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OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 330

RIN 3206–AH26

Career Transition Assistance for Surplus and Displaced Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management is issuing final regulations to implement the President's memorandum of September 12, 1995, that requires Federal agencies to develop career transition assistance programs to help their employees affected by downsizing obtain other employment. The regulations require agencies to provide transition assistance services and give hiring priority to surplus and displaced employees.

DATES: Effective July 9, 1997. Agencies will amend their Career Transition Assistance Plans (CTAP), reflecting regulatory changes on providing internal selection priority and services to their surplus and displaced employees, as soon as possible, but no later than 90 calendar days after publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Shelton or Ed McHugh on (202) 606–0960, FAX (202) 606–2329, or TDD (202) 606–0023.

SUPPLEMENTARY INFORMATION: On September 12, 1995, the President issued a memorandum entitled ''Career Transition Assistance for Federal Employees,'' that directs Federal Executive agencies to establish career transition assistance programs to help surplus and displaced workers find other jobs as the Federal Government undergoes downsizing and restructuring. As set forth in the memorandum, such programs are to be developed in partnership with labor and management, in accordance with guidance and regulations provided by the Office of Personnel Management (OPM).

OPM issued interim regulations on December 29, 1995, 60 FR 67281, which were developed in cooperation with representatives from the Interagency Advisory Group of Personnel Directors and employee unions. These regulations provided the framework for implementing the President's directive, the purpose of which is to maximize employment opportunities for displaced workers, both within and outside the Federal Government.

The program set up under the Presidential directive incorporates a new concept in career transition assistance for displaced workers called ''employee empowerment.'' Instead of placing surplus workers in new jobs from a centralized inventory (the traditional Federal model for assisting displaced civil servants), the new program gives individual workers the power to find, apply and exercise priority for specific vacancies in which they themselves are interested. It seeks to motivate and reinforce an employee's self interest in finding work opportunities by giving displaced workers the resources and hiring priority necessary to support their transition to other employment.

Transition assistance consists of four components:

- Programs to provide career transition services to the agency's surplus and displaced employees;
- Policies for retraining displaced employees for new career opportunities;
- Policies that require the selection of a well-qualified surplus or displaced internal agency employee who applies for a vacant position in the commuting area, before selecting any other candidate from either within or outside the agency; and
- Policies that require the selection of a well-qualified displaced employee from another agency who applies for a vacant position in the commuting area before selecting any other candidate from outside the agency.

Under these regulations, Federal agencies are required to implement Career Transition Assistance Plans to provide career transition services to their surplus and displaced employees, and give special selection priority to these workers. These regulations set minimum standards for these plans, which can be supplemented at the agency's discretion. These plans will operate through September 30, 1999, unless further extended because of severe downsizing. Because the Department of Defense (DOD) manages an effective program which provides selection priority to surplus and displaced employees within the Department—the Priority Placement Program—it is exempt from the special selection requirement affecting its own employees under the Career Transition Assistance Plan. The Department of Defense is subject to the other elements of these regulations, and the Reemployment Priority List under Subpart B of 5 CFR part 330, and its employees are eligible for the benefits provided by these programs.

Program Results to Date

On February 29, 1996, the interim regulations took effect. During the next few months, each major Federal agency established a Career Transition Assistance Plan for its employees and began giving selection priority for vacancies—first to its own surplus and displaced employees and then to displaced employees from other Federal agencies. During the first seven months the program was in operation, over 1,000 non-Defense surplus and displaced employees were selected for other jobs within their agencies. Over 400 more displaced employees were selected for vacancies in other Federal agencies through the Interagency Career Transition Assistance Program. The latter figure, achieved in seven months using the ''employee empowerment'' concept embodied in the Presidential directive, is roughly twice as many selections as were made during the last *3 years* that the old Interagency Placement Program, a centralized referral and placement program which ICTAP replaced, was in operation.

During the same period, two Internet websites were set up to assist surplus and displaced Federal employees in finding other employment. OPM's USAJOBS Internet site (http://www.usajobs.opm.gov) provides information on Federal employment and complete vacancy listings which are updated daily. A joint website operated by the U.S. Department of Labor in

partnership with the U.S. Office of Personnel Management (http://safetynet.doleta.gov) is titled ''Planning Your Future—A Federal Employee's Survival Guide.'' It provides a wide range of critical information to Federal employees who are affected by downsizing and are attempting to make successful career transitions, especially to occupations in the private sector. (Additional information on these sites and other career transition resources is available from OPM's Workforce Restructuring Office at (202) 606–0960; (202) 606–2329, FAX).

A number of Federal agencies undergoing downsizing have set up career transition centers to assist their displaced workers. In May, 1996, OPM, the Interagency Advisory Group of Personnel Directors, several local governments, and the Department of Labor opened a network of transition centers for displaced Federal workers in the Washington, DC area. The centers, which are a pilot for replication in other areas of the country, provide job search assistance, skills analysis, counseling and resume preparation services.

Changes Incorporated in the Final Regulations

Like the interim regulations, the final regulations require an agency, when filling a vacancy, to select an employee eligible under its Career Transition Assistance Plan before selecting any other candidate from within or outside the agency. When an agency has met its obligations under its Career Transition Assistance Plan (CTAP) and elects to fill a position from outside its workforce, it must first select agency employees who have been separated through reduction in force (RIF) and are eligible under its Reemployment Priority List (RPL); then, Federal employees displaced from other agencies who apply for positions in the local commuting area and are eligible under the Interagency Career Transition Assistance Plan (ICTAP).

Several changes have been made in the final regulations to improve the program for employees, and to provide agencies more flexibility in managing their workforce during this time of downsizing. These changes were made based upon written and oral comments received from agencies, employees, unions, and other interested persons. In addition, OPM's Workforce Restructuring Office obtained feedback on the interim regulations through OPM's Oversight function, field activity conferences, and by visiting over a dozen agencies at the headquarters level, soliciting their input and ideas.

We received written comments on the interim regulations from 18 Federal agencies, one union, two professional associations, and several individuals. As a result of those comments, we have listed the major changes to the interim regulations by category:

Internal Selection Actions

Under the interim regulations, agencies are required to announce any vacancy lasting 90 or more days, and give selection priority to employees eligible under their Career Transition Assistance Plan. Of the agencies commenting, nine expressed their concern that internal reassignments were subject to the CTAP, thus limiting the flexibility of their managers to make workload assignments based on shifting priorities. The problems appear especially acute in those situations where managers have neither the personnel ceiling authorization nor the funding to bring in employees from outside their immediate organization, and need the flexibility to move their employees around in order to meet fluctuating workload and shifting priorities. OPM, in response to the many concerns expressed by these agencies, is adding an exception under 5 CFR 330.606(d), actions not covered, to permit, at the agency's discretion, those actions taken by an agency component to fill a position from among its employees after well-qualified surplus and displaced employees of that component, in the same local commuting area, have been accorded selection priority. This exception will allow agency components to make internal selections, including reassigning their employees to other positions, where this is necessary, without being required to give selection priority to CTAP candidates from outside that component.

For example, if Agency Component A in the local commuting area of Philadelphia, Pennsylvania, wants to reassign an employee to another position in the component within the Philadelphia area, it may do so without having to give selection priority to a CTAP candidate from outside the component. Special selection priority must still be afforded any eligible candidates within the component in the local commuting area, however. In our example, if Agency Component A wants to reassign an employee to Agency Component B, i.e., across component lines, then selection priority must first be given to eligible CTAP candidates from all components of the agency in the Philadelphia area. A component is considered to be the first major subdivision of an agency, e.g., the Customs Service within the Department of Treasury, or the U.S. Geological Survey within the Department of Interior. We have added a definition of ''component'' to § 330.604, Definitions.

Expanded Geographical Eligibility for CTAP and ICTAP Eligible Employees

Under the interim regulations, a surplus or displaced Federal employee can exercise selection priority only for those positions that are in the same local commuting area as the position occupied at the time of his or her RIF separation. Two agencies and one association stated that selection priority should be extended to surplus and displaced employees beyond the local commuting area. Many agency officials voiced concern, however, that to open up every vacancy nationwide would place undue administrative and cost burdens on the agency. The agency could be forced to bear the costs of relocating the employee, when in most cases, well-qualified displaced candidates would be available within the local commuting area. This problem may be susceptible to change by statute or new regulation. Until such steps are taken, however, OPM is retaining the requirement under § 330.605(a)(4), Eligibility for CTAP, and § 330.704(a)(4), Eligibility for ICTAP, that in order to receive special selection priority, the applicant must apply for positions in the same local commuting area in which he or she works or worked at the time of his or her separation from the competitive service. Agencies have the discretion in their Career Transition Assistance Plans, however, to expand internal selection priority beyond the local commuting area for their own surplus and displaced employees. However, in no case could an eligible applicant outside of the local commuting area be given selection priority over a well-qualified surplus or displaced agency employee within the local commuting area.

Content of Vacancy Announcements

OPM received comments from both agencies and employees that job vacancy announcements sometimes do not contain clear and concise information for ICTAP candidates on eligibility requirements, how to apply, or documentation required. In response to those concerns, OPM is adding the requirement under § 330.707, Reporting Vacancies to OPM, that when the agency is posting a job announcement to the Federal Jobs Database, it must clearly state the definition of ''well-qualified'' on the vacancy announcement, including information on how a CTAP and/or ICTAP eligible may apply, and what proof of eligibility is required. A similar requirement is

contained in § 330.607(b) for an agency's internal announcements issued in connection with its Career Transition Assistance Plan.

Notification Requirements

OPM received numerous complaints from surplus and displaced employees who had filed applications under CTAP and ICTAP, but were not able to find out the results of their application. Because surplus and displaced employees are entitled to selection priority, OPM feels that it is critical that the agency provide them with information relative to their application for a specific vacancy. Thus, OPM is adding a requirement to 5 CFR 330.607(c) and 330.706(c) for agencies to advise, in writing, surplus and displaced employees who apply under specific vacancy announcements of the results of their applications, including whether or not they were found well-qualified. If well-qualified, the agency should notify the applicant of his/her selection as soon as possible, or if another well-qualified CTAP or ICTAP candidate is chosen. If the applicant is not found well-qualified, then he or she must be advised in writing of the results of a second independent review of his or her application.

Definition of ''Well-qualified''

OPM received many requests from agencies to clarify the definition of ''well-qualified'' under 5 CFR 330.604(h) of the interim regulations. In response to those requests, OPM is clarifying the language and including a statement under § 330.604(k) that ''well-qualified'' generally includes those applicants whose knowledge, skills, and abilities clearly exceed the minimum qualification requirements, but who would not necessarily meet the agency's definition of ''highly or best qualified.'' For purposes of the career transition assistance regulations, the terms ''highly qualified'' and ''best qualified'' are not applicable.

Review of Qualification Determinations

Under the interim regulations, surplus and displaced employees must be well-qualified for a position in order to receive selection priority. Currently § 330.609 and § 330.708 of the interim regulations require that agencies conduct a documented review whenever otherwise eligible employees are found not to be well-qualified. OPM received many comments regarding the requirement for this review. One association commented that employees should be able to ask for a review of their applications in those instances where they meet minimum qualification requirements, but are not found well-qualified. The commenter went further to suggest that a reviewing panel, consisting of an equal employment opportunity specialist and a personnel specialist, review the selection. One individual commented that the regulations should provide an avenue of appeal to the applicant. Another association asked that in lieu of an appeals procedure, that the final regulations clarify the right of the individual to grieve determinations through either the negotiated or administrative grievance procedure. One agency agreed that a qualifications review should be conducted only in those instances where the employee has not been found well-qualified. The Workforce Restructuring Office at OPM also received numerous calls from surplus and displaced employees who expressed concern that they were not afforded an avenue of appeal. OPM has considered these comments, and has determined that the language in 5 CFR 330.609 and 330.708 of the interim regulations needs to be clarified, to specify that agencies will conduct a documented, independent second review in those instances where an otherwise eligible CTAP or ICTAP applicant is not found well-qualified. An example of a second independent reviewer might be a supervisor in the human resources office, an Equal Employment Opportunity official, or a subject matter specialist who was not involved in the original rating process. The applicant must be advised in writing of the results of the second review.

Length of Positions Subject to CTAP/ICTAP

Several agencies objected to the definition of the word ''vacancy'' under § 330.604(g) of the interim regulations, saying that the requirement to announce positions lasting 90 days or more was too restrictive, and carried an administrative burden that resulted in few, if any, CTAP or ICTAP applicants. Further, vacancies of short duration, e.g., 90 days, did not provide the CTAP or ICTAP eligible a significant placement opportunity to ease the employee's reduction in force separation. In response to those objections, OPM has changed the definition of ''vacancy'' to positions lasting 121 or more days. The final regulations thus allow agencies to temporarily fill positions for up to 120 days without requiring that selection priority be afforded their surplus or displaced employees. A conforming change was also made to § 330.102, which previously required that agencies notify OPM of all competitive service vacancies lasting more than 90 days.

Extensions of Temporary and Term Employment Actions

In response to many concerns raised by agencies, OPM is including exceptions in the final regulations which allow agencies to make an extension to a temporary action, e.g., promotion, or an extension to a temporary or term appointment, without having to reannounce the position and reconsider surplus and/or displaced employees. The original vacancy announcement must have been open to CTAP and/or ICTAP candidates, whichever is appropriate, and it must have clearly stated that the original action, e.g., promotion, or appointment could be extended. Temporary actions which took place prior to the effective date of the interim regulations, i.e., February 29, 1996, including subsequent extensions, are not subject to the CTAP and ICTAP.

OPM is thus adding as an exception under CTAP, § 330.606(d)(26), actions not covered, the following:

- Extensions of temporary or term actions, up to the full period allowed, provided the original vacancy announcement was open to CTAP candidates, and selection priority conferred to them, as appropriate. The original announcement must have specified that the action could be extended without reannouncement.
- OPM is also adding as an exception to ICTAP, § 330.705(c)(11), the following: Extensions of temporary or term actions, up to the full period allowed, provided the original vacancy announcement specified that ICTAP candidates could apply, and if found well-qualified, would be conferred special selection priority. The original announcement must have specified that the action could be extended without reannouncement. This exception includes extensions granted by OPM to the 2 or 4 year limit allowed for temporary and term appointments, respectively.

Eligibility of Excepted Service Employees

Currently, the interim regulations do not provide selection priority to employees separated from excepted service positions. The reason for this is that such employees do not have the same kind of eligibility to be appointed on an ''interchangeable'' basis as employees in the competitive civil service. Excepted service employees *are* eligible to receive all the same career transition services, e.g., career counseling, attendance at workshops,

access to career transition centers and their resources, etc., as competitive service employees. One agency commented that selection priority should be afforded all Federal employees, because downsizing is taking place Federal-wide, and all employees are affected. One association commented that employees in Schedule A or B positions should be afforded not only the full range of career transition assistance available to competitive service employees, but also should be given selection priority to other Schedule A or B positions.

The final regulations give agencies the discretion to offer selection priority under CTAP to excepted service employees who were hired into appointments without time limit under Schedule A or B appointing authorities. If a permanent Schedule A or B excepted service employee is being separated through RIF, or because he or she declined a transfer of function or directed reassignment outside of the local commuting area, he or she, at the agency's discretion, may be given selection priority for other similar permanent excepted service Schedule A or B vacancies within an agency's local commuting area.

The policy set by the agency must be consistently applied to all Schedule A and B appointees within the agency, and must be in accordance with the provisions of 5 CFR part 302, as applicable. Selection priority would be exercised based upon the nature of the appointing authority, e.g., a Schedule A employee who is in receipt of a RIF notice would have selection priority for other Schedule A positions in the agency, within the local commuting area. We are thus adding under § 330.604(i)(3), Definitions, the provision that a surplus employee may include an employee in the excepted service, who serves without time limit under a Schedule A or B appointing authority at grade levels GS–15 or equivalent and below, who is in receipt of a certificate of expected separation or a RIF notice of separation, or who is in receipt of a notice of proposed separation for declining a directed reassignment or transfer of function outside of the local commuting area. The employee, at the agency's discretion, may exercise special selection priority for positions having the same appointing authority as the position from which the employee is being separated, within the agency's local commuting area. This provision will apply to all Schedule A or B employees serving in positions without time limit. These employees are not eligible for special selection priority under the ICTAP.

Filling Excepted Service Positions as Exceptions to CTAP and ICTAP

The interim regulations allow agencies to fill excepted service positions without having to give selection priority to surplus or displaced employees. This includes the movement of excepted service employees within an agency and conversions of agency employees from excepted appointments to competitive service positions, in certain defined situations. These same provisions apply to Subpart G, the ICTAP. That is, an agency can appoint, reassign, promote, or transfer an excepted service employee to an excepted service position without first being required to provide selection priority to surplus or displaced competitive service employees. Again, this is based on the fact that excepted service employees are usually hired for very special positions or purposes, and they are not generally interchangeable with other competitive service employees. During the comment process, one union suggested that excepted appointments be eliminated as an exception from the CTAP and ICTAP, stressing that the integrity of the career transition assistance program could not be preserved otherwise. We considered this suggestion, but feel that since excepted service positions are often used for specialized purposes, e.g., attorney positions, and typically have requirements that are not found in an agency's workforce, making them subject to career transition programs would not significantly increase selection opportunities for most surplus or displaced employees. The final regulations thus continue to permit agencies to fill excepted service positions without regard to the agency's Career Transition Assistance Program or the Interagency Career Transition Assistance Program.

Eligibility of Employees Who Decline a Directed Reassignment or Transfer of Function Outside of the Local Commuting Area

Under the interim regulations, employees who decline a directed reassignment or transfer of function outside of the local commuting area are eligible for selection priority under ICTAP on the date of their declination. Two agencies commented that the language in 5 CFR 330.704(b) (i) and (iv), eligibility for special selection priority, was not consistent. Specifically, the commenter suggested that it was not equitable to state that eligibility for special selection priority for an employee being RIF separated begins on the date the agency issues a specific RIF separation notice; whereas, in § 330.704(b)(iv), eligibility for special selection priority for an employee who declines a directed reassignment or transfer of function to another commuting area begins on the date of declination. OPM has considered this comment and agrees that in order to ensure that employees are treated equitably, employees who decline a directed reassignment or transfer of function to another commuting area should be eligible for CTAP and ICTAP beginning on the date on which the separation notice is issued to the employee by the agency.

We are thus amending § 330.605(b), Eligibility for CTAP, and § 330.704(b)(4), Eligibility for ICTAP, to clarify that CTAP and ICTAP eligibility begins when the agency issues a notice of proposed separation for declining a directed reassignment or transfer of function outside of the local commuting area. Employees who decline a directed reassignment or transfer of function to another commuting area prior to the effective date of these final regulations will remain eligible for ICTAP based upon the date of their declination, under § 330.704(b)(iv) of the interim regulations.

Length of Eligibility

One union, one agency, and several individuals expressed their concern that eligibility for special selection priority is too short to provide adequate opportunity for placement. OPM believes, however, that current eligibility periods are adequate. Realistically, selection priority within an agency can only be afforded while the employee is still on the agency rolls. Eligibility for the ICTAP begins with the date of the RIF separation notice, for example, and ends one year from the date of the actual RIF separation. Thus, a displaced employee has a minimum of 60 calendar days (120 days for Department of Defense employees) of CTAP eligibility (beginning with the date the agency issues the RIF separation notice) and 1 year, 60 days (1 year, 120 days for Department of Defense employees) of ICTAP eligibility. We feel that this provides a reasonable time during which a displaced employee can apply for and be selected for employment.

CTAP/ICTAP Briefing for Each Displaced Employee

OPM has received information indicating that some individuals eligible for the CTAP and/or ICTAP are not being provided information by their

human resources office about the program. As a result, some employees may not fully understand their entitlement under this new program, or that they must apply within the local commuting area for vacancies in which they are interested. In order to better educate affected employees on the requirements and benefits of this new program, OPM is requiring agencies under 5 CFR 330.602(a)(1)(iv), Agency plans, to conduct a specific orientation session for their current surplus and displaced eligible employees.

Reporting Requirements

Consistent with other chapters in the regulations, OPM is adding a requirement under § 330.610(b) (2) and (3) that an agency report the number of eligible applicants found well-qualified, and not well-qualified under CTAP. In addition, a new requirement has been added, under § 330.610(b)(5), Reporting, asking agencies to report the number of second reviews and the results of such reviews. We are also requiring agencies under § 330.610(b)(6) to report the number of CTAP eligibles who declined job offers. We are adding similar requirements to § 330.710(b), Reporting, as they pertain to ICTAP, including the requirement of the agency to report the number of placements made from the Reemployment Priority List.

Labor-Management Requirements

Agreement provisions in conflict with the interim regulations, which were effective February 29, 1996, remain in effect for the term of the agreement by operation of 5 U.S.C. 7116(a)(7). However, in the spirit of partnership, agencies and unions are urged to mutually amend existing agreements to make them consistent with these regulations prior to the expiration of conflicting negotiated agreements.

Apart from the aforementioned agreements, these regulations were effective at the time they were issued as interim regulations. In implementing them, agency officials should check with their labor relations officials to determine to what extent, if any, there is a duty to give notice and, upon request, bargain on their impact and implementation.

Technical Exceptions

As a result of the comments received, we are adding several technical exceptions to agency Career Transition Assistance Plans (CTAP) under 5 CFR 330.606(d), actions not covered. These include:

1. The internal placement of an injured or disabled worker whose agency has identified a position for which he or she can be reasonably accommodated;

2. An action taken to return an employee to his or her original or similar position during a supervisory probationary period;

3. Actions taken by the agency head or his designee pursuant to the settlement of a formal complaint, grievance, appeal, or litigation;

4. The retention of individuals whose positions are brought into the competitive service under § 316.701 or § 316.702 of this chapter and subsequent conversion, when applicable, under § 315.701 of this chapter;

5. The retention of an employee for whom OPM has approved a rule 5.1 variation;

6. The reemployment of a former agency employee who retired under a formal trial retirement and reemployment program, and who seeks reemployment with that agency under the program's provisions, including the program's applicable time limits;

7. The placement of a member of the Senior Executive Service under 5 U.S.C. 3594; and

8. The noncompetitive movement of displaced employees between agencies as a result of reorganization, transfer of function, or mass transfer.

Likewise, OPM is adding several technical exceptions to the Interagency Career Transition Assistance Plan (ICTAP) under 5 CFR 330.705(c), actions not covered, including those listed as items 3–7 above, and:

- The reappointment of former employees with their former agency into hard-to-fill positions, and whose unique skills and experience are needed in order to conduct a formal skills-based training program for the agency; and
- Assignments made under the Intergovernmental Personnel Act (IPA).

Expanding Definition of ''Surplus'' Employees to Include Individuals Whose Positions Are Abolished

OPM is also expanding the definition of ''surplus employee'' under 5 CFR 330.604(i) to include an employee who is officially notified in writing by the agency that his or her position is being abolished, and that he or she is eligible for discontinued service retirement. This is in response to numerous concerns raised by employees who had been advised that they were eligible for discontinued service retirement because of position abolishment, but they were not eligible for selection priority under CTAP.

CTAP/ICTAP Eligibility of Excepted Service Employees Who Are Given Placement Assistance for Competitive Service Positions by Special Statute

OPM is extending the definition of ''surplus'' under § 330.604(i) and ''displaced'' under § 330.604(c), Definitions, to include a current Executive Branch excepted service employee serving on an appointment without time limit, at grade levels GS–15 or equivalent and below, who has been issued an official certificate of expected separation (or similar official agency notice that his or her job is surplus), RIF notice of separation, or notice of proposed removal for declining a transfer of function or directed reassignment outside of the local commuting area, and who has noncompetitive appointment eligibility and special selection priority, granted under special statute. OPM is also including under § 330.703(b)(8), Definitions for displaced employees, a former Executive Branch employee, at grade levels GS–15 or equivalent and below, who has been separated from a permanent appointment in the excepted service and who has been given noncompetitive eligibility and selection priority for career or career conditional appointment by statute in order to facilitate placement into the competitive service. Similar language is added under § 330.703(b)(7) for current excepted service employees in receipt of a RIF separation notice. These definitions are intended to clarify that employees in the excepted service who have noncompetitive appointment eligibility into the competitive service based on statute do not have selection priority for competitive service positions, unless the pertinent statute so states.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 330

Armed forces reserves, Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 330 of title 5, Code of Federal Regulations, as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327 and 3330; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subpart H also issued under 5 U.S.C. 8337(h) and 8457(b); subpart I also issued under 106 Stat. 2720, 5 U.S.C. 3301 note.

§ 330.102 [Amended]

2. In § 330.102, paragraph (b) is revised to read as follows:

* * * * *

(b) *All other vacancies*—(1) *Notice required.* Under 5 U.S.C. 3330, OPM must maintain, and make available to the public, a list of agency vacancy announcements for positions in the competitive service. Under § 330.707 of this chapter, agencies must notify OPM promptly of competitive service vacancies to be filled for more than 120 days when the agency will accept applications from individuals outside the agency's own work force.

(2) [Reserved]

3. Section 330.301 is revised to read as follows:

§ 330.301 Coverage.

(a) This subpart covers the Interagency Placement Program for employees who will be displaced or who have been separated from their Federal jobs as a result of agency workforce reductions, compensable on-the-job injury, discontinued service retirement, or disability retirement. Agencies have the primary responsibility for providing placement assistance to their surplus and displaced employees, and for administering career transition assistance programs. OPM supplements these agency efforts by administering the Interagency Placement Program which gives surplus or displaced employees priority referral to positions in other agencies.

(b) The operation of this subpart will be suspended from February 29, 1996 through September 30, 1999. In the interim, placement assistance will be provided in accordance with subparts B, F, and G of this part. OPM may extend this date if it determines that the Federal Government is still experiencing an emergency downsizing situation.

4. Subpart F is revised to read as follows:

Subpart F—Agency Career Transition Assistance Plans (CTAP) for Local Surplus and Displaced Employees

330.601 Purpose.
330.602 Agency plans.
330.603 Duration.
330.604 Definitions.
330.605 Eligibility.
330.606 Order of selection for filling vacancies from within the agency.
330.607 Notification of surplus and displaced employees.
330.608 Application and selection.
330.609 Qualification reviews.
330.610 Reporting.
330.611 Oversight.

Authority: Presidential memorandum dated September 12, 1995, entitled ''Career Transition Assistance for Federal Employees.''

Subpart F—Agency Career Transition Assistance Plans (CTAP) for Local Surplus and Displaced Employees

§ 330.601 Purpose.

(a) This subpart implements the President's memorandum of September 12, 1995, to establish agency Career Transition Assistance Plans for Federal employees during a period of severe Federal downsizing. It is the policy of the United States Government to provide services to help surplus and displaced Federal employees take charge of their own careers and find other job offers, either within the Federal Government or in the private sector.

(b) These regulations set forth minimum criteria for agency Career Transition Assistance Plans. Consistent with the regulations, agencies may supplement these provisions to expand career transition opportunities to their surplus and displaced workers at their discretion.

(c) Sections 330.602(a)(2) and 330.604 through 330.609 do not apply to the Department of Defense Priority Placement Program.

(d) New negotiated agreements and agreements which have expired since February 29, 1996, the effective date of the interim regulations, will be subject to the provisions set forth in this part.

§ 330.602 Agency plans.

(a) Each agency will establish a Career Transition Assistance Plan (CTAP) to actively assist its surplus and displaced employees. A copy of the final plan and any additional modified plans will be sent to OPM as approved by the agency/department head or deputy or under secretary. An agency plan will include:

(1) Policies to provide career transition services to all surplus and displaced agency employees affected by downsizing or restructuring, including employees in the excepted service and the Senior Executive Service, which include the following:

(i) Types of career transition services to be provided by the agency;

(ii) Use of excused absence for employees to use the services and facilities;

(iii) Access to services or facilities after separation;

(iv) The requirement for a specific orientation session for surplus and displaced employees on the use of career transition services and the eligibility requirements for selection priority under CTAP and ICTAP. The orientation session must include information on how to apply for vacancies under the CTAP and ICTAP (if applicable);

(v) Retraining to be provided to employees;

(vi) Access by employees, including those with disabilities, to services in headquarters, field offices, and remote site locations;

(vii) Access to resource information on other forms of Federal, state, and local assistance which are available to support career transition for employees with disabilities;

(viii) Role of employee assistance programs in providing services; and

(ix) Designation of agency components, if the agency exercises its discretion under § 330.606(d)(24).

(2) Policies to provide special selection priority to well-qualified surplus and/or displaced agency employees, as defined by § 330.604 (c) and (i), who apply for agency vacancies in the local commuting area, before selecting any other candidate from either within or outside the agency, and agency procedures for reviewing qualification issues; and

(3) Operation of the agency's Reemployment Priority List under subpart B of 5 CFR part 330.

(b) Each agency is responsible for assuring that its Career Transition Assistance Plan and the provisions of these subparts are uniformly and consistently applied to all employees.

§ 330.603 Duration.

This subpart will expire on September 30, 1999, unless the Office of Personnel Management extends the program based on its determination that the Federal Government is still experiencing an emergency downsizing situation.

§ 330.604 Definitions.

For purposes of this subpart:

(a) *Agency* means an Executive Department, a Government corporation, and an independent establishment as cited in 5 U.S.C. 105. For the purposes of this program, the term ''agency''

includes all components of an organization, including its Office of Inspector General.

(b) *Component* means the first major subdivision of an agency, that is separately organized and clearly distinguished from other components in work function and operation.

(c) *Displaced employee* means:

(1) A current career or career conditional competitive service employee in tenure group 1 or 2, at grade levels GS–15 or equivalent and below, who has received a specific reduction in force (RIF) separation notice or notice of proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area; or,

(2) A current Executive Branch agency employee in the excepted service, serving on an appointment without time limit, at grade levels GS–15 or equivalent and below, who has been given noncompetitive appointment eligibility and selection priority by statute for positions in the competitive service, and who is in receipt of a reduction in force separation notice or notice of proposed removal for declining a transfer of function or directed reassignment outside of the local commuting area.

(d) *Eligible employee* means a surplus or displaced employee who meets the conditions set forth in § 330.605(a).

(e) *Local commuting area* means the geographic area that usually constitutes one area for employment purposes as determined by the agency. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

(f) *Reorganization* means the planned elimination or redistribution of work functions within an agency, normally announced in writing.

(g) *Special selection priority* means that, except as provided by § 330.606(d), surplus and/or displaced employees eligible under this subpart must be selected over any other candidate for vacancies in the local commuting area for which they apply and are found well-qualified.

(h) *Suitability* means determinations based on an individual's character or conduct that may impact the efficiency of the service by jeopardizing an agency's accomplishment of its duties or responsibilities, or by interfering with or preventing effective service in the competitive, excepted or SES position applied for or employed in, and determinations that there is a statutory or regulatory bar to employment.

(i) *Surplus employee means:*

(1) A current agency employee serving under an appointment in the competitive service, in tenure group 1 or 2, at grade levels GS–15 or equivalent and below, who has received a certificate of expected separation or other official certification issued by the agency indicating that the position is surplus, for example, a notice of position abolishment, or a notice stating that the employee is eligible for discontinued service retirement; or,

(2) A current Executive Branch agency employee serving on an excepted service appointment without time limit, at grade levels GS–15 or equivalent and below, who has been issued a certificate of expected separation or other official agency certification indicating that his or her position is surplus, for example, a notice of position abolishment or a notice stating that the employee is eligible for discontinued service retirement, and who has been conferred noncompetitive appointment eligibility and special selection priority by statute for positions in the competitive service; and

(3) At an agency's discretion, a current Executive Branch employee serving on a Schedule A or B excepted appointment without time limit, at grade levels GS–15 or equivalent and below, and who is in receipt of a certificate of expected separation or other official agency certification indicating that his or her job is surplus, for example, a notice of position abolishment, or an official notice stating that the employee is eligible for discontinued service retirement; or an employee who has received a RIF notice of separation, or a notice of proposed removal for declining a transfer of function or directed reassignment outside of the local commuting area. Such employee may exercise selection priority for permanent excepted service positions within the agency's local commuting area, provided the position to which appointed has the same appointing authority, i.e., Schedule A or B, as the position from which being separated.

(j) *Vacancy* means a competitive service position filled for a total of 121 days or more, including all extensions, which the agency is filling, regardless of whether the agency issues a specific vacancy announcement.

(k) *Well-qualified employee* means an eligible employee who possesses the knowledge, skills, and abilities which clearly exceed the minimum qualification requirements for the position. A well-qualified employee will not necessarily meet the agency's definition of ''highly or best qualified,'' when evaluated against other candidates who apply for a particular vacancy, but must satisfy the following criteria, as determined and consistently applied by the agency:

(1) Meets the basic qualification standards and eligibility requirements for the position, including any medical qualifications, suitability, and minimum educational and experience requirements; and

(2) Satisfies one of the following qualifications requirements:

(i) Meets all selective factors where applicable. Meets appropriate quality rating factor levels as determined by the agency. Selective and quality ranking factors cannot be so restrictive that they run counter to the goal of placing displaced employees. In the absence of selective and quality ranking factors, selecting officials will document the job-related reason(s) the eligible employee is or is not considered to be well qualified; or

(ii) Is rated by the agency to be above minimally qualified in accordance with the agency's specific rating and ranking process. Generally, this means that the individual may or may not meet the agency's test for ''highly qualified,'' but would in fact, exceed the minimum qualifications for the position;

(3) Is physically qualified, with reasonable accommodation where appropriate, to perform the essential duties of the position;

(4) Meets any special qualifying condition(s) that OPM has approved for the position; and

(5) Is able to satisfactorily perform the duties of the position upon entry.

§ 330.605 Eligibility.

(a) To be eligible for the special selection priority, an individual must meet all of the following conditions:

(1) Is a surplus or displaced employee (still on the agency rolls) as defined in § 330.604 (c) and (i);

(2) Has a current performance rating of record of at least fully successful or equivalent;

(3) Applies for a vacancy that is at or below the grade level from which the employee may be or is being separated, that does not have a greater promotion potential than the position from which the employee may be or is being separated;

(4) Occupies a position in the same local commuting area of the vacancy; or, at the agency's discretion, occupies a position beyond the local commuting area. An eligible agency applicant outside of the local commuting area, however, can only exercise selection priority when there are no eligible surplus and displaced agency

employees within the local commuting area who apply and are found well-qualified;

(5) Files an application for a specific vacancy within the time frames established by the agency, and provides proof of eligibility as required under § 330.608(a)(2); and

(6) Is determined by the agency to be well-qualified for the specific vacancy.

(b) *Eligibility for special selection priority begins* on the date the agency issues the employee a RIF separation notice, certificate of expected separation, notice of proposed separation for declining a directed reassignment or transfer of function outside of the local commuting area, or other official agency certification identifying the employee as being in a surplus organization or occupation, whichever is earliest.

(c) *Eligibility expires on the earliest of:*

(1) The RIF separation date, the date of the employee's resignation from the agency, or the date of separation under adverse action procedures for declining a directed reassignment or transfer of function to another local commuting area; or

(2) Cancellation of the RIF separation notice, certificate of expected separation, notice of proposed removal for declining a directed reassignment or transfer of function outside of the commuting area, or other official agency certification identifying the employee as surplus; or

(3) When an eligible employee receives a career, career-conditional, or excepted appointment without time limit in any agency at any grade level; and

(4) Within an agency, and at the agency's discretion, when an eligible employee declines a career, career conditional, or excepted appointment (without time limit), for which the employee has applied and been rated well-qualified.

§ 330.606 Order of selection for filling vacancies from within the agency.

(a) Except as provided in paragraph (d) of this section, when filling a vacancy as defined in § 330.604(j), an agency must select an employee eligible under § 330.605 of this subpart before selecting any other candidate from within or outside the agency, unless the agency can show that another employee would otherwise be separated by reduction in force. In addition, agencies may not procure temporary help services under 5 CFR part 300, subpart E, in lieu of appointing a surplus or displaced Federal employee as required by subparts F and G of this chapter.

(b) Once the agency has met its obligation to select employees eligible under its CTAP, it is free to select any other competitive service tenure group 1 or 2 candidate from within its workforce, under appropriate procedures. An agency may provide selection priority to surplus and displaced agency employees from another commuting area after it has discharged its obligation to eligible surplus and displaced agency employees from within the local commuting area.

(c) When an agency selects a candidate from outside of its workforce, the agency is subject to the order of selection prescribed in § 330.705.

(d) The following are not covered under this subpart:

(1) Actions taken under 5 CFR part 335, including reassignments, changes to lower grade, or promotions, when no employees eligible under this subpart apply;

(2) Reemployment of a former agency employee exercising regulatory or statutory reemployment rights, including the reemployment of injured workers who have either been restored to earning capacity by the Office of Workers' Compensation Programs (OWCP), or who have received a notice that their compensation benefits will cease because of recovery from the disabling injury or illness;

(3) Position changes resulting from disciplinary actions;

(4) Temporary appointments of under 121 days (including all extensions);

(5) Exchange of positions between or among agency employees, when the actions involve no increase in grade or promotion potential, i.e., job swaps;

(6) Conversion of an employee of the same agency who is serving on an excepted appointment which confers eligibility for noncompetitive conversion into the competitive service, e.g., conversion of a veterans' readjustment appointee to a career conditional appointment under § 315.705;

(7) An action taken under part 351 of this chapter;

(8) Non-competitive placement of an employee into a different position as a result of a formal reorganization, when the former position ceases to exist, and no actual vacancy results;

(9) Assignments made under the Intergovernmental Personnel Act (IPA) as provided in part 334 of this chapter;

(10) The filling of a position through an excepted appointment;

(11) Details;

(12) Time-limited promotions of under 121 days, including all extensions;

(13) Noncompetitive movement of surplus or displaced employees within the agency, and within the same local commuting area;

(14) Movement of excepted service employees within an agency;

(15) A placement under 5 U.S.C. 8337 or 8451 to allow continued employment of an employee who has become unable to provide useful and efficient service in his or her current position because of a medical condition;

(16) A placement that is a ''reasonable offer'' as defined in 5 U.S.C. 8336(d) and 8414(b);

(17) Career ladder promotions or position changes resulting from reclassification actions, e.g., accretion of duties, or application of new position classification standards;

(18) Recall of seasonal or intermittent employees from nonpay status;

(19) The internal placement of an injured or disabled worker whose agency has identified a position for which he or she can be reasonably accommodated;

(20) An action taken by the agency head or his designee pursuant to the settlement of a formal complaint, grievance, appeal, or other litigation;

(21) An action taken to return an employee to his or her original or similar position during a supervisory probationary period;

(22) The retention of individuals whose positions are brought into the competitive service under § 316.701 or § 316.702 of this chapter and subsequent conversion, when applicable, under § 315.701 of this chapter;

(23) The retention of an employee for whom OPM has approved a rule 5.1 variation;

(24) At the agency's discretion, the selection of an employee from within a component of an agency within the local commuting area, after all eligible surplus and displaced applicants of that component who are eligible under CTAP within the local commuting area have been accorded selection priority;

(25) The reemployment of a former agency employee who retired under a formal trial retirement and reemployment program, and who seeks reemployment with that agency under the program's provisions, and within the program's applicable time limits;

(26) Extensions of temporary or term actions, up to the full period allowed, provided that the original action, upon which the extension is based, was made on or before February 29, 1996; or for actions initially made after February 29, 1996, the original vacancy announcement must have specified that the position was open to CTAP candidates and that if they were found

well-qualified, would be afforded selection priority. The original announcement must have stated that an extension was possible without further announcement;

(27) Noncompetitive movement of displaced employees between agencies as a result of reorganization, transfer of function, or mass transfer; and

(28) The placement of a member of the Senior Executive Service under 5 U.S.C. 3594.

§ 330.607 Notification of surplus and displaced employees.

(a) In addition to meeting the requirements of § 330.602(a)(1)(iv), at the time it issues a specific RIF separation notice, certificate of expected separation, or other official agency certification that identifies an employee as being likely to be separated by RIF, or by adverse action procedures for declining a directed reassignment or transfer of function outside of the local commuting area, an agency must give each of its eligible employees information in writing about the special selection priority available to them under the agency's Career Transition Assistance Plan. Such information must contain guidance to the employee on how to apply for vacancies under the CTAP, and what documentation is generally required as proof of eligibility.

(b) Agencies must take reasonable steps to ensure eligible employees are notified of all vacancies the agency is filling and what is required for them to be determined well-qualified for the vacancies. Vacancy announcements within an agency must contain information on how eligible employees within the agency can apply, what proof of eligibility is required, and the agency's definition of ''well-qualified.''

(c) Each agency is required to advise, in writing, their surplus and displaced employees who apply for specific vacancies within its local commuting area of the results of their application, and whether or not they were found well-qualified. If they are not found well-qualified, such notice must include information on the results of an independent, second review conducted by the agency. If an applicant is found well-qualified, and another well-qualified surplus or displaced candidate is selected, the applicant must be so advised.

§ 330.608 Application and selection.

(a) *Application.*

(1) To receive this special selection priority, an eligible employee must apply for a specific agency vacancy in the same local commuting area as the position the employee occupies within the prescribed time frames, attach the appropriate proof of eligibility as described in paragraph (a)(2) of this section, and be determined well-qualified by the agency for the specific vacancy.

(2) Employees may submit the following as proof of eligibility for the special selection priority:

(i) RIF separation notice or notice of proposed removal for declining a directed reassignment or transfer of function outside the local commuting area;

(ii) Certificate of expected separation or other official notice from the agency indicating that the employee is surplus or eligible for discontinued service retirement; or

(iii) Other official agency certification identifying the employee as being in a surplus organization or occupation.

(b) *Selection.* An agency may decide the specific order of selection of its eligible employees within the provisions set forth in § 330.606(a) (e.g., the agency may decide to select displaced employees before surplus employees or may select surplus and/or displaced employees from within a particular component of the agency before selecting surplus and/or displaced employees from another component of the agency).

(c) An agency cannot select any other candidate from within or outside the agency if eligible employees are available for the vacancy or vacancies.

(d) If two or more eligible employees apply for a vacancy and are determined to be well-qualified, any of these eligible employees may be selected.

(e) If no eligible employees apply or none is deemed well-qualified, the agency may select another agency employee without regard to this subpart.

§ 330.609 Qualification reviews.

Agencies will ensure that a documented, independent second review is conducted whenever an otherwise eligible employee is determined to be not well-qualified. The applicant must be advised in writing of the results of the second review.

§ 330.610 Reporting.

(a) Each agency shall submit an annual report covering each fiscal year activity under this subpart to OPM no later than December 31 of each year.

(b) Each report will include the following:

(1) Number of employees identified by the agency as surplus and displaced during that fiscal year;

(2) The number of CTAP applicants who were found to be well-qualified;

(3) The number of CTAP applicants who were found to be not well-qualified;

(4) Number of selections of eligible employees under the agency's CTAP, or in the case of the Department of Defense, under its Priority Placement Program;

(5) The number of second reviews and the results of those reviews;

(6) The number of CTAP eligibles who declined job offers; and

(7) The name, title, and telephone number of the agency official responsible for the report.

(c) Reports should be addressed to: U.S. Office of Personnel Management, Workforce Restructuring Office, Employment Service, 1900 E Street, NW., Washington, DC 20415, FAX: 202–606–2329.

§ 330.611 Oversight.

OPM provides advice and assistance to agencies in implementing their Career Transition Assistance Programs. OPM is also responsible for oversight of agency CTAPs and may conduct reviews of the plans at any time.

5. Subpart G is revised to read as follows:

Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

330.701 Purpose.
330.702 Duration.
330.703 Definitions.
330.704 Eligibility.
330.705 Order of selection in filling vacancies from outside the agency's workforce.
330.706 Notification of displaced employees.
330.707 Reporting vacancies to OPM.
330.708 Application and selection.
330.709 Qualification reviews.
330.710 Reporting.
330.711 Oversight.

Authority: Presidential memorandum dated September 12, 1995, entitled ''Career Transition Assistance for Federal Employees.''

Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

§ 330.701 Purpose.

(a) This subpart implements the President's memorandum of September 12, 1995, to establish a special interagency career transition assistance program for Federal employees during a period of severe Federal downsizing.

(b) This subpart is effective July 9, 1997.

(c) The provisions of the Reemployment Priority List (RPL) set forth in subpart B of this part will remain in effect during the period of severe Federal downsizing. When an

agency considers candidates from outside the agency for vacancies, registrants in an agency's RPL have priority for selection over employees eligible under this subpart in accordance with § 330.705.

(d) This subpart applies only when agencies are making selections from outside their workforce, and does not prohibit movement within an agency, as permitted by subpart F of this part.

§ 330.702 Duration.

This subpart will expire on September 30, 1999, unless the U. S. Office of Personnel Management extends the program based on its determination that the Federal Government is still experiencing an emergency downsizing situation.

§ 330.703 Definitions.

For the purposes of this subpart:

(a) *Agency* has the meaning given in § 330.604(a).

(b) *Displaced employee* means:

(1) A current career or career-conditional competitive service employee, in tenure group 1 or 2, at grade levels GS–15 or equivalent and below, who has received a specific RIF separation notice, or a notice of proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area;

(2) A former career or career-conditional competitive service employee, in tenure group 1 or 2, at grade levels GS–15 or equivalent and below, who was separated through reduction in force, or removed for declining a directed reassignment or transfer of function outside of the local commuting area;

(3) A former career or career-conditional employee who was separated because of a compensable injury or illness as provided under the provisions of subchapter I of chapter 81 of title 5, United States Code, whose compensation has been terminated and whose former agency is unable to place the individual as required by part 353 of this chapter;

(4) A former career or career-conditional competitive service employee, in tenure group 1 or 2, who retired with a disability under sections 8337 or 8451 of title 5, United States Code, whose disability annuity has been or is being terminated;

(5) A former career or career-conditional competitive service employee, in tenure group 1 or 2, at grades GS–15 level or equivalent or below, who received a RIF separation notice, and who retired on the effective date of the reduction in force or under the discontinued service retirement option;

(6) A former Military Reserve Technician or National Guard Technician who is receiving a special disability retirement annuity from OPM under section 8337(h) or 8456 of title 5 United States Code, as described in subpart H of this part;

(7) A current Executive Branch agency employee in the excepted service, serving on an appointment without time limit, at grade levels GS–15 or equivalent and below, who has been given noncompetitive appointment eligibility and selection priority by statute for positions in the competitive service, and who is in receipt of a reduction in force separation notice or notice of proposed removal for declining a transfer of function or directed reassignment outside of the local commuting area; or

(8) A former Executive Branch agency employee in the excepted service, who served on an appointment without time limit, at grade levels GS–15 or equivalent and below, who has been given noncompetitive appointment eligibility and selection priority by statute for positions in the competitive service, and who has been separated through reduction in force or removed for declining a transfer of function or directed reassignment outside of the local commuting area.

(c) *Eligible employee* means a displaced employee who meets the conditions set forth in § 330.704(a).

(d) *Local commuting area* has the meaning given in § 330.604(e).

(e) *Special selection priority* has the meaning given in § 330.604(g).

(f) *Vacancy* has the meaning given in § 330.604(j).

(g) *Well-qualified employee* has the meaning given in § 330.604(k).

§ 330.704 Eligibility.

(a) To be eligible for the special selection priority, an individual must meet all of the following conditions:

(1) Is a displaced employee as defined in § 330.703(b);

(2) Has a current (or a last) performance rating of record of at least fully successful or equivalent (except for those eligible under § 330.703(b)(3), (b)(4), and (b)(6);

(3) Applies for a vacancy at or below the grade level from which the employee has been or is being separated, that does not have a greater promotion potential than the position from which the employee has been or is being separated;

(4) Occupies, or was displaced from a position in the same local commuting area of the vacancy;

(5) Files an application for a specific vacancy within the time frames established by the agency, and provides proof of eligibility required under § 330.708(a)(2); and

(6) Is determined by the agency to be well-qualified for the specific position.

