and storage of the FRGAS from the refinery to the load port, and from this review determine:

(A) The refinery at which the FRGAS was produced; and

(B) That the FRGAS remained segregated from:

(*1*) Non-FRGAS; or

(*2*) Other FRGAS produced at a different refinery, except that FRGAS may be combined with other FRGAS produced at refineries that are aggregated under § 80.101(h);

(vi) Obtain the EPA-assigned registration number of the foreign refinery;

(vii) Determine the name and country of registration of the ship used to transport the FRGAS to the United States; and

(viii) Determine the date and time the ship departs the port serving the foreign refinery.

(2) The requirements of paragraph (f)(1) of this section must be met separately for each quantity of FRGAS that is not homogenous with regards to properties specified in § 80.65(e)(1).

(3) The independent third party shall submit a report to the Administrator containing the information required under paragraph (f)(1) of this section, within thirty days following the date of the independent laboratory's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the gasoline was produced, that the gasoline was not mixed with gasoline produced at any other refinery, and a description of the gasoline's movement and storage between production at the source refinery and ship loading.

(4) A third person my be used to meet the requirements in this paragraph (f) only if:

(i) The person is approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (f);

(ii) The person is independent under the criteria specified in § 80.65(f)(2)(iii); and

(iii) The person signs a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities, facilities and documents relevant to compliance with the requirements of this paragraph (f).

(g) *Comparison of load port and port of entry testing.* (1) Any foreign refiner of CG FRGAS shall compare the results from the load port testing under paragraph (f)(1) of this section, with the port of entry testing as reported under paragraph (n)(4) of this section, and if the port of entry results differ by more than the amounts allowed under § 80.65(e)(1) the foreign refiner shall adjust the foreign refinery's compliance calculations under § 80.101(g) to reflect the port of entry results.

(2) The foreign refiner shall compare the volume from the load port testing with the volume from the port of entry testing, and if these results, corrected for temperature and density, differ by 1% or more the foreign refiner shall:

(i) In the case of reformulated gasoline or RBOB FRGAS, adjust the foreign refinery's compliance baseline calculations under § 80.101(f) to reflect the port of entry volume; and

(ii) In the case of conventional gasoline FRGAS adjust the foreign refinery's compliance calculations under § 80.101(g) to reflect the port of entry volume, using the properties as determined at the foreign refinery.

(h) *Attest requirements.* The following additional procedures shall be carried out by any foreign refiner of FRGAS as part of the attest engagement for each foreign refinery under subpart F of this part:

(1) Obtain separate listings of all tenders of reformulated and conventional gasoline FRGAS that is loaded onto ships for transport to the United States. Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b), and to the volumes determined by the independent laboratory under paragraph (f)(1)(iv) of this section.

(2) Report as a finding the name and country of registration of each ship, and

the volumes of FRGAS loaded onto each ship, identified in paragraph (h)(1) of this section.

(3) Select a sample from the list of ships identified in paragraph (h)(1) of this section, in accordance with the guidelines in § 80.127, and for each ship selected perform the following:

(i) Obtain the report of the independent laboratory, under paragraph (f)(3) of this section, and of the United States importer under paragraph (n)(4) of this section.

(A) Agree the information in these reports with regard to ship identification, gasoline volumes and test results.

(B) Identify, and report as a finding, each occasion the load port and port of entry emissions and/or volume results differ by more than the amounts allowed in paragraph (g) of this section, and determine whether the foreign refiner adjusted its refinery calculations as required in paragraph (g) of this section.

(ii) Obtain copies of the contracts for sale and transfer of the FRGAS, and determine whether the contract provisions required in paragraph (e) of this section are included.

(iii) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the ship, and the port of entry and date of arrival of the ship. Agree the ship's departure and arrival locations and dates from the independent laboratory and United States importer reports to the information contained in the commercial document.

(iv) Obtain the documents used by the independent laboratory to determine transportation and storage of the FRGAS from the refinery to the load port, under paragraph (f)(1)(v) of this section. Obtain tank activity records for any storage tank where the FRGAS is stored, and pipeline activity records for any pipeline used to transport the FRGAS, prior to being loaded onto the ship. Use these records to determine whether the FRGAS was produced at the refinery that is the subject of the attest engagement, and whether the FRGAS was mixed with any non-FRGAS gasoline or any FRGAS produced at a different refinery.

(4) In order to complete the requirements of this paragraph (h) an auditor shall:

(i) Be independent under the criteria specified in § 80.65(f)(2)(iii);

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§ 80.125 through 80.130 and this paragraph (h); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities and documents relevant to compliance with the requirements of §§ 80.125 through 80.130 and this paragraph (h).

(i) *Foreign refiner commitments.* Any foreign refiner shall commit to and comply with the provisions contained in this paragraph (i) as a condition to being assigned an individual refinery baseline.