(b) *Eligibility for special selection priority begins:*

(1) On the date the agency issues the RIF separation notice;

(2) On the date an agency certifies that it cannot place an employee eligible under § 330.703(b)(3);

(3) On the date an employee eligible under § 330.703(b)(4) is notified that his or her disability annuity has been or is being terminated;

(4) On the date the agency issues a formal notice of proposed separation to an employee for declining a transfer of function or directed reassignment outside the local commuting area; or

(5) On the date the National Guard Bureau or Military Department certifies that an employee under § 330.703(b)(6) has retired under 5 U.S.C. 8337(h) or 8456.

(c) *Eligibility expires:*

(1) 1 year after separation, except for those employees separated on or after September 12, 1995, and prior to February 29, 1996. For these employees, eligibility expired February 28, 1997;

(2) 1 year after an agency certifies that an individual under § 330.703(b)(3) cannot be placed;

(3) 1 year after an individual under § 330.703(b)(4) receives notification that his/her disability annuity has been or will be terminated;

(4) When the employee receives a career, career-conditional, or excepted appointment without time limit in any agency at any grade level;

(5) When the employee no longer meets the eligibility requirements set forth in paragraph (a) of this section (e.g., the employee is no longer being separated by RIF, or under adverse action procedures for declining a transfer of function or directed reassignment outside the local commuting area, or separates by resignation or non-discontinued service retirement prior to the RIF effective date); or

(6) At an agency's discretion, when an eligible employee declines a career, career conditional, or excepted appointment (without time limit), for which the employee has applied and been rated well-qualified; or upon the failure of the applicant to respond within a reasonable period of time to an offer or official inquiry of availability.

§ 330.705 Order of selection in filling vacancies from outside the agency's workforce.

(a) Except as provided in paragraph (c) of this section, when filling a vacancy from outside the agency's workforce an agency must select:

(1) Current or former agency employees eligible under the agency's Reemployment Priority List described in subpart B of this part, then;

(2) At the agency's option, any other former employee displaced from the agency (under appropriate selection procedures), then;

(3) Current or former Federal employees displaced from other agencies eligible under this subpart; and then;

(4) Any other candidate (under appropriate selection procedures) (optional).

(b) The following actions are subject to the above order of selection and are covered under this subpart:

(1) Competitive appointments (e.g., from registers or delegated examining);

(2) Noncompetitive appointments to the competitive service (e.g., the types listed in part 315, subpart F of this chapter, as well as Outstanding Scholar and Bilingual/Bicultural appointments made under the authority of the Luevano consent decree);

(3) Movement between agencies (e.g., transfer), except as provided for in paragraph (c)(8) of this section or part 351 of this chapter;

(4) Reinstatements (except as provided for in paragraph (a)(2) of this section); and

(5) Time-limited competitive appointments of 121 days or more, including all extensions, except as provided in (c)(11) of this section.

(c) The following actions are not covered under this subpart:

(1) Selections from an agency's internal Career Transition Assistance Plan or Reemployment Priority List as described in subparts F and B of this part respectively or any other internal agency movement of current agency employees;

(2) Appointments of 10 point veteran preference eligibles (CP, CPS, and XP), if reached through an appropriate appointing authority;

(3) Reemployment of former agency employees who have regulatory or statutory reemployment rights, including the reemployment of injured workers who have either been restored to earning capacity by the Office of Workers' Compensation Programs (OWCP), or who have received a notice that their compensation benefits will cease because of recovery from the disabling injury or illness;

(4) Temporary appointments of under 121 days (including all extensions);

(5) An action taken under part 351 of this chapter;

(6) The filling of a position by an excepted appointment;

(7) Conversion of an employee of the same agency who is serving on an excepted appointment that confers eligibility for noncompetitive appointment into the competitive service, e.g., conversion of a veterans' readjustment appointee to a career conditional appointment under § 315.705 of this chapter;

(8) Noncompetitive movement of displaced employees between agencies as a result of reorganization, transfer of function, or mass transfer;

(9) The reemployment of a former agency employee who retired under a formal trial retirement and reemployment program, and who seeks reemployment with that agency under the program's provisions, and within the program's applicable time limits;

(10) An action taken by the agency head or his or her designee pursuant to the settlement of a formal complaint, grievance, appeal, or other litigation;

(11) Extensions of temporary or term actions, up to the full period allowed, provided that the original action, upon which the extension is based, was made on or before February 29, 1996 (the effective date of the interim regulations); or for actions initially made after February 29, 1996, the original vacancy announcement must have specified that the position was open to ICTAP candidates, and that if they were found well-qualified, would be afforded selection priority. The original announcement must have stated that an extension was possible without further announcement. This exception includes extensions granted by OPM to the 2 or 4 year limit allowed for temporary and term appointments, respectively;

(12) The reappointment of former employees with their agency into hard-to-fill positions, the duties of which require unique skills and experience necessary to conduct a formal skills-based training program for the agency;

(13) The retention of individuals whose positions are brought into the competitive service under § 316.701 or § 316.702 of this chapter and subsequent conversion, when applicable, under § 315.701 of this chapter;

(14) The retention of an employee for whom OPM has approved a rule 5.1 variation;

(15) The placement of a member of the Senior Executive Service under 5 U.S.C. 3594; and

(16) Assignments made under the Intergovernmental Personnel Act (IPA) as provided in part 334 of this chapter.

§ 330.706 Notification of displaced employees.

(a) In addition to meeting the requirements of § 330.602(a)(1)(iv) and § 330.607(a), at the time it issues a specific RIF separation notice or notice of proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area, an agency must give each of its eligible employees information in writing about the special selection priority available to them under the Interagency Career Transition Assistance Plan. Such information must contain guidance to the employee on how to apply for vacancies under the ICTAP, and what documentation is generally required as proof of eligibility.

(b) Agencies must take reasonable steps to ensure eligible employees are notified of all vacancies the agency is filling and what is required for them to be determined well-qualified for the vacancies.

(c) Each agency is required to advise, in writing, ICTAP candidates who apply for specific vacancies within its local commuting area of the results of their application, and whether or not they were found well-qualified. If they are not found well-qualified, such notice must include information on the results of an independent, second review conducted by the agency. If an applicant is found well-qualified, and another well-qualified surplus or displaced candidate is selected, the applicant must be so advised.

§ 330.707 Reporting Vacancies to OPM.

(a) Agencies are required to report all competitive service vacancies to OPM when accepting applications from outside the agency (including applications for temporary positions lasting 121 or more days), except when they elect to fill a position by the transfer or reassignment of an ICTAP eligible from another agency.

(b) *Content.* Notice to OPM of job announcements must include the position title, location, pay plan and grade (or pay rate) of the vacant position; application deadline; and other information specified by OPM. In addition, for all positions reported, agencies are required to provide OPM with an electronic file of the complete vacancy announcement or recruiting bulletin, which must contain:

(1) Title, series, pay plan, and grade (or pay rate);

(2) Duty location;

(3) Open and closing dates, plus any other information dealing with how application receipt will be controlled, such as the use of early cut-off dates;

(4) Name of issuing agency and announcement number;

(5) Qualification requirements, including knowledges, skills, and abilities;

(6) Entrance pay;

(7) Brief description of duties;

(8) Basis of rating;

(9) What to file;

(10) Instructions on how to apply;

(11) Information on how to claim veterans' preference, if applicable;

(12) The agency's definition of well-qualified and information on how CTAP and/or ICTAP candidates may apply, including proof of eligibility required; and

(13) Equal employment opportunity statement.

§ 330.708 Application and selection.

(a) *Application.*

(1) To receive this special selection priority, eligible employees must apply directly to agencies for specific vacancies in the local commuting area within the prescribed time frames, attach the appropriate proof of eligibility as described in paragraph (a)(2) of this section, and be determined well-qualified by the agency for the specific position.

(2) Employees may submit the following as proof of eligibility for the special selection priority:

(i) RIF separation notice, or notice of proposed removal for declining a directed reassignment or transfer of function to another commuting area;

(ii) Documentation, e.g., SF–50, Notification of Personnel Action, showing that they were separated as a result of reduction in force, or for declining a transfer of function or directed reassignment to another commuting area;

(iii) Official certification from an agency stating that it cannot place an individual whose injury compensation has been or is being terminated;

(iv) Official notification from OPM that an individual's disability annuity has been or is being terminated; or

(v) Official notification from the Military Department or National Guard Bureau that the employee has retired under 5 U.S.C. 8337(h) or 8456.

(b) Selection. In making selections, an agency will adhere to the overall order of selection set forth in § 330.705. In addition, the following apply:

(1) An agency cannot select another candidate from outside the agency if eligible employees are available for the vacancy or vacancies.

(2) If two or more eligible employees apply for a vacancy and are determined to be well-qualified, any of these eligible employees may be selected.

(3) If no eligible employees apply or none is deemed well-qualified, the agency may select another candidate without regard to this subpart. (This flexibility does not apply to selections made from the agency's Reemployment Priority List as described in subpart B of this part.)

(c) An agency may select a candidate from its Career Transition Assistance Plan or Reemployment Priority List, as described in subparts F and B of this part respectively, or another current agency employee (if no eligible employees are available through its CTAP) at any time.

§ 330.709 Qualification reviews.

Agencies will ensure that a documented, independent second review is conducted whenever an otherwise eligible employee is found to be not well-qualified. The applicant must be advised in writing of the results of the second review.

§ 330.710 Reporting.

(a) Each agency shall submit an annual report covering each fiscal year activity under this subpart to OPM no later than December 31 of each year.

(b) Each report will include data specified in § 330.610 of subpart F of this part, and will also include information on:

(1) The number of selections of ICTAP eligible employees from other Federal agencies;

(2) The number of ICTAP candidates found not well-qualified;

(3) The number of ICTAP candidates found well-qualified;

(4) The number of selections of competitive service tenure group 1 or 2 employees from other Federal agencies who are not displaced;

(5) The number of declinations from ICTAP eligible candidates;

(6) The number of competitive service tenure group 1 or 2 appointments from outside the Federal Government; and

(7) The number of placements made from the agency's Reemployment Priority List.

§ 330.711 Oversight.

OPM is responsible for oversight of the Interagency Career Transition Assistance Plan for Displaced Employees and may conduct reviews of agency activity at any time.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 101

[Docket No. 93–152–2]

RIN 0579–AA65

Viruses, Serums, Toxins, and Analogous Products; Definition of Biological Products and Guidelines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations by revising the definition of ''biological products.'' The amendment is necessary in order to reflect current usage and advances in scientific knowledge, and to clarify certain parts of the definition. We are also adding a definition of ''guidelines'' to the regulations. Guidelines are issued to assist manufacturers of veterinary biological products and others in understanding test procedures, standards, and regulatory requirements pertaining to such products. This addition clarifies the purpose and intent of guidelines.

EFFECTIVE DATE: July 9, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Director, Licensing and Policy Development, Center for Veterinary Biologics, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

Veterinary biological products are licensed under the Virus-Serum-Toxin Act (hereinafter referred to as the VSTA) on the basis of purity, safety, potency, and efficacy. A product which is a ''virus, serum, toxin, or analogous product'' and which is intended for use in the treatment of animals is subject to regulation under the VSTA. Such products are commonly referred to as biologics or biological products. The definitions of terms related to veterinary biological products appear in 9 CFR part 101.

The Food and Drug Administration (FDA) regulates drugs for use in animals. The Federal Food, Drug, and Cosmetic Act (FFDCA) defines ''drugs'' to include, among other things, articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in man or other animals; and articles (other than food) intended to affect the structure or any function of the body of man or other animals.

Articles that are used to improve animal performance, such as increased rate of gain and enhanced feed efficiency, are ''drugs'' under the FFDCA. Section 902(c) of the FFDCA states that nothing in the FFDCA shall affect, modify, repeal, or supersede the provisions of the VSTA. FDA regulations under 21 U.S.C. 510.4 provide that an animal drug produced in full conformance with the VSTA will not be subject to the new animal drug approval requirements of the FFDCA.

Definition of Biological Product

The definition of ''biological products'' in 9 CFR 101.2 was last amended on April 2, 1973 (*See* 38 FR 8426–8428). Since that time, the VSTA has been amended by the 1985 Food Security Act (Pub. L. 99–198) and scientific advances have improved our understanding of how veterinary biologics work.

The 1985 Food Security Act provided for additional enforcement authorities under the VSTA. These authorities include detention, seizure, and condemnation and injunctive procedures. In addition, unless otherwise exempted, all veterinary biological products shipped in or from the United States must meet Federal standards for licensure related to purity, safety, potency, and efficacy. Products manufactured in foreign countries may not be imported without a permit issued under the VSTA and regulations. The main purpose of the VSTA is to protect those who use veterinary biologics from products which are worthless, contaminated, dangerous, or harmful. In this regard, products which are represented to be biological products also fall under the jurisdiction of the VSTA.

Since 1973, our understanding of how veterinary biologics work has advanced substantially. It is now recognized in the scientific literature that the generation or stimulation of an immune response involves both antigens and certain protein regulatory factors referred to as cytokines. Some cytokines (e.g. interleukins) serve as essential components in the generation and expression of an immune response, without which the vaccine would be worthless. These cytokines may be elicited through stimulation with antigens or certain ''immunomodulators''.

Cytokines are also produced in many body tissues and act on cell types other than those of the immune system. Cytokines of natural or synthetic origin can be prepared as products for administration to animals. Because of the diverse biological activity of the cytokines, not all products consisting of these substances would be regulated under the VSTA. Many of these cytokines intended to be used as drugs would fall under the jurisdiction of the Food and Drug Administration. In such instances, the VSTA would not apply.

Both cytokines and immunomodulators are analogous to biological products when they are used to stimulate, supplement, enhance, or modulate the immunity of animals in the treatment of disease. Products consisting of these substances that work through these immune mechanisms in the treatment of specific disease appropriately fall within the definition of ''biological products''. Certain immunomodulators (e.g. cell wall extracts and products derived from the aloe vera plant) that are used in the treatment of specific diseases of animals have been regulated by the Animal and Plant Health Inspection Service (APHIS) since 1980.

APHIS received a petition dated September 14, 1993, from the Animal Health Institute, a national trade association, requesting that the definition of ''biological products'' be amended.

In drafting the amended definition, APHIS considered various points raised in the petition and reviewed the definition of ''biological products'' in 9 CFR 101.2. Such review has been ongoing for some time because it has been apparent that a clarification and an update of the definition is necessary. Therefore, in response to the petition and as a result of its own efforts to update the definition, APHIS issued a proposal amending the definition of ''biological products'' in § 101.2. The definition proposed by APHIS is applicable to all viruses, serums, toxins (excluding antibiotics), or analogous products at any stage of production, shipment, distribution, or sale. APHIS also proposed to add a definition of guidelines to § 101.2. The purpose of guidelines is to assist licensees and applicants in matters related to procedures, methods, and other considerations pertaining to the regulation and licensure of biological products. Guidelines also clarify and explain agency practice and requirements.

The proposed rule was published in the **Federal Register** (61 FR 43483–43486, Docket No. 93–152–1) on August 23, 1996.

We solicited comments concerning our proposal for 60 days ending October 22, 1996. Three comments were received by that date. They were from a professional association and two trade associations. We carefully considered all of the comments we received. They are discussed below.

One commenter supported the rule as proposed. The commenter agreed that the revised definition is necessary to reflect current usage and advances in science. In addition, the commenter commended the agency for clarifying matters covered under the VSTA.

Another commenter believed that the rule would benefit biologics manufacturers and the animal health industry. The commenter supported the rule as proposed but requested clarification of several points related to the definition. The first point raised by the commenter related to the term ''treatment of specific diseases.'' The commenter inquired whether the term excluded products for the control of fertility from the definition of ''biological products.'' In response to the commenter, it is the position of APHIS that products intended for the control of fertility are not intended for the ''treatment of specific diseases'' and therefore fall outside of the definition of ''biological products.''

Two comments were received regarding section 4 of the preamble which deals with analogous products. There seemed to be some confusion about the reference to water and coloring and the statement concerning any stage of production. A question was also raised about the regulation of oral claims by APHIS. A careful reading of section 4 of the preamble will reveal that it merely meant to distinguish between the types of products which would be considered ''analogous.'' These are products having a legitimate use which are similar in function to biological products, and products which may resemble, or are represented as, biological products, but may consist of nothing but water and coloring. Both types fall under the definition of products regulated under the Act. Furthermore, products would not be exempted from regulation simply because they failed to reach some step in their manufacture or packaging. To further clarify the definition, an additional statement concerning the interpretation of the meaning of intended use, which appears in the discussion of analogous products in the proposal, has been added to § 101.2.

The same two commenters inquired whether ''guidelines'' would become requirements. In response to the commenters, the purpose of the guidelines is to assist manufacturers and others with questions concerning licensing, testing, regulatory requirements, and other areas dealing with biologics. Therefore, while ''guidelines'' clarify and explain agency

policy and regulatory requirements, ''guidelines'' themselves do not have the force and effect of regulations. No change to the regulations is made in response to these comments.

One commenter recommended that the definition of ''biological products'' also include ''natural products'' and ''live or killed vector carrier systems.'' In response to this comment, APHIS believes that ''natural products'' that fit the definition of ''biological products'' are already included under the proposed definition under the phrase ''that are of natural or synthetic origin.'' In addition, ''live or killed vector systems'' that carry ''immune components of live organisms'' intended for the treatment of specific diseases already fall under the proposed definition. No change to the regulations is made in response to this comment.

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

Executive Order 12866 and Regulatory Flexibility Act

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

APHIS is amending the definition of the term ''biological products'' in its regulations under the Virus-Serum-Toxin Act, based on a petition that APHIS received from the Animal Health Institute, a national trade association, requesting that the definition be updated to reflect current scientific usage. The agency is also amending the definition based on its own efforts to update the definition.

This action has been coordinated with the Food and Drug Administration.

The primary effect of the rule is to update the definition of ''biological products'' and add a definition of the term ''guidelines.'' This amendment to the regulations should have no adverse economic impact on firms and may even provide a benefit since the issuance of ''guidance'' documents may help to reduce the amount of time or resources required to complete licensure or testing of a biological product. It is anticipated that the amendment will benefit manufacturers of veterinary biologics by providing definitions that reflect current usage and accommodate advances in scientific knowledge.

The rule also provides guidance to manufacturers of veterinary biologics as to the scope of the term ''biological products.'' Biologics manufacturers should thus be aided in their decisionmaking related to the choice of submissions to APHIS for licensure of veterinary biological products or to the Food and Drug Administration for the approval of veterinary drugs.

There are currently approximately 118 veterinary biologics establishments that may be affected by this rule. According to the Small Business Administration regulations, many of them would be classified as small entities.

Three comments were received for the proposed rule on the definition of ''biological products'' and ''guidelines.'' All three comments supported the definition as proposed and believed that the definition would reflect current usage and advances in science and provide a benefit to manufacturers of veterinary biologics and the animal health industry.

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

Executive Order 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 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. There are no administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

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

Regulatory Reform

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

List of Subjects in 9 CFR Part 101

Animal biologics.

Accordingly, 9 CFR part 101 is amended as follows:

PART 101—DEFINITIONS

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

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 101.2 is amended by revising the definition of *Biological products* and by adding a definition for *Guidelines,* in alphabetical order, to read as follows:

§ 101.2 Administrative terminology.

* * * * *

Biological products. The term ''biological products,'' also referred to in this subchapter as biologics, biologicals, or products, shall mean all viruses, serums, toxins (excluding substances that are selectively toxic to microorganisms, *e.g.,* antibiotics), or analogous products at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of animals and which act primarily through the direct stimulation, supplementation, enhancement, or modulation of the immune system or immune response. The term ''biological products'' includes but is not limited to vaccines, bacterins, allergens, antibodies, antitoxins, toxoids, immunostimulants, certain cytokines, antigenic or immunizing components of live organisms, and diagnostic components, that are of natural or synthetic origin, or that are derived from synthesizing or altering various substances or components of substances such as microorganisms, genes or genetic sequences, carbohydrates, proteins, antigens, allergens, or antibodies.

(1) A product's intended use shall be determined through an objective standard and not a subjective one, and would be dependent on factors such as representations, claims (either oral or written), packaging, labeling, or appearance.

(2) The term analogous products shall include:

(i) Substances, at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of animals and which are similar in function to biological products in that they act, or are intended to act, through the stimulation, supplementation, enhancement, or modulation of the immune system or immune response; or

(ii) Substances, at any stage of production, shipment, distribution, or

sale, which are intended for use in the treatment of animals through the detection or measurement of antigens, antibodies, nucleic acids, or immunity; or

(iii) Substances, at any stage of production, shipment, distribution, or sale, which resemble or are represented as biological products intended for use in the treatment of animals through appearance, packaging, labeling, claims (either oral or written), representations, or through any other means.

(3) The term ''treatment'' shall mean the prevention, diagnosis, management, or cure of diseases of animals.

* * * * *

Guidelines. Guidelines establish principles or practices related to test procedures, manufacturing practices, product standards, scientific protocols, labeling, and other technical or policy considerations. Guidelines contain procedures or standards of general applicability that are usually not regulatory in nature, but that are related to matters that fall under the Virus-Serum-Toxin Act. Guidelines issued by the agency include Veterinary Biologics Licensing Considerations, Memoranda, Notices, and Supplemental Assay Methods.

* * * * *

Done in Washington, DC, this 3rd day of June 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–14997 Filed 6–6–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 92–090–2]

Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements for Clostridium Perfringens Types C and D Toxoids and Bacterin-Toxoids

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations pertaining to the Standard Requirements for Clostridium Perfringens Type C and Clostridium Perfringens Type D toxoids and bacterin-toxoids. The amendments will reduce the minimum number of rabbits required in order to pool their serum for testing. This amendment will also clarify the method of determining the test vaccine dose in rabbits based on the recommended vaccine dosage in cattle and other host animal species.

These amended regulations will not change the accuracy of the assays and, under certain circumstances, will reduce the number of required tests as well as the number of mice needed for testing. The amendment is necessary to make the potency assays conform more closely to the revised standard requirements for Clostridium Novyi and Clostridium Sordellii Bacterin-Toxoids and more economical to run when combination products containing these fractions are tested.

EFFECTIVE DATE: July 9, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Director, Licensing and Policy Development, Center for Veterinary Biologics, VS, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 113 pertain to standard requirements for the preparation of veterinary biological products. A standard requirement consists of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service (APHIS) to determine that a veterinary biological product is pure, safe, potent, and efficacious and not worthless, dangerous, contaminated, or harmful.

These regulations concerning potency testing of Clostridium Perfringens Type C Toxoid and Bacterin-Toxoid in § 113.111 and Clostridium Perfringens Type D Toxoid and Bacterin-Toxoid in § 113.112 reduce certain test requirements and decrease the cost of performing these tests. This has been accomplished without affecting the accuracy and reliability of the tests.

On March 22, 1993, we published a proposed rule in the **Federal Register** (58 FR 15301–15303, Docket No. 92–090–1) to amend the regulations in § 113.111 pertaining to Clostridium Perfringens Type C Toxoid and Bacterin-Toxoid and in § 113.112 pertaining to Clostridium Perfringens Type D Toxoid and Bacterin-Toxoid.

We proposed to reduce the number of mice needed for serum neutralization testing in certain circumstances. Also, the current test method uses half of the recommended cattle or sheep dose. The proposed rule provided for potency testing of product recommended for use in host animal species other than cattle and sheep. The test method in the proposed rule provided for recommendations for a variety of host animal species by prescribing the use of half of the smallest host animal dose.

Current regulations in §§ 113.111(c) and 113.112(c) provide for at least four of eight rabbits which are initially injected to be bled in the potency determination of Clostridium Perfringens Type C Toxoid and Bacterin-Toxoid and Clostridium Perfringens Type D Toxoid and Bacterin-Toxoid. The amount of antitoxin found in the rabbit sera after injection with the toxoid or bacterin-toxoid is proportional to the potency of the antigen in the product tested.

The antitoxin response of vaccinated rabbits is measured by a toxin neutralization assay in mice. A standard amount of *Clostridium perfringens* Beta or Epsilon toxin is mixed with a designated amount of the test rabbits' sera. The mixture is allowed to neutralize for one hour. Swiss white mice are then injected with this toxin-sera mixture to determine if the standard amount of toxin was neutralized by the test rabbit sera. Since mice are particularly sensitive to these toxins, the absence of mouse mortality indicates sufficient toxin neutralization and thus an adequate antitoxin response in the rabbits tested. The result would indicate an acceptable potency for the toxoid or bacterin-toxoid antigen in the product tested.

Under the current regulations in §§ 113.111(c) and 113.112(c), if four to seven rabbits are bled for potency testing, the sera from each rabbit must be assayed individually. This requires the use of at least 20 to 35 mice (each rabbit serum is tested in a minimum of 5 mice) for serum neutralization testing as compared to a minimum of 5 mice with the single pooled serum sample which was proposed.

The proposed rule required the use of at least seven rabbits in order for the sera to be pooled into a single sample. The potency test would then be conducted on the single pooled sample. Pooling the serum samples of seven instead of eight rabbits would reduce the number of toxin-antitoxin neutralization tests required, the number of mice needed, the time spent, and the expense of the procedure.

We solicited comments concerning our proposal for 60 days ending May 21, 1993. We received six comments by that date from manufacturers of animal health products and a national trade association. One of the commenters supported the proposed rule as written, while five raised specific issues concerning the proposed rule. Those comments are discussed below.

One commenter expressed concern that, as proposed, the rule had the

unintended effect of making the potency test requirements more stringent. As a cure, the commenter recommended the use of half the cattle dose for testing the potency of all Clostridium Perfringens Toxoids.

Five other commenters also expressed concern about the proposed reduction in the volume of rabbit inoculum to half the smallest host animal dose. One firm indicated it would be forced to increase antigen content in order to pass the more stringent requirement resulting from a reduced volume of rabbit inoculum, with the possible negative effect on host animal safety.

Three commenters indicated that the proposed inoculum volumes would be incompatible with those in the recently revised standard requirements for Clostridium Novyi and Clostridium Sordellii, which permitted utilization of the same group of rabbits for testing of sheep and cattle product fractions, the only two species addressed under that standard requirement. One commenter indicated that there is no need to change the volume of the rabbit inoculum under the current regulations.

Yet another commenter suggested that the volume of rabbit inoculum should be half of the largest dose indicated on the label for any species of animal for which the product is recommended. The commenter argued that this suggestion would not affect the potency test procedure for any licensed product, while it would address the dosage to be used for alternate species not specifically addressed under the current regulations, i.e., goats and swine.

In response to these comments, APHIS agrees that a volume of rabbit inoculum that is half the largest host animal dose for any species of animal for which the product is recommended is reasonable and also provides for more general indications that are appropriate for products not recommended for cattle or sheep. Reference to half of the largest host animal dose would, in most cases, result in the same rabbit test dosage that is used for testing these products in the current standard requirement. The proposal to require half the smallest host animal dose would have unnecessarily raised the potency requirement for some products and, in contrast to statements made in the proposed rule, would have resulted in test procedures that were not consistent with recent standard requirements for products containing *Clostridium novyi* and *Clostridium sordellii.* Therefore, in response to these comments, we are amending the regulations in §§ 113.111 and 113.112, paragraph (c)(2), to allow the use of half the largest recommended dose in host animals for the rabbit potency testing for any species of animal for which the product is recommended. The change in the proposed rule will, in most cases, retain the potency test requirement for these products at the same level as in the current standard requirement while recognizing products that would be used in animals other than cattle or sheep.

In further response to the comment that the standard requirement for Clostridium Perfringens should be consistent with those of Clostridium Novyi and Clostridium Sordellii, APHIS notes that the recently amended standard requirements for Clostridium Novyi and Clostridium Sordellii require that the strain of rabbit used for potency testing be acceptable to APHIS. APHIS believes that, for consistency, the requirement should apply equally to Clostridium Perfringens. Therefore, in response to this comment, we are adding the requirement in §§ 113.111 and 113.112, paragraph (c)(2), that the strain of rabbit used for potency testing Clostridium Perfringens be acceptable to APHIS.

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

Executive Order 12866 and Regulatory Flexibility Act

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

There are currently some 19 veterinary biologics establishments that may be affected by this rule. According to the Small Business Administration regulations, many of them would be classified as small entities.

This rule will result in a reduction of the number of mice required to perform potency assays. The reduction in the number of mice needed will result in a reduction in the total cost of the assays. Therefore, the rule should provide an economic benefit to producers of veterinary biologics. In addition, this rule clarifies the dosage of rabbit inoculum to be used in potency tests for products recommended for species other than cattle or sheep.

Retests may be indicated if less than 80 percent of control mice, inoculated with standard antitoxin and 10 L_+ doses of standard toxin, die in the neutralization test. However, since the testing of the pooled serum sample requires fewer mice as compared to testing individual serum samples, the number of mice required for a retest will be less.

Manufacturers, as well as the National Veterinary Services Laboratories, will benefit from the revisions since they will improve efficiency and reduce costs but will not change the accuracy of the assays.

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

Executive Order 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 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. There are no administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 is amended as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 113.111 is amended by revising paragraphs (c)(2), (c)(3)(i), (c)(3)(ii), (c)(3)(iii), and (c)(5)(iii) to read as set forth below, and by removing paragraph (c)(5)(iv).

§ 113.111 Clostridium Perfringens Type C Toxoid and Bacterin-Toxoid.

* * * * *

(c) * * *

(2) Each of at least eight rabbits of a strain acceptable to APHIS, each

weighing 4–8 pounds, shall be injected subcutaneously with not more than half of the largest recommended dose for any species indicated on the product label. A second equivalent dose shall be given not less than 20 days nor more than 23 days after the first dose.

(3) * * *

(i) At least seven rabbits are required to make an acceptable serum pool.

(ii) Equal quantities of serum from each rabbit shall be combined and tested as a single pooled serum.

(iii) If less than seven rabbits are available, the test is invalid and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

* * * * *

(5) * * *

(iii) If any mice inoculated with the mixture of serum with 10 Lσ doses of Standard Toxin die, the serum is considered to contain less than 10 International Units per ml, and the serial is unsatisfactory.

3. Section 113.112 is amended by revising paragraphs (c)(2), (c)(3)(i), (c)(3)(ii), (c)(3)(iii), and (c)(5)(iii) to read as set forth below, and by removing paragraph (c)(5)(iv).

§ 113.112 Clostridium Perfringens Type D Toxoid and Bacterin-Toxoid.

* * * * *

(c) * * *

(2) Each of at least eight rabbits of a strain acceptable to APHIS, each weighing 4–8 pounds, shall be injected subcutaneously with not more than half of the largest recommended dose for any species indicated on the product label. A second equivalent dose shall be given not less than 20 days nor more than 23 days after the first dose.

(3) * * *

(i) At least seven rabbits are required to make an acceptable serum pool.

(ii) Equal quantities of serum from each rabbit shall be combined and tested as a single pooled serum.

(iii) If less than seven rabbits are available, the test is invalid and shall be repeated: *Provided*, That, if the test is not repeated, the serial shall be declared unsatisfactory.

* * * * *

(5) * * *

(iii) If any mice inoculated with the mixture of serum with 10 Lσ doses of Standard Toxin die, the serum is considered to contain less than 2 International Units per ml, and the serial is unsatisfactory.

Done in Washington, DC, this 3rd day of June 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–14996 Filed 6–6–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–70–AD; Amendment 39–10045; AD 97–12–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD) that are applicable to certain Boeing Model 747 series airplanes. One of those AD's currently requires inspections for cracking, corrosion, and fracturing of the lower horizontal clevis of the strut midspar fittings, and replacement of discrepant parts with new or serviceable parts, or repair, if necessary. That AD also requires inspection for removal of broken sealant of the clevis and the fasteners, and various follow-on actions. It also provides for optional terminating actions for the inspections. The other AD currently requires inspection for cracking of certain fastener holes of the upper and lower horizontal clevis legs. This amendment continues to require inspections to detect cracking, corrosion, and fracturing of the lower horizontal clevis; and adds corresponding inspections of the upper horizontal clevis, and replacement of discrepant parts with new parts, or rework, if necessary. This amendment also removes certain optional terminating actions. This amendment is prompted by reports of cracking of the lower and upper leg of the horizontal clevis of the midspar fitting. The actions specified in this AD are intended to detect and correct cracking and fracturing of the clevis, which could result in drooping of the strut at the strut-to-wing interface, and consequent separation of the engine and strut from the airplane.

DATES: Effective June 24, 1997.

The incorporation by reference of Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996, as listed in the regulations, is approved by the Director of the Federal Register as of June 24, 1997.

The incorporation by reference of the following publications listed in the regulations was approved by the Director of the Federal Register as of the specified dates:

Referenced service bulletin and date	Approval date and Federal Register citation
747–54A2157, January 12, 1995.	July 28, 1995 (60 FR 33333, June 28, 1995).
747–54A2158, November 30, 1994.	July 28, 1995 (60 FR 33336, July 28, 1995).
747–54A2159, November 3, 1994.	June 21, 1995 (60 FR 27008, May 22, 1995).

The incorporation by reference of certain other publications listed in the regulations also was approved previously by the Director of the Federal Register as of January 22, 1997 (60 FR 66201, December 12, 1996).

Comments for inclusion in the Rules Docket must be received on or before August 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–70–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: Tamara Dow, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On January 13, 1988, the FAA issued AD 87–04–13 R1, amendment 39–5836 (53 FR 2005, January 26, 1988), applicable to certain Boeing Model 747 series airplanes. That AD revised an existing AD to require inspection for cracking, and repair or replacement, as necessary, of the horizontal clevis of the pylon midspar attach fitting. That action was prompted by reports of cracking and corrosion in the fastener holes of the

midspar attach fitting of the engine pylon. The actions required by that AD are intended to detect and correct such cracking/corrosion of the attach fitting, which could cause possible separation of the pylon and engine from the wing.

In addition, on November 25, 1996, the FAA issued AD 96–25–01, amendment 39–9842 (61 FR 66201, December 17, 1996), applicable to certain Boeing Model 747 series airplanes, to require inspections to detect broken sealant common to the lower horizontal clevis of the inboard and outboard strut midspar fittings and of the fasteners, and various follow-on actions. That action also requires inspections to detect cracking, corrosion, and fracturing of the lower horizontal clevis, and replacement of discrepant parts with new or serviceable parts, or repair, if necessary. That action also provides for optional terminating actions for the repetitive inspections. That action was prompted by reports of fatigue cracking, stress corrosion cracking, and fracturing of the horizontal clevis of the inboard midspar fitting of the number three strut. The actions required by that AD are intended to detect and correct such cracking and fracturing, which could result in drooping of the strut at the strut-to-wing interface, and consequent separation of the engine and strut from the airplane.

Other Relevant Rulemaking

The FAA has previously issued several other AD's that address cracking in the midspar fitting clevis on Boeing Model 747 series airplanes:

1. AD 90–06–06, amendment 39–6490 (55 FR 8374, March 7, 1990): Among various other actions, this AD requires structural modification, among various other actions, in accordance with Boeing Document No. D6–35999, dated March 31, 1989. The FAA has approved an alternative method of compliance that extends the compliance time threshold to a maximum of three years after the airplane reaches 20,000 total flight cycles, or until the mandated strut/wing modification is accomplished, whichever occurs first. Additionally, ultrasonic inspections to detect cracking of the fastener holes are required at intervals not to exceed 1,000 flight cycles in accordance with Boeing Service Bulletin 747–54–2118, dated July 26, 1986. If cracking or corrosion is detected during those inspections, rework or replacement of the midspar fitting with a new or serviceable part is required, in accordance with that service bulletin.

The FAA has approved Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996, as an alternative method of compliance for the requirements specified in AD 90–06–06, which references Boeing Service Bulletin 747–54–2118 as the appropriate source of service information.

2. AD 95–10–16, amendment 39–9233 (60 FR 27008, May 5, 1995): For airplanes equipped with Pratt & Whitney Model JT9D engines (excluding Model JT9D–70 engines), that AD requires modification of the nacelle strut and wing structure, and inspections of the adjacent structure that has not been replaced by the modification, in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994. As a condition to extend the compliance time from 32 to 56 months, AD 95–10–16 also requires repetitive ultrasonic inspections to detect cracking of the aft-most two fastener holes in both strut midspar fittings on the inboard and outboard nacelle struts, or modification of the aft-most two fastener holes as described in Boeing Service Bulletin 747–54–2118.

The FAA has approved the inspections of the upper and lower horizontal legs of the strut midspar fittings and compliance times for those inspections specified in Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 29, 1996, as an alternative to those actions specified in paragraphs (a)(2)(ii)(a) and (a)(2)(iv)(a) of AD 95–10–16.

Since the issuance of that AD, Boeing Alert Service Bulletin 747–54A2159, Revision 1, dated June 1, 1995, and Revision 2, dated March 14, 1996, have been approved as alternative methods of compliance with that AD.

3. AD 95–13–05, amendment 39–9285 (60 FR 33333, June 28, 1995): For airplanes equipped with Rolls Royce Model RB211 series engines, that AD requires modification of the strut/wing in accordance with Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995.

Since the issuance of that AD, Boeing Alert Service Bulletin 747–54A2157, Revision 1, dated August 3, 1995, and Revision 2, dated November 14, 1996, have been approved as alternative methods of compliance with the AD.

4. AD 95–13–07, amendment 39–9287 (60 FR 33336, July 28, 1995): For airplanes equipped with General Electric Model CF6–45 or –50 series engines, that AD requires modification of the strut/wing in accordance with Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994.

Since issuance of that AD, Boeing Alert Service Bulletin 747–54A2158, Revision 1, dated August 17, 1995, and Revision 2, dated August 15, 1996, have been approved as alternative methods of compliance with that AD.

Actions Since Issuance of AD 87–04–13 R1 and AD 96–25–01

Since the issuance of AD 96–25–01, the FAA has received reports indicating that cracking was found of the lower and upper leg of the horizontal clevis of the midspar fitting on Boeing Model 747 series airplanes. The cracking was detected during inspections that were conducted in accordance with AD 96–25–01.

One operator reported that a midspar fitting at the number three pylon was cracked at the fourth row of fasteners from the aft end on the upper leg of the horizontal clevis of the midspar fitting. This operator also reported a crack on the lower leg of the midspar fitting at the number two pylon at the second row from the aft end. Metallurgical analysis accomplished on the midspar fitting at the number three pylon indicates that the cause of the cracking was stress corrosion.

The FAA also received another report indicating that cracking was detected on the upper leg of the horizontal clevis of the midspar fitting at the second row of fasteners from the aft end at the number three pylon. In addition, this report indicated that cracking was also detected on that same airplane at the number 3 pylon at the second row from the aft end of the lower leg. The report also indicated that terminating action specified Boeing Service Bulletin 747–54–2118, dated July 25, 1986, had been accomplished on the affected airplane; this service bulletin was referenced in AD 96–25–01 as the appropriate source of service information.

Cracking or fracturing of the lower or upper horizontal clevis of the inboard and outboard strut midspar fittings, if not detected and corrected in a timely manner, could result in drooping of the strut at the strut-to-wing interface, and consequent separation of the engine and strut from the airplane.

Explanation of New Relevant Service Information

Since the issuance of AD 87–04–13 R1 and AD 96–25–01, the FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996. This alert service bulletin describes procedures for the following:

1. Removing sealant common to the lower and upper horizontal legs of the clevis of the outboard (for certain airplanes) and the inboard (for all airplanes) midspar fittings, and cleaning the midspar fittings.

2. Performing detailed visual borescope inspections or alternative ultrasonic/detailed visual inspections to detect cracking, corrosion, and/or fracturing of the lower horizontal legs of the clevis of the strut midspar fittings, and repair, if necessary.

3. Performing ultrasonic and detailed visual inspections to detect cracking, corrosion, and/or fracturing of the upper horizontal leg of the strut midspar fittings, and repair, if necessary.

4. Reworking only the discrepant areas or hole.

5. Reworking all fastener holes, or replacing the midspar fitting with new fittings, as applicable, if any discrepancy is detected; this eliminates the need for repetitive inspections.

Additionally, for all airplanes, the service bulletin references replacement of the midspar fittings, which involves modification of the strut/wing in accordance with the following Boeing service bulletins, as applicable. Accomplishment of this modification eliminates the need for repetitive inspections.

1. Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995; Revision 1, dated August 3, 1995; or Revision 2, dated November 14, 1996 (for airplanes equipped with Rolls Royce RB211 engines);

2. Boeing Alert Service Bulletin 747–54–A2158, dated November 30, 1994; Revision 1, dated August 17, 1995; or Revision 2, dated August 15, 1996 (for airplanes equipped with General Electric CFC–45/–50 or Pratt & Whitney JT9D–70 engines); and

3. Boeing Service Bulletin 747–54A2159, dated November 3, 1994; Revision 1, dated June 1, 1995; or Revision 2, dated March 14, 1996 (for airplanes equipped with Pratt & Whitney engines).

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 87–04–13 R1 and AD 96–25–01, as follows:

First, this AD requires removal of certain sealant common to the lower and upper horizontal legs of the outboard (for certain airplanes) and the inboard (for all airplanes) midspar fittings, and cleaning the midspar fittings.

This AD continues to require repetitive detailed visual borescope inspections to detect cracking, corrosion, and fracturing of the lower horizontal clevis of the inboard and outboard strut midspar fittings. Replacement of discrepant fittings with new fittings is also required, or rework, as applicable. This AD adds ultrasonic/detailed visual inspections as an alternative method of accomplishing those inspections.

This AD adds repetitive ultrasonic/detailed visual inspections of the upper horizontal clevis of the inboard and outboard strut midspar fittings, and replacement of discrepant fittings with new fittings, or rework, if necessary.

For airplanes on which any cracking, corrosion, or fracturing is detected that is outside certain limits, this AD requires accomplishment of the strut/wing modification, replacement of the midspar fittings of the strut with new fittings, or repair in accordance with a method approved by the FAA, as applicable.

Accomplishment of the strut/wing modification constitutes terminating action for the repetitive inspection requirements of this AD.

Certain actions are required to be accomplished in accordance with Boeing Alert Service Bulletin 747–A2179, Revision 1, dated November 27, 1996, described previously. Certain other actions are required to be accomplished in accordance with a method approved by the FAA.

Difference Between This AD and the Alert Service Bulletin

Operators should note that, while the alert service bulletin advises operators to contact the manufacturer if the damaged area is beyond the specified limits, this AD requires operators to repair any such damage in accordance with a method approved by the FAA, Transport Airplane Directorate.

Operators also should note that airplanes on which reworking of the upper and lower horizontal clevis of the midspar fittings has been accomplished in accordance with Boeing Service Bulletin 747–54–2118, dated July 25, 1986, have not been included in the effectivity of the alert service bulletin. However, the FAA has determined that, in light of the recent reports of cracking, the rework is not sufficient to provide adequate assurance of permanent correction of the unsafe condition addressed by this action. Therefore, the FAA has removed the provision for reworking from AD 96–25–01 as an optional terminating action for the repetitive inspection requirements of this AD.

Additionally, Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996, describes the replacement of the midspar fittings of the strut as an optional method of eliminating the repetitive inspections. The alert service bulletin also references replacement of the midspar fittings of the strut in accordance with either the alert service bulletin or Boeing Service Bulletin 747–54–2118, Revision 4, dated May 11, 1989, as an optional terminating action, which eliminates the need for repetitive inspections.

However, the FAA has determined that, in light of the recent reports of cracking discussed previously, neither the replacement nor the rework is sufficient to provide adequate assurance of permanent correction of the unsafe condition. Therefore, the FAA also has removed those optional terminating actions from this AD.

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–70–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 removing amendment 39–5836 (53 FR 2005, January 26, 1988) and amendment 39–9842 (61 FR 66201, December 17, 1996), and by adding a new airworthiness directive (AD), amendment 39–10045, to read as follows:

97–12–03 Boeing: Amendment 39–10045. Docket 97–NM–70–AD. Supersedes AD 87–04–13 R1, amendment 39–5836; and AD 96–25–01, amendment 39–9842.

Applicability: Model 747 series airplanes as listed in Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996; certificated in any category, except for airplanes on which the strut/wing modification has been accomplished in accordance with the following Boeing alert service bulletins:

1. Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995; Revision 1, dated August 3, 1995; or Revision 2, dated November 14, 1996;

2. Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994; Revision 1, dated August 17, 1995; or Revision 2, dated August 15, 1996; or

3. Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994; Revision 1, dated June 1, 1995; or Revision 2, dated March 14, 1996.

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 (n) 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 drooping of the strut at the strut-to-wing interface, and consequent separation of the engine and strut from the airplane due to cracking or fracturing of the midspar fitting clevis, accomplish the following:

Restatement of Requirements of AD 96–25–01

(a) For all airplanes: Except as provided by paragraph (d) of this AD, perform a detailed visual borescope inspection to detect cracking, corrosion, and/or fracturing of the lower horizontal clevis of both midspar fittings of the inboard struts, in accordance with Boeing Alert Service Bulletin 747–54A2179, dated June 27, 1996, or Revision 1, dated November 27, 1996, at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable.

(1) For airplanes identified as Group 1 or Group 6 in the alert service bulletin: Perform the initial inspection at the time specified in paragraph (a)(1)(i) or (a)(1)(ii), as applicable. Thereafter, repeat this inspection at intervals not to exceed every 150 flight cycles, or every 3 months, whichever occurs first. (i) Within 150 flight cycles or 60 days after January 2, 1997 (the effective date of AD 96–25–01, amendment 39–9842), whichever occurs first. Or

(ii) For airplanes on which terminating action has been accomplished within 500 flight cycles prior to January 2, 1997, in accordance with Boeing Service Bulletin 747–54–2118, Revision 1, dated May 21, 1987; Revision 2, dated April 21, 1988; Revision 3, dated September 29, 1988; or Revision 4, dated May 11, 1989: Perform the initial inspection within 500 flight cycles or 12 months after January 2, 1997, whichever occurs first.

(2) For airplanes identified as Group 2 or Group 4 in the alert service bulletin: Perform the initial inspection at the time specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable. Thereafter, repeat this inspection at intervals not to exceed every 300 flight cycles or 6 months, whichever occurs first.

(i) Within 150 flight cycles or 60 days after January 2, 1997, whichever occurs first. Or

(ii) For airplanes on which terminating action has been accomplished within 1,000 flight cycles prior to January 2, 1997, in accordance with Boeing Service Bulletin 747–54–2118, Revision 1, dated May 21, 1987; Revision 2, dated April 21, 1988; Revision 3, dated September 29, 1988; or Revision 4, dated May 11, 1989: Perform the initial inspection within 1,000 flight cycles or 12 months after January 2, 1997, whichever occurs first.

(3) For airplanes identified as Group 3 in the alert service bulletin: Perform the initial inspection at the time specified in paragraph (a)(3)(i) or (a)(3)(ii) of this AD, as applicable. Thereafter, repeat this inspection at intervals not to exceed every 350 flight cycles or 6 months, whichever occurs first.

(i) Within 150 flight cycles or 60 days after January 2, 1997, whichever occurs first. Or

(ii) For airplanes on which terminating action has been accomplished within 1,000 flight cycles prior to January 2, 1997, in accordance with Boeing Service Bulletin 747–54–2118, Revision 1, dated May 21, 1987; Revision 2, dated April 21, 1988; Revision 3, dated September 29, 1988; or Revision 4, dated May 11, 1989: Perform the initial inspection within 1,000 flight cycles or 12 months after January 2, 1997, whichever occurs first.

(4) For airplanes identified as Group 5 in the alert service bulletin: Perform the initial inspection at the time specified in paragraph (a)(4)(i) or (a)(4)(ii) of this AD, as applicable. Thereafter, repeat the inspection at intervals not to exceed every 300 flight cycles or 6 months, whichever occurs first.

(i) Within 150 flight cycles or 60 days after January 2, 1997, whichever occurs first.

(ii) For airplanes on which terminating action has been accomplished within 800 flight cycles prior to January 2, 1997, in accordance with Boeing Service Bulletin 747–54–2118, Revision 1, dated May 21, 1987; Revision 2, dated April 21, 1988; Revision 3, dated September 29, 1988; or Revision 4, dated May 11, 1989: Perform the initial inspection within 800 flight cycles or 12 months after January 2, 1997, whichever occurs first.

(b) For airplanes identified as Group 1 in Boeing Alert Service Bulletin 747–54A2179, dated June 27, 1996, or Revision 1, dated November 27, 1996: Except as provided by paragraph (e) of this AD, perform a detailed visual borescope inspection to detect cracking, corrosion, and/or fracturing of the lower horizontal clevis of both midspar fittings of the outboard struts, in accordance with Boeing Alert Service Bulletin 747–54A2179, dated June 27, 1996, or Revision 1, dated November 27, 1996, at the time specified in paragraph (b)(1) or (b)(2) of this

AD, as applicable. Thereafter, repeat the inspection at intervals not to exceed every 300 flight cycles or 6 months, whichever occurs first.

(1) Within 200 flight cycles or 60 days after January 2, 1997, whichever occurs first. Or

(2) For airplanes on which the terminating action has been accomplished within the last 1,000 flight cycles prior to January 2, 1997, in accordance with Boeing Service Bulletin 747–54–2118, Revision 1, dated May 21, 1987; Revision 2, dated April 21, 1988; Revision 3, dated September 29, 1988; or Revision 4, dated May 11, 1989: Perform the inspection within 1,000 flight cycles or 12 months after January 2, 1997, whichever occurs first.

New Requirements of this AD

(c) For all airplanes: After the effective date of this AD, prior to the accomplishment of each inspection required by paragraph (a), (b), (d), or (e), of this AD, remove the sealant common to the lower leg of the horizontal clevis of the inboard (for all airplanes) midspar fittings, and the outboard (for Groups 1 and 6 airplanes) and clean the midspar fittings, in accordance with Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996. Prior to further flight following accomplishment of these actions, apply corrosion inhibitive compound BMS 3–23 to any area where the original sealant was removed or disturbed, in accordance with Boeing Standard Operational Procedures (BSOP) 20–41–05 for Model 747 series airplanes.

(d) Accomplishment of the actions specified in this paragraph is an alternative to compliance with paragraph (a) of this AD. Perform an ultrasonic/detailed visual inspection to detect cracking, corrosion, and/or fracturing of the lower horizontal clevis of both midspar fittings of the inboard struts, in accordance with Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996, at the time specified in paragraph (d)(1), (d)(2), (d)(3), or (d)(4) as applicable.

(1) For airplanes identified as Group 1 or 6 in the alert service bulletin: Perform the inspections at the time specified in paragraph (d)(1)(i) or (d)(1)(ii) of this AD. Thereafter, repeat the inspections at intervals not to exceed every 1,000 flight cycles or 18 months, whichever occurs first.

(i) Within 150 flight cycles or 3 months after accomplishing the last inspection required by paragraph (b) of AD 96–25–01 or paragraph (a) of this AD.

(ii) For airplanes on which terminating action has been accomplished within 500 flight cycles after January 2, 1997, in accordance with Boeing Service Bulletin 747–54–2118, Revision 1, dated May 21, 1987; Revision 2, dated April 21, 1988; Revision 3, dated September 29, 1988; or Revision 4, dated May 11, 1989: Perform the initial inspection within 500 flight cycles or 12 months after January 2, 1997, whichever occurs first.

(2) For airplanes identified as Group 2 or 4 in the alert service bulletin: Perform the inspection at the time specified in paragraph (d)(2)(i) or (d)(2)(ii) of this AD, as applicable. Thereafter, repeat this inspection at intervals not to exceed every 1,500 flight cycles or 18 months, whichever occurs first.

(i) Within 300 flight cycles or 6 months after accomplishing the last inspection required by paragraph (b) of AD 96–25–01 or paragraph (a) of this AD. Or

(ii) For airplanes on which terminating action has been accomplished within 1,000 flight cycles after January 2, 1997, in accordance with Boeing Service Bulletin 747–54–2118, Revision 1, dated May 21, 1987; Revision 2, dated April 21, 1988; Revision 3, dated September 29, 1988; or Revision 4, dated May 11, 1989: Perform the initial inspection within 1,000 flight cycles or 12 months after January 2, 1997, whichever occurs first.

(3) For airplanes identified as Group 3 in the alert service bulletin: Perform the inspection at the time specified in paragraph (d)(3)(i) or (d)(3)(ii) of this AD, as applicable. Thereafter, repeat the inspection at intervals not to exceed every 2,500 flight cycles or 18 months, whichever occurs first.

(i) Within 350 flight cycles or 6 months after accomplishing the last inspection required by paragraph (b) of AD 96–25–01 or paragraph (a) of this AD. Or

(ii) For airplanes on which terminating action has been accomplished within 1,000 flight cycles after January 2, 1997, in accordance with Boeing Service Bulletin 747–54–2118, Revision 1, dated May 21, 1987; Revision 2, dated April 21, 1988; Revision 3, dated September 29, 1988; or Revision 4, dated May 11, 1989: Perform the initial inspection within 1,000 flight cycles or 12 months after January 2, 1997, whichever occurs first.

(4) For airplanes identified as Group 5 in the alert service bulletin: Perform the inspection at the time specified in paragraph (d)(4)(i) or (d)(4)(ii) of this AD, as applicable. Thereafter, repeat the inspection at intervals not to exceed every 1,500 flight cycles or 18 months, whichever occurs first.

(i) Within 300 flight cycles or 6 months after accomplishing the last inspection required by paragraph (b) of AD 96–25–01 or paragraph (a) of this AD. Or

(ii) For airplanes on which terminating action has been accomplished within 800 flight cycles after January 2, 1997, in accordance with Boeing Service Bulletin 747–54–2118, Revision 1, dated May 21, 1987; Revision 2, dated April 21, 1988; Revision 3, dated September 29, 1988; or Revision 4, dated May 11, 1989: Perform the initial inspection within 800 flight cycles or 12 months after January 2, 1997, whichever occurs first.

(e) For airplanes identified as Group 1 in Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996: Accomplishment of the actions specified in this paragraph is an alternative to compliance with paragraph (b) of this AD. Perform an ultrasonic/detailed visual inspection to detect cracking, corrosion, and/or fracturing of the lower horizontal clevis of both midspar fittings of the outboard struts, in accordance with Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996, at the time specified in paragraph (e)(1) or (e)(2) of this AD, as applicable. Thereafter, repeat the inspection at intervals not to exceed every 2,000 flight cycles or 18 months, whichever occurs first.

(1) Within 300 flight cycles or 6 months after accomplishing the last inspection required by paragraph (c) of AD 96–25–01 or paragraph (b) of this AD. Or

(2) For airplanes on which terminating action has been accomplished within 1,000 flight cycles after January 2, 1997, in accordance with Boeing Service Bulletin 747–54–2118, Revision 1, dated May 21, 1987; Revision 2, dated April 21, 1988; evision 3, dated September 29, 1988; or Revision 4, dated May 11, 1989: Perform the inspection within 1,000 flight cycles or 12 months after January 2, 1997, whichever occurs first.

(f) For all airplanes: After the effective date of this AD, prior to the accomplishment of each inspection required by paragraphs (g), (h), or (i), of this AD, remove the sealant of the upper horizontal leg surface and clean the midspar fittings in accordance with Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996. Prior to further flight following accomplishment of these actions: Restore the sealant of the upper horizontal leg surface in accordance with the alert service bulletin.

(g) For all airplanes: Within 90 days after the effective date of this AD, perform an ultrasonic/detailed visual inspection to detect cracking, corrosion, and/or fracturing of the upper horizontal clevis of both midspar fittings of the inboard struts, in accordance with Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996. Repeat the ultrasonic/detailed visual inspection thereafter at the time specified in paragraph (g)(1), (g)(2), or (g)(3), as applicable.

(1) For airplanes identified as Group 1 or 6 in the alert service bulletin: Repeat at intervals not to exceed every 1,000 flight cycles or 18 months, whichever occurs first.

(2) For airplanes identified as Group 2, 4, or 5 in the alert service bulletin: Repeat at intervals not to exceed every 1,500 flight cycles or 18 months, whichever occurs first.

(3) For airplanes identified as Group 3 in the alert service bulletin: Repeat at intervals not to exceed every 2,500 flight cycles or 18 months, whichever occurs first.

(h) For airplanes identified as Group 1 in Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996: Within 90 days after the effective date of this AD, perform an ultrasonic/detailed visual inspection of the upper horizontal clevis of both midspar fittings of the outboard strut to detect cracking, corrosion, and/or fracturing, in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed every 2,000 flight cycles or 18 months, whichever occurs first.

(i) For airplanes specified in paragraph (i)(1) or (i)(2) of this AD: Perform the actions specified in paragraph (a), (b), (d), (e), (f), (g), or (h) of this AD, as applicable, at the time specified in paragraph (i)(1) or (i)(2) of this AD, as applicable. Thereafter, perform the repetitive inspections at the time specified in paragraph (a), (b), (d), (e), (f), (g), or (h) of this AD, as applicable.

(1) For airplanes on which rework of all the fastener holes has been accomplished in

accordance with Boeing Alert Service Bulletin 747–54A2179, dated June 27, 1996, Revision 1, dated November 27, 1996, or Boeing Service Bulletin 747–54–2118, dated July 25, 1986: Perform the initial inspection at the later of the times specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD.

(i) Prior to the accumulation of 3,000 total landings, or within 3 years after accomplishment of the rework, whichever occurs first. Or

(ii) Within 90 days after the effective date of this AD.

(2) For airplanes on which the midspar fittings have been replaced in accordance with Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996, or Boeing Service Bulletin 747–54–2118, dated July 25, 1986; Revision 1, dated May 21, 1987; Revision 2, dated April 21, 1988; Revision 3, dated September 29, 1988; or Revision 4, dated May 11, 1989: Perform the initial inspection at the later of the times specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD.

(i) Prior to the accumulation of 5,000 landings, or within 5 years after the fitting has been replaced, whichever occurs first. Or

(ii) Within 90 days after the effective date of this AD.

(j) For all airplanes: If any cracking, corrosion, or fracturing is detected during any inspection required by this AD that is outside the limits specified in Boeing Alert Service Bulletin 757–54A2179, Revision 1, dated November 27, 1996, and the damaged area is within the area limits specified in the alert service bulletin, prior to further flight, accomplish the requirements of paragraph (j)(1) or (j)(2) of this AD.

(1) Accomplish the strut/wing modification specified in paragraph (j)(1)(i), (j)(1)(ii), or (j)(1)(iii) of this AD, as applicable. Following accomplishment of that action, no further action is required by this AD.

(i) For airplanes equipped with Rolls Royce Model RB211 series engines: Accomplish the strut/wing modification in accordance with Boeing Alert Service Bulletin 747–54A2157, Revision 2, dated November 14, 1996. Accomplishment of this paragraph terminates the requirements of AD 95–13–05, amendment 39–9285.

(ii) For airplanes equipped with General Electric Model CF6–45 or –50 series engines, or Pratt & Whitney Model JT9D–70 series engines: Accomplish the strut/wing modification in accordance with Boeing Alert Service Bulletin 747–54A2158, Revision 2, dated August 15, 1996. Accomplishment of this paragraph terminates the requirements of AD 95–13–07, amendment 39–9287.

(iii) For airplanes equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D–70 engines): Accomplish the strut/wing modification in accordance with Boeing Alert Service Bulletin 747–54A2159, Revision 2, dated March 14, 1996. Accomplishment of this paragraph terminates the requirements of AD 95–10–16, amendment 39–9233.

(2) Replace the midspar fittings of the strut with new fittings in accordance with Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996. Repeat the inspections thereafter at the intervals specified in paragraph (i)(2) of this AD.

(k) If any cracking, corrosion, or fracturing is detected during any inspection required by this AD that is outside the limits specified in Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996, and the damaged area is outside the area limits specified in the alert service bulletin, prior to further flight, accomplish the requirements of either paragraph (j)(1) or (j)(2) of this AD, or repair in accordance with a method approved by the Manager, Seattle ACO.

(l) For all airplanes: If any cracking, corrosion, or fracturing is detected during any inspection required by this AD and it is within the limits specified in Boeing Alert Service Bulletin 757–54A2179, Revision 1, dated November 27, 1996: Prior to further flight, accomplish the requirements of paragraph (l)(1), (l)(2), (l)(3), or (l)(4) of this AD.

(1) Rework any discrepant area in accordance with the alert service bulletin. Following the rework, repeat the actions required by paragraph (a), (b), (d), (e), (f), (g), or (h) of this AD, as applicable, at the intervals specified in those paragraphs.

(2) Rework all the fastener holes in accordance with the alert service bulletin. Within 3,000 flight cycles or 3 years after reworking all the fastener holes, whichever occurs first: Repeat the actions required by paragraph (i)(1) of this AD, and accomplish the repetitive inspections required by paragraph (i) of this AD.

(3) Replace the midspar fittings in accordance with the alert service bulletin. Within 5,000 flight cycles or 5 years after replacing the midspar fittings, whichever occurs first: Repeat the actions required by paragraph (i)(2) of this AD, and accomplish the repetitive inspections required by paragraph (i) of this AD.

(4) Accomplish the strut/wing modification specified in paragraph (j)(1)(i), (j)(1)(ii), or (j)(1)(iii) of this AD, as applicable. Following accomplishment of that action, no further action is required by this AD.

(m) Accomplishment of the strut/wing modification specified in paragraph (j)(1)(i), (j)(1)(ii), or (j)(1)(iii) of this AD constitutes terminating action for the requirements of this AD.

(n) 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.

(o) 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.

(p) Certain actions shall be done in accordance with the Boeing Alert Service Bulletins listed in the following table. The incorporation by reference of those documents was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of the dates specified in the table below:

Referenced Service Bulletin and Date	Approval Date and FEDERAL REGISTER Citation
747–54A2157, January 12, 1995.	July 28, 1995 (60 FR 33333, June 28, 1995).
747–54A2158, November 30, 1994.	July 28, 1995 (60 FR 33336, July 28, 1995).
747–54A2159, November 3, 1994.	June 21, 1995 (60 FR 27008, May 22, 1995).

Certain other actions shall be done in accordance with the Boeing Alert Service Bulletins listed in the following table. The incorporation by reference of those documents was approved previously by the Director of the Federal Register on January 22, 1997 (61 FR 66201, December 12, 1996), in accordance with 5 U.S.C. 552(a) and 1 CFR part 51:

Referenced Service Bulletin	Revision Level	Date
747–54A2179 ...	Original	June 27, 1996.
747–54A2157 ...	1	Aug. 3, 1995.
747–54A2157 ...	2	Nov. 14, 1996.
747–54A2158 ...	1	Aug. 17, 1995.
747–54A2158 ...	2	Aug. 15, 1996.
747–54A2159 ...	1	June 1, 1995.
747–54A2159 ...	2	Mar. 14, 1996.

Certain other actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2179, Revision 1, dated November 27, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from 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.

(q) This amendment becomes effective on June 24, 1997.

Issued in Renton, Washington, on May 30, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–14769 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–9]

Revocation of Class E Airspace; El Rico, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace area at El Rico, CA. The cancellation of instrument approach procedures at El Rico Airport has made this action necessary. The intended effect of this action is to revoke controlled airspace since the purpose and requirements for the airspace area no longer exist at El Rico Airport, El Rico, CA.

EFFECTIVE DATE: 0901 UTC July 17, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On April 21, 1997, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by revoking the Class E airspace area at El Rico, CA (62 FR 19238). This action revokes the Class E airspace area at El Rico, CA. The cancellation of instrument approach procedures at El Rico Airport has made this action necessary. The intended effect of this action is to revoke controlled airspace since the purpose and requirements for the airspace area no longer exist at El Rico Airport, El Rico, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be removed subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class E airspace area at El Rico, CA. The cancellation of instrument approach procedures at El Rico Airport has made this action necessary. The intended effect of this action is to revoke controlled airspace since the purpose and requirements for the airspace area no longer exist at El Rico Airport, El Rico, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D. Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AWP CA E5 El Rico, CA [Removed]

* * * * *

Issued in Los Angeles, California, on May 27, 1997.

George D. Williams,

Manager Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–14979 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–2]

Amendment to Class E Airspace, Fremont, NE

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule, correction.

SUMMARY: This action amends the Class E airspace area at Fremont Municipal Airport, Fremont, Nebraska. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) which has made this change necessary. The effect of this rule is to provide additional controlled airspace for aircraft arriving or departing the Fremont Municipal Airport. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule as proposed except that presently existing Class E airspace at the Scribner and Wahoo, Nebraska, airports is excluded. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already proposed.

EFFECTIVE DATE: 0901 UTC July 17, 1997.

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

SUPPLEMENTARY INFORMATION:

History

On March 11, 1997, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace area at Fremont, NE (62 FR 11076). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Fremont Municipal airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is

incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Fremont, NE, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and route amendments are necessary to keep them operationally current. Therefore, this regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ACE NE E5 Fremont, NE [Revised]

Fremont Municipal Airport, NE
(Lat. 41°26′57″N., long. 96°31′13W.)
Fremong NDB
(Lat. 41°27′01″N., long. 96°31′05″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Fremont Municipal Airport, and within 2.6 miles each side of the 306° bearing from the Fremont NDB extending from the 6.6-mile radius to 7 miles northwest of the airport, excluding that airspace within the Scribner, NE, Class E and the Wahoo, NE, Class E airspace areas.

* * * * *

Issued in Kansas City, MO, on May 9, 1997.

Jack L. Skelton,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 97–14982 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 97P–0031]

Food Labeling: Nutrient Content Claim for ''Plus''

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food labeling regulations to include the term ''plus'' as a synonym for the term ''added.'' This action is in response to FDA's decision to grant a petition for the synonym filed by Nestle USA-Beverage Division Inc. FDA concludes that the term ''plus'' is a clear and unambiguous synonym for ''more,'' and is consistent with the terms ''added'' and ''extra.''

DATES: The regulation is effective July 9, 1997; written comments by July 9, 1997.

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

FOR FURTHER INFORMATION CONTACT: Carole L. Adler, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, 202–205–5483.

SUPPLEMENTARY INFORMATION:

I. Background

Section 403(r)(4) of the Federal Food, Drug, and Cosmetic Act (the act) provides that any person may petition the Secretary of Health and Human Services (and by delegation, FDA) to approve nutrient content claims that are not specifically provided for in FDA's regulations. In the **Federal Register** of January 6, 1993 (58 FR 2302), FDA published a final rule entitled, ''Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food'' (hereinafter referred to as ''nutrient content claims final rule''). The nutrient content claims final rule, among other things, defined specific nutrient content claims that included the terms ''good source,'' ''high,'' and ''more'' (§ 101.54 (21 CFR 101.54)) and established procedures for the submission and review of petitions regarding the use of nutrient content claims (§ 101.69 (21 CFR 101.69)). Section 101.69(n) establishes the procedures to petition for use of a synonymous term.

On January 14, 1997, FDA received a petition from Nestle USA-Beverage Division, Inc., 345 Spear St., San Francisco, CA 95105, to establish the term ''plus'' as a synonym for the terms ''more,'' ''added,'' and ''extra'' (Ref. 1). In accordance with procedures established in § 101.69(n), FDA evaluated the petition and concluded that the term ''plus'' is a clear and unambiguous synonym for the term ''more'' and, in particular, is consistent with the terms ''added'' and ''extra.'' Nestle USA-Beverage Division, Inc., stated in its petition that according to the definitions in current dictionaries, the word ''plus'' signifies ''increased by'' or ''with the addition of.'' Based on this information, FDA concluded that the term ''plus'' would be commonly understood to have the same meaning as ''more,'' and more specifically, ''added'' and ''extra.'' FDA advised the firm of this in a letter dated March 26, 1997 (Ref. 2). The agency also explained in the March 26, 1997, letter that the term ''plus'' is most closely synonymous with the term ''added'' in that it suggests that the labeled food has been altered compared to a similar reference food. Therefore, the agency concluded that the term ''plus'' as a relative claim must be used in the same way that the term ''added'' is used as specified in § 101.13(j)(1)(i)(B) (21 CFR 101.13(j)(1)(i)(B)).

In § 101.69(n)(4), FDA stated that as soon as practicable following the agency's decision to either grant or deny a petition for a synonymous term, it would publish a notice in the **Federal Register** informing the public of its decision, and that if it grants the petition, FDA will list the term in its nutrient content claims regulation. Therefore, in this document, the agency is amending §§ 101.13(j) and 101.54(e) to include the term ''plus'' as a synonym for the terms ''added'' and ''extra.''

II. Public Comment

This final rule announces an agency decision that FDA reached in accordance with a procedure established by statute. Notice and public procedure therefore are unnecessary. However, in accordance with 21 CFR 10.40(e)(1), FDA is providing 30 days for public comment on whether the announced action should be modified or revoked.

Interested persons may, on or before July 9, 1997, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act

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

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the economic implications of the final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of that rule on small entities. FDA finds that this final rule is not a significant rule as defined by Executive Order 12866, and finds, under the Regulatory Flexibility Act, that the final rule will not have a significant impact on a substantial number of small entities (Ref. 3).

The costs of this regulation are anticipated to be small. FDA is aware that some firms are already using the term ''plus'' on product labels. The agency does not have sufficient information to determine how many of these claims satisfy the criteria described in this rulemaking. If any labels need revision, this rule will impose a small cost. Because FDA does not know the number of labels currently using the term ''plus'' that do not meet FDA's criteria, the agency cannot estimate the total costs of this regulation.

The benefit of this rule is increased flexibility on the part of manufacturers to inform consumers of the nutritional content of foods. The rule also provides the benefit of ensuring that the term will be used in food labeling in a truthful and nonmisleading way and in a way that will help consumers to construct a healthy diet.

The Regulatory Flexibility Act requires analyzing options for regulatory relief for small entities. According to the information currently available to the agency, of the relatively small number of products which use the term ''plus'' on their labels, none are produced by small entities. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner of Food and Drugs certifies that this tentative final rule will not have a significant impact on a substantial number of small entities.

VI. References

The following references have been placed on public display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Nestle USA-Beverage Division, Inc., ''Petition for Synonymous Term 'Plus','' January 9, 1997.

2. Scarbrough, F. Edward, CFSAN, FDA, Letter to Kristin Adrian, Nestle USA-Beverage Division Inc., March 26, 1997.

3. Memorandum from L. M. Bush, FDA, Factual Basis for Small Business Certification of ''Plus,'' April 18, 1997.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101— FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

§ 101.13 [Amended]

2. Section 101.13 *Nutrient content claims—general principles* is amended in paragraph (j)(1)(i)(B) by adding the word ''plus,'' before the word ''fortified''.

§ 101.54 [Amended]

3. Section 101.54 *Nutrient content claims for ''good source,''''high,'' and ''more''* is amended in the first sentence of the introductory text of paragraphs (e)(1) and (e)(2) by removing the words '''enriched,' 'added,' and 'extra''' and by adding in their place the words '''enriched,' 'added,' 'extra,' and 'plus'''.

Dated: May 2, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–14893 Filed 6–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 5, 26, 27, 95, 100, 110, 130, 136, 138, 140, 151, 153, 177

46 CFR Part 2

[CGD 96–052]

RIN 2105–AC63

Civil Money Penalties Inflation Adjustments

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulations [CGD 96–052] which were published Tuesday, April 8, 1996 (62 FR 16695). The regulations incorporated into the Code of Federal Regulations (CFR) inflation adjustments for civil money penalties pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: This rule is effective on June 9, 1997.

FOR FURTHER INFORMATION CONTACT: Greg Parks, Office of Regulations and Administrative Law at (202) 267–1534.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections amend Title 33 and Title 46 of the Code of Federal Regulations to reflect the Debt Collection Improvement Act of 1996 (DCIA) (Pub. L. 104–134) which requires Federal agencies to adjust certain Civil Monetary Penalties (CMPs) to account for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for each applicable CMP, and to make further adjustments at least once every 4 years for these penalty amounts.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of correction or clarification.

Correction of Publication

Accordingly, the publication on April 8, 1996, of the final regulations (62 FR 16695), which were the subject of FR Doc. 97–8781 is corrected as follows:

PART 130—[CORRECTED]

1. On page 16703, in the first column, § 130.14 is correctly revised to read as follows:

§ 130.14 Enforcement.

(a) any vessel operator who fails to comply with this part is subject to a fine of not more than $10,000 for each failure.

(b) The Secretary of the Treasury may refuse to grant the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), to any vessel subject to section 311(p) of the Act which does not have a Certificate issued under this part.

(c) The Coast Guard denies entry to any port or place in the United States or the navigable waters of the United States and detains, at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to section 311(p) of the Act, which, upon request, does not produce a valid Certificate.

PART 136—[CORRECTED]

2. On page 16703, in the first column, the authority citation for Part 136, is correctly revised to read as follows:

Authority: 33 U.S.C. 2713, 2714; E.O. 12777, 3 CFR, 1991 Comp., p.351; 49 CFR 1.46.

PART 151—[CORRECTED]

3. On page 16703, in the second column, instruction number 27 is corrected to read as follows:

''27. The authority citation for subpart A of part 151 is revised to read as follows:''

§ 151.59 [Corrected]

4. On page 16703, in the second column, in § 151.59, in paragraph (d)(6), add the following sentences at the end of the paragraph. ''Placards installed on vessels before May 7, 1997, need not be replaced; and existing stocks of placards, containing previous language, may be used. When language on a placard is inconsistent with the language in the Code of Federal Regulations (CFR) due to use of a placard containing previous language, penalty amounts contained in the CFR are controlling.''

5. On page 16703, in the second column, in § 151.59, in paragraph (e)(2)(ii), add the following sentences at the end of the paragraph. ''Placards installed on vessels before May 7, 1997, need not be replaced; and existing stocks of placards, containing previous language, may be used. When language on a placard is inconsistent with the language in the Code of Federal Regulations (CFR) due to use of a placard containing previous language, penalty amounts contained in the CFR are controlling.''

Dated: June 3, 1997.

Robert S. Horowitz,

Acting Chief Counsel, U.S. Coast Guard.

[FR Doc. 97–14970 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 05–97–040]

RIN 2115–AA97

Safety Zone: Delaware Bay, Delaware River

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Delaware Bay and Delaware River between the Delaware Breakwater and Marcus Hook, Pennsylvania. This safety zone is needed to protect vessels, the port community and the environment from potential safety and environmental hazards associated with the loading and transit of the T/V EEKLO while it is loaded with more than 2% of its cargo carrying capacity of Liquified Hazardous Gas.

DATES: This rule is effective from 11:59 p.m. May 31, 1997, and terminates at 11:59 p.m. June 10, 1997.

FOR FURTHER INFORMATION CONTACT: LTJG C. M. Savarese, Project Officer c/o U.S. Coast Guard Captain of the Port, 1 Washington Avenue, Philadelphia, PA 19147–4395, Phone: (215) 271–4889.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The Coast Guard was informed by the owner/operator of the T/V EEKLO on May 29, 1997 of the intended transit of the T/V EEKLO along the Delaware River. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to respond to protect the environment and vessel traffic against potential hazards associated with the transit of the T/V EEKLO while it is loaded with Liquefied Hazardous Gas.

Discussion of the Regulation

This temporary rule establishes a safety zone in a specified area around the T/V EEKLO while underway in the loaded condition and during cargo operations. The safety zone will be in effect during the T/V EEKLO's transit of the Delaware Bay and Delaware River and during cargo operations at the Sun Refining and Marketing Refinery terminal on the Delaware River, at Marcus Hook, Pennsylvania. This temporary rule is intended to minimize the potential hazards associated with the transportation of Liquefied Hazardous Gas by a large tankship in heavily trafficked areas of the Delaware Bay and Delaware River as well as in the Ports of Philadelphia. Entry into this zone is prohibited unless authorized by the Captain of the Port, Philadelphia, PA. The Captain of the Port may impose certain restrictions on vessels allowed to enter the safety zone.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of

the Department of Transportation (DOT) (44 CFR 11040; February 26, 1979). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

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

Federalism Assessment

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

Environment

The Coast Guard considered the environmental impact of this temporary rule and concluded that under section 2.B.2.e(34) of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways. In consideration of the foregoing, the Coast Guard amends 33 CFR 165 as follows:

PART 165—[AMENDED]

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

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

3. A new temporary section 165.T05–040 is added to read as follows:

§ 165.T05–040 Safety Zone: Delaware Bay and Delaware River from the Delaware Breakwater to Marcus Hook, PA.

(a) *Location:* The following area is a safety zone: (1) All waters within an area which extends 500 yards on either side and 1000 yards ahead and astern of the T/V EEKLO while the vessel is in the loaded condition and underway in the area of the Delaware River and Delaware Bay bounded by the Sun Refining and Marketing Refinery terminal on the Delaware River, at Marcus Hook, Pennsylvania and the Delaware Breakwater.

(2) All waters within a 200 yd radius of the T/V EEKLO while it is moored at the Sun Refining and Marketing Refinery terminal on the Delaware River, at Marcus Hook, Pennsylvania.

(b) *Effective Dates:* This rule is effective from 11:59 p.m. May 31, 1997, and terminates at 11:59 p.m. June 10, 1997.

(c) *Definitions:* (1) *Captain of the Port* or *COTP* means the Captain of the Port Philadelphia or any Coast Guard commissioned, warrant or petty officer authorized to act on his behalf. (2) *Loaded Condition* means loaded with LHG that exceeds 2% of the vessel's cargo carrying capacity.

(d) No vessel may enter the safety zone unless its operator obtains permission of the Captain of the Port or his designated representative.

(e) As a condition of entry, the COTP may order that: (1) All vessels operating within the safety zone must maintain a continuous radio guard on channels 13 and 16 VHF-FM while underway; (2) Overtaking may take place only under conditions where overtaking is to be completed well before any bends in the channel. Before any overtaking, the pilots, masters, and operators of both vessels must clearly agree on all factors including speeds, time, and location of overtaking. (3) On the Delaware River, the T/V EEKLO and an oncoming vessel shall not meet at a relative speed greater than twenty (20) knots, or greater than prevailing weather conditions make prudent. Meeting situations on river bends shall be avoided.

(4) The operator of any vessel in the safety zone shall proceed as directed by the Captain of the Port or by his designated representative.

(f) The senior boarding officer enforcing the safety zone may be contacted on VHF channels 13 and 16. The Captain of the Port of Philadelphia and the Command Duty Officer at the Marine Safety Office, Philadelphia, may be contacted at telephone number (215) 271–4940.

Dated: May 30, 1997.

John E. Veentjer,

Captain, U.S. Coast Guard, Captain of the Port, Philadelphia, PA.

[FR Doc. 97–14971 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 149–1a; FRL–5834–6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: On July 23, 1996, the State of Illinois submitted a site specific State Implementation Plan (SIP) revision request to revise Volatile Organic Material (VOM) Reasonably Available Control Technology (RACT) requirements for Chase Products Company in Broadview (Cook County), Illinois. VOM, as defined by the State of Illinois, is identical to ''volatile organic compounds'' (VOC), as defined by USEPA. Emissions of VOC react with other pollutants, such as oxides of nitrogen, on hot summer days to form ground-level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing passages.

Chicago area RACT rules are intended to establish, for each particular major stationary source in the Chicago ozone nonattainment area, the lowest VOC emission limitation it is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. RACT controls are a major component of the Chicago ozone nonattainment area's overall strategy to achieve and maintain attainment with the ozone standard. A direct final approval action is being taken because the submittal meets all pertinent Federal requirements.

DATES: The ''direct final'' is effective on August 8, 1997, unless USEPA receives adverse or critical comments by July 9, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Ryan Bahr, Environmental Engineer, at (312) 353–4366 before visiting the Region 5 Office.)

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

FOR FURTHER INFORMATION CONTACT: Ryan Bahr at (312) 353–4366.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(2) of the Clean Air Act (Act) requires States with moderate and above ozone nonattainment areas to

adopt VOC RACT rules covering ''major'' sources not already covered by a Control Technique Guideline (CTG) for all areas designated nonattainment for ozone and classified as moderate or above. Under section 182(d), sources located in areas classified as ''severe'' are considered ''major'' sources if they have the potential to emit 25 tons per year or more of VOC.

On October 21, 1993, and March 4, 1994, the State of Illinois submitted and supplemented, as a revision to the Illinois SIP, ''generic'' RACT rules covering non-CTG major sources in the Chicago severe ozone nonattainment area, including subpart DD of part 218 of 35 Illinois Administrative Code (IAC).

Public hearings on the adjusted standard proposal were held on June 26, 1995, and on August 2, 1995, in Chicago, Illinois and on August 8, 1995, Chase Products and the Illinois Environmental Protection Agency (IEPA) filed a joint petition for an adjusted standard for Chase Products' Broadview, Illinois facility with the Illinois Pollution Control Board (Board). The adjusted standard petition sought relief for the Broadview facility's aerosol can filling lines from VOM control requirements found in part 218, subpart DD. Subpart DD requires that 90 percent (%) of the cans filled on a monthly basis on the Broadview facility's aerosol can filling lines to be filled using a method called through the valve (TTV). TTV filling greatly reduces emissions when compared with the standard under the cup method (UTC). Subpart DD additionally requires the remaining cans to be filled using enhanced under the cup (EUTC) techniques or another approved system which reduces emissions by at least 75% of UTC emissions.

On January 26, 1997, (61 FR 2423) the USEPA issued a direct final approval of the non-CTG rules, as a revision to the SIP. Adverse comments were received on the direct final rule and it was withdrawn by the USEPA on March 25, 1996 (61 FR 12030). A final rule addressing those comments and taking final action to approve the non-CTG rules was subsequently published October 21, 1996 (61 FR 54556), and became effective on November 20, 1996. Subpart DD of part 218 of 35 IAC was approved at that time. On March 12, 1997, technical amendments to subpart DD were approved (62 FR 11327), and became effective on May 12, 1997.

On May 16, 1996, the Board adopted a Final Opinion and Order, AS 94–4, granting the adjusted standard, requiring Chase Products to fill 95% of their cans using TTV and exempting Chase Products from the requirement to fill the remaining cans using EUTC; thereby allowing them to fill up to 2 million cans per year (not to exceed 5% of total cans filled per month) with UTC. The adjusted standard also became effective on May 16, 1996.

The IEPA formally submitted the adjusted standard for the Chase Products Company on July 23, 1996, as a site-specific revision to the Illinois SIP for ozone. In doing so, IEPA intends to cover the Act's section 182(b)(2) major non-CTG RACT requirement for Chase Products' Broadview, Illinois facility. USEPA made a finding of completeness on this SIP submittal in a letter dated August 28, 1996.

II. State Submittal of Adjusted Standard

The following is a summary of adjusted standard AS 94–4 requirements for the Chase Products facility's aerosol filling lines:

A. Through the Valve Filling

The Chase Products Company shall fill at least 95% of their cans on a monthly basis with TTV.

B. Under the Cup Filling

The Chase Products Company is permitted to fill up to two million cans per year using UTC, not to exceed 5% of the cans filled on a monthly basis. All other cans must be filled using TTV, except for trial runs to verify product quality.

C. Recordkeeping and Reporting

Chase Products Company shall maintain daily records, establishing the total number of cans filled by TTV and the total filled by UTC. These records shall be kept on file, and be available for inspection by the Agency (IEPA or USEPA), for three years.

D. Modifications

If Chase Products Company modifies any of the filling lines at its Broadview facility after March 15, 1995, the Company shall meet all requirements of subpart DD.

III. Analysis of Adjusted Standard

The site-specific SIP revision would alter the control requirements contained within part 218, subpart DD, section 218.686 of the 35 IAC as they apply to the Chase Product facility's aerosol can filling lines. Section 218.686 of subpart DD (61 FR 2425) is summarized as follows:

Aerosol filling lines to which Subpart DD applies must comply with one of the following:

(1) Use of add-on controls which achieve an overall reduction of 81%, or,

(2)(A) Use of TTV or EUTC or another system approved in a federally enforceable permit which achieves at least 75% reduction of UTC fill; and, (B) fill on a monthly basis at least 90% of cans filled on such aerosol can filling lines that are capable of being filled with TTV fill.

The adjusted standard, approved by the Board May 16, 1996, most closely resembles the scenario outlined in option (2). The adjusted standard adheres to the central provision contained is option (2) part (B) by specifying that at least 95% of cans filled on the aerosol filling lines must be filled using TTV. In fact, the adjusted standard requires Chase Products to use TTV filling for 5% more cans than the current SIP minimum.

The reason Chase Products requested an adjusted standard is that Chase Products has determined it to be technically infeasible to fill certain aerosol cans using anything but UTC. Therefore, the Chase Products facility can not comply with (2)(A) as specified above for the remaining 5% of cans.

However, the same emission reduction is expected to be achieved under the adjusted standard (95% TTV, 5% UTC) as would be achieved under the Subpart DD requirements (90% TTV, 10% EUTC). That is to say that, the requirement to fill 5% more cans with TTV offsets the relaxation of filling 5% of the total cans with UTC.

IV. Final Rulemaking Action

The USEPA has determined that the VOM control requirements specified in AS 94–4 for Chase Products Company's Broadview facility's aerosol can filling lines constitute RACT and are fully enforceable. On this basis, the site-specific SIP revision request for Chase Products Company's Broadview facility is approved.

This adjusted standard, AS 94–4, was adopted on May 16, 1996, and became effective on May 16, 1996, and supersedes the control requirements codified at 35 IAC, part 218, subpart DD, section 218.686 as they apply to the Chase Products Company's Broadview, Illinois facility's aerosol can filling lines.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on August 8, 1997 unless, by July 9, 1997, adverse or critical comments are received.

If the USEPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 8, 1997.

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

V. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 *et seq.*, USEPA 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, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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

C. Unfunded Mandates

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

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: May 22, 1997.

Elissa Speizman,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(133) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(133) On July 23, 1996, the Illinois Environmental Protection Agency submitted a site-specific State Implementation Plan revision request for the Chase Products Company's Broadview (Cook County), Illinois facility located at 19th Street and Gardner Road, as part of the Ozone Control Plan for the Chicago area. The resulting revision revises the control requirements codified at 35 Illinois Administrative Code Part 218 Subpart DD Section 218.686 as they apply to the Chase Products Company's Broadview facility.

(i) Incorporation by reference. May 16, 1996, Opinion and Order of the Illinois Pollution Control Board AS 94–4, effective May 16, 1996.

[FR Doc. 97–14583 Filed 6–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 099–4063; FRL–5837–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; 15 Percent Plan and 1990 VOC Emission Inventory for the Philadelphia Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: EPA is granting conditional interim approval of the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania, for the Philadelphia ozone nonattainment area, to meet the 15 percent reasonable further progress (RFP, or 15% plan), also known as rate-of-progress requirements of the Clean Air Act. EPA is granting conditional interim approval because the 15% plan submitted by Pennsylvania for the Philadelphia area relies on the inspection and maintenance (I/M) program that received a conditional interim approval. Finally, EPA is approving the Philadelphia 1990 VOC emission inventory with certain exceptions as explained herein.

DATES: This action is final on July 9, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566–2180 or via e-mail at: stahl.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On March 11, 1997, EPA proposed conditional interim approval of the Philadelphia 15% plan and the 1990 VOC emission inventory (62 FR 11131). The basis for EPA's action is that the Philadelphia 15% plan on its face achieves the required 15% emission reduction but does not contain the required verification of emission calculations necessary for full approval and relies on the Pennsylvania Inspection and Maintenance (I/M) rule that received final conditional interim approval on January 28, 1997 (62 FR 4004). The details of the September 12, 1996 Pennsylvania submittal are contained in the March 11, 1997 notice and accompanying technical support document and will not be reiterated here. The discussion here will address additional information submitted by Pennsylvania on April 10, 1997 and EPA's responses to public comments received on the proposed rulemaking notice. This action is being taken under section 110 of the Clean Air Act (the Act).

I. Pennsylvania DEP's April 10, 1997 Supplement

Pennsylvania submitted a letter to EPA on April 10, 1997, within the required time frame, committing to satisfy all the conditions listed by EPA in the proposed rulemaking notice and within the time frames required by that notice. Included in its April 10, 1997 addendum is additional documentation to satisfy some of those conditions listed by EPA. Specifically, Pennsylvania submitted additional stationary source documentation (identified as Attachment 1 of its addendum) for the shutdown credits claimed in the 15% plan. Part of this documentation is the detailed emission inventory breakdown on a unit by unit basis for Philadelphia County that was not included in the September 12, 1996 submittal. Pennsylvania also included sample calculations and a copy of the methodology it followed to determine stationary source emissions (identified as Attachment 1 of its addendum) and revised charts and tables for insertion into the September 12, 1996 submittal (identified as Attachment 2 of its addendum). Pennsylvania adjusted the amount of shutdown credit claimed in the 15% plan and is now claiming 2.0 tons per day (TPD) rather than the 3.4 TPD claimed in the September 12, 1996 submittal. The revised charts and tables pertain to these corrections. These revisions occur in Figure 1.2, Table 5.3, Section 6.1.1, Table 6.3 and Section 6.2.3 of the Commonwealth's addendum to its 15% plan..

EPA's evaluation of the April 10, 1997 addendum submitted by Pennsylvania is detailed in the technical support document (TSD) that is part of the docket to this rulemaking. Briefly, EPA has determined that Pennsylvania has resolved the inconsistencies with the 1990 VOC emissions inventory, with the exception of those certain source emissions at United States Steel—Fairless (USX—Fairless) located in Bucks County. Consequently, EPA is approving the 1990 VOC emission inventory submitted on September 12, 1996 for the Philadelphia nonattainment area, with the exception of certain sources located at USX—Fairless. These sources are identified as: 1) no. 3 blast furnace (source no. 243), 2) no.1 open hearth furnace (source no. 251), 3) no.1 soaking pits (20) (source no. 300), 4) no.2 soaking pits (1–8) (source no. 330), 5) no.2 soaking pits (9–16) (source no. 338), and 6) 80 in. Hot strip mill (source no. 351). The 1990 VOC emissions for the above-named sources at USX—Fairless were approved by EPA in a previous rulemaking notice (April 9, 1996, 61 FR 15709). That version of the 1990 VOC emissions for the above-named sources at USX—Fairless remains SIP approved.

Pennsylvania has satisfactorily documented the emission reduction credits due to shutdowns and over control with the exception of those credits claimed for following four sources: Congoleum (NEDS ID 0049), Sun R&M (NEDS ID 0025), Rohm & Haas (NEDS ID 0009), and BP Oil (NEDS ID 0030). EPA has recalculated the available emission reduction credit from shutdown and over controlled sources based on the April 10, 1997 documentation and is approving an emission credit of 1.82 TPD for the Philadelphia 15% plan. This is less than the 3.4 TPD figure in the September 12, 1996 Pennsylvania submittal and the 2.0 TPD figure in the April 10, 1997 addendum. The lesser amount of these credits does not jeopardize the ability of Pennsylvania to meet the 15% target level of emissions required by the Act. As a result of the additional documentation provided by Pennsylvania on April 10, 1997, Pennsylvania has satisfied conditions 1 through 3 listed in the notice of proposed rulemaking. The remaining conditions (4 and 5) pertain to the inspection and maintenance (I/M) rule. Pennsylvania expects to satisfy those conditions within the required time frames.

II. Public Comments and Response

As a result of the March 11, 1997 proposed rulemaking notice, EPA received comments from the Clean Air Council (CAC). The comments and EPA's responses follow below.

Comment 1: CAC agrees with EPA's assessment that the Philadelphia 15% plan contains various defects and cannot be determined to achieve the 15% reduction required by the Act. CAC, however, states that these defects preclude approval of the 15% plan.

Response 1: As described above, Pennsylvania's April 10, 1997 addendum to its September 12, 1996 submittal resolves the emission inventory and creditability issues discussed in EPA's proposed rulemaking notice. As a result, EPA has determined that Pennsylvania has satisfied conditions 1 through 3 listed in the March 11, 1997 proposed rulemaking notice (62 FR 11131). The remaining conditions pertain to I/M and allow Pennsylvania additional time in accordance with the National Highway Systems Designation Act. Consequently, the defects identified in the March 1997 proposed rulemaking notice have been remedied.

Comment 2: CAC commented that the Philadelphia plan, which takes credit for federal control measures such as architectural and industrial maintenance coating, consumer/commercial products and autobody refinishing, should not be approved because those federal control measures have not yet been promulgated. CAC states that allowing such credit violates section 182(b)(1)(C) of the Act. CAC further commented that EPA cannot lawfully base SIP decisions on as-yet unpromulgated rules because it does not know what these final rules will say. CAC contends that allowing credit on as-yet unpromulgated rules, even with the caveat that the states must revisit the rule later if the federal rules turn out differently than predicted, amounts to an unlawful extension of a SIP

submission deadline. CAC stated that EPA must base its decision on the record before it at the time of its decision; not on some record that the agency hopes will exist in the future.

Response 2: Section 182(b)(1)(A) of the Act requires states to submit their 15% SIP revisions by November, 1993. Section 182(b)(1)(C) of the Act provides the following general rule for creditability of emissions reductions towards the 15% requirement:

> Emissions reductions are creditable toward the 15 percent required, to the extent they have actually occurred, as of [November, 1996], from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under Title V.

This provision further indicates that certain emissions reductions are not creditable, including reductions from certain control measures required prior to the 1990 Amendments.

This creditability provision is ambiguous. Read literally, it provides that although the 15% SIPs are required to be submitted by November 1993, emissions reductions are creditable as part of those SIPs only if ''they have actually occurred, as of [November 1996].'' This literal reading renders the provision internally inconsistent. Accordingly, EPA believes that the provision should be interpreted to provide, in effect, that emissions reductions are creditable ''to the extent they will have actually occurred, as of [November, 1996], from the implementation of [the specified measures]'' (the term ''will'' is added). This interpretation renders the provision internally consistent.

Section 182(b)(1)(C) of the Act explicitly includes as creditable reductions those resulting from ''rules promulgated by the Administrator''. This provision does not state the date by which those measures must be promulgated, i.e., does not indicate whether the measures must be promulgated by the time the 15% SIPs were due (November, 1993), or whether the measures may be promulgated after this due date.

Because the statute is silent on this point, EPA has discretion to develop a reasonable interpretation, under *Chevron U.S.A. Inc.* v. *NRDC,* 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). EPA believes it is reasonable to interpret section 182(b)(1)(C) of the Act to credit reductions from federal measures as long as those reductions are expected to occur by November, 1996, even if the federal measures are not promulgated by the November 1993 due date for the 15% SIPs.

EPA's interpretation is consistent with the congressionally mandated schedule for promulgating regulations for consumer and commercial products, under section 182(e) of the Act. This provision requires EPA to promulgate regulations controlling emissions from consumer and commercial products that generate emissions in nonattainment areas. Under the schedule, by November, 1993— the same date that the states were required to submit the 15% SIPs—EPA was to issue a report and establish a rulemaking schedule for consumer and commercial products. Further, EPA was to promulgate regulations for the first set of consumer and commercial products by November 1995. It is reasonable to conclude that Congress anticipated that reductions from these measures would be creditable as part of the 15% SIPs, as long as those reductions were to occur by November 1996.

Crediting reductions from federal measures promulgated after the due date for the 15% SIPs is also sensible from an administrative standpoint. Crediting the reductions allows the states to accurately plan to meet the 15% reduction target from the appropriate level of state and federal measures. Not crediting such reductions would mean that the states would have to implement additional control requirements to reach the 15% mark; and that SIPs would result in more than a 15% level of reductions once the federal measures in question were promulgated and implemented. At that point in time, the state may seek to eliminate those additional SIP measures on grounds that they would no longer be necessary to reach the 15% level. Such constant revisions to the SIP to demonstrate 15% is a paper exercise that exhausts both the states' and EPA's time and resources.