(1) Any United States Environmental Protection Agency inspector or auditor will be given full, complete and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Gasoline is produced;

(B) Documents related to refinery operations are kept;

(C) Gasoline or blendstock samples are tested or stored; and

(D) FRGAS is stored or transported between the foreign refinery and the United States, including storage tanks, ships and pipelines.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits will be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to:

(A) Refinery baseline establishment, including the quantity and quality, and transfers of title or custody, of any gasoline or blendstocks, whether FRGAS or non-FRGAS, produced at the foreign refinery during the period January 1, 1990 through the date of the refinery baseline petition or through the date of the inspection or audit if no baseline petition has been submitted, and any work papers related to refinery baseline establishment;

(B) The quality and quantity of FRGAS;

(C) Transfers of title or custody to FRGAS;

(D) Sampling and testing of FRGAS;

(E) Worked performed or reports prepared by independent laboratories or by independent auditors under the requirements of this section, including work papers; and

(F) Reports prepared for submission to EPA, and any work papers related to such reports.

(vi) Inspections and audits by EPA may include taking samples of gasoline or blendstock, and interviewing employees.

(vii) Any employee of the foreign refiner will be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents will be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters will be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia will be named, and service on this agent constitutes service on the foreign refiner or any employee of the foreign refiner.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) The foreign refiner, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(6) In the case of foreign refineries that are owned or operated by a foreign government, the foreign refiner will waive sovereign immunity with regard to prosecution by the United States of civil and criminal violations of Clean Air Act section 211(k) and the regulations promulgated thereunder at subparts D, E and F of this part and other relevant laws and regulations including but not limited to Clean Air Act sections 113, 114, 211(c) and (d), and Title 18 United States Code. This waiver of sovereign immunity also will apply to any employee or agent of a refinery owned or operated by the foreign government.

(7) The commitment required by this paragraph (i) shall be signed by the owner or president of the foreign refiner business. In the case of foreign refineries that are state owned or operated, the commitment shall be signed by an official of the government at the cabinet secretary level or higher who has responsibility for the foreign refinery.

(8) In any case where FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the ship that transports the FRGAS to the United States, the foreign refiner shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (i)(1) through (7) of this section, and these commitments shall be included in the foreign refiner's baseline petition.

(j) Bond posting. Any foreign refiner shall meet the requirements of this paragraph (j) as a condition to being assigned an individual refinery baseline.

(1) The foreign refiner shall post a bond of the amount calculated using the following equation:

Bond = G x $ 0.01

where:
Bond = amount of the bond in U.S. dollars;
G = the largest volume of conventional gasoline produced at the foreign refinery and exported to the United States, in gallons, during the most recent of the following calendar years up to a maximum of five calendar years: the calendar year immediately preceding the date the baseline petition is submitted, the calendar year the baseline petition is submitted, and each succeeding calendar year.

(2) Bonds shall be posted by:

(i) Paying the amount of the bond to the Treasurer of the United States; or

(ii) Obtaining a bond in the proper amount from a third party surety agent that would be payable to satisfy U.S. administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement.

(3) If the bond amount for a foreign refinery increases the foreign refiner shall increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(4) Bonds posted under this paragraph (j) shall be used to satisfy:

(i) Any judgment against the foreign refiner or against any employee or agent of the foreign refiner for violation of the Clean Air Act or regulations promulgated thereunder;

(ii) Any judgment against any other party for a violation that is caused by the foreign refiner.

(5) On any occasion a foreign refiner bond is used to satisfy any judgment, the foreign refiner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(k) *Blendstock tracking.* For purposes of blendstock tracking by any foreign refiner under § 80.102 by a foreign refiner with an individual refinery baseline, the foreign refiner may exclude from the calculations required in § 80.102(d) the volume of applicable blendstocks for which the foreign refiner has sufficient evidence in the form of documentation that the blendstocks were used to produce gasoline used outside the United States.

(l) *English language reports.* Any report or other document submitted to EPA by any foreign refiner shall be in English language, or shall include an English language translation.

(m) *Prohibitions.* No person may combine FRGAS produced at a foreign refinery with any non-FRGAS produced at that foreign refinery, or with any gasoline or blendstock produced at any other refinery, prior to the FRGAS being imported into the United States.

(n) *United States importer requirements.* Any United States importer shall meet the following requirements:

(1) Each batch of imported gasoline shall be classified by the importer as being FRGAS, or as not being FRGAS.

(2) Gasoline shall be classified as FRGAS where the product transfer documents include a foreign refiner FRGAS certification for the gasoline, as required in paragraph (d)(3) of this section, that was prepared by the foreign refiner of the FRGAS and that is supported by a report of an inspection of the gasoline at the foreign load port prepared by an independent third party as required in paragraph (f) of this section.