The fact that EPA cannot determine precisely the amount of credit available for federal measures not yet promulgated does not preclude granting the credit. The credit can be granted as long as EPA is able to develop reasonable estimates of the amount of VOC reductions from the measures EPA expects to promulgate. EPA believes that it is able to develop reasonable estimates, particularly because it has already proposed and taken comment on the measures at issue, and expects to promulgate final rules by the spring of 1998. Many other parts of the SIP, including state measures, typically include estimates and assumptions concerning VOC amounts, rather than actual measurements. For example, EPA's document to estimate emissions, ''Compilation of Air Pollutant Emission Factors,'' January 1995, AP–42, provides emission factors used to estimate emissions from various sources and source processes. AP–42 emission factors have been used, and continue to be used, by states and EPA to determine base year emission inventory figures for sources and to estimate emissions from sources where such information is needed. Estimates in the expected amount of VOC reductions are commonly made in air quality plans, even for those control measures that are already promulgated. Moreover, the fact that EPA is occasionally delayed in its rulemaking is not an argument against granting credits from these measures. The measures are statutorily required, and states and citizens could bring suit to enforce the requirements that EPA promulgate them. If the amount of credit that EPA allows the state to claim turns out to be greater than the amount EPA determines to be appropriate when EPA promulgates the federal measures, EPA intends to take appropriate action to require correction of any shortfall in necessary emissions reductions that may occur.

The above analysis focuses on the statutory provisions that include specific dates for 15% SIP submittal (November 1993) and implementation (November 1996). These dates have expired, and EPA has developed new dates for submittal and implementation. EPA does not believe that the expiration of the statutory dates, and the development of new ones, has implications for the issue of whether reductions from federal measures promulgated after the date of the 15% SIP approval may be counted toward those 15% SIPs. Although the statutory dates have passed, EPA believes that the analysis described above continues to be valid.

Comment 3: CAC commented that EPA cannot ignore the November 15, 1996 statutory deadline simply because the deadline is now behind us. It contends that EPA's and states' unlawful delays have prevented compliance with the November 15, 1996 deadline and that EPA cannot now jettison the statutory deadlines by substituting the ''as soon as practicable'' test; rather, CAC states EPA must require compliance with an ''as soon as possible'' test and fix a compliance deadline. The commenter cited various court decisions in an effort to support its formulation of the ''as soon as possible'' test.

Response 3: The case law cited by the commenter considers various circumstances, such as failure by EPA to promulgate rules on the statutorily mandated deadline or to take action on

state failures to make SIP submissions on the statutorily mandated deadline. *See, e.g., Natural Resources Defense Council* v. *EPA,* 22 F.3d 1125 (D.C. Cir. 1994), *Natural Resources Defense Council* v. *Train,* 510 F.2d 692 (D.C. Cir. 1975). These cases articulate various formulations of the standards by which the courts establish new deadlines. EPA believes that its formulation of the standard by which States must achieve the 15% reductions—''as soon as practicable''—is generally consistent with the case law.

Further, EPA believes that Pennsylvania has demonstrated that it has met this standard. The notice of proposed rulemaking, the TSD, and other documents in the record establish that implementation of various 15% measures including the I/M program is as soon as practicable. The main reasons for the delays in the development and implementation of Pennsylvania's 15% SIP relate to its enhanced I/M plan. Most recently, these enhanced I/M delays were closely associated with the enactment, in November, 1995, of the National Highway Systems Designation Act (NHSDA). The NHSDA afforded states the opportunity to revise their I/M plans in a manner that would be treated as meeting certain EPA requirements on an interim basis. The NHSDA provided additional time for the Commonwealth and EPA to develop and process the revised I/M plans. The Commonwealth acted expeditiously in developing and implementing a revised enhanced I/M program. However, the delays in developing and implementing the NHSDA I/M program rendered impossible achieving the 15% reduction target by the end of 1996.

Moreover, EPA has reviewed other VOC SIP measures that are at least theoretically available to Pennsylvania, and has concluded that implementation of any such measures that might be appropriate would not accelerate the date of achieving the 15% reductions.

EPA agrees with the commenter that in this particular case, a fixed deadline is appropriate. Accordingly, EPA will establish November 15, 1999, as the date by which the 15% measures must be implemented to the extent necessary to generate the required amount of reductions.

Comment 4: Any further delays in implementing VOC control measures, including most prominently, enhanced I/M, must not be tolerated. For I/M, EPA's deadline must require implementation in the shortest time in which it is logistically possible to get the testing systems up and running. The National Highway Designation Act does not mention the 15% plan or authorize any delay of the achievement of the 15% emission reduction. Furthermore, missing the November 15, 1996 deadline unlawfully rewards states for failure to meet the deadline by giving them increased credits under national programs such as the Tier I Federal Motor Vehicle Control Program. CAC argues that such an approach unlawfully delays the achievement of clean air by allowing the states to reduce their own emission control efforts by the amount of the post-November 1996 fleet turnover benefits. Consequently, EPA must deny the post-November 1996 Tier I credit and require states to adopt emission reductions to compensate for post-1996 VMT growth.

CAC further argues that EPA cannot delay the section 182(b)(1) requirement for states to account for growth in the 15% plans to the post-1996 rate-of-progress plans. Particularly because the post-1996 plans involve potential NO_X substitution that is not permitted in the VOC-only 15% plans.

Response 4: EPA disagrees with the comment. The National Highway Systems Designation Act was enacted by Congress in November of 1995. Section 348 of this statute provided states renewed opportunity to satisfy the Act's requirements related to the network design for I/M programs. States were not only granted the flexibility to enact test-and-repair programs, but were provided additional time to develop those programs and to submit proposed regulations for interim SIP approval. Pennsylvania moved rapidly to propose I/M regulations on March 16, 1996, and to submit to EPA a SIP containing those regulations, under the authority granted by the NHSDA.

Under the terms of the 15% requirement in section 182(b)(1)(A)(I) of the Act, the SIP must—

> provide for [VOC] emission reductions, within 6 years after the date of enactment of the Clean Air Act Amendments of 1990, of at least 15 percent from baseline emissions, accounting for any growth in emissions after [1990].

EPA interprets this provision to require that a specific amount of VOC reductions occur, and has issued guidance for computing this amount. The Commonwealth, complying with this guidance, has determined the amount of the required VOC reductions needed to meet the 15% goal. It is no longer possible for the Commonwealth to implement measures to achieve this level of reduction as the November 15, 1996 date provided under the 15% provisions has passed. Accordingly, EPA believes that the Commonwealth will comply with the statutory mandate as long as Pennsylvania achieves the requisite level of reductions on an as-soon-as-practicable basis after 1996. In computing the reductions, EPA believes it acceptable for states to count reductions from federal measures, such as vehicle turnover, that occur after November 15, 1996, as long as they are measures that would be creditable had they occurred prior to that date. These measures result in VOC emission reductions as directed by Congress in the Act; therefore, these measures should count towards the achievement —however delayed—of the 15% VOC reduction goal.

EPA does not believe states are obligated, as part of the 15% SIP, to implement further VOC reductions to offset increases in VOC emissions due to post-1996 growth. As noted above, the 15% requirement mandates a specific level of reductions. By counting the reductions that occur through measures implemented pre- and post-1996, SIPs may achieve this level of reductions. Although section 182(b)(1)(A)(I), quoted above, mandates that the SIPs account for growth after 1990, the provision does not, by its terms, establish a mechanism for how to account for growth, or indicate whether, under the present circumstances, post-1996 growth must be accounted for. EPA believes that its current requirements for the 15% SIPs meet section 182(b)(1)(A)(I). In addition, although post-1996 VOC growth is not offset under the 15% SIPs, such growth must be offset in the post-1996 plans required for serious and higher classified areas to achieve 9% in VOC reductions every three years after 1996 (until the attainment date). The fact that these post-1996 SIPs may substitute NO_X reductions for VOC reductions in the 1996–1999 period does not undermine the integrity of the 15% SIPs. Allowing NO_X substitution is fully consistent with the public health-based goals of the Act.

Under EPA's approach, post-1996 growth will be accounted for in the plans that Congress intended to take account of such growth—the post-1996 ''rate of progress'' SIPs. To shift the burden of accounting for such growth to the 15% plans, as the commenters would have EPA do, would impose burdens on states above and beyond what Congress contemplated would be imposed by the 15% requirement (which was intended to have been achieved by November 1996). In the current situation, where it is clearly impossible to achieve the target level of VOC reductions (a 15% reduction taking into account growth through November 1996) by November 1996, EPA believes that its approach is a reasonable and

appropriate one. It will still mean that post-1996 growth is taken into account in the SIP revisions Congress intended to take into account such growth and it means that the target level of VOC reductions will be achieved as soon as practicable. Once the post-1996 rate of progress plans are approved and implemented, areas will have achieved the same level of progress that they were required to have achieved through the combination of 15% and rate of progress requirements as was originally intended by Congress.

Comment 5: EPA cannot approve SIPs if the state has failed to demonstrate approvability. In this regard, EPA has not been able to verify Pennsylvania's mobile source emission reduction credits but has stated that it has no reason to believe that Pennsylvania's methodology is flawed and is therefore approving the Philadelphia 15% plan. CAC stated that an absence of information requires disapproval.

Response 5: EPA believes Pennsylvania has demonstrated that it has appropriately modeled its mobile source program benefits, through proper use of EPA's MOBILE emissions factor estimation model, combined with state vehicle miles of travel estimates. Due to the sheer magnitude the modeling task (i.e. the large number of modeling scenarios needed to compile inventories and evaluate emissions benefits) Pennsylvania faced when developing mobile source inventories and modeling the benefits of various mobile source programs, the Commonwealth utilized a post-processor model to run the numerous MOBILE modeling scenarios needed to characterize these emissions. It is not practical to submit the hundreds or even thousands of modeling input and output runs needed to evaluate the mobile source-related portions of the 15% rate-of-progress SIP.

Pennsylvania instead submitted to EPA a list of the variables and assumptions utilized in its MOBILE modeling analysis, along with sample model input and output scenarios. Additionally, the Commonwealth submitted a demonstration of how the post-processor utilized MOBILE to generate composite index factors for use in determining mobile source emission factors for the Philadelphia area. Finally, the Commonwealth tallied mobile source emissions in summary tables for various programs, by county, etc. to present the results of its analysis.

While the SIP does not contain sufficient data to reconstruct the analysis and, therefore, to independently verify the Commonwealth's claims stemming from the mobile source emissions analysis, EPA believes the Commonwealth's modeling methodology is sound. However, EPA has deferred the specific results of that modeling, in part, to the Commonwealth.

Comment 6: EPA has pointed out information gaps in the Pennsylvania submittal, including the finding that Pennsylvania did not follow standard guidance and methodologies for projecting growth in the 1996 inventory. EPA has also stated that there is a potential double counting issue related to emission credits but that it is not conditioning the approval of the Philadelphia 15% plan on these issues. CAC argued that these deficiencies speak to the heart of the calculation of the target emission reduction level and whether the claimed emission reductions are sufficient to meet that level. Therefore, although CAC believes that the Philadelphia 15% plan should be disapproved, at a minimum, it argues that the resolution of these deficiencies should be made additional conditions that the Commonwealth must satisfy for the 15% plan approval.

Response 6: EPA has acknowledged the potential double counting of emission reductions in the Philadelphia 15% plan as part of its honest effort to credibly account for activities associated with the operation of the Pennsylvania emissions bank. The use of Bureau of Economic Analysis (BEA) growth factors, recommended by EPA guidance, did not contemplate the net effect on emissions accounting where there is an operational emissions bank. Since most states in the nation do not have approved emissions bank, this was not an issue of widespread concern or discussion. Pennsylvania's use of the BEA growth factors and the operation of an emissions bank are both permitted by EPA. The effect of the combined use of the BEA growth factors and the operation of the emissions bank is, however, uncertain. EPA shall address this issue in subsequent air quality plans for Pennsylvania.

III. Creditable Measures

The control measures described below are creditable toward the rate of progress requirements of the Act. Pennsylvania takes emission credit toward the 15% requirement through implementation of the following required programs: (1) Federal reformulated gasoline, (2) reformulated gasoline—nonroad, (3) I/M FMVCP/Tier I, and (4) Stage II vapor recovery. Pennsylvania also takes emission credit toward the 15% requirement through the implementation of the following programs: (1) Federal architectural and industrial maintenance coating regulation (national rule), (2) treatment, storage and disposal facility (TSDF) controls (hazardous waste rule with air emission reductions), (3) autobody refinishing national rule, (4) consumer and commercial products national rule, and (5) facility shutdowns/over control.

Further details regarding EPA's review of the Commonwealth's control measures are contained in the TSD for this rulemaking action.

Summary of Creditable Emission Reductions for the Philadelphia Ozone Nonattainment Area (tons/day)

Required reduction for the Philadelphia area	123.64
Creditable Reductions:	
Shutdown credits	1.83
AIM Coatings Rules	7.28
Consumer/Commercial Products	6.58
TSDF Controls	9.35
Autobody refinishing	6.30
Stage II vapor recovery	17.02
Federal Reformulated gasoline	26.48
Reformulated gasoline—nonroad	0.59
FMVCP (Tier I)	1.08
Inspection and Maintenance (I/M)	49.74
Total	126.24

IV. Conditions for Approval

EPA has evaluated this submittal for consistency with the Act, applicable EPA regulations, and EPA policy. In the March 11, 1997 proposed rulemaking notice, EPA listed five conditions, which Pennsylvania is required to meet, within 12 months of the final rulemaking notice, in order to obtain approval of the Philadelphia 15% plan and 1990 VOC emission inventory. These conditions are:

(1) Reconcile the 1990 VOC emissions inventory with all the appendices, tables and narratives throughout the 15% document, wherever emissions are cited;

(2) After establishing consistent figures as described in 1) above, provide sample calculations for point source 1990, 1990 adjusted, and 1996 projected emissions showing how each of these figures were obtained. The level of documentation must be equivalent to that required for approval of a 1990 emissions inventory as described in the emission inventory documents at the beginning of this technical support document;

(3) Provide additional documentation for the emissions for those sources categories where credit is claimed (shutdowns, TSDFs);

(4) Provide a written commitment to remodel the I/M program as implemented in the Philadelphia

nonattainment area in accordance with EPA guidance (December 23, 1996 memo entitled ''Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance); and

(5) Fulfill the conditions listed in the I/M SIP rulemaking notice (proposed October 3, 1996, 61 FR 51638; final rule, January 28, 1997, 62 FR 4004) and summarized here as: (a) geographic coverage and program start dates, (b) program evaluation, (c) test types, test procedures and emission standards, (d) test equipment specifications, and (e) motorist compliance enforcement.

By its April 10, 1997 addendum, Pennsylvania has met conditions 1, 2, and 3. Although the full amount of emission reduction credit in some cases could not be substantiated with the Pennsylvania documentation, EPA is satisfied that the documentation supports the position that the amount of credits being approved now by EPA is adequately verified. The emission reductions from the enhanced I/M program that is subject to the National Highway Systems Designation Act with its extended deadlines are required in order for the required 15% emission reduction to be achieved in the Philadelphia nonattainment area. Under the National Highway Systems Designation Act of 1995, Pennsylvania's enhanced I/M program is receiving a conditional interim approval. As such, EPA can, at best, propose conditional interim approval of the Philadelphia 15% plan. In its April 10, 1997 letter, Pennsylvania agreed to meet conditions 4 and 5 that pertain to I/M within the required time frames.

As conditions 4 and 5 remain unfulfilled, EPA cannot grant full approval of the Philadelphia 15% rate-of-progress plan under section 110(k)(3) and Part D of the Clean Air Act. Instead, EPA is granting conditional interim approval of this SIP revision under section 110(k)(4) of the Act, because the Commonwealth must meet the specified conditions and supplement its submittal to satisfy the requirements of section 182(b)(1) of the Act regarding the 15 percent rate-of-progress plan, and because the Commonwealth must supplement its submittal and demonstrate it has achieved the required emission reductions. In addition, EPA is approving the 1990 VOC base year emissions inventory for the Philadelphia ozone nonattainment area, submitted with the 15% plan on September 27, 1996, with the exception of the revisions to the emissions for USX—Fairless (Bucks County) that were previously approved by EPA (April 9, 1996, 61 FR 15709). EPA is not taking any rulemaking action regarding the contingency plan submitted by Pennsylvania in response to the requirement of section 172(c)(9) of the Act. The contingency plan will be the subject of a separate rulemaking notice. EPA is also not taking any rulemaking action at this time with regard to the 1990 NO_X emission inventory submitted with the September 1996 15% plan. The 1990 NO_X emission inventory will also be the subject of a separate rulemaking notice.

The Commonwealth submitted the required written commitment to EPA on April 10, 1997. In addition, the Commonwealth submitted additional documentation to fully satisfy conditions 1 through 3 and the necessary written commitment to complete condition 4 in the time frame required.

The remaining unsatisfied conditions or portions of conditions must be satisfied by June 9, 1998.

Final Action

EPA is granting conditional interim approval of the Philadelphia 15% plan and approval of the 1990 VOC emission inventory as a revision to the Pennsylvania SIP. By today's action, EPA is granting approval to emission credits for the Philadelphia 15% plan on an interim basis, pending verification of the enhanced I/M Program's performance, pursuant to section 348 of the NHSDA. This interim approval of the 15% plan will expire at the end of the 18 month period, and will be replaced by appropriate EPA action based on the evaluation EPA receives concerning the program's performance. If the evaluation indicates a shortfall in emission reductions compared to the remodeling that the 15% plan is conditioned on, the Commonwealth will need to find additional emission credits. Failure of the Commonwealth to make up for an emission shortfall from the enhanced I/M program may subject the Commonwealth to sanctions and imposition of a Federal Implementation Plan. EPA has already approved the Pennsylvania enhanced I/M program on a conditional interim basis (January 28, 1997, 62 FR 4004). This approval of the Pennsylvania enhanced I/M program was taken under section 110 of the Act and, although the credits provided by this program may expire, the approval of the I/M regulations does not expire. As explained above, the credits provided by the enhanced I/M program on an interim basis for the 15% plan may be adjusted based on EPA's evaluation of the enhanced I/M program's performance.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to 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.

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

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA

to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement.

Therefore, EPA certifies that this 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 substitute a new federal requirement.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

Under section 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 section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 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, pertaining to the final conditional interim approval of the 15% plan for the Pennsylvania portion of the Philadelphia ozone nonattainment area and the approval of the 1990 VOC emission inventory (with the exception of the revisions to the inventory of emissions for selected sources at USX—Fairless) for the same area, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone, Reporting and record keeping requirements.

Dated: May 30, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

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 NN—PENNSYLVANIA

2. Section 52.2026 is amended by adding paragraph (c) to read as follows:

§ 52.2026 Conditional Approval.

* * * * *

(c) The Commonwealth of Pennsylvania's September 12, 1996 submittal for the 15 Percent Rate of Progress Plan (15% plan) for the Pennsylvania portion of the Philadelphia ozone nonattainment area, is conditionally approved based on certain contingencies, for an interim period. The condition for approvability is as follows:

Pennsylvania must meet the conditions listed in the January 28, 1997 conditional interim Inspection and Maintenance Plan (I/M) rulemaking notice, remodel the I/M reductions using the EPA guidance memo: ''Modeling 15 Percent VOC Reductions from I/M in 1999—Supplemental Guidance'', memorandum from Gay MacGregor and Sally Shaver, dated December 23, 1996.

3. Section 52.2036 is amended by adding paragraph (i) to read as follows:

§ 52.2036 1990 Base year Emission Inventory

* * * * *

(i) The 1990 VOC emission inventory for the Philadelphia ozone nonattainment area, submitted on September 12, 1996 by Pennsylvania Department of Environmental Protection, is approved, with the exception of the revisions to the emission inventory for those sources at United States Steel—Fairless that were approved in § 52.2036 (b) on April 9, 1996.

[FR Doc. 97–14987 Filed 6–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–NHA–02; FRL–5834–9]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Improved Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is granting interim approval of a State Implementation Plan (SIP) revision submitted by the State of Utah. This revision establishes and requires the implementation of an improved basic inspection and maintenance (I/M) program in Utah County. The intended effect of this action is to approve the State's proposed I/M program for an interim period to last 18 months, based upon the State's good faith estimate of the program's performance. This action is being taken under section 110 of the Clean Air Act and section 348 of the National Highway Systems Designation Act.

EFFECTIVE DATE: This final rule is effective on July 9, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the USEPA Region VIII (P2–A), 999 18th Street—Suite 500, Denver, Colorado 80202–2466. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Scott P. Lee, at (303) 312–6736 or via e-

mail at lee.scott@epamail.epa.gov. The mailing address is, USEPA Region VIII (P2–A), 999 18th Street—Suite 500, Denver, Colorado 80202–2466.

SUPPLEMENTARY INFORMATION:

I. Background

On October 10, 1996 (61 FR 53180), EPA published a notice of proposed rulemaking (NPR) for the State of Utah. The NPR proposed interim approval of Utah's improved basic inspection and maintenance program for Utah County, submitted to satisfy the applicable requirements of both the Clean Air Act (CAA) and the National Highway Safety Designation Act (NHDSA). The formal SIP revision was submitted by Utah's Governor, Michael O. Leavitt, on March 15, 1996.

As described in the NPR, the NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under the NHSDA. The NHSDA also directs EPA and the states to review the interim program results at the end of that 18-month period, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort, to reflect the emissions reductions actually measured by the State during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for these programs to start up as soon as possible, which EPA believes should be on or before November 15, 1997, so that at least six months of operational program data can be collected to evaluate the interim programs. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, Congress recognized and attempted to mitigate any further delay with the start-up of this program. If Utah County fails to start its program according to this schedule, this interim approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the State. The start date provision will only trigger a disapproval upon EPA's notification to the State by letter that the start date has been missed. Because the start date condition is not imposed pursuant to a commitment to correct a deficient SIP under 110(k)(4), EPA does not believe it is necessary to have the SIP approval convert to a disapproval automatically if the start date is missed. EPA is imposing the start date condition under its general SIP approval authority of section 110(k)(3), which does not require automatic conversion.

The program evaluation to be used by the State during the 18-month interim period must be acceptable to EPA. The Environmental Council of States (ECOS) group has developed such a program evaluation process which includes both qualitative and quantitative measures, and this process has been deemed acceptable to EPA. The core requirement for the quantitative measure is that a mass emission transient test (METT) be performed on 0.1% of the subject fleet, as required by the I/M Rule at 40 CFR 51.353 and 51.366.

As per the NHSDA requirements, this interim rulemaking will expire on January 11, 1999. A full approval of Utah's final I/M SIP revision for Utah County (which will include the State/County program evaluation and final adopted County/State regulations) is still necessary under section 110 and under section 182, 184 or 187 of the CAA. After EPA reviews the State/County's submitted program evaluation and regulations, final rulemaking on the State/County's SIP revision will occur.

Specific requirements of the Utah improved basic I/M SIP for Utah County and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

II. Public Comment/Response to Comments

No comments were received.

III. Final Rulemaking Action

EPA is approving the improved basic I/M program for Utah County as a revision to the Utah SIP. The State's I/M program revisions for Utah County meet requirements pursuant to sections 182 and 187 of the Act and 40 CFR part 51, subpart S and section 348 of the NHSDA for interim approval. This approval is being granted on an interim basis for a period of 18 months, under the authority of section 348 of the National Highway Systems Designation Act of 1995. At the end of this period, the approval will lapse.

Following this interim period, full approval of the State's plan and associated program credit will only be granted if the following criteria are met:

(1) EPA's review of the State/County's program evaluation confirms that the appropriate amount of program credit was claimed by the State/County and achieved with the interim program,

(2) Final program regulations are submitted to EPA.

Following a review of the State/County's credit evaluation and final rules, EPA will proceed with further rulemaking action under section 110 of the Clean Air Act.

VI. Administrative Requirements

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to 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.

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

Approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If this approval is converted to a disapproval, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal would not affect its

state-enforceability. Moreover, EPA's disapproval of the submittal would not impose a new Federal requirement. Therefore, EPA certifies future conversion to a disapproval would not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor would it substitute a new federal requirement.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

D. Submission to Congress and the General Accounting Office

Under section 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 section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 1997.

Filing a petition for reconsideration by the Administrator of this final interim rule, does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act).

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Reporting and record keeping requirements.

Dated: May 21, 1997.

Patricia D. Hull,

For Acting Regional Administrator, Region VIII.

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 TT–UTAH

2. Section 52.2348 is added to Subpart TT to read as follows:

§ 52.2348 National Highway Systems Designation Act Motor Vehicle Inspection and Maintenance (I/M) Programs

On March 15, 1996 the Governor of Utah submitted a revised I/M program for Utah County which included a credit claim, a basis in fact for the credit claimed, a description of the County's program, draft County ordinances, and authorizing legislation for the program. Approval is granted on an interim basis for a period of 18 months, under the authority of section 348 of the National Highway Systems Designation Act of 1995. If Utah County fails to start its program by November 15, 1997 at the latest, this approval will convert to a disapproval after EPA sends a letter to the State. At the end of the eighteen month period, the approval will lapse. At that time, EPA must take final rulemaking action upon the State's SIP, under the authority of section 110 of the Clean Air Act. Final action on the State/County's plan will be taken following EPA's review of the State/County's credit evaluation and final regulations (State and County) as submitted to EPA.

[FR Doc. 97–14986 Filed 6–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[IL–64–2–5807; FRL–5836–2]

RIN 2060–AG33

Standards of Performance for New Stationary Sources; Standards of Performance for Nonmetallic Mineral Processing Plants; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates revisions and clarifications to several provisions of the standards of performance for nonmetallic mineral processing plants, which were proposed in the **Federal Register** on June 27, 1996 (61 FR 33415). This action presents the final revisions to the applicability, definitions, test methods and procedures, and reporting and recordkeeping requirements of the standards, and the basis for those revisions. The affected industries and numerical emission limits remain unchanged.

EFFECTIVE DATE: June 9, 1997. See the Supplementary Information section concerning judicial review.

ADDRESSES: *Docket.* Docket No. A–95–46, containing information considered by the EPA in development of the promulgated revisions to the new source performance standards (NSPS) is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center (MC–6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548, fax (202) 260–4000. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. William Neuffer at (919) 541–5435, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by EPA's final action on this promulgated rule are new, modified, or reconstructed affected facilities in nonmetallic mineral processing plants that process any of the 18 nonmetallic minerals listed in Table 1.

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Entity category	Description
Industrial	Crushed and broken stone, sand and gravel, clay, rock salt, gypsum, sodium compounds, pumice, gilsonite, talc and pyrophyllite, boron, barite, fluorospar, feldspar, diatomite, perlite, vermiculite, mica, and kyanite processing plants.
Federal Government	Same as above
State/Local/ Tribal	Same as above

The provisions of this final rule apply to the following affected facilities at fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station. To determine whether your facility is regulated by this final action, you should examine the applicability criteria in § 60.670 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

Under section 307(b)(1) of the Act, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the revised requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. Background and Public Participation
II. Comments and Changes to the Proposed Revisions to the NSPS
A. Summary of Changes to the Proposed Revisions to the NSPS
B. Responses to Comments
III. Administrative Requirements
A. Docket
B. Clean Air Act Procedural Requirements
C. Office of Management and Budget Reviews
1. Paperwork Reduction Act
2. Executive Order 12866
D. Unfunded Mandates Reform Act
E. Regulatory Flexibility Act Compliance
F. Submission to Congress and the General Accounting Office

I. Background and Public Participation

Standards of performance for nonmetallic mineral processing plants were promulgated in the **Federal Register** on August 1, 1985 (50 FR 31328). These standards implement section 111 of the Clean Air Act and require all new, modified, and reconstructed nonmetallic mineral processing plants to achieve emission levels that reflect the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

On January 26, 1995, the National Stone Association (NSA) petitioned the EPA, pursuant to the Clean Air Act and the Administrative Procedures Act, to review the existing NSPS for nonmetallic mineral processing plants (40 CFR part 60, subpart OOO). In its petition, the NSA and its member companies requested the EPA to review and consider revising, in particular, the provisions in the NSPS that pertain to the test methods and procedures. Also, the NSA requested that several of the recordkeeping and reporting requirements be reduced or eliminated.

Before proposal of the amendments to the NSPS, meetings were held with representatives of several companies regulated under the NSPS for nonmetallic mineral processing plants and the NSA to discuss potential changes to the NSPS (subpart OOO). The EPA also received input from representatives of State and local environmental agencies before the proposed amendments were published in the **Federal Register**.

The amendments to the new source performance standards (NSPS) for nonmetallic mineral processing plants were proposed on June 27, 1996 (61 FR 33415). The public comment period ended on August 26, 1996. Industry representatives, regulatory authorities, and environmental groups had the opportunity to comment on the proposed revisions and to provide additional information during the public comment period that followed proposal. A public hearing was offered at proposal to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed amended rule. However, no one requested a hearing and, therefore, no hearing was held. Forty-three comment letters were received. The commenters included industry, one national and several State trade associations, several State regulatory agencies, and one environmental consultant. These comments were considered and, today's final amended rule reflects consideration of these comments. The public comments that were received along with EPA's responses to the comments on the proposed amended rule are summarized in this preamble. The summary of comments and responses serves as the basis for the revisions that have been made to the final amended rule between proposal and promulgation. The following section discusses changes made as a result of public comments on the proposed amendments to the NSPS. A more detailed discussion of comments and responses is contained in the docket (Docket No. A–95–46; Item V–C–1.)

II. Comments and Changes to the Proposed Revisions to the NSPS

A. Summary of Changes to the Proposed Revisions to the NSPS

There was general support for the amendments which reduced or eliminated several of the paperwork requirements on the industry, greatly reduced the costs of emission testing without sacrificing air quality, provided a table specifying the applicability of subpart A (General Provisions for part 60) to subpart OOO affected facilities, and clarified that facilities located in underground mines are not subject to the NSPS. The commenters requested further clarification of the applicability of the NSPS to certain operations, additional reductions in the Method 9 test duration for certain affected facilities, and further reductions in the reporting and recordkeeping requirements.

The following is a summary of the changes made to the proposed revisions as a result of EPA's evaluation of the public comments. Some of these changes are clarifications of EPA's original intent. The rationale for these changes is discussed in section II.B.

1. Section 60.670, Applicability and designation of affected facility, is revised:

(a) To clarify the original intent of the NSPS that stand-alone screening operations at plants without crushers or grinding mills are not subject to the NSPS;

(b) To clarify the original intent of the NSPS that crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement, and subsequent affected facilities in the production line up to, but not including, the first storage silo or bin are subject to the NSPS; and

(c) To remove the exemption of wet screening and associated belt conveyors from all provisions of this subpart

except reporting and recordkeeping because these sources are subject to all provisions of this subpart except for Method 9 opacity tests.

2. Section 60.671, Definitions, is revised to add a definition of wet mining operation and to make minor changes in the proposed definition of wet screening operation.

3. Section 60.672, Standard for particulate matter, is revised to require no visible emissions from

(a) Wet screening operations and subsequent screening operations, bucket elevators, and belt conveyors in the production line that process saturated materials up to the next crusher, grinding mill, or storage bin in the production line;

(b) Screening operations, bucket elevators, and belt conveyors in the production line downstream of wet mining operations, that process saturated materials up to the first crusher, grinding mill, or storage bin in the production line.

4. Section 60.675, Test methods and procedures, is revised:

(a) To exempt from the initial requirement in § 60.11 for Method 9 emission testing;

(i) Wet screening operations and subsequent screening operations, bucket elevators, and belt conveyors in the production line that process saturated materials up to the next crusher, grinding mill, or storage bin in the production line;

(ii) Screening operations, bucket elevators, and belt conveyors in the production line downstream of wet mining operations, that process saturated materials up to the first crusher, grinding mill, or storage bin in the production line.

(b) To correct typographical error in paragraph (b).

(c) To allow crushers without emission capture systems to reduce the duration of Method 9 observations of fugitive emissions for compliance from 3 hours (thirty 6-minute averages) to 1 hour (ten 6-minute averages) if there are no individual readings greater than 15 percent opacity and there are no more than 3 readings of 15 percent for the first 1-hour period.

(d) To add wording to clarify that if qualifying conditions are not met by affected facilities subject to applicable fugitive emission limits, then 3 hours, rather than 1 hour, of Method 9 testing would be required to determine compliance.

5. Section 60.676, Reporting and recordkeeping, is revised:

(a) To require that both the address of the home office and the current address/location of the portable aggregate plant be included in the notification of the actual date of initial startup;

(b) To require the reporting within 30 days of any affected facility that changes the saturated or unsaturated nature of the material being processed. The affected facility is then subject to the provisions of the standard applicable to the type of material being processed.

B. Responses to Comments

Several commenters remarked that the proposed changes to the rule were an important milestone in EPA's partnering efforts with the regulated community to help reduce the administrative burden of subpart OOO while maintaining protection of the health and welfare of the general public.

The comments, the issues they address, and the EPA's responses to comments are presented in the following sections according to the following topics: (1) Applicability; (2) Definitions; (3) Standard for Particulate Matter; (4) Test Methods and Procedures; and (5) Reporting and Recordkeeping.

1. Applicability

(a) *Comment.* One commenter disagreed with the Agency's clarification to exempt nonmetallic mineral processing facilities located in underground mines from subpart OOO.

Response. Underground mining operations will continue to be exempted from this regulation. As stated in the preamble to the proposed amendments to the new source performance standards (NSPS) for nonmetallic mineral processing plants, this regulation does not apply to facilities located in underground mines because emissions from crushers or other facilities in underground mines are vented in the general mine exhaust and cannot be distinguished from emissions from drilling and blasting operations which are not covered by the regulation. In addition, a response to a comment in the background information document for the original promulgated standards (EPA–450/3–83–001b, April 1985, page 2–44) stated specifically that mining operations are not covered under the proposed or final standards for nonmetallic mineral processing plants.

(b) *Comment.* Four commenters were concerned whether ''wet mining operations'' and subsequent processing of the mineral material should be subject to this NSPS. Two of these commenters requested EPA to include wet dredging operations/equipment in the definition of ''wet screening operation'' to exempt those operations from all NSPS requirements except for the reporting and recordkeeping requirements. One of the two commenters suggested that the equipment exemption include all screening, crushing and transfer operations (conveyors) associated with dredging operations up to, but not including, the next crusher, grinding mill or dry screening operation in the production line of the plant. According to the commenter, fugitive dust emissions from wet dredging operations have never been recorded during any site visit by this State agency.

One of the previously mentioned commenters requested that overland conveyor systems that are transporting sand and gravel that has been mined below the water table be exempted from testing requirements. An alternative performance testing program for these field conveyor systems previously approved by an EPA Regional Office was recommended. This alternative testing program consisted of reducing the Method 9 testing from 3 hours to 1 hour; conducting the Method 9 test at the first and last transfer points in a series of transfer points; and waiving the performance test for all intermediate transfer points if no visible emissions are observed at the first and last transfer points. Another commenter requested an exemption from emission testing requirements or total exemption for facilities, such as sand and gravel, dredge, and marine limestone, that mine and process a ''wet'' product with an inherent natural moisture content that does not have the potential to create emissions. This commenter stated that many State agencies already offer testing exemptions for these types of facilities.

Another commenter suggested adding a definition of ''wet mining operation'' in the regulation and revising the rule to exempt operations at mining facilities that extract limestone, dolomite or sand and gravel from deposits below the water table and saturated with water except for reporting requirements.

Response. The EPA has considered these comments and agrees that there is no potential for emissions from belt conveyors transporting nonmetallic minerals that are saturated with water. Also, there is no potential for emissions from other processes such as screens and bucket elevators that handle nonmetallic minerals that are saturated with water. Therefore, belt conveyors, screening operations and bucket elevators that process materials saturated with water from wet mining operations up to the first crusher, grinding mill, or stockpile in the production line are exempted from the initial Method 9 performance testing under § 60.11 but are required to have no visible emissions from these sources.

The no visible emission standard would allow plant and enforcement officials to verify that the materials being processed were indeed saturated with water.

If an affected facility that processes saturated material later processes unsaturated material, a report of this change shall be sent to EPA within 30 days of this change. Also, this affected facility becomes subject to the Method 9 opacity test requirements of this subpart and the 10 percent opacity limit in § 60.672(b).

As recommended by the last mentioned commenter, a definition of ''Wet mining operation'' has been added to ''Definitions'' in § 60.671 to identify which affected facilities are exempt from Method 9 emission testing. To assure no emissions are possible, the definition will state that the nonmetallic mineral must be saturated.

Crushers reduce the size of the process material and in so doing increase the surface area of the material being processed. This crushed material then has new surfaces which are not saturated and have the potential to create air emissions. Therefore, crushers at dredging operations are not exempt.

(c) *Comment.* A commenter requested clarification whether the NSPS applies to stand-alone screening operations at plants without any crushers.

Response. The commenter is correct that EPA did not intend to regulate stand-alone screening operations at plants that have no crushers. Subpart OOO affected facilities begin with the initial crushing or grinding operation at the plant. Plants that do not employ crushing or grinding, by definition, are not considered nonmetallic mineral processing plants and thus are not subject to subpart OOO.

(d) *Comment.* One commenter supported the proposed exemption of wet screening operations and associated conveyors and recommended that the wet screening exemption be expanded to include all pieces of equipment where the use of water is necessary to the operation of the process, such as pugmills. Another commenter believed that the term ''dry'' in the definition of wet screening operation was confusing because a screen operated downstream from a wash screen will handle material that is saturated by the wash process. Also, another commenter recommended that the wet screening operations and associated downstream conveyors exemption be expanded to include loadout bins and other wet process operations.

Response. Equipment other than crushers and grinding mills where the use of water may be necessary to the operation, such as pugmills used for reblending of materials at the end of the process, are not affected facilities and therefore not subject to subpart OOO. Therefore, no further change has been made to expand the wet screening exemption as requested by the first-mentioned commenter.

Screening is the process by which material is separated according to size. Screening may be performed either wet or dry. Wet screening where the product is saturated with water removes material from the product, such as silt, clay, grit, etc., or separates marketable fines by a washing process and there is no potential for air emissions.

Wet screening operations, which use a washing process, and subsequent screening operations, bucket elevators, and belt conveyors up to the next crusher, grinding mill, or storage bin are also exempt from Method 9 initial performance tests per § 60.11 and are required to meet a no visible emissions standard. To assure there is no potential for emissions from these operations following the wet screens, the material that is being processed is required to be saturated. The no visible emission standard is a means for both plant and enforcement personnel to verify that the material being processed is indeed saturated.

If an affected facility processes saturated material later processes unsaturated material, a report of this change shall be sent to EPA within 30 days of this change. Also, this affected facility becomes subject to the Method 9 opacity test requirements of this subpart and the opacity limit in § 60.672(b).

(e) *Comment.* A commenter requested clarification as to whether recycled asphalt operations are covered under the NSPS. The commenter attached a memo from an EPA Region which stated that during a visit to a recycled asphalt facility, nonmetallic minerals of two to three inches within the recycled asphalt were being crushed to less than half an inch. The Region stated if the nonmetallic mineral is crushed or ground by a recycled asphalt crusher, the crusher would be subject to this NSPS.

Response. The EPA concurs with this determination as this is the intent of the rule. A new, modified or reconstructed asphalt crusher or grinding mill that reduces the size of a nonmetallic mineral embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including, the storage silo or bin at a hot mix asphalt facility are subject to subpart OOO. A sentence has been added to § 60.670 Applicability that such a crusher or grinding mill is subject to this NSPS.

2. Definitions

(a) *Comment.* Three commenters fully supported the Agency's exemption of wet screening operations, except for reporting and recordkeeping from the NSPS, but requested that the definition of ''wet screening operation'' be revised to remove the term ''completely'' in the definition because they believe it gives the connotation that the rock is wet throughout and because the term is subject to various interpretations by industry and regulatory personnel. In addition, one commenter requested that the Agency change the term ''unwanted material to ''fines'' in the definition. Quite often the ''unwanted material,'' or fines, that are washed from the rock surface on a washing screen are collected and sold as a natural or manufactured sand or other marketable product. Also, one commenter suggested that the definition of wet screening operation be changed to a definition of ''wet process'' to include other wet process operations such as log washers, classifiers, sand screws, pugmills, belt presses, and dewatering screens. However, if this change is not made, then he recommended further defining the terms ''saturated'' and ''unwanted material'' to avoid numerous interpretation conflicts.

Response. After review and consideration of these comments, the EPA has decided to make changes in the definition of ''wet screening operation.'' The term ''completely'' has been deleted from the definition. ''Saturated'' is defined as ''to soak or load to capacity'' and therefore the term ''completely'' is not necessary to convey the intent. Also, the revised definition includes the separation of marketable fines and now more closely describes the types of screening operations in the wet/wash end of a nonmetallic minerals processing plant without changing the original intent of the definition. It is not necessary to define ''unwanted material'' in the definition, which could include silt, grit, etc., as requested.

''Wet screening operation'' is the appropriate term to be defined, not ''wet process'' as suggested by one of the commenters. The other processes cited are not affected facilities and therefore are not subject to this NSPS. As stated in the preamble to the proposed amendments, there is no potential for air emissions from either screening or conveying operations in the wash process.

3. Test Methods and Procedures

(a) *Comment.* Several commenters maintained that the cost of dual compliance tests for both the stack

emission limit and stack opacity standard was prohibitive to the industry and requested that Method 9 testing be the sole test for compliance of any affected facility. In addition, another commenter disagreed with the dual stack emission testing of particulate and opacity which he believes greatly increases the testing costs with no data to support the environmental benefits.

Response. This NSPS requires an initial performance test to measure the concentration of particulate matter in stack emissions for each affected facility because the EPA has found that facilities with similar control devices may not have the same emissions characteristics due to variables in the processes, process operating conditions, and control system design, installation, and operation. Because of this variability, performance tests are necessary to demonstrate the capability of each facility to meet the PM emission limit. The stack opacity test is used as a continuing compliance tool during any subsequent inspections by State and local air pollution agency personnel. During the development of this NSPS, the cost of performance testing was estimated and found to be reasonable and no new data was submitted by the commenter.

(b) *Comment.* Two national trade associations and one State trade association stated that many nonmetallic mineral producers that use enclosed aggregate storage bins often have more than one of these bins ducted to a fabric filter collection system and requested that the NSPS require only Method 9 testing for single fabric filter systems that control emissions from more than one enclosed storage bin.

Response. As stated in the preamble to the proposed amendments to the NSPS, Method 5 testing cannot be performed for baghouses that only control emissions from individual, enclosed storage bins due to very low air flows from individual, enclosed storage bins. However, if emissions from multiple storage bins are ducted to a single fabric collection system, the air flow is high enough for Method 5 testing, accordingly, the combined emissions are subject to both Method 5 stack emission testing and Method 9 opacity testing for determining compliance. This requirement is specified in § 60.672(g).

(c) *Comment.* A commenter referred to the original proposed rule for subpart OOO that was published on August 31, 1983 (48 FR 39574), which stated that ''Performance tests would not be required for fugitive emission sources.'' Fugitive emissions as defined in that proposal include emissions from crushers, conveyors, and screens that have no capture system. According to the commenter, neither the current rule nor the proposed amended rule for subpart OOO contain language that would require performance testing immediately after startup for fugitive emission sources. According to the commenter, §§ 60.675 (b) and (c) explain only how to determine compliance for the fugitive emission limitations, not that performance testing is required. The State agency requested that the wording, and true intent, of subpart OOO be clarified so as to explicitly state whether performance testing for fugitive emissions is required.

Response. The intent of subpart OOO is to require initial compliance testing for fugitive emissions from applicable affected facilities. The commenter referred to the statement in the proposed rule published on August 31, 1983 at page 48 FR 39574. This statement was in regard to performance tests by Method 5, which are not applicable to fugitive emission sources. It was not intended to exempt fugitive emission sources from initial compliance using Method 9 or Method 22 as appropriate.

Section 60.8 of the General Provisions for 40 CFR part 60 requires performance testing for affected facilities in each subpart (regulation) and § 60.11 contains requirements for compliance with opacity standards. Each subpart specifies the applicable test methods and any additional test procedures or exemptions specific to the affected facility being regulated. The test methods and procedures for affected facilities under subpart OOO, § 60.675, require performance tests on fugitive emission sources. This is also indicated by the General Provisions requirements which are included in Table 1 of § 60.670 in these amendments to this NSPS. This Table has been added to make clear in the regulation itself the requirements of this NSPS.

(d) *Comment.* There was total support in the public comments for the proposed reduction of visible emission testing from 3 hours to 1 hour (subject to the level of visible emissions observed during the first hour) for fugitive emission sources. However, one commenter stated that since crushers without capture systems are allowed 15 percent opacity, a 3-hour test should not be required if three 10 percent opacity readings are observed in the first hour. The commenter asserted that a crusher operating uniformly at 5 percent opacity with several 10 percent puffs or constantly at 10 percent is well within compliance. Several commenters also strongly believe that affected facilities should be allowed to demonstrate compliance during the 1-hour test with the existing opacity limits that are applicable for each affected facility, i.e., 15 percent for crushers at which a capture system is not used and 10 percent for other affected facilities as required in the NSPS.

Response. The proposed revised rule did not change the existing 15 percent opacity limit for crushers without capture systems as interpreted by several of the commenters, nor did the proposed revised rule allow the Method 9 test reduction from 3 hours to 1 hour for these crushers. However, the EPA's review of visible emission data submitted by a State agency for crushers without capture systems showed that these crushers generally had no emissions during 1-hour Method 9 observations. The visible emission data was from crushers using wet suppression and from screens and conveyor transfer points without capture systems. The test data showed 3 crushers with all Method 9 readings at 0 percent and 1 crusher with a few readings at 5 percent; 1 conveyor (prior to crushing) test showed several readings at 10 percent and some at 15 percent. Therefore, based on this test data, the Method 9 emission test period for crushers without capture systems is reduced from 3 hours to 1 hour to demonstrate compliance with the 15 percent fugitive emissions limit if there are no individual readings greater than 15 percent opacity and there are no more than 3 readings of 15 percent for the first 1-hour period. If these qualifying conditions are not met during the first hour, then testing of crushers without capture systems would be required for 3 hours.

(e) *Comment.* According to one commenter, the proposed revisions fail to specify what an inspector or industry personnel must do to demonstrate compliance if visible emissions are seen using Method 22 outside a building which does not comply with § 60.672(e). The commenter stated that the inspector must enter the building in these cases. As an example, the commenter cited an incident that took place after promulgation of the original rule in which an EPA inspector found it impossible to read opacity inside a building located at a rock crushing plant due to the lack of proper visibility. The commenter stated that in some cases there was no room for an inspector to enter, much less read the opacity from affected facilities. The commenter also referred to OSHA rules which define such structures as confined spaces and caution against exposing personnel to

such dangers. The commenter recommended that if visible emissions are seen outside the building and it is unsafe to enter the building then Method 9 readings should be taken outside the building. The recommended opacity limit would be the same as allowed under § 60.672 (b) or (c).

Response. The commenter was concerned that the original rule failed to address what must be done if the visible emission requirements that apply to emissions observed outside the building are not met. Section 60.672(e)(standard for particulate matter) clearly states that compliance is shown by complying with either § 60.672 (a), (b) and (c) or by complying with § 60.672(e). Also, the requirements are discussed in the preamble for the final rule published on August 1, 1985; at 50 FR 31333 and 31334. Accordingly, no change is required to the regulation.

This NSPS is a national standard and it is impossible to prepare a regulation that addresses every possible situation. This NSPS gives industry flexibility by giving them the option of complying with § 60.672(e) or with § 60.672 (a), (b) and (c). Section 60.672(e) allows no visible emissions from a building except from a vent. Emission limits from a vent are the same as for any stack emissions; 0.05 g/dscm and 7 percent opacity. Thus, by complying with § 60.672(e) no one is required to enter the building. Sections 60.672 (a),(b) and (c) limit the stack emissions as mentioned above as well as setting Method 9 opacity limits for fugitive emissions from individual affected facilities. If Method 9 limits are set for the building as suggested by the commenter, there is the potential of allowing dilution air to be added to general building ventilation. Also, the Method 9 opacity limits for fugitive emissions as shown in §§ 60.672 (b) and (c) are based on emission test data obtained while observing emissions from individual affected facilities such as crushers and belt conveyors and not from buildings containing these affected facilities. Therefore, there will be no change made to the proposed revisions based on this comment.

(f) *Comment.* One commenter recommended waiving the Method 9 opacity compliance testing requirement for screens and conveyor transfer points subject to this NSPS pursuant to § 60.8(b)(4) of the General Provisions, subpart A (which waives the requirement for performance tests because an owner or operator has demonstrated compliance to EPA by other means). The commenter based this request on more than 80 emissions evaluations performed at nonmetallic mineral processing plants during the past nine years which demonstrate that these affected facilities are in compliance with the opacity standard for fugitive emissions. If a waiver of the initial testing requirement is not granted, it was suggested that the cut-off point as applied to the testing requirement for 3 hours of testing be 50 percent of the largest applicable federally enforceable opacity standard.

A Regional Air Pollution Control Agency provided copies of a number of actual Method 9 observation sheets that illustrated their experience of gathering mostly ''zeros'' when conducting the subpart OOO visible emission readings and offered these as corroboration that the proposed Method 9 testing reduction from 3 hours to 1 hour, if there is not a visible emission problem, should be promulgated. The visible emission data were from crushers using wet suppression and from screens and conveyor transfer points.

Response. With regard to the first comment, the EPA does not believe that a waiver of the initial compliance testing requirement for screening operations and conveyor transfer points is justified under § 60.8(b)(4). A Method 9 performance test is only required one time (initially) under the regulation. This performance test is necessary to demonstrate that the capture system is properly designed, installed and operated to comply with this NSPS. The emission test data submitted by the local agency support the use of this performance test. As to the suggestion that the cut-off point for requiring 3 hours of testing be 50 percent of the largest applicable federally enforceable opacity standard, the EPA believes that the proposed qualifying conditions in § 60.675(d) (no reading greater than 10 percent or 3 readings equal to 10 percent) are more appropriate since these were based on several emission tests submitted by industry and air pollution control agencies. No emission test data were submitted by the commenter.

(g) *Comment.* A commenter requested further consideration of alternate testing procedures for periodic operations such as enclosed storage bins and loadout stations. The commenter provided procedures approved previously by an EPA Regional Office and requested that these procedures be incorporated into the final rule. The EPA Regional Office agreed that if a storage tank's baghouse exhaust is in compliance with this NSPS by using Method 9, Method 5 particulate emission testing would not be required. Also the EPA Regional Office approved Method 9 testing that was conducted over two or three loading cycles of the product storage tank in lieu of 3 hours of Method 9 observations. For truck loadout stations, 30 minutes of visible emission testing were allowed.

Response. As noted by the commenter, the proposed amended rule, 60.672(f), requires individual, enclosed storage bins to only comply with the opacity standard. Also, the testing period has been reduced from three hours to one hour. Section 60.8(b) of the General Provisions allows the use of alternatives to performance testing based on the review and approval by EPA of relevant supporting information. The supporting data and information in requests for alternative testing are evaluated for approval by EPA on a case-by-case basis. Even though these alternate testing procedures that reduced the duration of Method 9 testing were approved by EPA under certain conditions for certain affected facilities, no emission test data were submitted to warrant incorporating these changes into the final rule for regulating such affected facilities throughout the entire industry.

4. Reporting and Recordkeeping Requirements

(a) *Comment.* Several commenters were opposed to the requirement under § 60.4(a) of the General Provisions that all notifications, reports, etc. be sent in duplicate to both the EPA Regional Office and one copy to the State regulatory agency, provided the State has been delegated authority for the NSPS. Also, the commenters recommended that if the State has been delegated authority for this NSPS, notifications, reports, etc. should only be sent to the States. According to the commenters, for those States not delegated NSPS authority, notifications and correspondence should be sent only to the appropriate EPA Regional Office.

Response. The submittals of duplicate copies of notifications, reports, etc. to the EPA Regional Offices and a copy to State agencies with delegated authority are needed so that both groups can keep track of this NSPS.

The commenters are correct that if a State has not been delegated authority; notifications, reports, etc. are required to be sent only to the appropriate EPA Regional Office.

(b) *Comment.* One commenter suggested that EPA consider the use of fax or telephone notifications to States of the date of actual construction and initial start-up.

Response. On September 11, 1996 (61 FR 47840), revisions to the General Provisions, subpart A, 40 CFR parts 60, 61, and 63, were proposed allowing the use of electronic notifications if

approved by the relevant permitting authority.

(c) *Comment.* One commenter supported the proposed revision that allowed a single notification for the actual date of initial startup for multiple affected facilities that plan to begin initial startup simultaneously (on the same day), in circumstances where, due to delays and the time required to install the affected facilities, startup of every affected facilities does not occur at the same time. Due to these different startup times, the commenter requested a single notification of startup for all affected facilities that startup within a 30-day timeframe.

Response. If a 30-day window were allowed, sufficient prior notification to the State or local agencies for the first affected facilities that commence operations would not be provided. Companies that choose to submit a single notification of initial startup for multiple affected facilities must do appropriate planning to avoid such simultaneous equipment installation delays. If such equipment installation delays cannot be avoided, then a notification of initial startup for each affected facility is required. Accordingly, a change to accommodate this request is not appropriate.

(d) *Comment.* One commenter requested that the Agency eliminate the notification in subpart A, General Provisions, § 60.7(a)(1), of the date of when construction commences of an affected facility (postmarked no later than 30 days after construction commences) because the company did not believe it served any useful purpose.

Response. The requirement under the General Provisions, § 60.7(a)(1), for an owner or operator to notify the EPA or State agencies of the date of construction of an affected facility is necessary for tracking purposes and enforcement. The EPA or State agencies enforcing the standards have to track, or keep records of, new equipment at both new plants and capacity expansions at existing plants. Administrative reporting and recordkeeping requirements for these standards are similar to those for other NSPS.

(e) *Comment.* One commenter suggested that under § 60.676(i), the current address/location be included in the notification of the actual date of initial startup of each affected facility. Many aggregate processing plants are portable, and are routinely moved from place-to-place. In the past, this has led to confusion on where the plant is located and where the visible emission observations are going to take place. Currently, portable aggregate processing plants in the particular State retain the identification address from the owner/operator's business headquarters. When the portable plant is relocated, it is still identified with that home office address even though it is actually located elsewhere.

Response. The EPA agrees that, in the case of portable plants that are routinely moved from place to place, the current address/location should be included in the notification of the actual date of initial startup of such portable plants. Therefore, § 60.676(i) of the final amended rule has been revised to require both the home office address and the current address/location of the portable plant.

(f) *Comment.* One aggregate company requested 14 days lead time, in lieu of 30 days for notifications of relocation of portable plants and other notifications such as emission testing and date of construction because portable plants have trouble anticipating the new location 30 days in advance.

Response. Notifications of relocations of portable plants are a requirement of individual State and local agencies. For notifications of emission testing, these agencies need adequate notice so that they can observe opacity and emission testing. Personnel from these agencies have stated they need 30 days prior notice to adequately plan to attend opacity and emission testing. The requirements for other notifications have decreased. The notification requirement of the actual date of initial startup under § 60.7(a)(2) is already 15 days and the anticipated date of initial startup requirement under § 60.7(a)(2) has already been waived under subpart OOO. Therefore, no additional changes in notification lead times have been made for portable plants.

III. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this final rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking process. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the official record in case of judicial review (except for interagency review materials (section 307(d)(7)(A) of the Act)).

B. Clean Air Act Procedural Requirements

1. The effective date of this revised regulation is June 9, 1997. Section 111(b)(1)(B) of the CAA provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities of which the construction or modification was commenced after the date of proposal, June 27, 1996.

2. Administrator Listing—Under section 111 of the Act, establishment of standards of performance for nonmetallic mineral processing plants was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

3. External Participation—In accordance with section 117 of the Act, publication of the final revisions to the NSPS was preceded by consultation with a national trade association composed of 570 member companies and several States.

4. Economic Impact Assessment—Section 317 of the Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. Today's final amended rule is for clarifications and minor revisions to the applicability, definitions, test methods and procedures, and reporting and recordkeeping sections of the regulation. No additional controls or other costs are being incurred as a result of these revisions. The final amended rule would result in a cost savings for the industry (reduction of certain testing and recordkeeping and reporting requirements) and the EPA and State/local agencies (reduction in staff time needed to review fewer reports). Therefore, no economic impact assessment for the proposed or final revisions to the rule was conducted.

C. Office of Management and Budget Reviews

1. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an ''information collection request'' (ICR) document has been prepared by the EPA (ICR No. 1084.05) to reflect the revised/reduced information requirements of the final revised regulation and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2136), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or by calling (202) 260–2740.

Under the existing NSPS, the industry recordkeeping and reporting burden and costs for an owner or operator of a new

nonmetallic mineral processing plant were estimated at 820 hours and $27,060 for the first year of operation. The vast majority of the estimated hours (670) was attributed to required Method 5 and Method 9 performance testing of affected facilities. Under the final revised NSPS, a 1-hour Method 9 test is allowed in lieu of the Method 5 test for individual, enclosed storage bins. In addition, the duration of Method 9 tests for fugitive emission sources has been reduced from 3 hours to 1 hour if qualifying conditions are met as discussed in Section II.3.3.d. Also, plant owners or operators are allowed to submit one notification of actual startup for several affected facilities in a production line that begin operation the same day, in lieu of multiple notifications for each affected facility. The final revised NSPS is also waiving the General Provisions requirement to submit a notification of anticipated startup for each affected facility. Therefore, the revised annual estimated industry recordkeeping and reporting burden and costs for an owner or operator of a new nonmetallic mineral processing plant are 480 hours and $16,000, the majority of which is due to performance testing. This represents an estimated reduction in the average annual recordkeeping and reporting burden of 340 hours and $11,000 per plant. This collection of information is estimated to have an average annual government recordkeeping and reporting burden of 320 hours over the first 3 years. 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.

2. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the EPA must determine whether the final regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). 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 in State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the final revisions to the NSPS are ''not significant'' because none of the above criteria are triggered by the final revisions. The final amended rule would decrease the cost of complying with the revised NSPS.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final standards that include a Federal mandate that may result in estimated costs to State, local, or tribal governments, or to the private sector, of, in the aggregate, $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the standard and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the standards.

The EPA has determined that today's action, which promulgates revisions and clarifications to the existing regulation, decreases the cost of compliance with this final revised regulation. Also, the final revised regulation does not contain any requirements that apply to State, local or tribal governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this final action.

E. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires Federal agencies to give special consideration to the impact of regulations on small entities, which are small businesses, small organizations, and small governments. The major purpose of the RFA is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated, without compromising the objectives of, in this case, the Clean Air Act.

If a regulation is likely to have a significant economic impact on a substantial number of small entities, the EPA may give special consideration to those small entities when analyzing regulatory alternatives and drafting the regulation. The impact of this regulation upon small businesses was analyzed as part of the economic impact analysis performed for the proposed standards for the nonmetallic minerals processing plants (48 FR 39566, August 31, 1983). As a result of this analysis, plants operating at small capacities were exempted from the requirements of the standards. Today's final revisions to the standards do not affect these exempted small plants; that is, they continue to be exempted from the standards. In addition, the main thrust of the final revisions to the standards is a reduction of the reporting and recordkeeping requirements for owners and operators of all affected facilities.

Thus, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedures Act (APA), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nonmetallic mineral processing plants, Reporting and recordkeeping requirements.

Dated: May 30, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 60, subpart OOO is amended to read as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

2. Section 60.670 is amended by revising paragraphs (a) and (d)(2), and adding paragraph (f) to read as follows:

§ 60.670 Applicability and designation of affected facility.

(a)(1) Except as provided in paragraphs (a)(2), (b), (c), and (d) of this section, the provisions of this subpart are applicable to the following affected facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station. Also, crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including, the first storage silo or bin are subject to the provisions of this subpart.

(2) The provisions of this subpart do not apply to the following operations: All facilities located in underground mines; and stand-alone screening operations at plants without crushers or grinding mills.

* * * * *

(d) * * *

(2) An owner or operator complying with paragraph (d)(1) of this section shall submit the information required in § 60.676(a).

* * * * *

(f) Table 1 of this subpart specifies the provisions of subpart A of this Part 60 that apply and those that do not apply to owners and operators of affected facilities subject to this subpart.

TABLE 1.—APPLICABILITY OF SUBPART A TO SUBPART OOO

Subpart A reference	Applies to Subpart OOO	Comment
60.1, Applicability	Yes.	
60.2, Definitions	Yes.	
60.3, Units and abbreviations	Yes.	
60.4, Address:		
(a)	Yes.	
(b)	Yes.	
60.5, Determination of construction or modification.	Yes.	
60.6, Review of plans	Yes.	
60.7, Notification and recordkeeping	Yes	Except in (a)(2) report of anticipated date of initial startup is not required (§ 60.676(h)).
60.8, Performance tests	Yes	Except in (d), after 30 days notice for an initially scheduled performance test, any rescheduled performance test requires 7 days notice, not 30 days (§ 60.675(g)).
60.9, Availability of information	Yes.	
60.10, State authority	Yes.	
60.11, Compliance with standards and maintenance requirements.	Yes	Except in (b) under certain conditions (§§ 60.675 (c)(3) and (c)(4)), Method 9 observation may be reduced from 3 hours to 1 hour. Some affected facilities exempted from Method 9 tests (§ 60.675(h)).
60.12, Circumvention	Yes.	
60.13, Monitoring requirements	Yes.	
60.14, Modification	Yes.	
60.15, Reconstruction	Yes.	
60.16, Priority list	Yes.	
60.17, Incorporations by reference	Yes.	
60.18, General control device	No	Flares will not be used to comply with the emission limits.
60.19, General notification and reporting requirements.	Yes.	

3. Section 60.671 is amended by adding in alphabetical order the definitions of *Wet mining operation* and *Wet screening operation* to read as follows:

§ 60.671 Definitions.

* * * * *

Wet mining operation means a mining or dredging operation designed and operated to extract any nonmetallic mineral regulated under this subpart from deposits existing at or below the water table, where the nonmetallic mineral is saturated with water.

Wet screening operation means a screening operation at a nonmetallic mineral processing plant which removes unwanted material or which separates marketable fines from the product by a washing process which is designed and operated at all times such that the product is saturated with water.

* * * * *

4. Section 60.672 is amended by removing the word ''or'' and adding the word ''and'' after paragraph (a)(1); by revising paragraphs (b) and (c); and by adding paragraphs (f), (g), and (h) to read as follows:

§ 60.672 Standard for particulate matter.

* * * * *

(b) On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup as required under § 60.11 of this part, no owner or operator subject to the provisions of this

subpart shall cause to be discharged into the atmosphere from any transfer point on belt conveyors or from any other affected facility any fugitive emissions which exhibit greater than 10 percent opacity, except as provided in paragraphs (c), (d), and (e) of this section.

(c) On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup as required under § 60.11 of this part, no owner or operator shall cause to be discharged into the atmosphere from any crusher, at which a capture system is not used, fugitive emissions which exhibit greater than 15 percent opacity.

* * * * *

(f) On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup as required under § 60.11 of this part, no owner or operator shall cause to be discharged into the atmosphere from any baghouse that controls emissions from only an individual, enclosed storage bin, stack emissions which exhibit greater than 7 percent opacity.

(g) Owners or operators of multiple storage bins with combined stack emissions shall comply with the emission limits in paragraph (a)(1) and (a)(2) of this section.

(h) On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup, no owner or operator shall cause to be discharged into the atmosphere any visible emissions from:

(1) Wet screening operations and subsequent screening operations, bucket elevators, and belt conveyors that process saturated material in the production line up to the next crusher, grinding mill or storage bin.

(2) Screening operations, bucket elevators, and belt conveyors in the production line downstream of wet mining operations, where such screening operations, bucket elevators, and belt conveyors process saturated materials up to the first crusher, grinding mill, or storage bin in the production line.

5. Section 60.675 is amended by revising paragraph (b), introductory text, redesignating paragraphs (c) introductory text, (c)(1), (c)(2), and (c)(3) as paragraphs (c)(1), (c)(1)(i), (ii), and (iii) and adding new paragraphs (c)(2), (c)(3), (c)(4), (g), and (h) to read as follows:

§ 60.675 Test methods and procedures.

* * * * *

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.672(a) as follows:

* * * * *

(c) * * *

(2) In determining compliance with the opacity of stack emissions from any baghouse that controls emissions only from an individual enclosed storage bin under § 60.672(f) of this subpart, using Method 9, the duration of the Method 9 observations shall be 1 hour (ten 6-minute averages).

(3) When determining compliance with the fugitive emissions standard for any affected facility described under § 60.672(b) of this subpart, the duration of the Method 9 observations may be reduced from 3 hours (thirty 6-minute averages) to 1 hour (ten 6-minute averages) only if the following conditions apply:

(i) There are no individual readings greater than 10 percent opacity; and

(ii) There are no more than 3 readings of 10 percent for the 1-hour period.

(4) When determining compliance with the fugitive emissions standard for any crusher at which a capture system is not used as described under § 60.672(c) of this subpart, the duration of the Method 9 observations may be reduced from 3 hours (thirty 6-minute averages) to 1 hour (ten 6-minute averages) only if the following conditions apply:

(i) There are no individual readings greater than 15 percent opacity; and

(ii) There are no more than 3 readings of 15 percent for the 1-hour period.

* * * * *

(g) If, after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting any rescheduled performance test required in this section, the owner or operator of an affected facility shall submit a notice to the Administrator at least 7 days prior to any rescheduled performance test.

(h) Initial Method 9 performance tests under § 60.11 of this part and § 60.675 of this subpart are not required for:

(1) wet screening operations and subsequent screening operations, bucket elevators, and belt conveyors that process saturated material in the production line up to, but not including the next crusher, grinding mill or storage bin.

(2) screening operations, bucket elevators, and belt conveyors in the production line downstream of wet mining operations, that process saturated materials up to the first crusher, grinding mill, or storage bin in the production line.

6. Section 60.676 is amended by removing and reserving paragraph (b); revising paragraph (f); revising and redesignating paragraph (g) as paragraph (j); and adding new paragraphs (g), (h) and (i) to read as follows:

§ 60.676 Reporting and recordkeeping.

* * * * *

(b) [Removed and reserved.]

* * * * *

(f) The owner or operator of any affected facility shall submit written reports of the results of all performance tests conducted to demonstrate compliance with the standards set forth in § 60.672 of this subpart, including reports of opacity observations made using Method 9 to demonstrate compliance with § 60.672(b), (c), and (f), and reports of observations using Method 22 to demonstrate compliance with § 60.672(e).

(g) The owner or operator of any screening operation, bucket elevator, or belt conveyor that processes saturated material and is subject to § 60.672(h) and subsequently processes unsaturated materials, shall submit a report of this change within 30 days following such change. This screening operation, bucket elevator, or belt conveyor is then subject to the 10 percent opacity limit in § 60.672(b) and the emission test requirements of § 60.11 and this subpart. Likewise a screening operation, bucket elevator, or belt conveyor that processes unsaturated material but subsequently processes saturated material shall submit a report of this change within 30 days following such change. This screening operation, bucket elevator, or belt conveyor is then subject to the no visible emission limit in § 60.672(h).

(h) The subpart A requirement under § 60.7(a)(2) for notification of the anticipated date of initial startup of an affected facility shall be waived for owners or operators of affected facilities regulated under this subpart.

(i) A notification of the actual date of initial startup of each affected facility shall be submitted to the Administrator.

(1) For a combination of affected facilities in a production line that begin actual initial startup on the same day, a single notification of startup may be submitted by the owner or operator to the Administrator. The notification shall be postmarked within 15 days after such date and shall include a description of each affected facility, equipment manufacturer, and serial number of the equipment, if available.

(2) For portable aggregate processing plants, the notification of the actual date of initial startup shall include both the home office and the current address or location of the portable plant.

(j) The requirements of this section remain in force until and unless the Agency, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In that event, affected facilities within the State will be relieved of the obligation to comply with the reporting requirements of this section, provided that they comply with requirements established by the State.

[FR Doc. 97–14856 Filed 6–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5836–8]

National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions From Wood Furniture Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 7, 1995 (60 FR 62930), the EPA promulgated National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions from Wood Furniture Manufacturing Operations under section 112 of the Clean Air Act (CAA), 42 U.S.C. 7412. The national emission standards for hazardous air pollutants (NESHAP) requires existing and new major sources to control emissions using maximum achievable control technology (MACT) to control hazardous air pollutants. This action revises the definition of wood furniture component in the NESHAP to exclude foam seat cushions not made at a wood furniture manufacturing facility from this definition. The revisions clarify the applicability of the final rule to eliminate potential overlapping requirements with other NESHAP.

DATES: The direct final rule will be effective August 8, 1997 unless significant adverse comments are received by July 9, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) on the proposed changes to the NESHAP to: Air and Radiation Docket and Information Center (6102), Attention, Docket No. A–93–10, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards and the proposed changes, contact Mr. Paul Almodóvar, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–0283. For information regarding the applicability of this action to a particular entity, contact Mr. Robert Marshall, Manufacturing Branch, Office of Compliance, (2223A), U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone (202) 564–7021.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are owners or operators of facilities that are engaged, either in part or in whole, in wood furniture manufacturing operations and that are major sources as defined in 40 CFR Part 63, subpart A, section 63.2. Regulated categories include:

Category	Examples of regulated entities
Industry	Facilities which are manor sources of hazardous air pollutants and manufacture wood furniture or wood furniture components.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that EPA is now aware potentially could be regulated by this action. Other types of entities not listed in the table also could be regulated. To determine whether your facility [company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in section 63.800 of the NESHAP for Wood Furniture Manufacturing Operations that was promulgated in the **Federal Register** on December 7, 1995 (60 FR 62930) and codified at 40 CFR part 63, subpart JJ. If you have questions regarding the applicability of this action to a particular entity, consult Mr. Robert Marshall at the address listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Any significant and timely adverse comments received on any portion of this direct final rule will be addressed in a subsequent final rule based on the proposed rule contained in the Proposed Rules Section of this **Federal Register** that is identical to this direct final rule. If no significant and timely adverse comments are received on this direct final rule, then the direct final rule will become effective August 8, 1997 and no further action will be taken on the parallel proposal published today.

The information presented below is organized as follows:

I. Background
II. Summary of and Rationale for Rule Changes
III. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866
D. Regulatory Flexibility Act
E. Regulatory Review
F. Unfunded Mandates Act
G. Submission to Congress and the General Accounting Office

I. Background

On December 7, 1995 (60 FR 62930), the EPA promulgated the NESHAP for Wood Furniture Manufacturing Operations. These standards were codified as subpart JJ in 40 CFR part 63. These standards established emission limits for, among other things, coating and gluing of wood furniture and wood furniture components. Wood furniture components were defined to include ''seat cushions,'' some of which are made of foam and are manufactured and glued to the wood furniture at the wood furniture manufacturing facility. Others are manufactured off-site at a foam fabrication facility, and provided to the wood furniture manufacturing facility to include with the final wood furniture product.

This action clarifies the applicability of the final rule by revising the definition of ''wood furniture component'' to exclude from this definition, seat cushions manufactured and fabricated at a facility that does not engage in any other wood furniture or wood furniture component manufacturing operations. The manufacture of these foam seat cushions will be subject to a different NESHAP as discussed in more detail below.

II. Summary of and Rationale for Rule Changes

The EPA has revised the definition of ''wood furniture component'' in the Wood Furniture Manufacturing NESHAP to exclude foam seat cushions not made at a wood furniture manufacturing facility from this

definition. The following is the revised definition for wood furniture component:

Wood furniture component means any part that is used in the manufacture of wood furniture. Examples include, but are not limited to, drawer sides, cabinet doors, seat cushions, and laminated tops. However, foam seat cushions manufactured and fabricated at a facility that does not engage in any other wood furniture or wood furniture component manufacturing operation are excluded from this definition.

The EPA is currently developing a separate NESHAP for foam fabricators which will cover facilities that manufacture foam seat cushions at foam fabricating plants for a variety of industries, including wood furniture manufacturers. To avoid duplicative requirements for such facilities, these foam seat cushions are no longer covered by this subpart. This will ensure that these facilities would not be subject to one set of requirements for seat cushions sold to the wood furniture industry and a different set of requirements for seat cushions sold to other industries. However, wood furniture manufacturing facilities that manufacture their foam seat cushions on-site or perform other upholstery operations still will be subject to the emission limits for the application of contact adhesives included in this subpart.

III. Administrative Requirements

A. Docket

Docket A–93–10 is an organized and complete file of all of the information submitted to, or otherwise considered by, the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public to readily identify and locate documents to enable them to participate effectively in the rulemaking process. The contents of the docket serves as the record in case of judicial review (except for interagency review materials) (§ 307(d)(7)(A) of the CAA, 42 U.S.C. 7607(d)(7)(A)).

B. Paperwork Reduction Act

There are no additional information collection requirements contained in these amendments to the final rule. Therefore, approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is not required.

C. Executive Order 12866

Under Executive Order 12866, the EPA is required to determine whether a regulation is ''significant'' and therefore subject to Office of Management and Budget review and the requirements of this Executive Order to prepare a regulatory impact analysis. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is not a ''significant regulatory action'' within the meaning of the Executive Order.

D. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis for this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. This notice makes clarifying amendments to the Wood Furniture Manufacturing Operations NESHAP, including applicability and definitions. These amendments will not place any additional requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

E. Regulatory Review

In accordance with sections 112(d)(6) and 112(f)(2) of the CAA, 42 U.S.C. 7412(d)(6) and 7412(f)(2), this regulation will be reviewed within 8 years of the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods of control, enforceability, improvements in emission control technology and health data, and recordkeeping and reporting requirements.

F. Unfunded Mandates Act

The economic impact analysis performed for the original rule showed that the economic impacts from implementation of the promulgated standards would not be ''significant'' as defined in Executive Order 12866. No changes are being made in these amendments that would increase the economic impacts. The EPA prepared the following statement of the impact of the original rule in response to the requirements of the Unfunded Mandates Reform Act.

There are no Federal funds available to assist State, local, and Tribal governments in meeting these costs. There are important benefits from volatile organic compounds and hazardous air pollutant emission reductions because these compounds have significant adverse impacts on human health and welfare and on the environment. The rule does not have any disproportionate budgetary effects on any particular region of the nation, State, local, or Tribal government, or urban, rural, or other type of community. On the contrary, the rule will result in only a minimal increase in the average product rates (less than 1 percent). Moreover, the rule will not have a material effect on the national economy.

Throughout the regulatory negotiation process prior to issuing the final rule on December 7, 1995, the EPA provided numerous opportunities for consultations with interested parties (e.g., public comment period; opportunity for a public hearing [none was requested]; meetings with industry, trade associations, State and local air pollution control agency representatives, environmental groups, State, local, and Tribal governments, and concerned citizens). Although small governments are not significantly or uniquely affected by this rule, these procedures, as well as additional public conferences and meetings, gave small governments an opportunity to give meaningful and timely input and obtain information, education, and advice on compliance.

Prior to the promulgation of the rule in 1995, the EPA considered several regulatory options. The final rule represents the least costly and least burdensome alternatives currently available for achieving the objectives of section 112 of the CAA. All of the regulatory options selected are based on pollution prevention measures. Finally, after careful consideration of the costs, the environmental impacts, and the comments, the EPA decided that the MACT floor was the appropriate level of control for this regulation.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedures Act (APA), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. §804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Wood furniture manufacturing.

Dated: May 30, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for Part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart JJ—National Emissions Standards for Wood Furniture Manufacturing Operations

2. § 63.801 is amended by revising the definition for ''wood furniture component'' to read as follows:

§ 63.801 Definitions.

* * * * *

Wood furniture component means any part that is used in the manufacture of wood furniture. Examples include, but are not limited to, drawer sides, cabinet doors, seat cushions, and laminated tops. However, foam seat cushions manufactured and fabricated at a facility that does not engage in any other wood furniture or wood furniture component manufacturing operation are excluded from this definition.

* * * * *

[FR Doc. 97–14988 Filed 6–6–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–97–2133 (HM–225)]

Petitions for Reconsideration of Interim Final Rule: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Deferral of decision on petitions for reconsideration of interim final rule; notice of meeting.

SUMMARY: RSPA is deferring action on a decision with respect to two petitions for reconsideration of the interim final rule issued in RSPA Docket HM–225 on February 19, 1997, regarding cargo tank motor vehicles in liquefied compressed gas service, until the agency issues a final rule in that docket. Specifically, the petitions for reconsideration raise issues identical to those raised by commenters to the interim final rule. RSPA is deferring action on the petitions for reconsideration in order to avoid prejudging issues that are more appropriate for resolution in the final rule. RSPA will address the issues raised by petitioners and commenters in a final rule, which it intends to issue prior to August 15, 1997, the expiration date of the interim final rule.

RSPA is also holding a public meeting on June 23, 1997, in Washington, DC, at the request of several interested parties, to discuss the interim final rule requirements and long-term solutions to the cargo tank emergency discharge control system issue.

DATES: The public meeting will be held on June 23, 1997, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation (Room 2230, Nassif Building), 400 7th Street, S.W., Washington, D.C. 20590–0001.

FOR FURTHER INFORMATION CONTACT: Nancy E. Machado, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington D.C. 20590–0001, telephone 202–366–4400.

SUPPLEMENTARY INFORMATION: On February 19, 1997, RSPA published an emergency interim final rule (IFR) in RSPA Docket HM–225 (62 FR 7638, Feb. 19, 1997). The IFR amended the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180, to specify the conditions under which certain cargo tank motor vehicles may continue to be used on an interim basis, even if not equipped with emergency discharge control systems required by the HMR. The IFR specifically addresses MC 330, MC 331 and certain non-specification cargo tank motor vehicles used to deliver propane and other liquefied compressed gases.

The IFR was issued after the discovery of a safety deficiency affecting many of the cargo tank motor vehicles at issue and RSPA's denial of two emergency petitions for exemption from the HMR's emergency discharge control requirements. The IFR was intended as an alternative means of compliance with the HMR requirements. The intended effect of the IFR was to ensure, on an interim basis, an acceptable level of safety for delivery of liquefied compressed gases while a permanent solution to the problem was developed and implemented.

In the IFR, RSPA gave notice of a public meeting and two public workshops scheduled to gather information and allow comment on the IFR requirements. In the IFR, RSPA also solicited comments and data on the costs and effectiveness of alternative means of achieving a level of safety for the long term comparable to that provided by the current HMR requirements. Also, RSPA solicited comments on the costs and benefits of the interim measures adopted under the IFR. During the comment period, which closed on April 21, 1997, RSPA received over 40 comments from industry.

Also, on March 21, 1997, RSPA received a petition for reconsideration of the IFR from the National Propane Gas Association, on behalf of its members, and a petition for reconsideration jointly filed by Ferrellgas, L.P., Suburban Propane, L.P., AmeriGas Propane, L.P., Agway Petroleum Corporation and Cornerstone Propane Partners, L.P. Petitioners specifically request that RSPA reconsider the additional attendance requirement, which they believe effectively mandates that two or more attendants travel to and be present during the unloading of propane gas from a cargo tank motor vehicle. They assert that the high cost of compliance with the additional requirement is not supported by the safety record for

propane gas delivery, and they provided some cost and safety data to support their views. A significant number of commenters to the IFR also raised identical issues, and several provided cost and safety data. These same issues were among the topics raised by participants in the public meeting and the two public workshops.

RSPA did not respond to the petitions for reconsideration prior to the close of the comment period in order not to prejudge the additional attendance requirement issue before all interested parties had an opportunity to comment on the IFR requirements. Because of the fast-approaching expiration date of the IFR, the need to take further regulatory action to ensure an acceptable level of safety is maintained during the delivery of liquefied compressed gases, and the identical nature of the issues raised by petitioners and commenters alike, RSPA finds that it is impracticable to issue a decision on the petitions for reconsideration prior to issuance of a final rule in RSPA docket HM–225. Consequently, RSPA will address the issues raised by petitioners and commenters regarding the IFR requirements in a final rule that it intends to issue prior to the expiration date of the IFR. Shortly thereafter, RSPA intends to issue a notice of proposed rulemaking to address broader issues raised during the course of this rulemaking, including the ''unobstructed view'' requirement in 49 CFR 177.834(I) and the need for hose maintenance requirements.

RSPA is issuing this document in accordance with 49 CFR 106.37(b).

Issued in Washington, DC on June 3, 1997.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–14900 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: June 9, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted May 21, 1997, and released May 30, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 295A and adding Channel 293C1 at La Junta, and by removing Channel 276C2 and adding Channel 276C1 at Limon.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 226C3 and adding Channel 226A at Warrenton.

4. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 249A and adding Channel 249C3 at Ottumwa.

5. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 224A and adding Channel 224C2 at Albion.

6. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 265C2 and adding Channel 265C3 at Sulphur.

7. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 244C1 and adding Channel 244C2 at Hot Springs.

8. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 232A and adding Channel 232C2 at Comanche, and by removing Channel 257C3 and adding Channel 257C2 at Linden.

9. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 271A and adding Channel 271C3 at Elma, and by removing Channel 270C3 and adding Channel 270C2 at Medical Lake.

10. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 288A and adding Channel 288C3 at Laramie.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–14800 Filed 6–6–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–117; Amdt. 195–57]

RIN 2137–AC87

Low-Stress Hazardous Liquid Pipelines Serving Plants and Terminals

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: This final rule excludes from RSPA's safety regulations for hazardous liquid [1] pipelines (1) low-stress pipelines [2] regulated for safety by the U.S. Coast Guard; and (2) low-stress pipelines less than 1 mile long that serve certain plants and transportation terminals without crossing an offshore area or a waterway currently used for commercial navigation. RSPA previously stayed enforcement of the regulations against these pipelines to mitigate compliance difficulties that did not appear warranted by risk. The rule change conforms the regulations with this enforcement policy.

DATES: This direct final rule is effective October 7, 1997. If RSPA does not receive any adverse comment or notice

[1] ''Hazardous liquid'' means petroleum, petroleum products, or anhydrous ammonia.

[2] ''Low-stress pipeline'' means a hazardous liquid pipeline that is operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength (SMYS) of the line pipe.

of intent to file an adverse comment by August 8, 1997 the rule will become effective on the date specified. RSPA will issue a subsequent notice in the **Federal Register** by September 8, 1997 after the close of the comment period to confirm that fact and reiterate the effective date. If an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact and RSPA would withdraw the direct final rule in whole or in part. RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U. S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202)366–4559, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

When RSPA's safety regulations for hazardous liquid pipelines (49 CFR part 195) were first published, the regulations did not apply to low-stress pipelines (34 FR 15473, Oct. 4, 1969). Because of their generally low operating pressures, low-stress hazardous liquid pipelines were thought to pose little risk to public safety.

In recent years, however, during a time of increased environmental awareness, critical accidents involving low-stress pipelines led Congress to restrict DOT's discretion to except these lines from regulation. The most prominent accident was the January 1990 spill of approximately 500,000 gallons of heating oil from an underwater Exxon pipeline into the Arthur Kill, a navigable waterway that separates Staten Island from New Jersey. Three years earlier, a 5,000-gallon spill of jet fuel on the Kinley pipeline in Iowa threatened the Missouri River. Both pipelines would have been covered by part 195 had there not been the low-stress exception. So, in an amendment to the pipeline safety laws, Congress directed the Secretary of Transportation not to provide an exception from regulation for a hazardous liquid pipeline facility only because the facility operates at low internal stress (49 U.S.C. 60102(k)).

In response to this change in the law, RSPA extended the part 195 regulations to cover certain low-stress pipelines of higher risk (Docket No. PS–117; 59 FR 35465, July 12, 1994). Except for onshore rural gathering lines and gravity-powered lines, the following categories of low-stress pipelines were brought under the regulations: Pipelines that transport highly volatile liquids, pipelines located onshore and outside rural areas, pipelines located offshore, and pipelines located in waterways that are currently used for commercial navigation (§ 195.1(b)(3)). Because the rulemaking record showed that many low-stress pipelines probably were not operated and maintained consistent with part 195 requirements, operators were allowed to delay compliance of their existing lines until July 12, 1996 (§ 195.1(c)).

II. Interfacility Transfer Lines

A. Description

The largest proportion of low-stress pipelines brought under part 195 consisted of interfacility transfer lines (about two-thirds of the pipelines and one-third of the overall mileage). The remainder included trunk lines and certain gathering lines.

Interfacility transfer lines move hazardous liquids locally between facilities such as truck, rail, and vessel transportation terminals, manufacturing plants, petrochemical plants, and oil refineries, or between these facilities and associated storage or long-distance pipeline transportation.[3] The lines usually are short, averaging about a mile in length. Typically they are operated in association with other transfer piping on the grounds of the plants and terminals they serve. However, some interfacility transfer lines that deliver hazardous liquids to plants or terminals from long-distance pipelines may be operated by the long-distance pipeline operators.

B. Related Federal Regulations

Segments of interfacility transfer lines located on the grounds of industrial plants and transportation terminals are subject to the Process Safety Management regulations of the Occupational Safety and Health Administration (OSHA) (29 CFR 1910.119). These regulations, which involve hazard analysis and control, operating and maintenance procedures, and personnel training, are intended to reduce the risk of fires and explosions caused by the escape of hazardous chemicals from facility processes.

Although on-grounds segments of interfacility transfer lines generally are excepted from part 195 (§ 195.1(b) (6) and (7)),[4] the on-grounds segment and regulated off-grounds segment of a line function together as a unit. Thus, OSHA's Process Safety Management regulations, though applicable only to on-grounds segments, affect the operation of off-grounds segments. And, similarly, compliance with part 195 for off-grounds segments affects operation of the unregulated on-grounds segments.

In addition, transfer lines between vessels and marine transportation-related facilities are subject to safety regulations of the U.S. Coast Guard (33 CFR parts 154 and 156). The Coast Guard applies these regulations to transfers of hazardous liquid from the dock loading arm or manifold up to the first valve after the line enters the Spill Prevention Control and Countermeasure (SPCC) containment or secondary containment if the facilities are not protected by SPCC plans.

C. Compliance Difficulties and Risk

Information we received in response to Notice 1 of Docket PS–117 (55 FR 45822, Oct. 31, 1990) showed that bringing interfacility transfer lines into full compliance with part 195 would be difficult for many operators. The primary difficulty is that their lines are not installed and operated on the basis of Part 195 standards. For example, considering the short length and low operating stress of the lines, additional pipe wall thickness is often used instead of cathodic protection to resist expected corrosion. But, regardless of this feature, under part 195, cathodic protection systems would have to be developed and installed as required. Other part 195 requirements that may not bring commensurate benefits for short, low-stress transfer lines involve modification of operations and maintenance manuals, installation of pressure control equipment, and establishment of programs to carry out drug and alcohol rules under 49 CFR part 199. Also, operating personnel would have to be trained to carry out part 195 requirements.

[3] The interfacility transfer lines did not include piping that connect high-stress pipelines with surge tanks located at plants and terminals. This piping was already subject to the part 195 regulations as part of the pipeline systems for which the tanks relieve surges.

[4] Segments of interfacility transfer lines on plant or terminal grounds are subject to part 195 if the segment connects a regulated pipeline (including off-grounds segments of interfacility transfer lines) to a surge tank or other device necessary to control the operating pressure of the regulated pipeline.

After publication of the Final Rule in Docket PS–117, we learned about another significant compliance difficulty. Transfer line operators and their representatives said that coping with the separate federal regulatory regimes of RSPA, OSHA, and the Coast Guard over transfer lines was a strain on resources. As explained above, OSHA's Process Safety Management regulations and RSPA's Part 195 standards have an overlapping effect on operation of interfacility transfer lines. This overlap results in analogous administrative costs for records, procedures, and manuals. Worse yet it creates opportunities for mistakes when operating personnel have to meet different requirements with similar objectives.

For transfers between vessels and marine transportation-related facilities, the Coast Guard safety regulations compound the RSPA–OSHA overlap problem. Moreover, application of part 195 to these marine terminal transfer lines duplicates agency efforts within DOT. It also leaves the industry uncertain which DOT safety standards apply to particular facilities. So the upshot of these separate regulatory regimes of RSPA, OSHA, and the Coast Guard is not only the added costs of meeting separate requirements directed at similar safety objectives, but also possible confusion of operating personnel.

The low-stress pipeline regulations also present RSPA and its cooperating State agencies with related compliance difficulties. Carrying out adequate compliance inspections on interfacility transfer lines would require a significant increase in resources. We estimate that about 11,000 miles of low-stress pipelines are now under part 195, with over a third of the mileage composed of short interfacility transfer lines. Just the job of finding and educating the many operators of these short lines would likely be a major, protracted effort.

We weighed these industry and government compliance difficulties against the need for risk reduction on low-stress interfacility transfer lines. Our conclusion: The potential benefits of complying with part 195 do not justify the compliance difficulties if the line is short and does not cross an offshore area or a commercially navigable waterway, or if the line is regulated by the Coast Guard. There were several reasons for this decision. First, RSPA's pipeline safety data do not show that short interfacility transfer lines have been a source of significant safety problems. Another reason was that the low operating hoop stress of interfacility transfer lines is itself a safeguard against several accident causes. And, from the consequence perspective, a short length means the potential spill volume would be limited should an accident occur. Also, public exposure is typically limited in the industrial areas where most low-stress transfer lines are located. For marine transfer lines, the risk is reduced even further by the Coast Guard regulations and inspection force. At the same time, except for Coast Guard regulated lines, the potential of transfer lines located offshore or in commercially navigable waterways to cause environmental harm tipped the scale toward continued compliance with part 195.

D. Stay of Enforcement

In view of the above considerations, we became concerned that the continued application of part 195 to Coast Guard regulated lines and other short interfacility transfer lines not crossing an offshore area or a navigable waterway was not in the public interest. Consequently, we announced a stay of enforcement of part 195 against these lines (61 FR 24245; May 14, 1996). The stay applies to low-stress pipelines that are regulated by the Coast Guard or that extend less than 1 mile outside plant or terminal grounds without crossing an offshore area or any waterway currently used for commercial navigation. The stay will remain in effect until modified or until the part 195 regulations are finally revised as a result of the present action.

Since announcement of the stay, we have not received any request to lift it. More important, last year we explained this new enforcement policy at two public meetings of the Technical Hazardous Liquid Pipeline Safety Advisory Committee, a statutory panel that reviews RSPA's pipeline safety program. We also explained our plan to revise the part 195 regulations to match the new policy. Neither the Committee members nor the public attendees raised any objection to the enforcement policy or planned rule change. Further, State agencies who cooperate with RSPA in enforcing safety standards over interfacility transfer lines have not objected to the stay.

E. The Rule Change

The present rulemaking action removes from the application of part 195 those low-stress interfacility transfer lines that are covered by the stay of enforcement. This rule change is achieved by revising § 195.1(b)(3) as set forth below. Besides the low-stress pipelines covered by the stay, revised § 195.1(b)(3) continues to exclude from part 195 the low-stress pipelines that were already excluded before the present action.

To make this rule change, rather than first publish a notice of proposed rulemaking as contemplated in the stay of enforcement, we are using the direct final rule procedure under 49 CFR 190.339. This new rulemaking procedure was not yet in effect when the stay was announced. Although this procedure does not provide for prior public notice and opportunity for comment, interested persons may participate as explained above under the ''Effective date'' heading. A direct final rule is appropriate in this case because, based on the history of the stay of enforcement, we believe the rule change is not controversial, is in the public interest, and is not likely to draw adverse comment.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this action to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). Therefore, OMB has not reviewed this final rule document. DOT does not consider this action significant under its regulatory policies and procedures (44 FR 11034; February 26, 1979).

RSPA prepared a study of the costs and benefits of the Final Rule that extended part 195 to cover certain low-stress pipelines (Final Regulatory Evaluation, Docket No. PS–117). That study, which encompassed short or Coast Guard regulated interfacility transfer lines, showed that the Final Rule would result in net benefits to society, with a benefit to cost ratio of 1.5.

The Final Regulatory Evaluation determined costs and benefits of the Final Rule on a mileage basis. But while costs were evenly distributed, most of the expected benefits were projected from accident data that did not involve short or Coast Guard regulated interfacility transfer lines. So, since the present action affects only these lines, it is reasonable to believe the action will reduce more costs than benefits. Thus, the present action should enhance the net benefits of the Final Rule. Because of this likely economic effect, a further regulatory evaluation of the Final Rule in Docket No. PS–117 or of the present action is not warranted.

B. Regulatory Flexibility Act

Low stress interfacility transfer lines covered by the present action are associated primarily with the operation

of refineries, petrochemical and other industrial plants, and materials transportation terminals. In general, these facilities are not operated by small entities. Nonetheless, even if small entities operate low-stress interfacility transfer lines, their costs will be lower because this action reduces compliance burdens. Therefore, based on the facts available about the anticipated impact of this rulemaking action, I certify, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12612

RSPA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 (52 FR 41685). RSPA has determined that the action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Paperwork Reduction Act

This action reduces the pipeline mileage and number of operators subject to part 195. Consequently, it reduces the information collection burden of part 195 that is subject to review by OMB under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of part 195 through May 31, 1999 (OMB No. 2137–0047).

List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR part 195 as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. In § 195.1, the introductory text of paragraph (b) is republished, and paragraph (b)(3) is revised to read as follows:

§ 195.1 Applicability.

* * * * *

(b) This part does not apply to—

* * * * *

(3) Transportation through the following low-stress pipelines:

(i) An onshore pipeline or pipeline segment that—

(A) Does not transport HVL;

(B) Is located in a rural area; and

(C) Is located outside a waterway currently used for commercial navigation;

(ii) A pipeline subject to safety regulations of the U.S. Coast Guard; and

(iii) A pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than 1 mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation;

* * * * *

Issued in Washington, D.C., on June 4, 1997.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 97–14999 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards

CFR Correction

In title 49 of the Code of Federal Regulations, parts 400 to 999, revised as of October 1, 1996, in § 571.108 in paragraph S8.9 the last sentence should be removed and the following sentence reinstated and in paragraph S9 the last sentence should be revised. The reinstated and revised text should read as follows:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S8.9 Sealing. * * * If any water occurs on the interior or air escapes, the lamp is not a sealed lamp.

* * * * *

S9 Deflection test for replaceable light source. * * * Distance 'A' for a replaceable light source other than an HB Type shall be the dimension provided in accordance with Appendix A of part 564 of this chapter, section I.A.1 if the light source has a lower beam filament, or as specified in section I.B.1 if the light source has only an upper beam filament.

* * * * *

[FR Doc. 97–5555 Filed 6–6–97; 8:45 am]

BILLING CODE 1505–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 900833–1095; I.D. 052997D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Halibut and Red King Crab Bycatch Rate Standards for the Second Half of 1997

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

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 1997. Publication of these bycatch rate standards is required under regulations implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards for vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 1, 1997, through 2400 hours, A.l.t., December 31, 1997. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., June 30, 1997.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel; or be delivered to 709 West 9th Street, Federal Building, Room 401, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutians Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and are implemented by regulations

governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and ''other trawl'' fisheries, and the BSAI yellowfin sole and ''bottom pollock'' fisheries. Vessel operators also may not exceed red king crab bycatch standards specified for the BSAI yellowfin sole and ''other trawl'' fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. For purposes of calculating vessel bycatch rates under the incentive program, 1997 fishing months were specified in the **Federal Register** on December 16, 1996 (61 FR 65989).