(3) For each gasoline batch classified as FRGAS, any United States importer shall perform the following procedures:

(i) In the case of both reformulated and conventional gasoline FRGAS, have an independent laboratory:

(A) Determine the batch volume;

(B) Use the foreign refiner's FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the FRGAS;

(C) Determine the name and country of registration of the ship used to transport the FRGAS to the United States; and

(D) Determine the date and time the ship arrives at the United States port of entry.

(ii) In the case of conventional gasoline FRGAS, have an independent laboratory:

(A) Collect a representative sample of the gasoline subsequent to the ship's arrival at the United States port of entry and prior to off loading any gasoline from the ship; and

(B) Analyze the sample for each property specified in § 80.65(e)(1) using the methodologies specified in § 80.46.

(4) Any importer shall submit a report to the Administrator, and to the foreign refiner, containing the information determined under paragraph (n)(3) of this section, within thirty days following the date any ship transporting FRGAS arrives at the United States port of entry.

(5)(i) Any United States importer shall meet the requirements specified for conventional gasoline in § 80.101 for any imported conventional gasoline that is not classified as FRGAS under paragraph (n)(2) of this section.

(ii) The baseline applicable to a United States importer who has not been assigned an individual importer baseline under § 80.91(b)(4) shall be the baseline specified in paragraph (o) of this section.

(o) *Importer baseline.* (1) Each calendar year starting in 2000, the Administrator shall calculate the volume-weighted average for exhaust NOx under the Phase II Complex Model for conventional gasoline imported into the United States during the prior three calendar years, except as provided otherwise in this paragraph (o). The calculation shall be based on the reports submitted under this section and § 80.105. The calculation shall consider:

(i) Imported conventional gasoline that is not classified as FRGAS, and included in the conventional gasoline compliance calculations of U.S. importers for each year; and

(ii) Imported conventional gasoline that is classified as FRGAS, and included in the conventional gasoline compliance calculations of a foreign refiner for each year.

(2) In 2000 the calculation shall be for the 1998 and 1999 averaging periods. The calculation in 2000 shall also include all conventional gasoline classified as FRGAS and included in the conventional gasoline compliance calculations of a foreign refiner for 1997, and all conventional gasoline batches that are imported during 1997 beginning on the date the first batch of FRGAS arrives at a United States port of entry.

(3)(i) The Administrator shall determine whether the volume-weighted average calculated in paragraph (o)(1) and (2) of this section is greater than the following value: Exhaust NO_X-1465 mg/mile.

(ii) If the volume-weighted average for exhaust NO_X is greater than 1465 mg/mile, the Administrator shall calculate an adjusted baseline for the exhaust

NO_X according to the following equation:

$$AB_i = B_i—(MYA_i—B_i)$$

where:
AB_i = Adjusted baseline;
I = Exhaust NO_X;
B_i = Value in paragraph (o)(3)(i) of this section;
MYA_i = Multi-year average.

(4)(i) Notwithstanding the provisions of § 80.91(b)(4)(iii), the baseline exhaust NO_X emissions values applicable to any United States importer who has not been assigned an individual importer baseline under § 80.91(b)(4) shall be the more stringent of the statutory baseline value for exhaust NO_X under § 80.91(c)(5), or the adjusted baseline value for exhaust NOx calculated under paragraph (o)(3) of this section.

(ii) On or before June 1 of each calendar year, the Administrator shall publish a notice in the **Federal Register** providing the baseline that applies to importers under this paragraph (o). If the baseline is an adjusted baseline, it shall be effective for any conventional gasoline imported beginning 60 days following the publication of the notice. If the baseline is the statutory baseline, it shall be effective upon publication of the notice. A baseline shall remain in effect until the effective date of a subsequent change to the baseline pursuant to this paragraph (o).

(p) *Withdrawal or suspension of a foreign refinery's baseline* EPA may withdraw or suspend a baseline that has been assigned to a foreign refinery where:

(1) A foreign refiner fails to meet any requirement of this section;

(2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section; or

(3) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (j) of this section.

(q) *Early use of a foreign refinery baseline.* (1) A foreign refiner may begin using an individual refinery baseline before EPA has approved the baseline, provided that:

(i) A baseline petition has been submitted as required in paragraph (b) of this section;

(ii) EPA has made a provisional finding that the baseline petition is complete;

(iii) The foreign refiner has made the commitments required in paragraph (i) of this section;

(iv) The persons who will meet the independent third party and independent attest requirements for the foreign refinery have made the commitments required in paragraphs (f)(4)(iii) and (h)(4)(iii) of this section; and

(v) The foreign refiner has met the bond requirements of paragraph (j) of this section.