Halibut and red king crab bycatch rate standards for the first half of 1997 also were published in the **Federal Register** (61 FR 65989, December 16, 1996). As required by § 679.21(f)(3) and (4), the Administrator, Alaska Region, NMFS (Regional Administrator), has established the bycatch rate standards for the second half of 1997 (July 1 through December 31). These standards were recommended by the Council at its April 1997 meeting and are set out in Table 1. The bycatch rate standards are based on the following information:

1. Previous years' average observed bycatch rates;

2. Immediately preceding season's average observed bycatch rates;

3. The bycatch allowances and associated fishery closures specified under § 679.21(d) and (e);

4. Anticipated groundfish harvests;

5. Anticipated seasonal distribution of fishing effort for groundfish; and

6. Other information and criteria deemed relevant by the Regional Administrator.

TABLE 1. BYCATCH RATE STANDARDS BY FISHERY FOR THE SECOND HALF OF 1997 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

Fishery	Bycatch rate standard
Halibut bycatch rate standards (kilogram of halibut/metric ton of groundfish catch)	
BSAI Midwater pollock	1.0
BSAI Bottom pollock	5.0
BSAI Yellowfin sole	5.0
BSAI Other trawl	30.0
GOA Midwater pollock	1.0
GOA Other trawl	40.0
Zone 1 red king crab bycatch rates standards (number of crab/metric ton of groundfish catch)	
BSAI yellowfin sole	2.5
BSAI Other trawl	2.5

Bycatch Rate Standards for Pacific Halibut

The halibut bycatch rate standards for the July 1–December 31, 1997 trawl fisheries are unchanged from those implemented for the July 1–December 31, 1996 trawl fisheries. The Regional Administrator based standards for the second half of 1997 on anticipated seasonal fishing effort for groundfish species and 1993–1997 halibut bycatch rates observed in the trawl fisheries included under the incentive program. In determining these bycatch rate standards, the Regional Administrator recognized that directed fishing for BSAI Pacific cod by catcher vessels using trawl gear is closed for the remainder of the year (62 FR 24058, May 2, 1997). Directed fishing for Pacific cod and flatfish species in Bycatch Limitation Zone 1 (Zone 1) by vessels using trawl gear also is closed because 1997 bycatch allowances of *Chionoecetes bairdi* Tanner crab specified for these fisheries have been reached (62 FR 10479, March 7, 1997; 62 FR 22896, April 28, 1997; 62 FR 27210, May 19, 1997). Given the present status of halibut bycatch in the yellowfin sole fishery, the Regional Administrator anticipates that the third seasonal allowance for this fishery will be reached by mid June (62 FR 16112, April 4, 1997. The fishery will remain closed until August 15 when the remainder of its halibut bycatch allowance becomes available. The Regional Administrator also considered the September 1 opening date of the 1997 Bering Sea pollock non-roe season (§ 679.23(e)(2)).

Directed fishing for GOA groundfish by vessels using trawl gear other than pelagic trawl gear is closed until July 1 (62 FR 25138, May 8, 1997), when the third seasonal allowance of Pacific halibut bycatch specified for the deep water and shallow water fisheries becomes available (62 FR 8179, February 24, 1997).

The halibut bycatch rate standards for the BSAI yellowfin sole and ''bottom pollock'' trawl fisheries are each set at 5 kilogram (kg) halibut/metric ton (mt) of groundfish. These standards approximate the average annual rates observed on trawl vessels participating in these fisheries since 1992.

The halibut bycatch rate standard for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. This standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut bycatch restrictions at § 679.21 prohibit directed fishing for pollock by vessels using non-pelagic trawl gear.

A bycatch rate standard of 30 kg halibut/mt of groundfish is established for the BSAI ''other trawl'' fishery. This standard has remained unchanged since 1992. A bycatch rate standard of 40 kg halibut/mt of groundfish is established for the GOA ''other trawl'' fishery, which is unchanged since 1994. The considerations that support these bycatch rate standards for the ''other trawl'' fisheries are unchanged from previous years and are discussed in the **Federal Register** publications of 1995 bycatch rate standards (60 FR 2905, January 12, 1995, and 60 FR 27425, May 24, 1995).

Observer data collected from the 1996 GOA ''other trawl'' fishery show average third and fourth quarter halibut bycatch rates of 25 and 47 kg halibut/mt of groundfish, respectively. The first quarter rate from 1997 was lower, at 20 kg halibut/mt of groundfish. Observer data from the 1996 BSAI ''other trawl'' fishery show third and fourth quarter halibut bycatch rates of 6 and 12 kg halibut/mt of groundfish, respectively. The first quarter rate from the 1997 BSAI ''other trawl'' fishery was 6 kg halibut/mt of groundfish.

Bycatch Rate Standards for Red King Crab

The red king crab bycatch rate standard for the yellowfin sole and ''other trawl'' fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the second half of

1997. This standard has remained unchanged since 1992.

The red king crab savings area in Zone 1 is closed to directed fishing for groundfish by vessels using trawl gear other than pelagic trawl gear (§ 679.22(a)(3)). This closure is effective for the remainder of 1997 and has limited the number of red king crab taken in the Zone 1 trawl fisheries. Through May 10, 1997, the rock sole/flathead sole/other flatfish fishery category had taken 75 percent of its annual red king crab bycatch allowance. The Pacific cod and yellowfin sole fisheries have taken only 25 percent and 38 percent, respectively, of their bycatch allowances. As a result, NMFS does not anticipate that the red king crab bycatch allowances specified for the 1997 trawl fisheries (62 FR 7168, February 18, 1997) will be reached. Furthermore, red king crab bycatch rates should remain low given that the intensive flatfish and Pacific cod trawl fisheries in Zone 1 are closed for the remainder of the year. Nonetheless, as in past years, the Regional Administrator is maintaining the 2.5 red king crab/mt of groundfish bycatch rate standard to support any exploratory fishing in Zone 1 by vessel operators attempting to avoid relatively high halibut and *C. bairdi* bycatch rates typically experienced in other areas of the BSAI.

The Regional Administrator has determined that the bycatch rate standards set out in Table 1 are appropriately based on the information and considerations necessary for such determinations under § 679.21(f)(4). These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Administrator, pending his consideration of the information set forth at § 679.21(f)(4).

Classification

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

Authority: 16 U.S.C. 773 *et seq.*,1801 *et seq.*

Dated: June 2, 1997.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries.

[FR Doc. 97–14920 Filed 6–6–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 052397B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Apportionment of Reserve

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

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS is apportioning reserve to certain target species in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow for ongoing harvest and account for previous harvest of the total allowable catch (TAC). It is intended to promote the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective June 4, 1997. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, June 24, 1997.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th Street, room 453, Juneau, AK 99801 or P.O. Box 21668, Juneau, AK 99802–1668, Attention: Lori Gravel.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Administrator, Alaska Region, NMFS, has determined that the initial TACs specified for Greenland turbot in the Bering Sea subarea and shortraker/rougheye rockfish in the Aleutian Islands subarea need to be supplemented from the non-specific reserve in order to continue operations and account for prior harvest.

Therefore, in accordance with § 679.20(b)(3)(i)(A), NMFS is apportioning from the reserve to the TAC for the following species: Bering Sea subarea - 905 metric tons (mt) of Greenland turbot; Aleutian Islands subarea - 141 mt of shortraker/rougheye rockfish.

These apportionments are consistent with § 679.20(a)(2) and do not result in overfishing of a target species because the revised TACs are equal to or less than specifications of acceptable biological catch.

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, has determined, under section 553(b)(B) and (d)(3) of the Administrative Procedure Act and 50 CFR 679.20(b)(3)(iii)(A), that good cause exists for waiving the opportunity for public comment and the 30-day delayed effectiveness period for this action. Fisheries are currently taking place that will be supplemented by this apportionment. Delaying the implementation of this action would be disruptive and costly to these ongoing operations.

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

Dated: June 2, 1997.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–14923 Filed 6–4–97; 10:18 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 110
Monday, June 9, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–18–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CT58 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company CT58 series turboshaft engines. This proposal would require removal from service of certain stage 1 and 2 forward cooling plates, and stage 2 aft cooling plates, and replacement with serviceable parts. This proposal is prompted by reports of certain cooling plates forged with contaminated alloy that could reduce the lives of the parts. The actions specified by the proposed AD are intended to prevent cooling plate fracture, which could result in a contained engine failure, and an inflight engine shutdown.

DATES: Comments must be received by August 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–18–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Company (GE), 1000 Western Ave., Lynn, MA 01909; telephone (671) 594–9894, fax (617) 594–1527. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7134, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–18–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–18–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of certain stage 1 and stage 2 forward cooling plates and stage 2 aft cooling plates, installed on General Electric Company (GE) Models CT58–110–1, –110–2, –140–1, –140–2, and T58–GE–3/–5/–8F/–10/–100 turboshaft engines, forged with contaminated alloy that could reduce the lives of the parts. Iron-rich inclusions were found in forgings produced by a vendor using A286 material. These inclusions were first found on parts from two heat lots during the normal Vacuum Induction Melt (VIM) in-process macroetch inspections. The parts from these two heat lots were then scrapped. Corrective actions to the VIM process were implemented to prevent the reoccurrence of iron-rich inclusions. Records of all heat lots produced from this vendor prior to the implementation of the corrective actions, totaling 56 heat lots, were reviewed. Twenty five out of the 56 heat lots were determined to be potentially contaminated. Approximately 300 GE CT58 cooling plates were produced from one potentially contaminated heat lot. A retired cooling plate from this suspected heat lot was macroetch inspected and was found with an inclusion. This condition, if not corrected, could result in cooling plate fracture, which could result in a contained engine failure, and an inflight engine shutdown.

The FAA has reviewed and approved the technical contents of GE Aircraft Engines CT58 Service Bulletin (SB) No. 72–188 (CEB–293), dated March 25, 1997, that describes procedures for removal from service of certain stage 1 and 2 forward cooling plates, and stage 2 aft cooling plates, and replacement with serviceable parts.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal from service of certain stage 1 and 2 forward cooling plates, and stage 2 aft cooling plates, and replacement with serviceable parts. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 400 engines of the affected design in the worldwide fleet. The FAA estimates that 126 engines installed on aircraft of U.S. registry would be affected by this proposed AD, and that it would not take any additional work hours per engine to accomplish the proposed actions at next part exposure. Required parts would cost approximately $2,730 per engine, based on the estimated current part cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $343,980. The manufacturer, however, has advised the FAA of a program to prorate the cost of required parts downward by a factor equal to the quotient of the difference between the original life limit of 4,000 hours time in service and the total cycles of life consumed at time of removal, divided by the original life limit. Therefore, the actual cost to operators may be less than the FAA's estimate.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. 97–ANE–18–AD.

Applicability: General Electric Company (GE) Models CT58–110–1, –110–2, –140–1, and –140–2 , and T58–GE–3/–5/–8F/–10/–100 series turboshaft engines, with stage 1 forward cooling plate, Part Number (P/N) 37C300055P101, stage 2 forward cooling plate, P/N 3000T88P02, and stage 2 aft cooling plate, P/N 3002T27P01, installed. These engines are installed on but not limited to Boeing Vertol 107 series, and Sikorsky S61 and S62 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cooling plate fracture, which could result in a contained engine failure and an inflight engine shutdown, accomplish the following:

(a) Remove from service affected cooling plates, listed by serial number in GE Aircraft Engines CT58 Service Bulletin (SB) No. 72–188 (CEB–293), dated March 25, 1997, and replace with serviceable parts, at the next part exposure, or next light overhaul, whichever occurs first, but not to exceed 1,000 hours time in service (TIS) for engines installed on aircraft that have engaged in Repetitive Heavy Lift (RHL) operations, or 2,000 hours TIS for engines installed on aircraft that have never engaged in RHL operations, in accordance with that SB.

(b) For the purpose of this AD, the following definitions apply:

(1) RHL operation is defined as performing more than 10 lift-carry-drop cycles per hour TIS without landing, or more than 10 takeoffs and landings per hour TIS.

(2) Light overhaul is defined as scheduled engine maintenance that allows the engine to continue in service until scheduled major overhaul time is reached.

(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, Engine Certification Office. The request shall be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

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

Issued in Burlington, Massachusetts, on May 27, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–14957 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AWP–33]

Proposed Amendment of Class E Airspace; Salyer Farms, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Salyer Farms, CA. The development of a Special Global Positioning System (GPS) Runway (RWY) 32 Standard Instrument Approach Procedure (SIAP) at Salyer Farms Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Salyer Farms Airport, Corcoran, CA.

DATES: Comments must be received on or before July 14, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–33, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours

at the Office of the Manager, Operations Branch, Air Traffic Division, at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AWP–33.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date of comments. A report summarizing each substantive contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Salyer Farms, CA. The development of a Special GPS SIAP at Salyer Farms Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the Special GPS RWY 32 SIAP at Salyer Farms, Corcoran, CA. Class E airspace area designations are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AWPCA E5 Salyer Farms, CA [Revised]

Salyer Farms Airport, CA
(Lat. 36°05′20″ N, long. 119°32′33″ W)
Salyer Farms Radio Beacon
(Lat. 36°05′05″ N, long. 119°32′43″ W)
El Rico Airport, CA
(Lat. 36°02′45″ N, long. 119°38′48″ W)

That airspace extending upward from 700 feet above the surface with a 6.6-mile radius of Salyer Farms Airport and within 2 miles each side of the 151° bearing from the Salyer Farms Radio Beacon extending from the 6.6-miles radius to 8.3 miles southeast of the Radio Beacon, excluding that airspace within a 1-mile radius of El Rico Airport.

* * * * *

Issued in Los Angeles, California, on May 27, 1997.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–14981 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–12]

Proposed Revision of Class E Airspace; Marysville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; reopening of the comment period and correction.

SUMMARY: This action corrects an error in the airspace description and reopens the comment period for a notice of proposed rulemaking, published in the **Federal Register** on March 21, 1997, (62 FR 13563), Airspace Docket No. 97–AWP–12, proposing a revision of Class E airspace at Marysville, CA.

DATES: Comments must be received on or before July 9, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 97–AWP–12, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–7224, Airspace Docket No. 97–AWP–12, published on March 21, 1997 (62 FR 13563), proposed to revise the description of the Class E airspace at Marysville, CA. An error was discovered in the airspace description for the Marysville, CA, Class E airspace area. This action corrects that error and REOPENS the comment period until July 9, 1997.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Reopening of Comment Period

The comment period closing date on Airspace Docket No. 97–AWP–12 is hereby reopened until July 9, 1997.

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

Correction to Notice of Proposed Rulemaking

Accordingly, pursuant to the authority delegated to me, the airspace description for the Class E airspace area at Marysville, CA, as published in the **Federal Register** on February 21, 1997, (62 FR 13563), (Federal Register Document p. 13564, column 1), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AWP CA E5 Marysville, CA [Corrected]

Marysville Yuba County Airport, CA
(Lat. 39°05′52″ N, long. 121°34′11″ W)
Marysville Beale AFB, CA
(Lat. 39°08′10″ N, long. 121°26′12″ W)
Marysville Beale AFB TACAN
(Lat. 39°08′05″ N, long. 121°26′26″ W)
Marysville VOR/DME
(Lat. 39°05′55″ N, long. 121°34′23″ W)
Mustang VORTAC
(Lat. 39°31′53″ N, long. 119°39′22″ W)
Lincoln Municipal Airport, CA
(Lat. 38°54′33″ N, long. 121°21′05″ W)
Sierraville Dearwater Airport, CA
(39°34′52″ N, long. 120°21′16″ W)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of Beale AFB and 2 miles each side of a 345° bearing from the Lincoln Municipal Airport and within a 7-mile radius of Yuba County Airport and within 7.8 miles west and 4.3 miles east of Beale AFB TACAN 342° radial extending from the Beale AFB 8.7-mile radius to 25 miles northwest of the Beale AFB TACAN and within 7 miles west and 4.3 miles east of the Marysville VOR 343° radial, extending from the Yuba County Airport 7-mile radius to 10.4 miles northwest of the Marysville VOR and within 7 miles southwest and 4.3 miles northeast of the Marysville VOR 153° radial extending from the Yuba County Airport 7-mile radius to 10.4 miles southeast of the Marysville VOR. That airspace extending upward from 1,200 feet above the surface bounded on the east by a line extending from lat. 40°00′00″ N, long. 120°30′04″ W; to lat. 39°30′00″ N, long. 120°30′04″ W; to lat. 39°30′00″ N, long. 120°19′04″ W; to lat. 39°07′00″ N, long. 120°19′04″ W; thence counterclockwise via the 39.1-mile radius of the Mustang VORTAC to lat. 39°00′00″ N; thence via lat. 39°00′00″ N, to the west boundary of V–23; thence bounded on the west by the west boundary of V–23, on the northwest by the Red Bluff, CA Class E airspace area, and on the north by lat. 40°00′00″ N, excluding the Truckee, CA Class E airspace area. That airspace extending upward from 8,500 feet MSL bounded on the south by lat. 40°00′00″ N, on the west and northwest by the Red Bluff, CA and Maxwell, CA Class E airspace areas, on the north by lat. 40°45′00″ N, and on the east by a line extending from lat. 40°45′00″ N, long. 121°39′04″ W; to lat. 40°23′00″ N, long. 121°39′04″ W; to lat. 40°23′00″ N, long. 121°25′04″ W; to lat. 40°00′00″ N, long. 121°25′04″ W. That airspace extending upward from 10,500 feet MSL bounded on the east by long. 120°19′04″ W; on the south by a line extending from lat. 39°30′00″ N, long. 120°19′04″ W; to lat. 39°30′00″ N, long. 120°30′04″ W; to lat. 40°00′00″ N, long. 120°30′04″ W; to lat. 40°00′00″ N, long. 121°25′04″ W; on the west by long. 121°25′04″ W, and on the north by lat. 40°45′00″ N, excluding the Truckee, CA Class E airspace area. That airspace extending upward from 12,500 feet MSL bounded on the east by long. 121°25′04″ W; on the south by lat. 40°23′00″ N, on the west by long. 121°39′04″ W; and on the north by lat. 40°45′00″ N.

* * * * *

Issued in Los Angeles, California, on May 27, 1997.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–14980 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–3]

Proposed Establishment of Class E Airspace; South Lake Tahoe, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at South Lake Tahoe, CA. The development of a Global Positioning System (GPS) Runway (RWY) 18 Standard Instrument Approach Procedure (SIAP) at Lake Tahoe Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Lake Tahoe Airport, South Lake Tahoe, CA.

DATES: Comments must be received on or before July 25, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 97–AWP–3, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AWP–3.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at South Lake Tahoe, CA. The development of a GPS SIAP to Lake Tahoe Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 18 SIAP at Lake Tahoe Airport, South Lake Tahoe, CA. Class E airspace area designations are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AWP CA E5 South Lake Tahoe, CA [New]

Lake Tahoe Airport, CA
(Lat. 38°53′38″N, long. 119°59′43″W)

That airspace extending upward from 700 feet above the surface with a 6-mile radius of Lake Tahoe Airport and within 2 miles each side of 008° bearing from Lake Tahoe Airport extending from the 6-miles radius to 9.8 miles north of the Lake Tahoe Airport.

* * * * *

Issued in Los Angeles, California, on May 27, 1997.

George D. Williams,

Manager, Air Traffic Division, Western Pacific Region.

[FR Doc. 97–14978 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–22]

Proposed Amendment of Class E Airspace; Mammoth Lakes, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Mammoth Lakes, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 27 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Mammoth Lakes Airport, Mammoth Lakes, CA.

DATES: Comments must be received on or before July 31, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 97–AWP–22. Air Traffic division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Branch, AWP–520 Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AWP–22.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace at Mammoth Lakes, CA. The development of GPS SIAP has made this proposal necessary. The intended effect of this proposal is to provide adequate airspace for aircraft executing the GPS RWY 27 SIAP at Mammoth Lakes Airport. Mammoth Lakes, CA. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposal rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95653 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

* * * * *

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

* * * * *

AWP CA E5 Mammoth Lakes, CA [Revised]

Mammoth Lakes Airport, CA
(Lat 37°37′26″N, long. 118°50′19″W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Mammoth Lakes Airport. That airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at lat. 37°49′00″N, long. 119°00′00″W; to lat. 37°49′00″N, long. 119°13′00″W; to lat. 38°11′00″N, long. 119°13′00″W; to lat. 38°11′00″N, long. 118°27′00″W; to lat. 37°30′00″W, long. 118°27′00″N; to lat. 37°30′00″W, long, 119°00′00″N, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on May 27, 1997.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–14977 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 32

Trade Options on the Enumerated Agricultural Commodities

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Generally, the offer or sale of commodity options is prohibited except on designated contract markets. 17 CFR 32.11. One of several specified exceptions to the general prohibition on off-exchange options is for ''trade options.'' Trade options are defined as off-exchange options ''offered by a person having a reasonable basis to believe that the option is offered to'' the categories of commercial users specified in the rule, where such commercial user ''is offered or enters into the transaction solely for purposes related to its business as such.'' 17 CFR 32.4(a). Trade options, however, are not permitted on the agricultural commodities which are enumerated in the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* (Act).

The Division of Economic Analysis of the Commodity Futures Trading Commission recently completed a study of the prohibition on the offer or sale of off-exchange trade options on the enumerated agricultural commodities. Based upon the Division's analysis and recommendations, the Commission is seeking comment on whether it should propose rules to lift the prohibition on trade options on the enumerated agricultural options subject to conditions and, if so, what conditions would be appropriate.

DATES: Comments must be received by July 24, 1997.

ADDRESSES: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically to [secretary@cftc.gov]. Reference should be made to ''Prohibition on Agricultural Trade Options.''

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or electronically, [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission (Commission or CFTC) directed its Division of Economic Analysis (Division) to study the prohibition on the offer or sale of off-exchange trade options on the agricultural commodities enumerated in the Act and to report on the Division's findings. On May 14, 1997, the Division forwarded to the Commission its study entitled, ''Policy Alternatives Relating to Agricultural Trade Options and Other Agricultural Risk-Shifting Contracts.'' Based upon the Division's analysis and recommendations, the Commission is seeking comment on whether it should propose rules to lift the prohibition on trade options on the enumerated agricultural options subject to conditions and, if so, what conditions would be appropriate. An abridged version of those portions of the Division's study which might be most useful to commenters in identifying the issues for comment follows. The complete text of that study is available through the Commission's internet site and can be accessed at http://www.cftc.gov/ag8.htm.

I. Statutory and Regulatory Background

A. Options on Commodities Subject to the 1936 Act

In 1936, responding to a history of large price movements and disruptions in the futures markets attributed to speculative trading in options, Congress completely prohibited the offer or sale of option contracts both on and off exchange in all commodities then under regulation.[1] Over the years, this statutory bar continued to apply only to the commodities regulated under the 1936 Act. The specific agricultural commodities regulated under the 1936 Act included, among others, grains, cotton, butter, eggs and potatoes. Later, fats and oils, soybeans and livestock, as well as others, were added to the list. Together, they are referred to as the ''enumerated'' agricultural commodities. Any commodity not so enumerated, whether agricultural or not, was not subject to regulation. Thus, options on such non-enumerated commodities were unaffected by the prohibition.[2]

B. Options on Commodities Not Subject to the 1936 Act

In the years following passage of the 1936 Act, the off-exchange offer and sale of commodity options on the non-enumerated commodities was subject to fraud, abuse and sharp practice. That history was one of the catalysts leading to enactment of the Commodity Futures Trading Commission Act of 1974 (1974 Act), which substantially strengthened the Commodity Exchange Act and broadened its scope. The Act's scope was broadened by bringing all commodities under regulation for the first time. Congress accomplished this by adding to the list of enumerated commodities an expansive catchall definition of ''commodity'' which included all ''services, rights or interests in which contracts for future delivery are presently or in the future dealt in.''[3]

Under the 1974 amendments, the newly created CFTC was vested with plenary authority to regulate the offer and sale of commodity options on the previously unregulated, non-enumerated commodities.[4] The Act's statutory prohibition on the offer and sale of options on the enumerated agricultural commodities was retained.

Shortly after its creation, the Commission promulgated a comprehensive regulatory framework applicable to off-exchange commodity option transactions in the non-enumerated commodities.[5] This comprehensive framework exempted ''trade options'' from most of its provisions.[6] Trade options on non-enumerated commodities are exempt from all of the requirements applicable to off-exchange commodity options except for a rule prohibiting fraud (rule 32.8) and a rule prohibiting manipulation (rule 32.9).

In contrast to the regulatory framework for commodity options on the non-enumerated commodities, commodity options on the enumerated commodities—the domestic agricultural commodities listed in the Act—were prohibited both as a consequence of the continuing statutory bar as well as Commission rule 32.2, 17 CFR 32.2. This prohibition made no exceptions and applied equally to trade options.

The attempt to create a regulatory framework to govern the offer and sale of off-exchange commodity options was unsuccessful. Because of continuing, persistent and widespread abuse and fraud in their offer and sale, the Commission in 1978 suspended all trading in commodity options, except for trade options.[7] Congress later codified the Commission's option ban,

[1] Commodity Exchange Act of 1936, Public Law No. 74–675, 49 Stat. 1491 (1936). *See,* H. Rep. No. 421, 74th Cong., 1st Sess. 1, 2 (1934); H. Rep. No. 1551, 72d Cong., 1st Sess. 3 (1932).

[2] Examples of non-enumerated commodities would include coffee, sugar, gold, and foreign currencies. Before 1974, the Act covered only those commodities enumerated by name. The 1936 Act regulated transactions in wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghum, mill feeds, butter, eggs and Solanum tuberosum (Irish potatoes). Act of June 15, 1936, Public Law No. 74–675, 49 Stat. 1491 (1936). Subsequent amendments to the Act added additional agricultural commodities to the list of enumerated commodities. Wool tops were added in 1938. Commodity Exchange Act Amendment of 1938, Public Law No. 471, 52 Stat. 205 (1938). Fats and oils, cottonseed meal, cottonseed, peanuts, soybeans and soybean meal were added in 1940. Commodity Exchange Act Amendment of 1940, Public Law No. 818, 54 Stat. 1059 (1940). Livestock, livestock products and frozen concentrated orange juice were added in 1968. Commodity Exchange Act Amendment of 1968, Public Law No. 90–258, 82 Stat. 26 (1968) (livestock and livestock products); Act of July 23, 1968, Public Law No. 90–418, 82 Stat. 413 (1968) (frozen concentrated orange juice). Trading in onion futures on United States exchanges was prohibited in 1958. Commodity Exchange Act Amendment of 1958, Public Law No. 85–839, 72 Stat. 1013 (1958).

[3] The definition of commodity is currently codified in section 1a(3) of the Act.

[4] Section 4c(b) of the Act provides that no person ''shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act'' which is in the nature of an option ''contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.'' 7 U.S.C. 6c(b).

[5] 17 CFR Part 32. *See,* 41 FR 51808 (Nov. 24, 1976) (Adoption of Rules Concerning Regulation and Fraud in Connection with Commodity Option Transactions. *See also,* 41 FR 7774 (Feb. 20, 1976) (Notice of Proposed Rules on Regulation of Commodity Options Transactions); 41 FR 44560 (Oct. 8, 1976) (Notice of Proposed Regulation of Commodity Options). Options were not traded on futures exchanges at this time, *see* p. 18 *infra.*

[6] As noted above, trade options are defined as off-exchange options ''offered by a person having a reasonable basis to believe that the option is offered to the categories of commercial users specified in the rule, where such commercial user is offered or enters into the transaction solely for purposes related to its business as such.'' *Id.* at 51815; Rule 32.4(a) (1976). This exemption was promulgated based upon an understanding that commercials had sufficient information concerning commodity markets insofar as transactions related to their business as such, so that application of the full range of regulatory requirements was unnecessary for business-related transactions in options on the non-enumerated commodities. *See,* 41 FR 44563, ''Report of the Advisory Committee on Definition and Regulation of Market Instruments,'' Appendix A–4, p. 7 (Jan. 22, 1976).

[7] 43 FR 16153 (April 17, 1978). Subsequently, the Commission also exempted dealer options from the general suspension of transactions in commodity options. 43 FR 23704 (June 1, 1978).

establishing a general prohibition against commodity option transactions other than trade and dealer options.[8]

C. Reintroduction of Exchange-Traded Options

The Commission subsequently permitted the introduction of exchange-traded options on the non-enumerated commodities by means of a three-year pilot program.[9] Based on that successful experience, Congress, in the Futures Trading Act of 1982, eliminated the statutory bar to transactions in options on the enumerated commodities, permitting the Commission to establish a similar pilot program to reintroduce exchange-traded options on those agricultural commodities.[10]

D. Retention of Ban on Off-Exchange Options on Enumerated Commodities

In 1984 the Commission permitted exchange trading of options on the enumerated commodities under essentially the same rules that were already applicable to options on all other commodities.[11] In proposing these rules, the Commission noted that section 4c(c) of the Act and Commission rule 32.4 permitted trade options on the non-enumerated commodities and that ''there may be possible benefits to commercials and to producers from the trading of these 'trade' options in domestic agricultural commodities.'' [12] However, ''in light of the lack of recent experience with agricultural options and because the trading of exchange-traded options is subject to more comprehensive oversight,'' the Commission concluded that ''proceeding in a gradual fashion by initially permitting only exchange-traded agricultural options'' was the prudent course.[13] Nevertheless, the Commission requested comment from the public concerning the advisability of permitting trade options between commercials on domestic agricultural commodities. Citing past abuses associated with off-exchange options, the consensus among commenters was that the Commission should proceed cautiously and retain the prohibition on such off-exchange transactions.

Since then, the Commission has reconsidered the issue of whether to remove the prohibition on the offer and sale of trade options on the enumerated commodities several times. In 1991, the Commission proposed deleting the prohibition on trade options on the enumerated commodities and including them under the same exemption applicable to all other commodities. 56 FR 43560 (September 3, 1991). The Commission never promulgated the proposed deletion as a final rule.[14] Most recently, on December 19, 1995, the Commission hosted a public roundtable (December Roundatable) to consider this issue once again and to provide a forum for members of the public to provide their views.

II. Possible Benefits of Trade Options on the Enumerated Agricultural Commodities

The Division in its study identified a number of benefits that may result from lifting the prohibition on agricultural trade options. One such benefit is the potential for a greater supply of, and competition in offering, option contracts.[15] Currently, only standardized, exchange-traded options are available for agricultural product hedging. Presumably, lifting the ban would encourage competition between customized contracts and financing arrangements offered by various off-exchange counterparties and the more standardized but highly liquid, low credit-risk products offered by exchanges.

Moreover, lifting the ban would permit a greater variety of option vendors, which could reduce the informational search costs to certain hedgers. Hedging can be a complex matter involving knowledge by the hedger of his market position, delivery timing, quantities and qualities of commodity production, inventory, financial wherewithal and marketing objectives. In addition, a hedger must be cognizant of risks associated with the counterparty on the cash commodity, particularly default risk.

To reduce search costs, many hedgers may choose to rely on established cash market trading channels to gather information on contracting methods. Established cash trading partners may have a greater understanding of the hedger's marketing position and needs than others. These cash trading partners may, therefore, be better situated to recommend particular hedge strategies and contracts. In addition, ongoing business relationships with these parties may have instilled a level of trust between counterparties, allowing hedgers to make informed assessments as to credit risk and possibly to use cash market obligations as collateral for trade option positions.

In competing to offer option contracts, option vendors may offer customers a greater variety of desired attributes or services. For example, futures commission merchants (FCMs) can compete by offering exchange-traded options which offer a high degree of liquidity and low credit risk. They may also offer trade options, to the extent permissible, that have features currently unavailable on any exchange, such as average-price options.[16] Elevators and other first-handlers, on the other hand, presumably may offer option contracts having terms or financing arrangements more closely tailored to the hedging or other needs of the customer. Through such competition, a hedger may have a greater number of alternatives from which to choose in deciding which contract source best suits his or her hedging needs, balanced against his or her tolerance for credit risk.

The potentially greater array of contracts and services may enable hedgers to achieve more precise hedging in a variety of ways. For example, more efficient hedges may be attained by more closely matching the size of the option contract to the underlying cash market position. The standard size of exchange-traded option contracts may not correspond to the spot or forward obligations of a hedger. If the contract size is not a multiple of a producers's

[8] Public Law No. 95–405, 92 Stat. 865 (1978). Pursuant to the 1978 statutory amendments, option transactions prohibited by new Section 4c(c) could not be lawfully effected until the Commission transmitted to its Congressional oversight committees documentation of its ability to regulate successfully such transactions, including its proposed regulations, and thirty calendar days of continuous session of Congress after such transmittal had passed.

[9] 46 FR 54500 (Nov. 3, 1981).

[10] Public Law No. 97–444, 96 Stat. 2294, 2301 (1983).

[11] 49 FR 2752 (January 23, 1984).

[12] 48 FR 46797, 46800 (October 14, 1983) (footnote omitted).

[13] Id.

[14] By letter dated January 30, 1997, the National Grain and Feed Association (NGFA) petitioned the Commission to repeal immediately the prohibition on agricultural trade options in its entirety. NGFA's petition advocated that the Commission proceed to promulgate final rules on the basis of the 1991 Notice of Proposed Rulemaking. The Commission, in light of its publication of this Advance Notice of Proposed Rulemaking and consideration of whether to lift the prohibition subject to conditions, denied that petition by letter dated May 23, 1997.

[15] Options provide a highly effective tool for hedging and have unique pay-out characteristics. Options differ from futures contracts in that they are a limited price-risk instrument. That is, the purchaser of an option contract can profit from a price rise (in the case of a call) or price fall (in the case of a put), but limit any losses on the contract to the price of the premium paid for the contract.

[16] For example, on May 29, 1991, the Commission issued a no-action letter to Gelderman, Inc., a registered FCM, to offer averaging European-style off-exchange options on agricultural commodities to certain commercial purchasers. *See* CFTC Letter No. 91–1, Comm. Fut. L. Rep. (CCH) ¶ 25,065 (May 29, 1991). However, under Commission rule 1.19, appropriate haircuts to FCMs' net capital requirements would have to be promulgated before FCMs could offer such trade options generally.

output, the hedger is forced to under- or over-hedge.[17]

Trade options also allow a hedger to specify expiration or delivery dates to coincide more closely with harvest dates, processing schedules or the timing of forward contracts. This reduces a hedger's exposure to the risk from mismatching the expiration date of an exchange-traded contract. Basis risk also can be reduced for the hedger by allowing a closer match to the grade of crop or livestock at a particular delivery location.

In addition to tailoring contracts to match more closely the underlying commodity, customers, through the bundling of various options, can also gain access to contracts which hedge multiple risks. Producers, for example, face production risks and price risk associated with inputs and outputs. Currently, a producer can hedge these risks separately by purchasing, to the extent that they exist, separate options on the inputs and outputs and either purchasing crop insurance or possibly an option on crop yield futures. However, a counterparty might be able to offer at a lower price a single trade option contract that hedges all of these risks.[18]

Trade option contracts also may address the need for sufficient cash flow to maintain margins on open futures contracts or to prepay option premiums. Although trade options typically are not margined, depending on the terms of the contract, they may allow the option purchaser to delay payment of the premium. In certain cases the option may be collateralized implicitly by linking the option and a contract to deliver the crop or livestock to the same counterparty. The premium can then be incorporated into the cash contract by deducting it from the final price of the commodity at delivery.

III. Risks of Trade Options on the Enumerated Commodities

The Division also identified a number of potential risks which may cause heightened concern if the prohibition on agricultural trade options were lifted. These include fraud, credit risk, liquidity risk, operational risk, systemic risk and legal risk. Trade options on the enumerated commodities, as with all commodity-related over-the-counter instruments, would trade in a less-regulated environment than exchange-traded options. The Act imposes legal requirements on an exchange, mandating that it police itself and its participants for illicit activity. In addition, the regulatory structure imposes a variety of prophylactic protections against egregious forms of fraudulent and abusive conduct. When trading is conducted on a centralized market with standardized trading instruments and procedures, it is possible for the government to offer a broad level of customer and market protection by applying relatively modest levels of its resources.

In contrast, much of the appeal of trade options stems from the desire to deal with known counterparties or to customize the contracts. However, regulatory oversight and enforcement is limited in such circumstances to the extent that vendors of the instrument are not themselves regulated. Although the vendors in a decentralized market could be subject to a regulatory scheme, the absence of a centralized market and a self-regulatory organization reduces the effectiveness of any such regulatory protections. Because transactions in trade options would be decentralized, the resources necessary to surveil that activity would be far greater than those necessary to oversee the operations of a centralized market. Finally, the ability of the government to police such activity directly, without the assistance of a self-regulatory organization, would require a commitment of greater resources.

Customization of particular contracts also increases the possibility of fraud. The lack of standardization may make the oversight and policing of trade practices more difficult. Providing prophylactic protections, as well as establishing general rules of appropriate conduct, is more difficult when contract terms are not standardized. Moreover, where practices vary greatly from one vendor to another, enforcement is made more difficult.[19]

Just as a lack of standardization may make it more difficult to police trading in these instruments, it may also make it more difficult for customers to protect themselves from fraudulent or wrongful practices. Initially, it is expected that agricultural producers and users would enter into put and call options that were very similar to those already offered on-exchange. However, to the extent that the terms of the contracts or financing arrangements for them became more complex, greater time will be required for individuals to become familiar with a particular product. Moreover, individuals will by necessity progress through a learning curve as they become familiar with a particular product and how it interacts with their set of circumstances. During the early stages of this process, individuals may be more susceptible to fraudulent activity. This, and the possible variation among instruments from one source to another and the time it takes to familiarize oneself with each new or different product, increase the chance that certain individuals will exploit the opportunity to commit fraud.[20] Of course, educational efforts aimed at potential participants in such instruments might, to some degree, ameliorate these effects. Conversely, this problem may be exacerbated to the extent that the fraudulent activity is carried out through the guise of providing education on these instruments.[21]

In such a decentralized market, participants find it more difficult to detect possible fraudulent conduct by their counterparty. The lack of transparent prices may make it difficult for parties to accurately ascertain a reasonable value for the contract. Moreover, to the extent that there is a lack of daily marking of positions to market or reporting of account position statements, as a matter of practice or regulatory requirement, it may make it more difficult for a counterparty to uncover possible fraudulent activity. These weaknesses may exacerbate other information inequalities and create a climate where fraudulent or sharp practices are made easier.

Finally, certain counterparties, particularly those who are also Commission registrants, could have conflicts of interest and customers may be confused as to the role of the counterparty. For example, to the extent that FCMs are permitted to offer trade options as principals, but also to act as fiduciaries in relation to executing exchange-traded options, confusion on

[17] ''Under-hedging'' means that the hedger has a futures or option position that is less than the total cash market position. This, in essence, leaves the cash market commitment, in part, without price protection. ''Over-hedging'' means that the futures or options position is greater than the cash market commitment.

[18] Under certain conditions, a contract that bundles options on multiple commodities has a lower premium than the total premia of the individual options on those commodities.

[19] For example, during the late spring and summer of 1996, the Commission received many complaints concerning so-called HTA contracts. As the Commission noted at the time, because the terms and circumstances surrounding each contract varied so much, it could only make a case-by-case determination regarding the legality of the contracts. Such an approach requires a relatively large commitment of Commission resources.

[20] A good example of this learning process has been the recent experience with flexible hedge-to-arrive contracts. These contracts had been entered into by elevators and producers for several years before recent variations in practice coupled with an inversion in the corn markets exposed the weaknesses associated with these contracts.

[21] Concerns about potential fraudulent activity are not limited to option vendors. They also extend to those rendering advisory or educational services in connection with such instruments.

the part of the customer may result as to the FCM's role and responsibilities. Of course, where the counterparty is a Commission registrant, the potential conflicts could be addressed through required disclosures or other mechanisms.

In the past, the Commission has found fraud in connection with the offer and sale of off-exchange option contracts to be a serious problem. In 1978 the Commission adopted a rule that suspended the offer and sale of commodity options to the general public.[22] In adopting the rule, the Commission noted that ''[t]he Commission's experience to date indicates that the offer and sale of commodity options has for some time been and remains permeated with fraud and other illegal or unsound practices notwithstanding a substantial investment of the Commission's resources in attempting to regulate rather than prohibit option trading.'' The Commission also expressed its view that the absence of exchange trading in the United States at that time may have contributed to problems with option trading.

Credit risk is the risk that a counterparty will be unable to perform on an obligation. In the case of an option, where a purchaser pays the premium up-front, the credit risks faced by the purchaser and the writer differ. The writer of an option faces significant market exposure, such that the writer's out-of-pocket losses may exceed the premium paid by the purchaser. Thus, the purchaser is at risk that the writer will not perform. The writer of an option typically does not face credit risk, however, because, unless the premium is financed or deferred, the purchaser has already performed on the contract by paying the premium.[23] An option purchaser, therefore, must take particular care to assure himself or herself that the option writer is able and will be willing to perform on the contract under all market conditions.

Liquidity enables customers quickly to enter into a transaction without significantly raising or lowering the purchase or sale price in the process. The market for trade options differs markedly in liquidity from exchange markets. Exchange markets permit trading among a diverse group of participants. Moreover, contracts are standardized and fungible, allowing any contract to be traded with any participant. The potential pool of participants for a specific trade option is much more limited. An individual entering into a trade option will likely have only a handful of offerors from which to choose. In addition, because trade options are typically not fungible, once one is entered into, the holder of the option can exit only by returning to the offeror. This may result in a higher cost to the hedger than would be the case with a more liquid, exchange-traded instrument.

Operational risk is the risk that the monitoring and control of operations cannot be sufficiently maintained and that financial losses occur as a result. Exchange-traded contracts are highly standardized. As a result, the terms and conditions of the contracts and the environment in which they are traded are well understood. In addition, familiarity with these contracts has become highly developed over the years. Familiarity with exchange-traded options tends to reduce the operational risk associated with their use. This risk is further reduced because of exchange and CFTC disclosure rules and other requirements, including daily marking-to-market of positions and regular customer position statements, which keep individuals informed of accruing losses.

In contrast, trade options are not traded in a transparent environment or on a continuous basis. As a result, prices may not regularly be reported, and positions may not be marked to market on a regular basis. Thus, it may be more difficult to monitor the market value of a position,[24] thereby increasing the degree of operational risk.

It should also be noted that, in the case of agricultural trade options, the most likely counterparty to producers is the local country elevator. Adding option contracts, particularly those with unusual terms, to the marketing mix of contracts already offered by an elevator may increase the complexity of the elevator's overall position and make it more difficult to hedge. Thus, the elevator's operational risk related to the use of trade options may be higher than under the current situation.

Generally, systemic risk is the risk of a broader collapse of entities or contracts that can be traced back to the collapse of an initial contract or group of contracts. While the repercussions from a widespread default can be problematic wherever it occurs, they can be particularly troublesome in rural areas where the economies of a town or region can be relatively isolated and highly dependent on agriculture. Thus, a default relating to agriculture could potentially spread quickly to other sectors of the local or even regional economy.

Lifting the ban on trade options on the enumerated commodities would provide an additional exemption from the general rule requiring commodity futures and option contracts to be traded only on designated contract markets. To the degree that the current prohibition is removed or relaxed, entities choosing to operate pursuant to that exemption would have to take care to conform their activities to the terms of the exemption. Failure to do so might expose such an entity to the legal risk that a particular over-the-counter derivative contract offered by it was not covered by the exemption and that its offer or sale violated either that exemption or some other provision of the Act or Commission rules.

The degree of risk of this occurring would depend upon the extent to which a simple option contract were modified. In a simple option position, the holder of the option has the right but not the obligation to make or take delivery of a commodity at a given price. However, as has been seen in the development of derivative contracts in the financial markets, this simple contract can evolve into more complicated instruments with payout structures significantly different from those associated with a simple option. These structures give rise to the risk that the resulting instrument comes more closely to resemble a futures contract, rather than an option contract. Accordingly, in order to avoid a violation, those offering option contracts in reliance on the trade option exemption would have to assure themselves that the instruments they offer adhere closely to the terms of that exemption.

IV. Possible Regulatory Restrictions

The Division in its study identified and analyzed a variety of regulatory protections or conditions which could be fashioned to address many of the risks noted above. These conditions could apply to the nature of eligible

[22] 43 FR 16153 (April 17, 1978).

[23] This lack of credit exposure may create a greater likelihood of fraudulent practices. For example, an enterprise may sell options with no intention of performing on the contracts. Because a period of time passes between the time options are written and when they expire, the enterprise may be able to collect a substantial amount of funds before its intentions not to perform are discovered.

[24] Based upon observation of forward contracting and associated hedging practices, it is anticipated that, although the terms of agricultural trade options will be individually negotiable, they nonetheless would be expected initially to resemble closely the terms of exchange-traded options with respect to exercise dates, delivery grades and strike prices. To the extent that the terms are similar, it will be easier to monitor the financial condition of a position by observing prices on the exchange markets. In addition, for individuals who have purchased an option, the price of the option is determined up-front, reducing the need to monitor the value of the position.

parties, conditions on the instrument or its use and regulation of marketing.

A. Nature of the Parties

As the Division noted, an indirect means of discouraging unsophisticated individuals from entering into trade options would be to use transaction size as a proxy for sophistication. A high minimum transaction size effectively would bar smaller, less well-capitalized—and presumably less sophisticated—commercials from participating. This approach has been a stipulated condition of transactions permitted under several Commission and staff no-action letters.[25] Transaction size limitations are a clear, easily applied—albeit crude—means of measuring sophistication.[26] Similarly, the net worth of the customer counterparty could be used as proxy for determining sophistication.

Proxy limitations may be over- or under-inclusive. In the case of size restrictions, they may limit hedging flexibility. As mentioned above, many producers do not use exchange-traded contracts because they prefer not to post margin, do not have brokers to sell them exchange-traded options or must arrange financing for the position. Entering into a trade option contract with a local elevator may address these producer concerns. Using these proxy limitations, however, may make trade options unavailable to the smaller entities that might otherwise find them the most useful. Conversely, such proxy limitations may also be a crude, though clear, means of distinguishing among entities when determining to which, if any, various conditions for lifting the ban on agricultural commodities should not apply.

Another method of limiting access to agricultural trade options as a means of maintaining regulatory oversight is to limit those entities or individuals which may become trade option vendors. For example, option vendors could be required to register in some capacity with the Commission as a condition of doing business.[27] Alternatively, the Commission could consider creating new requirements that would be applicable only to the offer and sale of agricultural trade options.[28] Such requirements could establish a new category of special registration or could simply require that those offering such instruments identify themselves by notifying the Commission. In lieu of, or in combination with, required registration, the Commission could restrict vendors of trade options to commercial entities involved in the handling or use of the commodity.

As an alternative for, or in conjunction with, other requirements and restrictions, the Commission could institute an educational program or condition. Many of the participants in the December Roundtable expressed the concern that individuals need better education in the use of option contracts and in the principles of risk management generally.[29] The appeal of such a program rests on the assumption that better educated individuals can better protect their own interests, thereby reducing the need for other regulatory restrictions or monitoring procedures.

Although the Commission currently does not have any educational requirements for individuals using futures or option contracts, the exchange-traded option pilot program established under the 1990 farm bill,[30] a program limited to a relatively limited number of counties, required persons participating in the program to complete educational training. Seminars on marketing and the use of exchange-traded options were developed by the United States Department of Agriculture and presented through the State Cooperative Extension Service together with representatives from the State and County Consolidated Farm Service Agency. The instruction included an introduction to the Options Pilot Program and a review of option trading procedures.

Although an educational program or requirement has great appeal, implementing the program could be very costly, especially in light of its potential nationwide scope. Moreover, mandatory attendance to fulfill an education requirement may not achieve the desired effect of raising the level of understanding or sophistication among potential participants, however. Unless competency also is tested, an attendance requirement alone may not be indicative of the actual sophistication of a participant and could lead to a false sense of security by the government, potential vendors, and the customers themselves, that those who met the education requirement were in fact knowledgeable or suitable customers. Finally, to the extent that private providers or organizations undertook this role, there would be a risk that educational programs could resemble or become marketing seminars.

B. Restrictions on the Instruments or Their Use

Several restrictions, either direct or indirect, could be placed on the use of agricultural trade options, in addition to the requirement that they be offered only to commercial entities. Section 32.4 of the Commission's regulations requires that trade options be offered only to a commercial entity ''solely for purposes related to its business as such.'' Although the Commission has not had occasion to address the scope of this restriction definitively, the Commission could delineate, by either specific restrictions or more general guidance, at least initially, those practices which in the context of agricultural trade options will ensure that the use of such options remains within the intent of the exemption.[31]

For example, the requirement that trade options be for a business-related use suggests that the overall size of all agricultural trade option contracts and any other derivative positions should not exceed the size of the cash or forward market position being hedged. Under most circumstances, a position in a derivative contract that exceeds the

[25] The Commission, in May 1991, issued a no-action letter to Gelderman, Inc., with respect to the offering of agricultural trade options. *See*, n. 39, *supra.* A condition of the letter was that the options be offered in units of no less than 100,000 bushels. Subsequently, in June 1992 the staff issued a no-action letter to a commodity merchant and processor to allow the offer of agricultural trade options. A condition of that letter was that the minimum transaction size of an option be at least 1,000,000 bushels. *See*, CFTC Letter No. 92–10, Division of Trading and Markets, Comm. Fut. L. Rep (CCH) ¶ 25,309 (June 9, 1992).

[26] The minimum appropriate transaction size levels would have to be considered as part of a notice and comment rulemaking procedure.

[27] An additional alternative would be to permit registration and oversight of option vendors by other federal or state regulators to substitute for CFTC registration. For example, under this alternative a bank subject to state or federal banking oversight could also offer trade options. However, an elevator could not offer such options unless it became registered with the Commission as an introducing broker or, as discussed below, in a new category of Commission registration or was subject to oversight under some other specified regulatory scheme.

[28] However, there are costs associated with registration requirements, both for the registrant and the Commission which must be taken into consideration.

[29] December Roundtable, tr. pp. 17, 19, 32, 45, 49, 53 and 62.

[30] FACT Act—Food, Agriculture, Conservation and Trade Act of 1990 (P.L. 101–624).

[31] In connection with HTA contracts, the Division of Economic Analysis frequently was asked for further specificity concerning the extent to which various forms of the contracts fell within the boundaries of the Commission's rules or policies or staff no-action positions. In response, the Division issued a Statement of Guidance on May 15, 1996. This statement provided specific guidance that could be applied to contracts or transactions to determine whether or not they were ''prudent,'' that is, could be used to reduce price risks. Such a format, if applied to trade options, also might prove valuable to the industry.

size of the underlying cash or forward position increases price risk. Other circumstances associated with managing risk include the existence of a predictable relationship between the crop produced and the commodity on which the option is written, the timing of option expiration and harvest of the commodity, and the expiration of the option in a crop year which coincides with the delivery period for the underlying commodity.

Consideration should also be given to whether, or under what circumstances, the practice of a producer or other agricultural business selling options to generate premium income is ''solely for purposes related to its business as such.'' While the purchaser of an option holds a limited risk instrument, option sellers potentially face unlimited price risk. A practice sometimes used by individuals having positions in the underlying commodity is to enter into what is known as a covered position. A producer enters a covered call position when he or she writes a call option that can be satisfied through delivery from production. In this sense, if prices fall, a producer writing covered calls is better off by the amount of the premium income received than if the cash position is not hedged. However, if prices rise, the producer is not able to participate in the market rally, although he or she may, nonetheless, receive a price sufficient to cover production costs and provide a satisfactory profit margin.

A second practice which generates premium income involves contracts which incorporate both written and purchased options. A contract having a cap and floor is an example of this practice. In conjunction with a long cash position, these contracts set a floor price for the commodity. The cost of providing that floor, however, is reduced in return for the producer agreeing to limit the upside profit potential, essentially incorporating a written call into the contract. To the extent that such contracts provide for a ratio of written options in excess of purchased options, they raise issues similar to those of writing covered calls or naked options. Certain trading strategies, such as placing and lifting a ''hedge'' multiple times, also raise the issue of whether such practices are consistent with the requirement that trade options be for a business purpose.

In addition, the design of trade option contracts could be restricted to assure that they do not violate other provisions of the Act or Commission regulations. While a basic option contract is a limited-risk financial instrument, options can be bundled to create instruments with more complex payout scenarios. Because option contracts can be ''bundled'' to create a synthetic futures contract and the regulatory treatment of trade options differs substantially from that of off-exchange futures contracts, the Commission could delineate trade options from futures contracts, either through guidance or as a condition of the exemption.

C. Regulation of Marketing

Required disclosures are a common customer protection. The Commission, in determining whether required disclosures should be mandated in connection with lifting the ban on agricultural trade options, must also determine the nature of the disclosure that is appropriate to this instrument. A second common protection is the requirement that customers be provided with periodic information regarding accounts. Information regarding the value of a customer's position would be useful to customers in guiding them as to the current value of their position and determining the prudence of their future activities.

D. Other Possible Limitations

As the Division noted, a major concern when entering into over-the-counter transactions is the risk of counterparty default. A variety of measures have been used in commerce, and on various occasions required by the Commission, to attempt to ensure that parties to a contract meet their obligations. These include collateral requirements, minimum capital requirements, cover requirements in the form of hedges or cash market inventories, third party guarantees and minimum credit ratings. For example, under the Commission's Part 34 exemption for hybrid instruments, as initially promulgated, the eligibility of hybrid instruments issuers for the exemption was conditioned upon meeting one of four credit-related criteria. These criteria were that the instrument be rated in one of the four highest categories by a nationally recognized investment rating organization, the issuer had at least $100 million in net worth, the issuer maintained letters of credit or cover, consisting of the physical commodity, futures, options or forward contracts for the commodity or interests consisting of acceptable cover, or that the instrument be eligible for insurance by a U.S. government agency or chartered corporation. In contrast, a futures exchange, during the December Roundtable, advocated that parties offering agricultural trade options be required to maintain cover by holding a one-to-one hedge with an exchange-traded contract.[32]

Requiring one-to-one hedging would restrict the flexibility of certain option vendors. For example, offerors with sufficient capital reserves might be in a position more effectively to cover the risk associated with their option contracts in a manner other than by one-to-one hedging.

Generally, the Commission imposes internal controls requirements as a condition of registration. These include the requirement that FCMs provide audited financial statements, have in place a system of internal controls, and supervise the conduct of all employees. The Commission could impose similar requirements on agricultural trade option vendors, with or without mandating their registration. However, in the absence of a registration requirement and a self-regulatory organization to assist in enforcing that requirement, such conditions would be more difficult to mandate and to enforce.

Many country elevators and others at the first-handler level of the marketing chain do not now have in place adequate internal controls to engage in a variety of off-exchange transactions,[33] nor are they subject to a regulatory scheme requiring such controls. Accordingly, a possible condition on those wishing to become vendors of such instruments might be to require that they have in place systems to track changes in the value of their positions and to notify customers periodically of the value of such positions. The adequacy of such systems could be required to be subject to a review by a certified public accountant.

V. Related Issues

The Division's study also touched on a number of issues which have been raised regarding the applicability of other exemptions to agricultural contracts. Those issues relate to forward contracts having option-like payment features and to the applicability of the Commission's exemptions under Part 35 of its rules—for swaps, and Part 36 of its rules—for professional markets. Although the Division's recommendations with respect to these issues are not directly applicable to the Commission's determination whether to lift the prohibition on the enumerated agricultural commodities, and are not the subject of this Advance Notice of Proposed Rulemaking, the Division recommended that the Commission

[32] *See*, December Roundtable, tr. pp. 30, 31, 36, 47, 48 and 78.

[33] *See*, December Roundtable, tr. p. 56.

decide that the prohibition on agricultural trade options does not limit the scope of the Commission's swaps exemption under Part 35 of its rules and that staff update a previous interpretative letter of the Commission's Office of General Counsel.

VI. Issues for Comment

Based upon the Division's study and its recommendation, the Commission is considering whether to lift the prohibition on agricultural trade options subject to conditions. The Division identified an array of possible regulatory conditions for lifting the prohibition, each having differing benefits and costs. The receipt of public comment on these issues, particularly an assessment by commenters of the costs and benefits of the potential regulatory conditions identified by the Division, will assist the Commission in considering whether to lift the prohibition and, if so, what conditions would establish an appropriate regulatory predicate for so doing. Accordingly, the Commission invites commenters to respond to the following specific questions, as well as additional comments they may have on the above analysis.

A. Benefits

1. Are there additional potential benefits of permitting the offer or sale of trade options on the enumerated agricultural commodities that were not identified in the Division's analysis?

2. Who, in addition to first handlers, likely would become vendors of agricultural trade options? Who would likely be purchasers of such instruments? Would they attract commercials who do not currently engage in risk-management practices?

3. Would the availability of agricultural trade options likely result in the introduction of new products, or would such options merely replicate those already available on-exchange?

4. What factors, if any, suggest that there is a demand for agricultural trade options? Has the need for such options changed over the years? If so, in response to what factors?

B. Risks

5. Are there additional potential risks resulting from permitting the offer or sale of trade options on the enumerated agricultural commodities that were not identified in the Division's analysis?

6. How transparent is the pricing of the instruments discussed in response to question No. 3 likely to be?

7. What role can industry or trade groups take in promoting best sales practices? Is some degree of uniformity in instruments necessary or desirable to prevent fraud?

8. What are the likely credit relationships in offering such contracts? Will customers have the bargaining power to address credit issues arising because of the asymmetrical nature of option-related credit exposures?

9. What systems do first-handlers currently have in place to address operational risk? What oversight is there of their operations, and by whom? Are current systems adequate to respond to the demands stemming from offering agricultural trade options? Are there impediments to first-handlers, and others, developing the necessary operational infrastructure?

10. Are there mechanisms in place to contain possible effects to a local or regional economy from the financial failure of a single elevator? Does such a failure, if due to adverse experience in trade options, have a different result or impact than one due to other reasons?

C. Nature of the Parties

11. Should restrictions be placed on who could offer trade options? For example, should vendors be subject to net worth or other financial capacity restrictions? Should vendors of agricultural trade options be registered with the Commission? What if any criteria should be conditions of such registration? If registration is not required, should vendors be required to notify the Commission? Should option vendors be limited to commercial agricultural interests or other types of entities which are subject to a registration requirement or government oversight—such as CFTC registrants, banks or insurance companies?

12. Should the use of trade options be limited to sophisticated users? If so, what criteria are appropriate to determine the sophistication of a party? Would other restrictions on users (such as net worth or other measures of financial capacity) be appropriate? If trade options are not limited to such users, should sophisticated users be exempt from any or all of the trade option requirements? Are parties which meet the eligibility requirements of Parts 35 and 36 of the Commission's rules appropriately defined as sophisticated for this purpose?

13. Are minimum transaction size requirements a practical means of limiting access to trade options? If so, what is an appropriate transaction size in the various commodities that would assure that options are available to only sophisticated participants? Should parties be exempt from transaction size limitations if they can demonstrate sophistication through some other criteria? If so, what substitute criteria would be appropriate?

14. Is an educational requirement appropriate as a condition to enter into a trade option contract for customers and/or vendors? What type of condition would be appropriate with regard to education? Should an option customer be required to demonstrate some level of proficiency with respect to option transactions, and if so, how would proficiency be determined? If trade option vendors were permitted to conduct educational seminars, what restrictions or disclosures might be required of vendors to prevent abuses? What resources for offering such educational opportunities exist or can be made available?

D. Restrictions on the Instruments or Their Use

15. What uses of agricultural trade options should be deemed appropriate? Should restrictions on the use or design of trade options be by regulation? Or should the Commission issue general guidance on this issue?

16. Under what circumstances, if any, should the writing of agricultural options by producers be considered to be an appropriate business-related use of a trade option? More specifically, is it appropriate for producers to write covered calls under the trade option exemption? To what degree, if any, is the writing of options to offset the cost of purchasing an option, appropriate?

17. Should the Commission adopt regulations or provide guidance to restrict trading strategies by option users which result in the increase of risk? What types of trading strategies might be restricted? Should trade option customers be allowed to enter and exit a position multiple times? What means could the Commission use to limit such a trading strategy? What obligations would be appropriate for the Commission to place on trade option vendors with respect to monitoring the appropriateness of the trading activity of their customers?

18. To what extent should option vendors be permitted to bundle options to create risk-return payouts different from a simple put or call option?

E. Regulation of Marketing

19. What types of risk disclosure should be required of vendors as related to the offer and sale of trade options? Should such disclosure be through a mandated uniform risk-disclosure statement? What information should be required to be disclosed?

20. What types of information and at what intervals should vendors be required to notify a customer with

respect to the financial status of a trade option position? What form should trade confirmation take?

F. Cover Requirements

21. Should the Commission compel counterparties to cover market risks, or should the issue of providing cover be left to negotiation between the counterparties? Should parties be permitted to waive the right to have a counterparty provide some sort of cover or guarantee?

22. If cover is required, should parties be allowed to combine different forms of cover—*i.e.*, collateral, hedging, minimum capital, guarantees, etc.—to satisfy the requirement?

23. Should cover be required on the vendor's gross or net trade option position? Should parties be allowed to offset their exposure on a trade option position against other non-trade option positions within the operation? At what level of a multi-enterprise firm should the firm be allowed to net their trade option exposure?

24. If the customer has a short option position, should the vendor have an obligation to ascertain whether the customer has adequately covered the position?

25. If parties are required to provide cover in the form of a one-to-one offsetting position in an exchange-traded option, what would constitute a ''one-to-one'' offset? That is, for trade option transactions occurring at fractional sizes of exchange contracts, would parties be required to round a position up or down? Would individual trade options be required to be offset individually, or could the overall position of the seller be hedged? How would trade options be covered for those enumerated commodities which are no longer actively traded on an exchange? What type of accounting procedure should be required to match trade options to offsetting exchange contracts?

26. In setting a minimum capital requirement in lieu of or in combination with various forms of cover, how should the overall level of market price risk be determined, and what level of capital would be deemed sufficient to cover the risk?

27. Should third-party guarantees be permitted as a form of cover? If so, what forms and what level of guarantee would be appropriate as cover for a trade option position? Should the total potential exposure on a trade option position be guaranteed? Who are appropriate parties to supply a guarantee?

G. Internal Controls

28. At a minimum, what types of internal controls should an option vendor have in place?

29. What is the most cost effective means to assure that vendors implement the minimum level of internal controls? What regulatory oversight mechanisms are necessary and in place? Should vendors be audited to assure compliance, or is a review by a certified public accountant sufficient?

30. Overall, in light of the above questions, should the Commission lift the prohibition on trade options on the enumerated agricultural commodities?

Issued in Washington, DC, this 3rd day of June, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–14890 Filed 6–6–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 123, 128, 141, 143, 145 and 148

RIN 1515–AC11

Increase of Maximum Amount for Informal Entries to $2000

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under the current Customs Regulations, shipments of merchandise generally must be valued at $1,250 or less in order to qualify for informal entry procedures. This regulatory value limit reflects the previous statutory maximum that the Secretary of the Treasury could establish by regulation under 19 U.S.C. 1498(a)(1) prior to its amendment by section 662 of the North American Free Trade Agreement Implementation Act which raised the statutory maximum to $2,500. As a consequence of this increase in the statutory maximum, and consistent with the regulatory discretion conferred by the statute to establish a level within that limit, Customs proposes in this document to amend the Customs Regulations to increase the informal entry value limit to $2,000.

DATES: Comments must be received on or before August 8, 1997.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Linda Walfish, Office of Field Operations (202–927–0042).

Legal Aspects: Jerry Laderberg, Office of Regulations and Rulings (202–482–6940).

SUPPLEMENTARY INFORMATION:

Background

All merchandise imported into the customs territory of the United States is subject to entry and clearance procedures. Section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), provides that the ''importer of record'' or his authorized agent shall: (1) Make entry for imported merchandise by filing such documentation or information as is necessary to enable Customs to determine whether the merchandise may be released from Customs custody; and (2) complete the entry by filing with Customs the declared value, classification and rate of duty applicable to the merchandise and such other documentation or other information as is necessary to enable Customs to properly assess duties on the merchandise and collect accurate statistics with respect to the merchandise and determine whether any other applicable requirement of law is met. Part 142, Customs Regulations (19 CFR Part 142), implements section 484 and prescribes procedures applicable to most Customs entry transactions. These procedures are referred to as formal entry procedures and generally involve the completion and filing of one or more Customs forms (such as Customs Form 7501, Entry/Entry Summary, which contains detailed information regarding the import transaction) as well as the filing of commercial documents pertaining to the transaction.

As originally enacted, section 498, Tariff Act of 1930 (subsequently codified at 19 U.S.C. 1498), authorized the Secretary of the Treasury to prescribe rules and regulations for the declaration and entry of, among other things, imported merchandise when the aggregate value of the shipment did not exceed such amount, but not greater than $250, as the Secretary shall specify in the regulations. Regulations implementing this aspect of section 498 are contained in Subpart C of Part 143, Customs Regulations (19 CFR Part 143) which is entitled ''Informal Entry''. The informal entry procedures set forth in Subpart C of Part 143 are less

burdensome than the formal entry procedures prescribed in Part 142 of the regulations. For example, if authorized by the port director, informal entry may be effected by the filing of a commercial invoice setting forth a declaration signed by the importer or his agent attesting to the accuracy of the information on the invoice.

Section 206 of the Trade and Tariff Act of 1984 (Public Law 98–573, 98 Stat. 2948) amended section 498 by increasing to $1,250 (but with some exceptions) the maximum dollar amount that the Secretary could prescribe by regulation for purposes of the declaration and entry of imported merchandise. On July 23, 1985, T.D. 85–123 was published in the **Federal Register** (50 FR 29949) to, among other things, increase to $1,000 the regulatory limit for which informal entries could be filed; the regulatory amendments in this regard involved changes to Subpart C of Part 143 and various other provisions of the Customs Regulations that reflected the $250 informal entry dollar limit, and Customs explained in the background portion of T.D. 85–123 that the new limit would be set initially in the regulations at $1,000, with the option to increase it to $1,250 in the future. On August 31, 1989, Customs published in the **Federal Register** (54 FR 36025) T.D. 89–82 which amended the Customs Regulations by increasing the limit for which informal entries could be filed to the maximum $1,250 permitted under section 498 as amended by section 206 of the Trade and Tariff Act of 1984.

Section 662 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) amended section 498 by increasing to $2,500 the maximum dollar amount that the Secretary could prescribe by regulation for purposes of the declaration and entry of merchandise. As a result of this further increase in the statutory maximum, and in consideration of the fact that the regulatory limit for informal entries has not been increased since 1989, Customs believes that it would be appropriate to again increase the regulatory limit for informal entries.

Similar to the approach taken in 1985 as indicated above, and noting that the statutory maximum still represents a ceiling but does not preclude adoption of a lower regulatory limit, Customs believes that it would be preferable at this time to take an intermediate step by establishing a new informal entry limit of $2,000, which would be considerably higher than the present $1,250 regulatory limit but still somewhat below the maximum level authorized by statute. Customs believes that adoption of this proposed $2,000 limit would result in the best balance between the revenue and statistical collection and enforcement responsibilities of Customs and the interest of the importing public in having an expanded opportunity to use the less burdensome informal entry procedures. If the proposed new $2,000 informal entry limit is adopted, Customs would still retain the option of proposing a further upward adjustment of the regulatory limit at an appropriate future date, subject to the statutory maximum, after having had an opportunity to evaluate the operational effect of the new $2,000 limit as well as any other intervening change in circumstances that may have an impact on the entry process.

The proposed changes to the regulations set forth in this document involve replacement of references to ''$1,250'' by references to ''$2,000'' in the informal entry provisions of Subpart C of Part 143 and in various other provisions within Parts 10, 123, 128, 141, 145 and 148 of the Customs Regulations (19 CFR Parts 10, 123, 128, 141, 145 and 148).

Comments

Before adopting the proposed amendments as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed regulatory amendments are in response to a statutory change and will have the effect of reducing the regulatory burden on the public. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 123

Aircraft, Canada, Customs duties and inspection, Imports, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vehicles, Vessels.

19 CFR Part 128

Carriers, Couriers, Customs duties and inspection, Entry, Express consignments, Freight, Imports, Informal entry procedures, Manifests, Reporting and recordkeeping requirements.

19 CFR Part 141

Bonds, Customs duties and inspection, Entry of merchandise, Invoices, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 143

Customs duties and inspection, Entry of merchandise, Invoice requirements, Reporting and recordkeeping requirements.

19 CFR Part 145

Customs duties and inspection, Imports, Mail, Postal service, Reporting and recordkeeping requirements.

19 CFR Part 148

Customs duties and inspection, Imports, Personal exemptions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend Parts 10, 123, 128, 141, 143, 145 and 148 of the Customs Regulations (19 CFR Parts 10, 123, 128, 141, 143, 145 and 148), as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

§ 10.1 [Amended]

2. In § 10.1, the introductory text of paragraph (a) and the first sentence of paragraph (b) are amended by removing the reference ''$1,250'' and adding, in its place, the reference ''$2,000''.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for Part 123 is revised to read, and the specific authority citation for § 123.4 continues to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

Section 123.4 also issued under 19 U.S.C. 1484, 1498;

* * * * *

§ 123.4 [Amended]

2. In § 123.4, the first sentence of paragraph (b) is amended by removing the reference ''$1,250'' and adding, in its place, the reference ''$2,000''.

PART 128—EXPRESS CONSIGNMENTS

1. The authority citation for Part 128 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

§ 128.24 [Amended]

2. In § 128.24, paragraph (a) is amended by removing the reference ''$1250'' wherever it appears and adding, in its place, the reference ''$2,000''.

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Subpart F also issued under 19 U.S.C. 1481;

* * * * *

§ 141.82 [Amended]

2. In § 141.82, paragraph (d) is amended by removing the reference ''$1,250'' and adding, in its place, the reference ''$2,000''.

PART 143—SPECIAL ENTRY PROCEDURES

1. The authority citation for Part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

§ 143.21 [Amended]

2. In § 143.21, paragraph (a), the first sentence of paragraph (b), and paragraphs (c), (f) and (g) are amended by removing the reference ''$1,250'' and adding, in its place, the reference ''$2,000''.

§ 143.22 [Amended]

3. In § 143.22, the second sentence is amended by removing the reference ''$1,250'' and adding, in its place, the reference ''$2,000''.

§ 143.23 [Amended]

4. In § 143.23, paragraphs (d) and (i) are amended by removing the reference ''$1,250'' and adding, in its place, the reference ''$2,000''.

§ 143.26 [Amended]

5. In § 143.26, the heading and text of paragraph (a) are amended by removing the reference ''$1,250'' and adding, in its place, the reference ''$2,000''.

PART 145—MAIL IMPORTATIONS

1. The authority citation for Part 145 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624.

Section 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618;

* * * * *

Section 145.12 also issued under 19 U.S.C. 1315, 1484, 1498;

* * * * *

Section 145.35 through 145.38, 145.41, also issued under 19 U.S.C. 1498;

* * * * *

§ 145.4 [Amended]

2. In § 145.4, paragraph (c) is amended by removing the reference ''$1,250'' and adding, in its place, the reference ''$2,000''.

§ 145.12 [Amended]

3. In § 145.12, paragraphs (a)(2), (a)(3) and (b)(1) and the heading and text of paragraph (c) are amended by removing the reference ''$1,250'' wherever it appears and adding, in its place, the reference ''$2,000''.

§ 145.35 [Amended]

4. Section 145.35 is amended by removing the reference ''$1,250'' and adding, in its place, the reference ''$2,000''.

§ 145.41 [Amended]

5. Section 145.41 is amended by removing the reference ''$1,250'' and adding, in its place, the reference ''$2,000''.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The authority citation for Part 148 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 20, Harmonized Tariff Schedule of the United States).

* * * * *

§ 148.23 [Amended]

2. In § 148.23, the heading and text of paragraph (c)(1) and the heading and introductory text of paragraph (c)(2) are amended by removing the reference ''$1,250'' and adding, in its place, the reference ''$2,000''.

George J. Weise,

Commissioner of Customs.

Approved: April 25, 1997.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–14903 Filed 6–6–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–97–019]

RIN 2115–AE84

Regulated Navigation Area: Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent regulated navigation area on portions of the Miami River, and Tamiami Canal. Over 300 freight vessels, ranging in size from 40 to 278 feet in length and 20 to 2600 gross tons routinely operate from the Miami River and the Tamiami Canal. the waterway channel is well under 150 feet wide at most points, and as vessels are often moored several abreast into the waterway this can result in little room in the channel for the safe navigation of other vessels transiting the waterway. This regulated navigation area is needed to provide for an unrestricted navigation channel by preventing the improper mooring of vessels on affected portions

of the Miami River and the Tamiami Canal. By establishing this permanent regulation, the Coast Guard expects to improve navigational safety on the river, present marine casualties which can cause injury to persons, property and the environment, and ensure the river's continued ability to serve as a main artery for flood control.

DATES: Comments must be received on or before August 8, 1997.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard, Marine Safety Office, P.O. Box 01–6940, Miami, FL 33131. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: LT C. A. Torres, Port Management and Response Department, USCG Marine Safety Office Miami at (305) 535–8744.

SUPPLEMENTARY INFORMATION:

Background and Purposes

The proposed regulations are needed to provide for the unimpeded transit of vessel's along portions of the Miami River and the Tamiami Canal, to prevent damage to bridges and other structures or moored vessels, and to protect the navigable waters from harm resulting from improperly moored vessels in the Miami River and Tamiami Canal. The project channel depth is 15 feet. The width varies from 150 feet at the mouth of the river (at the Brickell Avenue Bridge) to 90 feet at the limit of navigation (South Florida Water Management District salinity dam). The Coast Guard believes that a significant risk exists under current conditions with vessels rafted too far into the waterway channel, thus interfering with the ability of other vessels to navigate. Several vessels have been told to change their moorings to prevent their blocking free navigation on the Miami River and Tamiami Canal. Furthermore, local emergency response personnel have been hampered in their ability to reach outboard rafted vessels during vessel fires and other emergencies.

The Miami River also serves as a flood control conduit in southern Florida, especially during hurricanes and tropical storms. During periods of high water, the South Florida Water Management District may release water from the Everglades and surrounding areas into the river. Vessels that are improperly moored along the river, as when there are more than two vessels abreast, create a risk that the vessels may break loose and damage bridges or other vessels, or create obstructions which could jeopardize navigation and flood control. This proposed rule is intended to improve navigational safety on the river, and ensure the river's continued ability to serve as a main artery for flood control.

The proposed regulation would not allow vessels to be rafted more than two abreast. Neither a single vessel nor a maximum of two rafted vessels will be allowed to extend greater than 54 feet into the main river (measured from the dock) without permission of the Captain of the Port. There are many mooring facilities available on the river to accommodate those vessels required to move because of these regulations. The proposed regulation will require that a minimum navigation channel width of 65 feet exist on the Miami River at all times, from the Brickell Avenue Bridge west to the Tamiami Canal. A minimum channel width of 45 feet shall exist at all times on the Tamiami Canal and on the Miami River west of its junction with the Tamiami Canal to the South Florida Water Management District's salinity dam. No moored vessels shall extend into the channels in such a way as to obstruct navigation. All moored and rafted vessels shall provide safe access from the shore in order that the vessel can be boarded by crew and authorities quickly and efficiently as needed.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD07–97–019], the specific section of this proposal to which their comments apply and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8″ × 11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commanding Officer, Marine Safety Office Miami at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a notice in the **Federal Register.**

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). For the reasons expressed below in the ''small entities'' section, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard certifies under section 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities, as there are multiple mooring facilities available on the Miami River and the Tamiami Canal, including facilities for vessels over 54 feet in width, that would not cause them to protrude into the main channel.

Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environmental Analysis

The Coast Guard has considered the environmental impact of this proposal and has determined pursuant to section 2.B.2.e(34)(g) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), that this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be prepared during the comment period and will be available for inspection and copying after the comment period for this proposed rulemaking has expired.

List of Subjects in 33 CFR Part 165

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

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposed to amend Subpart F of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.726 is added to read as follows:

§ 165.726 Regulated Navigation Area; Miami River, Miami, Florida.

(a) *Location.* The following are Regulated Navigation Areas:

(1) All the waters of the Miami River, Miami, Florida, from the Brickell Avenue Bridge, in approximate position 25°–46°–19.0′ N, 080°–11.4′ W, inland to the South Florida Water Management District's salinity dam in approximate postion 25°–48.4′ N, 080°–15.6′ W.

(2) The Tamiami Canal from its intersection with the Miami River in approximate position 25°–47.7′ N, 080°–14.7′ W to the N.W. 37th Avenue bridge in approximate position 25–48–5′ N, 080–15–5′ W. All coordinates referenced use datum: NAD 83.

(b) *Regulations.* In accordance with the general regulations in § 165.11 of this part, no person may cause or authorize the operation of a vessel in a regulated navigation area contrary to this section.

(1) The following restrictions apply while operating within the regulated navigation area, unless authorized to deviate by the Captain of the Port, Miami, Florida, or a Coast Guard commissioned, warrant, or petty officer designated by him.

(2) All rafted vessels (inboard and outboard) must be properly moored in accordance with applicable municipal laws and regulations.

(3) At not time shall any vessels be rafted more than two abreast.

(4) Neither single nor rafted vessels shall extend greater than 54 feet into the main river (measured from the dock) without permission of the Captain of the Port.

(5) A minimum channel width of 65 feet shall be maintained at all times on the Miami River from the Brickell Avenue Bridge west to the Tamiami Canal. A minimum channel width of 45 feet shall be maintained at all times on the Miami River west of the junction of the Miami River and the Tamiami Canal to the South Florida Water Management District's salinity dam, as well as on the Tamiami Canal from its mouth to the N.W. 37th Avenue Bridge.

(6) All moored and rafted vessels shall provide safe access from the shore.

(7) All moored and rafted vessels shall provide clear and ready access for land-based firefighters to safely and quickly reach outboard rafted vessels.

(8) No vessels shall moor or raft in any manner as to impede safe passage of another vessel to any of the tributaries of the Miami River.

(9) Nothing in this section shall prohibit the U.S. Army Corps of Engineers from requiring the relocation or movement of vessels in a declared flood emergency.

(c) *Enforcement.* Violations of this regulated navigation area should be reported to the Captain of the Port, Miami. Persons in violation of this section will be subject to civil penalty under § 165.13(b) of this part.

Dated: May 12, 1997.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard 'District.

[FR Doc. 97–14972 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 149–1b; FRL–5834–7]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve the State Implementation Plan (SIP) revision request submitted by the Illinois Environmental Protection Agency (IEPA) on July 23, 1996. In the July 23, 1996, request, IEPA requested that Chase Products' facility in Broadview (Cook County), Illinois be granted an adjusted standard from the volatile organic material control requirements specified in 35 Illinois Administrative Code, part 218, section 218.686. In the Final Rules section of this **Federal Register**, USEPA is approving the State's SIP revision as a direct final rule without prior proposal because the agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If USEPA 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. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 9, 1997.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Ryan Bahr, Environmental Engineer, at (312) 353–4366 before visiting the Region 5 Office.)

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

FOR FURTHER INFORMATION CONTACT: Ryan Bahr at (312) 353–4366.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 22, 1997.

Elissa Speizman,

Acting Regional Administrator.

[FR Doc. 97–14582 Filed 6–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–33–1–7191; FRL–5837–7]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Louisiana: Motor Vehicle Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing a conditional approval of an I/M program proposed by the State, based upon the revision complying with the Clean Air Act (the Act). This action is taken under section 110 of the Act. The EPA is proposing a conditional approval because the State's SIP revision is lacking legislative authority needed for continuous implementation of the program.

If the State corrects this deficiency, then the State's I/M submittal will be fully approved into the SIP. If the condition is not met within one year, EPA proposes to disapprove the SIP revision. The EPA will notify the State by letter that the condition has not been met and that the conditional approval has converted to a disapproval. Furthermore, EPA is proposing that the State's program must start no later than January 1, 1999, in the I/M program area.

DATES: Comments must be received on or before July 9, 1997.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Compliance Division, 7290 Bluebonnet, 2nd Floor, Baton Rouge, Louisiana.

Louisiana Department of Environmental Quality Capital Regional Office, 11720 Airline Highway, Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–7367.

I. Background

On November 15, 1993, and in several later submittals, the State of Louisiana submitted plans for an I/M program in response to the requirements of the Act and Federal I/M rules promulgated on November 5, 1992. The Region made a determination that the plan was incomplete and issued a finding letter on February 22, 1994. This started both the sanction and Federal Implementation Plan clocks. The State worked toward correcting deficiencies in their submittal. On August 22, 1995, the State submitted a revised plan. The Region determined the plan to be administratively complete, thereby stopping the sanction clock. Several approvability issues (some legislative) remained to be resolved before the plan could be approved by the EPA. The Region worked with the Louisiana Department of Environmental Quality (LDEQ) to identify acceptable approaches on all approvability issues. At the same time, various states desired greater flexibility in implementing their I/M programs. In response to this desire, on September 18, 1995, EPA revised and finalized I/M rules which gave states much greater flexibility in implementing their I/M programs. One element of the I/M flexibility amendments included a provision for a new low enhanced performance standard which would allow for less stringent I/M programs if other required air quality goals were met. In response to the I/M flexibility rules and meetings with EPA, the State submitted its revisions to the SIP on May 30, 1996.

The Louisiana SIP revision was not submitted under the National Highway Systems Designation Act of 1995, nor are SIP credits taken for the I/M plan in the 15% Rate-of-Reduction Plan. The May 30, 1996, submittal addressed many of EPA's concerns, with the exception of the legislative constraints in the Louisiana I/M legal authority, which hindered expeditious implementation. The deficiency in the plan is a provision which requires the Louisiana Legislature to reauthorize the plan in 1997 and every other year thereafter, based on a determination whether the plan should proceed or continue with implementation. The EPA is proposing approval of the plan allowing the January 1, 1999, start date for reasons which are explained later in this action.

Furthermore, EPA believes that in taking action under section 110 of the Act, it is appropriate to propose granting a conditional approval to this submittal since there is a deficiency with respect to the Act's statutory and regulatory requirements (identified herein) that EPA believes can be corrected by the State during the following 12 months.

II. EPA's Analysis of Louisiana's Submittal

Louisiana submitted its revised I/M program to EPA Region 6 on August 18, 1995. It contained a SIP narrative, proposed emergency I/M Rules, and several appendices addressing the requirements of the I/M program. Another revision to the I/M SIP was received in the Region 6 office on December 27, 1995; it included finalized rules and responses to comments collected during the State's public comment period. A third revision with additional modeling and LDEQ's resolution responses to EPA's approvability issues was received on May 30, 1996. The submittals were intended to fulfill the requirements of the Act for the ozone nonattainment area of Louisiana which is required to implement an I/M program.

As outlined in the SIP revision of May 30, 1996, the additional program elements that the State intends to support include: (1) The LDEQ completing and signing a Memorandum of Understanding with the Department of Public Safety prior to the program implementation date to establish the details concerning responsibilities of both agencies in the administration of the vehicle I/M program, (2) the LDEQ performing mass emission testing on .1 percent of the vehicles in the program in accordance with CFR 51.353(c)(3), (3) the LDEQ revising the I/M rule (LAC 33:III.1917) prior to program start-up to allow for a minimum expenditure of $450 (with a CPI escalator) before a waiver may be obtained, and (4) the LDEQ providing a hot line service through its currently operating toll free number to assist repair technicians and answer questions regarding the program. The other comments and questions stated in our letter reflected a comparison of the revised Louisiana I/M SIP with the Federal I/M rules.

The EPA reviewed the State's submittal against the requirements contained in the Act and Federal I/M rules (40 CFR part 51, subpart S). The EPA also reviewed the State responses to comments which were in large part satisfactory to EPA. The major deficiency of continuing legislative authority outlined in this document can be corrected in the 1997 Louisiana legislative session. This deficiency is the current need for program reauthorization in odd-numbered years

starting with 1997. The State must correct this major deficiency within 12 months after the date of approval of the plan revision or this approval will automatically convert to a disapproval under the Act section 110(k)(4). The State must correct this deficiency during the 1997 Legislative Session to support full approval of its I/M SIP.

The following analysis addresses how the State intends to fulfill the requirements of the Federal I/M rules. This analysis assumes the State corrects the deficiency stated above. A more detailed analysis of the State submittals and a copy of EPA's comments on the plan are included in the Technical Support Document for this action and may be obtained from the EPA Region 6 office. A summary of the EPA's findings follows.

Section 51.350 Applicability

The SIP needs to describe the applicable areas in detail and, consistent with section 51.372 of the Federal I/M rule, shall include the legal authority or rules necessary to establish program boundaries.

The Louisiana regulations specify that an I/M program will be implemented in the Baton Rouge ozone nonattainment area. A low enhanced I/M program will be implemented in Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge Parishes. The State meets the applicability requirements for a conditional approval.

Section 51.351–2 Low Enhanced I/M Performance Standard

The I/M program provided for in the SIP is required to meet a performance standard, either basic or enhanced as applicable. The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met. Equivalency of emission levels needed to achieve the I/M program design in the SIP to those of the model program described in this section must be demonstrated using the most current version of EPA's mobile source emission model, or an alternative approved by the Administrator.

The approved 15% Rate-of-Progress Plan for this area can be met without an I/M program (published Tuesday, October 22, 1996, at 61 FR 54747). The State has submitted a modeling demonstration using the EPA computer model MOBILE5a showing that the low enhanced performance standard can be met in the Baton Rouge area. In order to meet the low enhanced standard, Louisiana included a complementary remote-sensing program for inspecting off-cycle vehicles. Projections of oxides of nitrogen (NO_x) emissions were not included in anticipation of EPA approval of NO_x waivers for Baton Rouge, which were approved on January 26, 1996 and February 27, 1996. Vehicles 25 years and older, and vehicles four years old and newer, will not be required to participate in the I/M program. The State is modeling with a test and repair program which assumes a 50 percent credit for network credits. The State meets the requirement for a low enhanced I/M performance standards for conditional approval.

Section 51.353 Network Type and Program Evaluation

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

The State will be implementing a decentralized test and repair program. The program includes an on-going evaluation process with results reported to EPA on a biennial basis in July, starting two years after the initial start of mandatory testing. Surveys assessing effectiveness, measured rates of tampering, and results of covert audits will be reported. In addition, the SIP commits to meet the ongoing program evaluation of mass emission testing of at least .1 percent of subject vehicles and reporting the results of such evaluation on a biennial basis. Resources and personnel for the program evaluation are described in the SIP. Legal authority, which is contained in the Louisiana Administrative Code (LAC 33:III, Chapter 19, Subchapter A), authorizes the LDEQ to implement the program and conduct the program evaluation. The State meets the requirement for network type and program evaluation for conditional approval.

Section 51.354 Adequate Tools and Resources

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

Louisiana R.S. 30:2054.B(8) authorizes the program to charge an emission inspection fee and a safety/anti-tampering inspection fee. If Intermodal Surface Transportation Efficiency Act funds are available, the emission fee will be $10. If not, the fee will be $20 biennially. The safety/anti-tampering fee will be $5. The SIP narrative also describes the budget, staffing support, and equipment needed to implement the program. The State has committed to employ and train 12 employees at the start of the program, beginning in 1999, and increase this to 15 employees in the year 2000. The State meets the requirement for adequate tools and resources for conditional approval.

Section 51.355 Test Frequency and Conveniencee

The SIP needs to describe the test schedule in detail, including the test year selection scheme if testing is other than annual. Also, the SIP needs to include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, in enhanced I/M programs, test systems shall be designed to provide convenient service to motorists who are required to get their vehicles tested. The SIP needs to demonstrate the network of stations providing test services is sufficient to insure short waiting times to get a test and short driving distances.

The revised Louisiana I/M SIP commits to testing all designated vehicles that are between four and twenty-four years old. Inspections will be required biennially to correspond with vehicle registration. Private sales of vehicles more than two years old require vehicles to be tested before title transfer. In addition, at least 10 percent of the vehicle population will be subject to remote sensing. The program is decentralized and stations will adhere to regular inspection hours. The network of stations will consist of familiar locations where motorists

regularly receive other vehicle services. Louisiana R.S. 30:2054(B)(8) and LAC 33:III. Chapter 19. Subchapter A are the legal authority for implementation of the test frequency. The State meets the requirement for test frequency and convenience for conditional approval.

Section 51.356 Vehicle Coverage

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

The revised Louisiana I/M SIP includes coverage of 1968 and newer light-duty vehicles and light and heavy-duty trucks registered or required to be registered in the I/M program area, including fleets. In addition, vehicles which are operated on Federal installations, or are stationed in the I/M program area but display Federal or other political division license plates are subject to inspection. Subject vehicles will be identified through the Department of Motor Vehicle database and from lists supplied by Federal facilities identifying stationed vehicles. The State statute allows exemption from the program for motorcycles, mobile equipment, fire engines, antique vehicles, heavy trucks, electric vehicles, golf carts, off-road vehicles, and vehicles displaying apportioned license plates. An estimated 475,000 vehicles from all the required groups combined will be subject to inspection. Legal authority for vehicle coverage is contained in the Louisiana I/M rule. The State meets the requirement for vehicle coverage for conditional approval.

Section 51.357 Test Procedures and Standards

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

Vehicles tested in the program shall be subject to a two speed idle test. Idle test procedures shall meet requirements in Appendix B of the Federal I/M rule. Idle test emission standards are contained in the SIP modeling analysis and are consistent with the Federal I/M rule. In addition, the SIP states that vehicles shall receive a gas cap integrity test in accordance with EPA procedures. Test procedures and standards are established in Louisiana Air Regulations, LAC 33:III, Chapter 19, Subchapter A. The State meets the requirement for test procedures and standards for conditional approval.

Section 51.358 Test Equipment.

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

The revised Louisiana I/M SIP states that all test equipment specifications will be consistent with that described in 40 CFR part 51, subpart S. In addition, the gas cap integrity test will be in accordance with EPA equipment specifications. The State meets the requirement for test equipment for conditional approval.

Section 51.359 Quality Control

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

The revised Louisiana I/M SIP states that the quality control procedures will be conducted in accordance with the Federal I/M rule Appendix A. These requirements will help ensure that equipment calibrations are properly performed and recorded while maintaining compliance document security. Equipment manufacturers' quality control procedures, periodic maintenance schedules, and calibration procedures will be performed to ensure proper operation of the test equipment. The State meets the requirement for quality control for conditional approval.

Section 51.360 Waivers and Compliance Via Diagnostic Inspection

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

Cost limits for the minimum expenditure waiver will be $450 adjusted annually in accordance with the Clean Air Act and Federal I/M rules. The revised Louisiana I/M program includes waiver rates of 3 percent of initially failed vehicles. These waiver rates are used in the modeling demonstration. The LDEQ commits in the SIP that if the waiver rates are higher than estimated, the State will take corrective action to address the deficiency. The SIP describes three types of waivers the State will allow. These include a minimum expenditure waiver, economic hardship waiver, and a waiver for vehicles unavailable for inspection. Vehicles unavailable for inspection are subject vehicles that are stationed outside the program area and cannot be easily returned for inspection when registration renewal is due. These vehicle owners must present proof of such stationing (military orders, school registration, or other acceptable documentation) to the administrative authority. Documentation must be presented to receive a time extension for renewal if the vehicle is stationed in an area with no I/M program. If the vehicle is stationed in an area with an I/M program, a reciprocal emissions test is required so that vehicle complies with the requirements of that area. The waiver issuance criteria and procedures used will be consistent with those required in the Federal I/M Rule. Issuing authority and the waiver criteria, including the minimum expenditure requirements, are contained in the Louisiana I/M rule. The State meets the waivers and compliance via diagnostic inspection requirement for conditional approval.

Section 51.361 Motorist Compliance Enforcement

The SIP needs to provide information concerning the enforcement process, including: (1) A description of the existing compliance mechanism if it is to be used in the future and the demonstration that it is as effective or more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this

section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other subject vehicles, *e.g.*, those operated in (but not necessarily registered in) the program area. Also, the SIP needs to include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism shall be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP needs to include a commitment to an enforcement level to be used for modeling purposes and to be maintained, at a minimum, in practice.

The State has chosen to enforce the I/M program with registration denial, suspension or revocation of registration, impoundment and cancellation of license plates and mandatory monetary penalties. The motorist compliance enforcement program will be handled cooperatively by the Department of Public Safety and Corrections (DPSC), local law enforcement agencies, and the LDEQ. There are no classes of on-road exempt vehicles. Fleet vehicles will be allowed to conduct self-testing provided that they meet the required equipment standards, are certified by the administrative authority, and tests are performed in accordance with established inspection procedures. Motorists operating vehicles in the I/M areas with an expired or invalid registration will be subject to penalties and/or citations by local and state law enforcement officials. The SIP anticipates a compliance rate of 96 percent through cooperation with the DPSC. The legal authority to implement and enforce the program is included in the Louisiana statutes and regulations cited in the SIP. The State meets the requirement for motorist compliance enforcement for conditional approval.

Section 51.362 Motorist Compliance Enforcement Program Oversight

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

The Louisiana I/M SIP provides for regular auditing of its enforcement efforts and for following effective management practices, including adjustments to improve the program when necessary. The program oversight and information management activities listed in the SIP narrative include procedures for I/M document handling and processing, audit procedures, procedures for dealing with motorists and inspection facilities suspected of violating program rules, an on-line telecommunication network to support the State's oversight and management requirements, and an I/M database which will be compared to the registration database to determine program effectiveness. The State meets the motorist compliance enforcement program oversight requirement for conditional approval.

Section 51.363 Quality Assurance

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

The revised Louisiana I/M SIP includes a description of its quality assurance program. The program includes both covert and overt audits which will be conducted on a regular basis. The SIP describes regular performance audits which include the inspection of records and equipment. Procedures for program oversight will be based upon written instructions and will be updated as necessary. The State program meets the requirement for quality assurance for conditional approval.

Section 51.364 Enforcement Against Contractors, Stations and Inspectors

The SIP needs to include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of state constitutional impediments to immediate suspension authority, the State Attorney General needs to furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law. Also, the SIP needs to describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In States without immediate suspension authority, the SIP needs to demonstrate that sufficient resources, personnel, and systems are in place to meet the three day case management requirement for violations that directly affect emission reductions.

In the revised Louisiana I/M SIP the State may assess penalties in its enforcement against stations and inspectors. A penalty schedule is included in the Louisiana I/M rule. The SIP describes the enforcement process. Quality Assurance Officers have immediate suspension authority. The legal authority for Louisiana to asses penalties is located in the Environmental Quality Act and Louisiana Air Quality Regulation, LAC 33:III, Chapter 19, Subchapter A. The authority for DPSC to deny application for license or revoke or suspend an outstanding certificate of any inspection station or the certificate of any person to inspect vehicles is found in the same citations. The State meets the requirement for enforcement against contractors, stations and inspectors for conditional approval.

Section 51.365–6 Data Collection, Analysis and Reporting

The SIP needs to describe the types of data to be collected and reported.

The revised Louisiana I/M SIP provides for collection of test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The SIP lists the specific types of test data and quality control data which will be collected to evaluate program effectiveness. The data collected will be consistent with that required in the Federal I/M rule. The data will be used to generate reports in the areas of test data, quality assurance, quality control, and enforcement. The State meets the data collection, analysis and reporting requirement for conditional approval.

Section 51.367 Inspector Training and Licensing or Certification

The SIP needs to include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The revised Louisiana I/M SIP provides for the implementation of training, certification, and refresher programs for emission inspectors. The SIP describes this program including hands-on testing. Inspector licenses or certificates will expire two years after issuance. All inspectors must be certified to inspect vehicles in the Louisiana I/M program. The State meets the inspector training and licensing or certification requirement for conditional approval.