(2) In any case where a foreign refiner uses an individual refinery baseline before final approval under paragraph (q)(1) of this section, and the foreign refinery baseline values that ultimately are approved by EPA are more stringent than the early baseline values used by the foreign refiner, the foreign refiner shall recalculate its compliance, *ab initio*, using the baseline values approved by EPA, and the foreign refiner shall be liable for any resulting violation of the conventional gasoline requirements.

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 6, 1997

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Oregon; published 3-7-97

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Oregon; published 3-7-97

Hazardous waste program authorizations:

Nevada; published 3-7-97

SECURITIES AND EXCHANGE COMMISSION

Securities:

Securities Exchange Act of 1933; prepared by or on behalf of the issuer for purposes of Section 18 of the Act; published 5-6-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Potatoes (Irish) grown in—

Washington; comments due by 5-14-97; published 4-14-97

Raisins produced from grapes grown in California; comments due by 5-14-97; published 4-14-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Poultry improvement:

National Poultry Improvement Plan and auxiliary provisions—

New program classifications and new or modified sampling and testing procedures for participants and participating flocks; establishment; comments due by 5-12-97; published 3-11-97

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Safflower seed; comments due by 5-12-97; published 4-11-97

AGRICULTURE DEPARTMENT

Farm Service Agency

Federal Agriculture Improvement and Reform Act of 1996; implementation:

Delinquent account servicing provisions; comments due by 5-13-97; published 3-5-97

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Cooked roast beef products; sorbitol use; comments due by 5-13-97; published 3-14-97

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Packers and Stockyard Act:

Poultry grower contracts, scales, weighing; comments due by 5-12-97; published 2-10-97

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Federal Agriculture Improvement and Reform Act of 1996; implementation:

Delinquent account servicing provisions; comments due by 5-13-97; published 3-5-97

AGRICULTURE DEPARTMENT

Rural Housing Service

Federal Agriculture Improvement and Reform Act of 1996; implementation:

Delinquent account servicing provisions; comments due by 5-13-97; published 3-5-97

AGRICULTURE DEPARTMENT

Rural Utilities Service

Rural development:

Distance learning and telemedicine loan and grant program; comments due by 5-16-97; published 4-16-97

COMMERCE DEPARTMENT

International Trade Administration

Uruguay Round Agreements Act (URAA):

Antidumping and countervailing duties, conformance and Federal regulatory review; comments due by 5-12-97; published 4-23-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species fisheries—

Atlantic bluefin tuna; comments due by 5-16-97; published 4-21-97

Highly migratory species advisory panels establishment; combination of Atlantic shark, swordfish, and tunas fishery management plans; comments due by 5-15-97; published 4-4-97

Northeastern United States fisheries—

Summer flounder, scup, and Black Sea bass; comments due by 5-14-97; published 4-15-97

Marine mammals:

Commercial fishing authorizations—

Take reduction plan and emergency regulations; hearings; comments due by 5-15-97; published 4-24-97

Incidental taking—

North Atlantic right whale, etc.; take reduction plan; comments due by 5-15-97; published 4-7-97

Subsistence taking—

Northern fur seals; harvest estimates; comments due by 5-12-97; published 4-11-97

CONSUMER PRODUCT SAFETY COMMISSION

Poison prevention packaging:

Household products containing petroleum distillates and other hydrocarbons; comments due by 5-12-97; published 2-26-97

DEFENSE DEPARTMENT

Acquisition regulations:

Duty-free entry of supplies; guidance clarification; comments due by 5-12-97; published 3-11-97

ENERGY DEPARTMENT

Nuclear waste repositories; site recommendations; general guidelines; comments due by 5-16-97; published 4-29-97

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Rulemaking petitions:

Pipeline Customer Coalition and Interstate Natural Gas Association of America; interstate natural gas pipelines services; expedited complaint procedures; comments due by 5-16-97; published 4-28-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:

Phosphate fertilizer industry; granular triple superphosphate storage facilities; comments due by 5-15-97; published 4-15-97

Air programs:

Ambient air quality surveillance; ozone monitoring season modification for Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; comments due by 5-16-97; published 4-16-97

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 5-14-97; published 4-14-97

New Jersey; comments due by 5-12-97; published 4-11-97

Ohio; comments due by 5-16-97; published 4-16-97

Tennessee; comments due by 5-14-97; published 4-14-97

Vermont; comments due by 5-12-97; published 4-10-97

Virginia; comments due by 5-13-97; published 4-29-97

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Indiana; comments due by 5-13-97; published 3-14-97

Air quality planning purposes; designation of areas:

Maine; comments due by 5-16-97; published 4-16-97

Solid wastes:

Recovered materials advisory notice; availability; comments due by 5-14-97; published 4-14-97

Water programs and sewage sludge:

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