Section 51.368 Public Information and Consumer Protection

The SIP needs to include a plan for informing the public on an ongoing basis throughout the life of the I/M program of the air quality problem, the requirements of Federal and state law, the role of motor vehicles in the air quality problem, the need for and benefits of an inspection program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. Also, the SIP shall include a detailed consumer protection plan.

The revised Louisiana I/M SIP commits to the establishment of an ongoing public awareness plan addressing the significance of the air quality problem, the requirements of Federal and state law, the role of motor vehicles in the air quality problem, the needs for and benefits of an inspection program, the ways to maintain a vehicle in low-emission condition , how to find a qualified repair technician, and the requirements of the I/M program. The SIP states that motorists will be offered general repair information including a list of repair facilities, information on the results of the repairs by repair facilities in the area, diagnostic information and warranty information. The SIP also describes consumer protection provisions which include challenge/referee facilities, oversight of the program through the use of audits, and whistle blower protection. The State meets the public information and consumer protection requirement for conditional approval.

Section 51.369 Improving Repair Effectiveness

The SIP needs to include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of the Federal I/M rule, and a description of the repair technician training resources available in the community.

The revised Louisiana I/M SIP includes a description of the technical assistance plan, repair industry performance monitoring plan, repair technician training assessment, and recognized repair technician requirements. The State will regularly inform repair facilities regarding changes to the inspection program, training course schedules, common problems and potential solutions for particular engine families, diagnostic tips, repair, and other technical assistance issues. The LDEQ will also provide a toll-free technical assistance hotline to assist repair technicians and answer questions from the public. Repair facility performance monitoring statistics will be available to motorists whose vehicles fail the I/M test. The State will also ensure that adequate repair technician training resources are available to the repair community. The State meets the requirement for improving repair effectiveness for conditional approval.

Section 51.370 Compliance With Recall Notices

The SIP needs to describe the procedures used to incorporate the vehicle lists provided into the inspection or registration database, the quality control methods used to insure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The revised Louisiana I/M SIP commits to cooperating with the EPA in assisting motorists with vehicle recall issues. Additional rulemaking by EPA is needed before the State will be able to implement this provision. The State meets the requirement for compliance with recall notices for conditional approval.

Section 51.371 On-Road Testing

The SIP needs to include a detailed description of the on-road testing program, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet) to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing. Also, the SIP needs to include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements. In addition, emission reduction credit for on-road testing programs shall be granted for a program designed to obtain significant emission reductions over and above those already predicted to be achieved by other aspects of the I/M program. The SIP needs to include technical support for the claimed additional emission reductions.

The revised Louisiana I/M SIP includes a description of its on-road testing program. The State is planning to use remote sensing as a complement to their two speed idle test. The State has committed to cover 0.5 percent of the EPA required subject vehicles. The legal authority to conduct and enforce on-road testing is in La. R.S.30:2054(B)(8). On-road testing emission reduction credits are being used to meet the performance standard. The State meets the on-road testing requirement for conditional approval.

Section 51.372 State Implementation Plan Submissions

Under section 51.372(a)(6) of the Federal I/M rule, the SIP submittal should include legal authority for I/M program operation until such time as it is no longer necessary. Legal authority in the revised Louisiana SIP is limited to reauthorization by the State Legislature in odd-numbered years starting in 1997. The EPA considers this a major deficiency in the SIP. A change in this legal authorization will be necessary before this I/M SIP becomes fully approvable.

The revised Louisiana I/M SIP commits to revising the I/M SIP as new regulations are promulgated, including the provision for revision as onboard diagnostic checks become available. In addition, the SIP commits to having all agreements with the DPSC in place prior to start up, and to have instituted other changes as were previously stated. The only issue left unresolved is adequate funding through authorization by the legislature. The issue of adequate funding does not prevent the State from meeting the requirement for state implementation plan submissions in this conditional approval.

Section 51.373 Implementation Deadlines

The original Federal I/M rule had a January 1995 start date requirement, as well as subsequent start dates for special circumstances. In response to states' requests for greater flexibility in implementing I/M programs the National Highway System Designation Act specified a start date of November 15, 1997. Then in a narrower application, a January 1, 1999, start date was designated as a result of providing greater flexibility in Ozone Transport Regions (OTR) (61 FR 39034, July 25, 1996). The OTRs would normally be exempt from I/M program requirements except for their location within the OTR. The January 1, 1999, start date allows the affected areas to meet the performance standard by the Act's attainment and reasonable further progress deadlines, including the end of 1999 for serious ozone nonattainment areas. The EPA received no public comment regarding the 1999 start date in that document. In a somewhat similar situation, the Baton Rouge serious ozone nonattainment area does not need an I/M program to achieve its 15% Rate-of-

Progress Plan requirements and reasonable further progress requirements except that section 110 of the Act requires that serious ozone nonattainment areas implement I/M programs. Program credits are used only to demonstrate the performance standard. In addition the mobile source portion of the Baton Rouge area's emissions inventory is less than 20 percent.

The revised Louisiana I/M SIP commits to implementing all requirements related to the I/M program by January 1, 1999, or as soon as practicable thereafter. A January 1999 start date allows the Louisiana program to meet the low-enhanced performance standard evaluation date of January 1, 2000, as required in § 51.351(h)(11). The State meets the implementation deadlines requirement for conditional approval.

III. Discussion for Rulemaking Action

A. Concluding Statement of Conditional Approval

The EPA's review of this material indicates that it meets the minimum requirements of the Act and Federal I/M rules with the exceptions of the deficiency explained in this proposal. Based upon the discussion contained in the previous analysis sections and technical support document, EPA concludes the State's submittal represents an acceptable approach to the I/M requirements and meets the requirements for conditional approval. Therefore, EPA is proposing a conditional approval of the Louisiana I/M SIP revision which was submitted on August 18, 1995, December 27, 1995, and May 30, 1996. The EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

B. Explanation of the Approval

At the end of the 12-month period, the approval status for this program will automatically convert to a disapproval pursuant to section 110(k) of the Act, unless continuous I/M program funding is authorized by the State legislature. The EPA expects that this program will start by January 1, 1999. If the State fails to start the program by January 1, 1999, EPA will be forced to make a finding of nonimplementation of the State's SIP. In addition, a final Memorandum of Understanding with the DPSC needs to be submitted to EPA prior to the January 1, 1999, start date. If this memorandum is not submitted within one year of this approval, EPA will consider this nonimplementation as well.

IV. Proposed Action

The EPA is proposing to grant conditional approval of the State's submission contingent upon the State obtaining all of the additional authority needed to implement the program outlined in the revised SIP. The EPA proposes that if the State fails to obtain the needed additional legal authority, the approval will convert to a disapproval after a letter is sent notifying the State of the conversion to disapproval.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to 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.

V. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this 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 substitute a new Federal requirement.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental

relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 30, 1997.

Myron O. Knudson,

Acting Regional Administrator.

[FR Doc. 97–14984 Filed 6–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WA 13–6–6121; WA 55–7130; and WA 57–7132; FRL–5837–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA invites public comment on its proposed approval of parts of three revisions to the State of Washington Implementation Plan (SIP). These revisions were submitted by the Washington Department of Ecology (Washington) to address the attainment of the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO) in the Spokane, Washington urbanized area.

DATES: Comments must be received in writing and postmarked on or before July 9, 1997.

ADDRESSES: Written comments should be addressed to Montel Livingston, SIP Manager, Office of Air Quality, M/S OAQ–107, EPA Region 10, Docket #s WA 13–6–6121; WA 57–7132; and WA 55–7130, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of Washington's submittals are available for public review during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, M/S OAQ–107, 1200 Sixth Avenue, Seattle, Washington 98101; Washington Department of Ecology, Attention: Tami Dahlgren, Olympia, Washington 98504–7600, telephone (360) 407–6830; and the Spokane County Air Pollution Control Authority, West 1101 College, Suite 403, Spokane, Washington 99201, telephone (509) 456–4727.

FOR FURTHER INFORMATION CONTACT: William M. Hedgebeth of the EPA Region 10 Office of Air Quality at (206) 553–7369.

SUPPLEMENTARY INFORMATION:

I. Background

On January 22, 1993, Washington submitted a SIP revision (Docket # WA 13–6–6121) consisting of a plan for the attainment and subsequent maintenance of the CO NAAQS for the Spokane area. This included a demonstration of attainment of the CO NAAQS and provisions for forecasting and tracking vehicle miles traveled (VMT) in the Spokane area, with contingency measures to be implemented if any estimate of actual VMT in the nonattainment area, or any updated forecast of VMT contained in an annual report for any year prior to attainment, exceeds the number predicted in the most recent VMT forecast. Also included were provisions which have been superseded by subsequent SIP revisions: Reasonably Available Control Measures for residential wood combustion; Reasonably Available Control Technology for point sources; New Source Review; Vehicle Emission Inspection and Maintenance Program; oxygenated fuels; and transportation conformity. On September 14, 1993, Washington submitted a revision to the January 22, 1993, SIP submittal consisting of the 1990 base year emissions inventory and the 1995 projected year emissions inventory. Washington also submitted, on September 29, 1995, a 1993 updated (periodic) emissions inventory for the Spokane area, to meet the requirement of section 187(a)(5) of the CAA for periodic inventories.

On April 30, 1996, Washington submitted a SIP revision (Docket # WA 57–7132) consisting of revisions to the previously submitted vehicle emission estimates portion of the 1990 base year emissions inventory and of the 1995 projected year inventory; the emissions budget; VMT estimates and forecasts; and the attainment demonstration. This revision also added a contingency measure (3.5% oxygenated fuel) for failure to attain the NAAQS.

On April 30, 1996, Washington also submitted a SIP revision (Docket # WA 55–7130) consisting of the removal of two transportation control measures (TCMs) which had previously been approved by EPA on March 22, 1982, as part of the 1982 Spokane CO SIP.

The implementation plan revisions were submitted by Washington to satisfy certain federal requirements for an approvable nonattainment area CO SIP for the Spokane nonattainment area in the State of Washington. EPA is proposing to approve parts of the submitted revisions and deferring action on several other parts of those revisions. Other parts are not being addressed in this action because they have been superseded by subsequent revisions and were or will be addressed in separate actions. The rationales for the approvals and deferrals of action are set forth in this notice. Additional information is available at the address indicated above.

II. Review of State Submittal

A. Emissions Inventories (Base Year and Periodic)

Under section 187(a)(1) of the CAA, for moderate CO nonattainment areas, states are required to submit a base year CO inventory that represents actual emissions in the CO season by November 15, 1992. Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The base year for the inventory is 1990. Stationary point, stationary area, on-road mobile, and non-road mobile sources of CO are included in the inventory. This inventory addresses actual CO emissions for the area during the peak CO season, which reflects the months when peak CO air quality concentrations occur. In Spokane, the peak CO season is October through December. All required sources were included in the inventory. Stationary sources with emissions of 50 tons or greater per year were included in the point source category. Stationary sources with emissions less than 50 tons per year were included in the area source category. The following list presents a summary of the 1990 CO peak season daily emissions estimates in tons per winter day by source category: *Point Sources:* 76.98 tons per day; *Area Sources:* 58.69 tons per day; *Mobile On-Road Sources:* 271.54 tons per day; *Mobile Non-Road Sources:* 16.18 tons per day; *Total Sources:* 423.39 tons per day. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Washington also submitted a 1995 Projected Year Emission Inventory. This inventory incorporates growth factors for population, households, and employments. For one of the point sources, the 1995 inventory used the 1990 emission figure, although a decrease in emissions had been estimated for 1995. For another of the point sources, emissions from 1991 were used, adjusted to 1995 using Bureau of Economic Analysis industry growth rates. For residential wood combustion, a household growth factor

was applied to the 1990 emissions. The primary change in estimating on-road vehicle emissions for 1995 the use of EPA's newest MOBILE emissions model, which estimated significantly increased CO emissions. In addition, there was an adjustment for a change in the inspection and maintenance area, which now includes the entire nonattainment area. The following list presents a summary of the 1995 CO peak season daily emissions estimates in tons per winter day by source category: *Point Sources:* 77.41 tons per day; *Area Sources:* 60.83 tons per day; *Mobile On-Road Sources:* 169.34 tons per day; *Mobile Non-Road Sources:* 17.87 tons per day; *Total Sources:* 325.45 tons per day.

Section 187(a)(5) of the CAA requires that states submit, for moderate CO nonattainment areas, periodic inventories that represent actual emissions; the first periodic inventory was due no later than September 30, 1995, with subsequent periodic inventories submitted every three years thereafter until the area is redesignated to attainment. The first periodic inventory (1993) was submitted by Washington on September 29, 1995.

The following chart compares CO season daily emissions for 1990 and 1995:

DAILY EMISSIONS
(Pounds Per Day)

Category	Base Year 1990	1995
Point Sources	153,954 (18%)	154,824 (24%)
Area Sources	117,376 (14%)	121,651 (19%)
On-road Mobile Sources	543,087 (64%)	338,680 (52%)
Non-road Mobile Sources	32,371 (4%)	35,749 (5%)
Total	846,788	650,904

EPA is proposing to approve the 1990 Base Year emissions inventory as meeting the requirements of section 187(a)(1) of the CAA. EPA is also proposing to approve the 1993 periodic emissions inventory as meeting the requirements of section 187(a)(5) of the CAA. Washington has provided acceptable documentation of quality assurance and has clearly identified the methodologies used in determining the emissions for each source category. References from which emissions and growth factors were derived were clearly identified. A more complete analysis supporting EPA's approval of the 1990 and 1993 emissions inventories is included in the Technical Support Document.

B. VMT/VMT Contingency Measures

Section 187(a)(2)(A) of the CAA required EPA, in consultation with the U.S. Department of Transportation (DOT), to develop guidance for states to use in complying with the VMT forecasting and tracking provisions of section 187. A Notice of Availability for the resulting Section 187 VMT Forecasting and Tracking Guidance was published in the **Federal Register** on March 19, 1992 (57 FR 9549).

The section 187 guidance identifies the Federal Highway Administration's Highway Performance Monitoring System (HPMS) as the foundation for VMT estimates and forecasts. HPMS was chosen as the best method for estimating actual VMT since it is a count-based, statistically-based, nationwide program with auditing procedures in place, and because travel demand models would require resource intensive annual updates of input data and annual validation against traffic counts in order to be useful for estimating annual VMT. EPA believes that these time and resource requirements generally make travel demand models an unrealistic option for estimating actual annual VMT with reasonable accuracy.

To develop growth factors for forecasting VMT, the section 187 guidance offers as one alternative the use of network-based travel demand models. If these models are properly updated and validated, and if they use an equilibrium approach to allocating trips, they are considered to be the best predictor of growth factors for VMT forecasts. Moderate areas without a network model that is validated according to the specifications described in the Section 187 Guidance are offered the alternative of developing growth factors based on a linear regression extrapolation of the past six years' HPMS VMT. In both cases, the growth factors are applied to the HPMS VMT reported to the Federal Highway Administration.

As specified in the Act, the contingency measure triggers serve to address as early as possible any situation in which a trend towards higher then expected VMT has been detected, since such a trend may affect the forecasted attainment date.

When determining whether annual VMT or a VMT forecast has exceeded the most recent prior forecast and, therefore, whether contingency measures should be implemented, EPA believes that it is appropriate to take into account the statistical variability in the estimates of VMT generated through HPMS. Consequently, EPA has identified a margin of error to be applied when making VMT comparisons. With the expectation that HPMS sampling procedures will improve over the next few years in response to recent Federal Highway Administration guidance, the margin of error starts at 5.0 percent for VMT comparisons made in 1994, becomes 4.0 percent for VMT comparisons made in 1995, and is reduced to 3.0 percent for VMT comparisons made in 1996 and thereafter. However, since each revised VMT forecast becomes the VMT baseline for triggering contingency measures, the application of a margin of error every year could allow the forecasts to increase without bound, without ever triggering contingencies. To prevent this occurrence, EPA believes it is appropriate to allow the application of the margin of error only as long as, cumulatively, neither an estimate of actual VMT nor a VMT forecast ever exceeds by more than 5.0 percent the VMT forecast relied upon in the area's attainment demonstration.

In practice, then, there are two ways in which an estimate of actual VMT or an updated forecast can be found to exceed a prior forecast. Individual yearly comparisons can result in an exceedance of the forecast made 12 months earlier by more than the prescribed percentage for that year, and exceedances can accumulate so that, cumulatively, they exceed the 5.0

percent cap above the attainment demonstration forecast.

EPA interprets the requirement for contingency measures to ''take effect without further action by the State or the Administrator'' to mean that no further rulemaking activities by the State or EPA would be needed to implement the measures. The General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, published in the **Federal Register** on April 16, 1992, offers guidance on the type and size of contingencies to be included in the SIP revision. This guidance is advisory in nature and is non-binding. (*See* 57 FR 13532–13533, April 16, 1992.)

The State of Washington has submitted a SIP revision to EPA in order to satisfy the requirements of sections 187(a)(2)(A) and 187(a)(3). Washington's submittal provides for each of the following mandatory elements: (1) A forecast of VMT in the nonattainment area for each year prior to the attainment year; (2) a provision for annual updates of the forecasts along with a provision for annual reports describing the extent to which the forecasts proved to be accurate; these reports shall provide estimates of actual VMT in each year for which a forecast was required; and (3) adopted and enforceable contingency measures to be implemented without further action by the State or the Administrator if actual annual VMT or an updated forecast exceeds the most recent prior forecast or if the area fails to attain the CO NAAQS by the attainment date.

The following items are the basis for approval of the portions of the SIP revisions addressing VMT:

1. VMT Forecasts

In Spokane, the Federal Aid Urban Area is identical to the CO nonattainment area and is the VMT forecast area. The Spokane Regional Council (SRC) developed daily VMT forecasts for the area using a network-based travel demand modeling process methodology. Washington has met the requirements of sections 187(a)(2)(A) by submitting a SIP revision that implements all required elements.

Below is a table showing the forecasted VMT for Spokane:

ANNUAL VMT FORECASTS FOR SPOKANE

VMT forecast year	Spokane Co. nonattainment area (miles traveled)
1990 Actual	2,085,203,390
1993	2,286,713,685

ANNUAL VMT FORECASTS FOR SPOKANE—Continued

VMT forecast year	Spokane Co. nonattainment area (miles traveled)
1994	2,317,581,370
1995	2,376,606,980

2. Annual VMT Updates/Reports

Section 187(a)(2)(A) specifies that the SIP revision provide for annual updates of the VMT forecasts and annual reports that describe the accuracy of the forecasts and that provide estimates of actual VMT in each year for which a forecast was required. The Section 187 VMT Forecasting and Tracking Guidance specifies that annual reports should be submitted to EPA by September 30 of the year following the year for which the VMT estimate is made.

Washington has submitted a SIP revision to EPA which satisfies the requirements of section 187(a)(2)(A) in that it provides for the submittal of annual updates of the VMT forecasts along with a provision for annual reports describing the extent to which the forecasts proved to be accurate.

3. VMT Contingency Measures

Section 187(a)(3) specifies that Washington, in its SIP revision, adopt specific, enforceable contingency measures to be implemented if the annual estimate of actual VMT or a subsequent VMT forecast exceeds the most recent prior forecast of VMT or if the area fails to attain the CO NAAQS by the attainment date. Implementation of the identified contingency measures must not require further rulemaking activities by Washington or EPA. Washington meets this requirement by submitting two contingency measures. Those measures used by Washington to satisfy the VMT contingency measure requirement are: (1) Commute Trip Reduction programs, as put forth in SSHB 1671, Washington State's Transportation Demand Management Act; and (2) A campaign for voluntary reductions in vehicle operation during periods of poor air quality.

At this time, EPA is proposing to approve the SIP revision submitted by Washington for the purpose of forecasting and tracking VMT in the Spokane area. This approval would include the revisions to the VMT estimates and forecasts provided in the April 30, 1996, SIP submittal, and would also include the VMT contingency measures.

C. Contingency Measures (3.5 Percent Oxygenated Fuel)

States containing CO nonattainment areas with design values of greater than 12.7 ppm were required to submit, among other things, contingency measures to satisfy the provisions under section 172(c)(9). These provisions require contingency measures to be implemented in the event that an area fails to reach attainment by the applicable attainment date, December 31, 1995. Contingency measures were to be submitted to EPA by November 31, 1992, pursuant to section 172(b) of the CAA.

Contingency measures must be implemented within 12 months after the finding of failure to attain the CO NAAQS. Once triggered, they must take effect without further action by the state or EPA. Therefore, all contingency measures must be adopted and enforceable prior to submittal to EPA.

The Clean Air Act Amendments of 1990 (CAAA) do not specify how many contingency measures are needed or the magnitude of emission reductions they must provide if an area fails to attain the CO NAAQS. Because section 186(b)(2) requires EPA to reclassify a moderate CO nonattainment area as a serious nonattainment area if the area does not attain the NAAQS for CO by December 31, 1995, EPA believes that one appropriate choice of contingency measures would be to provide for the implementation of sufficient VMT reductions or emissions reductions to counteract the effect of one year's growth in VMT while the state revises its SIP to incorporate all of the new requirements of a serious CO area.

The State of Washington has submitted a SIP revision to EPA in order to satisfy the requirements of section 172(c)(9) of the CAA. The contingency measure consists of revising the oxygenate requirement for the Spokane area to 3.5 percent oxygen for future control periods in the case of failure to attain or maintain NAAQS for CO. The control period is defined as September 1 through the last day of February.

Because it has not been determined that the Spokane CO nonattainment area attained the CO NAAQS by December 31, 1995, the Spokane County Air Pollution Control Authority (SCAPCA) implemented the 3.5 percent oxygen contingency measure for the 1996–1997 winter control period, commencing on September 1, 1996. It is important to note that EPA has proposed to determine that the Spokane CO nonattainment area did not attain the CO NAAQS by December 31, 1995, as required, and to reclassify the Spokane

CO nonattainment area as a ''serious'' nonattainment area. *See* 61 FR 33879, July 1, 1996.

At this time, EPA is proposing to approve the contingency measure as satisfying the requirements of section 172(c)(9), and as consistent with EPA guidance.

D. Transportation Control Measures (TCM) Deletions

EPA approved two TCMs as part of a SIP revision on March 22, 1982. One of the TCMs consisted of widening Rowan Avenue in Spokane to 44 feet from Alberta to Wall Streets, a total distance of 1.27 miles; the TCM also included the installation of traffic lights along Rowan Avenue. The second TCM consisted of constructing North River Drive in Spokane from Maple to Hamilton, a distance of 1.91 miles.

EPA, in its November 24, 1993, Final Rule on Transportation Conformity, stated that ''if obstacles to TCM implementation are not being overcome because it is impossible to do so, if State and local agencies are not giving maximum priority to TCMs which are behind schedule, or if the original sponsor or the cooperative planning process decides not to implement the TCM or decides to replace it with another TCM, a SIP revision which removes the TCM will be necessary before plans and TIPS may be found in conformity. In order to be approved by EPA, such a SIP revision must include substitute measures that achieve emissions reductions sufficient to meet all applicable requirements of the Clean Air Act, including section 110(l).'' *See* 58 FR 62198, November 24, 1993.

Washington has submitted documentation that a Spokane Regional Transportation Council analysis showed that, at the present time, the Rowan Avenue TCM would have, at best, neutral air-quality impacts and that the North River Drive TCM would have definite negative impacts. In addition, neither TCM will be used to demonstrate attainment. Therefore, no substitute measures are required.

At this time, EPA is proposing to approve the deletion of the two transportation control measures discussed herein.

E. Attainment Demonstration

The air quality planning requirements for moderate CO nonattainment areas set out in sections 186 and 187 of the CAAA include, for moderate areas with a design value greater than 12.7 ppm at the time of classification, a requirement for states to submit a SIP revision to provide for attainment of the CO NAAQS by the applicable attainment date and which includes a demonstration that the plan as revised will provide for such attainment. Washington submitted an Attainment Demonstration as part of its January 22, 1993, SIP revision, and revised the Attainment Demonstration in a submittal dated April 30, 1996. EPA proposed, on July 1, 1996 (61 FR 33879), to find that the Spokane, Washington, CO nonattainment area did not attain the CO NAAQS by the CAA mandated attainment date for moderate nonattainment areas, December 31, 1995, to reclassify the Spokane CO nonattainment area as a serious nonattainment area. EPA has not made a final determination as to this reclassification and is deferring action on approval of the attainment demonstration pending this decision.

F. Emissions Budget

For federal transportation conformity purposes, Washington submitted, as part of its April 30, 1996, SIP revision, an emission budget, the projected mobile source inventory (1995) used in the attainment demonstration. Because attainment has not been demonstrated (see discussion in (E) above), EPA is deferring action on the emission budget.

G. Reasonably Available Control Measures (RACM)/Reasonably Available Control Technology (RACT)

The January 22, 1993, SIP revision relating to RACM in Spokane was superseded by a revision submitted on December 9, 1994. This revision was approved by EPA on January 27, 1997. *See* 62 FR 3800. Satisfaction of the RACT requirements was acknowledged by EPA in 62 FR 3800, as well as having been approved earlier in the redesignation to attainment of the Puget Sound and Vancouver CO nonattainment areas. See 61 FR 53323, October 11, 1996, and 61 FR 54560. October 21, 1996.

H. New Source Review

The January 22, 1993, SIP revision relating to New Source Review was superseded by a revision submitted on March 8, 1994. This revision was approved by EPA on June 2, 1995. *See* 60 FR 28726.

I. Vehicle Emission Inspection and Maintenance Program

The January 22, 1993, SIP revision relating to the Vehicle Emission Inspection and Maintenance Program was superseded by a revision submitted on August 21, 1995. This revision was approved by EPA on September 25, 1996. *See* 61 FR 50235.

J. Oxygenated Fuels

The January 22, 1993, SIP revision relating to oxygenated fuels was approved by EPA on January 20, 1994. *See* 59 FR 2994.

K. Transportation Conformity

The January 22, 1993, SIP revision relating to transportation conformity was superseded by a revision submitted on May 10, 1994, which was further revised by a submittal dated November 30, 1995. EPA will act on this submittal separately from this action.

III. This Action

EPA is soliciting comments on its proposed approval of portions of the aforementioned revisions to the State of Washington Implementation Plan. Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted to the address listed in the front of this Notice. Comments postmarked on or before July 9, 1997 will be considered in the final rulemaking action taken by EPA.

IV. Administrative Review

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the

nature of the federal-state relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed for promulgation does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action proposes to approve pre-existing requirements under state or local law, and does not propose to impose new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, would result from this action, if approved.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 27, 1997.

Chuck Clarke,

Regional Administrator.

[FR Doc. 97–14853 Filed 6–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OR 56–7271; FRL–5837–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA invites public comment on its proposed redesignation of the Portland, Oregon, carbon monoxide (CO) nonattainment area, which is located in parts of Multnomah, Washington, and Clackamas Counties in the State of Oregon, from nonattainment to attainment. EPA further proposes to approve the CO Maintenance Plan as a revision to the Oregon Department of Environmental Quality's (Oregon's) State Implementation Plan (SIP) which was submitted with Oregon's redesignation request. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if the State demonstrates full compliance with the redesignation requirements set forth in section 107(d)(3)(E) of the CAA.

EPA is proposing to approve the submitted Maintenance Plan as meeting the requirements of section 175A of the CAA; the 1990 base year emissions inventory as meeting the requirements of section 187(a)(1) of the CAA; and the 1991 attainment year (periodic) emissions inventories as meeting the requirements of section 187(a)(5) of the CAA.

DATES: Comments must be received in writing and postmarked on or before July 9, 1997.

ADDRESSES: Written comments should be addressed to Montel Livingston, SIP Manager, Office of Air Quality, M/S OAQ–107, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of Oregon's submittals are available for public review during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, M/S OAQ–107, 1200 Sixth Avenue, Seattle, Washington 98101; and the Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390, telephone (503) 229–5696.

FOR FURTHER INFORMATION CONTACT: William M. Hedgebeth of the EPA Region 10 Office of Air Quality at (206) 553–7369.

SUPPLEMENTARY INFORMATION:

I. Background

On March 15, 1991, the Governor of Oregon recommended that the Portland portion of the Portland-Vancouver Air Quality Maintenance Area be designated as nonattainment for CO as required by section 107(d)(1)(A) of the 1990 Clean Air Act Amendments (CAAA) (Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671(q)). The area was designated nonattainment and classified as ''moderate'' with a design value less than or equal to 12.7 parts per million (ppm) under the provisions outlined in sections 186 and 187 of the CAA. (See 56 FR 56694, November 6, 1991, codified at 40 CFR 81.338). On September 29, 1995, EPA approved the separation of the Portland-Vancouver CO nonattainment area into two distinct nonattainment areas, effective November 28, 1995. Because the Portland area had a design value of 9.8 ppm (based on 1988–1989 data), the area was considered moderate. The CAA established an attainment date of December 31, 1995, for all moderate CO areas. The Portland area has ambient monitoring data showing attainment of the CO National Ambient Air Quality Standard (NAAQS) since 1989. On August 30, 1996, Oregon submitted a CO redesignation request and a CO Maintenance Plan for the Portland area. Oregon submitted evidence that public hearings were held on May 22, 1996, in

Portland, Oregon, and on May 23, 1996, in Tigard, Oregon.

II. Evaluation Criteria

Section 107(d)(3)(E) of the CAAA provides five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;
2. The area must have a fully approved SIP under section 110(k) of the CAA;
3. The air quality improvement must be permanent and enforceable;
4. The area must have a fully approved Maintenance Plan pursuant to section 175A of the CAA; and
5. The area must meet all applicable requirements under section 110 and Part D of the CAA.

III. Review of State Submittal

On September 18, 1996, EPA Region 10 determined that the information received from Oregon constituted a complete redesignation request under the general completeness criteria of 40 CFR part 51, appendix V, 2.1 and 2.2. The Oregon redesignation request for the Portland area meets the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how Oregon fulfilled each of these requirements.

1. Attainment of the CO NAAQS

Quality-assured CO ambient air monitoring data shows that the Portland area has met the CO NAAQS. The Oregon request to redesignate the Portland CO nonattainment area to attainment is based on an analysis of quality-assured CO air monitoring data which is relevant to the Maintenance Plan and to the redesignation request. To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard per year over at least two consecutive years. The ambient air CO monitoring data for calendar year 1990 through calendar year 1995, relied upon by Oregon in its redesignation request, shows no violations of the CO NAAQS in the Portland area. The last exceedance of the CO NAAQS in the Portland CO nonattainment area occurred on February 1, 1991. Because the area has complete quality assured data showing no more than one exceedance of the standard per year over at least two consecutive years, the area has met the first statutory criterion of attainment of the CO NAAQS (40 CFR 50.8 and appendix C). Oregon has committed to continue monitoring in this area in accordance with 40 CFR part 58. In addition, Oregon has committed to conduct saturation studies every four years to identify locations of peak CO concentrations and to periodically reassess whether the CO monitoring network represents worst case concentrations.

2. Fully Approved SIP Under Section 110(k) of the CAA

With the exception of Oregon's 1990 base year emissions inventory, which is proposed for approval herein, Oregon's CO SIP is fully approved by EPA as meeting all the requirements of section 110(a)(2)(I) of the CAA, including the requirements of Part D (relating to nonattainment), which were due prior to the date of Oregon's redesignation request.

The 1990 CAAA required that nonattainment areas meet specific new requirements depending on the severity of the nonattainment classification. Requirements for the Portland area included a vehicle inspection and maintenance program, the preparation of a 1990 emissions inventory with periodic updates, adoption of an oxygenated fuels program, the development of contingency measures, and development of conformity procedures. Each of these requirements added by the 1990 Amendments to the CAA is discussed in greater detail below. Final approval of this redesignation request is contingent upon final action by EPA to approve the 1990 base year emissions inventory, submitted by Oregon on August 30, 1996, along with the redesignation request and Maintenance Plan.

A. Emissions Inventories (Base Year and Periodic)

Under section 187(a)(1) of the CAA, States are required to submit, by November 15, 1992, a base year CO inventory for moderate CO nonattainment areas that represents actual emissions in the CO season. Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The base year for the inventory is 1990. Stationary point, stationary area, on-road mobile, and non-road mobile sources of CO are included in the inventory. This inventory addresses actual CO emissions for the area during the peak CO season, which reflects the months when peak CO air quality concentrations occur. In Portland, the peak CO season is November 1 through the end of February. All required sources were included in the inventory. Stationary sources with emissions of 100 tons or greater per year were included in the point source category. Stationary sources with emissions of 100 tons or greater per year which are outside of the CO nonattainment area but within 25 miles of the Portland CO nonattainment area boundary (coincident with the Metro boundary) have also been included. Stationary sources with emissions less than 100 tons per year were included in the area source category. The following list presents a summary of the 1990 CO peak season daily emissions estimates in tons per winter day by source category: Point Sources: 64.40 tons per day; Area Sources: 215.00 tons per day; Mobile On-Road Sources: 921.71 tons per day; Mobile Non-Road Sources: 66.96 tons per day; Total Sources: 1268.07 tons per day. Available guidance for preparing emissions inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Section 187(a)(5) of the CAA also requires that States submit, for moderate CO nonattainment areas, periodic inventories that represent actual emissions; the first periodic inventory is due no later than September 30, 1995, with subsequent periodic inventories submitted every three years thereafter until the area is redesignated to attainment. Oregon submitted an attainment year emissions inventory for 1991 which meets the requirements for the periodic inventory. This inventory was developed in the same manner as the 1990 base year. CO peak season daily emissions estimates in tons per winter day by source category are: Point Sources: 57.97 tons per day; Area Sources: 205.50 tons per day; Mobile On-Road Sources: 906.11 tons per day; Mobile Non-Road Sources: 67.55 tons per day; Total Sources: 1237.13 tons per day.

The following chart compares CO season daily emissions for 1990 and 1991:

DAILY EMISSIONS (POUNDS PER DAY)

Category	Base year 1990	Attainment year 1991
Point Sources	128,803	115,946
Area Sources	430,003	410,992
On-road Mobile Sources	1,843,414	1,812,224
Non-road Mobile Sources	133,911	135,102
Total	2,536,132	2,474,264

EPA is proposing to approve the 1990 base year emissions inventory and the 1991 attainment year (periodic) emissions inventory as meeting the

requirements of sections 187(a)(1) and 187(a)(5) of the CAA. Oregon has provided acceptable documentation of quality assurance and has clearly identified the methodologies used in determining the emissions for each source category. References from which emission and growth factors were derived were clearly identified.

B. Oxygenated Gasoline

Motor vehicles are significant contributors of CO emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen, contained within the oxygenate in the fuel, enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter.

Section 211(m) of the CAA requires that, for CO nonattainment areas with a design value of 9.5 or greater ppm based on data for the 2-year period of 1988 and 1989, a SIP revision be submitted for an oxygenated fuel program for the area. The oxygenated fuel requirement must apply to all fuel refiners or marketers who sell or dispense gasoline in the Metropolitan Statistical Area (MSA) or in the Consolidated Metropolitan Statistical Area (CMSA) in which the nonattainment area is located. The Portland area has a design value above 9.5 ppm based on 1988 and 1989 data and, consequently, Oregon was subject to the requirement to adopt an oxygenated fuel program for the Portland area.

Oregon submitted an oxygenated fuel SIP revision [1] for the Portland CO nonattainment area to EPA on November 16, 1992. The oxygenated gasoline program is one in which all oxygenated gasoline must contain an average minimum oxygen content of 2.7 percent by weight of oxygen. Under section 211(m)(4) of the CAA, EPA also issued requirements for the labeling of gasoline pumps used to dispense oxygenated gasoline, as well as guidelines on the establishment of an appropriate control period. These labeling requirements and control period guidelines may be found in the **Federal Register**, 57 FR 47849, dated October 20, 1992. Oregon's oxygenated gasoline regulation requires a 2.7 percent average oxygen content within a four-county Control Area (Clackamas, Multnomah, Washington, and Yamhill Counties) which includes the Portland CO nonattainment area. The regulation also contains the necessary labeling regulations, enforcement procedures, and oxygenate test methods. EPA approved Oregon's oxygenated fuel SIP revision on February 15, 1994 (59 FR 7222).

C. Conformity

Under section 176(c) of the CAA, States are required to submit revisions to their SIPs that include criteria and procedures to ensure that federal actions conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as all other federal actions (''general conformity''). Congress provided for the State revisions to be submitted one year after the date of promulgation of final EPA conformity regulations. EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and final general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that the States adopt both transportation and general conformity provisions in their SIPs for areas designated nonattainment or subject to a Maintenance Plan approved under CAA section 175A. Pursuant to 40 CFR 51.396 of the transportation conformity rule, Oregon was required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the federal rule by November 25, 1994. Similarly, pursuant to 40 CFR 51.851 of the general conformity rule, Oregon was required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the federal rule by December 1, 1994. Oregon submitted its transportation conformity SIP revision to EPA on April 14, 1995. EPA approved this SIP revision on May 16, 1996. Oregon submitted its general conformity SIP revision to EPA on September 27, 1995, but it has not yet been approved by EPA.

Although this redesignation request was submitted to EPA after the due date for the SIP revisions for general conformity rules, EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment. Therefore, Oregon remains obligated to adopt the general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of State-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under federal rules if State rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

Therefore, on April 1, 1996, EPA modified its national policy regarding the interpretation of the provisions of section 107(d)(3)(E) concerning the applicable requirements for purposes of reviewing a carbon monoxide redesignation request (61 FR 2918, January 30, 1996). Under this new policy, for the reasons just discussed, EPA believes that the CO redesignation request for the Portland area may be approved notwithstanding the lack of approved State general conformity rules.

For transportation conformity purposes, the on-road emission totals outlined in the chart below for each year will be designated as the emissions budget for the Portland CO nonattainment/maintenance area. Oregon has also developed emissions budgets for two Sub-Areas, the Central City Transportation Management Plan (CCTMP) Sub-Area and the 82nd Avenue Corridor Sub-Area.

[1] The Maintenance Plan being proposed for approval herein relies on the continuation of oxygenated fuel in the Portland CO nonattainment area for the ten years of the maintenance period after redesignation of the Portland CO nonattainment area to attainment.

PORTLAND CO TRANSPORTATION EMISSION BUDGETS

[Thousand pounds per winter day]

Year	1991	1995	1997	2001	2003	2007
CO Nonattainment Area = Metro Boundary						
Budget	1812	1217	1076	875	825	775
CCTMP Sub-Area						
Budget	191	123	107	84	78	70
82nd Avenue Corridor Sub-Area						
Budget	12	7	6	5	4	4

D. Inspection and Maintenance

Section 187(a)(4) requires that the applicable CO implementation plan include the vehicle inspection and maintenance (I/M) program described in section 182(a)(2)(B). This requires that Oregon implement at least a basic I/M program. Oregon submitted its basic I/M SIP revision to EPA on November 15, 1993. EPA approved this SIP revision on September 9, 1994. Oregon submitted an enhanced I/M SIP revision to EPA on December 12, 1996. EPA approved this on April 30, 1997. *See* 62 FR 27204.

E. Contingency Measures

States containing CO nonattainment areas with design values of 12.7 ppm or less were required to submit, among other things, contingency measures to satisfy the provisions under section 172(c)(9). These provisions require contingency measures to be implemented in the event that an area failed to reach attainment by the applicable attainment date, December 31, 1995. The SIP revision for the contingency measures portion of the Attainment Plan was submitted on November 15, 1993. The contingency plan required that oxygenates be supplied at maximum allowable oxygen contents (e.g., 3.5% ethanol and 2.7% methyl tertiary butyl ether (MTBE)). A specified minimum average oxygen content of 2.9% would have been required only if, in subsequent control seasons, the project control area average oxygen content would be less than 3.1% (based on reported oxygenate mix information submitted by the regulated community). EPA approved this SIP revision on June 28, 1994 (59 FR 33202).

F. New Source Review

All moderate CO nonattainment areas with a design value of 12.7 ppm or less were required to submit proposed Part D New Source Review (NSR) programs no later than November 15, 1993, pursuant to sections 172(b), 172(c)(5), and 173 of the CAA. Oregon submitted revisions to the SIP on November 16, 1992, to meet this requirement. Further revisions were submitted on December 12, 1996. EPA approved these revisions to the SIP on April 30, 1997. *See* 62 FR 27204.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

Once this action and the enhanced vehicle inspection and maintenance program are approved, EPA will have completed its approval of Oregon's CO SIP (attainment plan). Emission reductions achieved through the implementation of the primary control measures contained in that SIP are enforceable. The primary permanent and enforceable federal measure has been the Federal Motor Vehicle Control Program which has established emission standards for new motor vehicles. Permanent and enforceable SIP measures which have helped improve air quality in the Portland CO nonattainment area are: major New Source Review Program (Lowest Achievable Emission Rate and offsets); basic vehicle inspection and maintenance; improved public transit; carpool matching program and carpool parking program in downtown Portland; traffic flow improvements (ramp metering, computerized signalization, on-street parking limits); City of Portland bicycle parking program; Downtown Portland Air Quality Plan (1980 Updated Downtown Parking and Circulation Policy); and the Downtown Portland Parking Offset Program. Also, the oxygenated fuel program, from its implementation on November 1, 1992, has been and will continue to be, fully enforceable. As discussed above, the Portland area initially attained the NAAQS in 1990 with monitored attainment throughout the 1994–1995 CO season. This indicates that the improvements were due to the permanent and enforceable measures contained in the CO SIP. These improvements were made in spite of rapid population growth in the Portland area since 1991. Oregon has also evaluated Portland area meteorological patterns over the 1985–1994 period and has concluded that recent compliance with CO standards is not attributable to favorable meteorology.

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. Even though the SIP does not contain additional point source controls to attain the standard, existing and federally approved point source emission limitations are relied upon to maintain and demonstrate attainment with the CO NAAQS. EPA determined that, because the five-day advance notice provision required by ORS.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority the State must demonstrate to obtain SIP approval, as specified in section 110 of the CAA and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude federal approval of a CO nonattainment area SIP revision. EPA notified Oregon of the deficiency. To correct the problem, the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify the State's program from federal approval or delegation. Oregon responded to EPA's understanding of the application of 468.126(2)(e) and agreed that, if federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

Therefore, EPA is satisfied that Oregon has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to a local economic downturn. EPA finds that the combination of certain existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed the area to attain the NAAQS.

4. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a Maintenance Plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised Maintenance Plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the Maintenance Plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. In this notice, EPA is proposing to approve Oregon's Maintenance Plan for the Portland area because EPA finds that Oregon's submittal meets the requirements of section 175A.

A. Attainment Emissions Inventory

On August 30, 1996, Oregon submitted, as part of its redesignation and Maintenance Plan approval request, a comprehensive 1991 Attainment Year inventory of CO emissions for the Portland area. The inventory includes emissions from area, stationary, and mobile sources using 1991 as the base year for calculations.

The Oregon submittal contains the detailed inventory data and summaries by source category. The comprehensive base year emissions inventory was submitted in the National Emission Data System format. This inventory was prepared in accordance with EPA guidance.

Although the 1991 inventory can be considered representative of attainment conditions because the NAAQS was not violated during 1991, Oregon established CO emissions for the attainment year, 1991, as well as for forecast years out to the year 2007. These estimates were derived from Oregon's 1991 emissions inventory. The future emissions estimates are based on assumptions about vehicle miles traveled and economic growth, and on the continuation of the oxygenated fuel program throughout the ten year Maintenance Plan period. Also included in these estimates are, for point sources, production increases both from existing and new facilities.

1991 CO BASE YEAR EMISSIONS INVENTORY, PORTLAND NONATTAINMENT AREA

[Tons per day]

Year	Point	Area	Non-road mobile	On-road mobile	Total
1991	57.97	205.50	67.55	906.11	1237.13

B. Demonstration of Maintenance

i. *Projected Inventories.* Total CO emissions were forecast from 1991 base year out to 2007. These projected inventories were prepared in accordance with EPA guidance. Oregon conducted rollforward analysis for three hotspot monitoring locations, which are the sites of three of the four permanent CO monitors in the Portland CO nonattainment area. Oregon has provided a complete description of the methodology employed, selection of the background concentration, explanation of the CCTMP Worst Case Scenario for the downtown area, calculations, and a summary of the results. Oregon has included the following technical data: allocation of parking for the CCTMP Worst Case Scenario; City of Portland traffic counts; Oregon-conducted speed runs; and Mobile 5a input and output data sheets. Oregon will continue to implement the oxygenated fuel program in the Portland CO nonattainment area throughout the ten year Maintenance Plan period. The projections show that calculated CO emissions, with the oxygenated fuel program in place and operational, are not expected to exceed the level of the base year inventory during this time period. Therefore, it is anticipated that the Portland area will maintain the CO standard throughout the Maintenance Plan period.

PORTLAND CO NONATTAINMENT AREA, CO EMISSIONS FORECAST SUMMARY

[Thousand pounds CO per winter day]

Year	Point	Area	Non-road mobile	On-road mobile	Total
1991	116	411	135	1812	2474
1995	124	382	146	1217	1868
1997	167	392	151	1076	1785
2001	171	405	160	875	1610
2003	173	417	163	825	1577
2007	178	447	169	775	1569

ii. *Transportation Control Measures (TCMs).* TCMs incorporated into the Maintenance Plan fall into two categories: non-funding based TCMs and funding based TCMs. The non-funding based TCMs reduce transportation emissions through land-use requirements and regulatory programs. The funding based TCMs reduce transportation emissions by increasing the supply of transit, bicycle and pedestrian facilities. The funding based TCMs were established in the financially constrained transportation network of Metro's interim federal Regional Transportation Plan (RTP), adopted July 1995, in accordance with the requirements of the federal

Intermodal Surface Transportation Efficiency Act (ISTEA). This network includes only projects that can be supported based on historical funding level trends.

Under the Oregon Administrative Rule (OAR), the funding based TCMs must receive priority funding in Metro's transportation planning process and all TCMs identified in the Maintenance Plan must receive timely implementation. If the TCMs do not receive priority funding and timely implementation, a conformity determination cannot be made for Metro's transportation plans and all regionally significant projects will be held up until a conformity determination can be made. These requirements are specified in Oregon's transportation conformity rules (OAR 340–020–0710 through 340–020–1080). In general, ''priority funding'' means that all State and local agencies with influence over approvals or funding of the TCMs are giving maximum priority to approval of funding of the TCMs over other projects within their control. ''Timely implementation'' means that the TCMs are being implemented consistent with the schedule established in the Maintenance Plan. The determination of whether priority funding and timely implementation have been achieved is made in the context of interagency consultation as specified in the transportation conformity rules.

Identified TCMs may be substituted in whole, or in part, with other TCMs providing equivalent emission reductions. Substitution occurs through consultation with Metro's Transportation Policy Alternatives Committee (TPAC) and Joint Policy Advisory Committee on Transportation (JPACT). Such substitution requires public notice, EQC (Environmental Quality Commission) approval and concurrence from EPA, but does not require a revision to the SIP. Appendix D2–10 of the Maintenance Plan identifies the requirements for TCM substitutions, which EPA is proposing to approve as part of the Maintenance Plan. TCMs in the Maintenance Plan are as follow:

a. Non-funding based Transportation Control Measures: (1) Metro 2040 Growth Concept, which changes typical growth patterns to be less reliant on motor vehicle travel, thereby reducing motor vehicle emissions; and (2) Central City Parking Requirements: key elements of the Zoning Code Amendments [2] [3] related to CO air quality projections are incorporated into the Maintenance Plan. These include maximum parking ratios for new development, requirements for providing structured parking to serve older historic buildings, and other regulations on parking. The downtown parking lid will be transferred to contingency status upon approval of the Maintenance Plan.

Code No.	Code title
1. Incorporated Amendments to City of Portland Chapter 33.510, Central City Plan District	
33.510.261—33.510.261.E (33.510.261.E.1 (a)(1)–(2),b,E.2.a(1)–(2),b)	Parking Site split by subdistrict or parking sector boundaries.
33.510.263—33.510.263.A (33.510.263.A.1.a–c(1)–(4),A.2–4.a–b(1)–(3),A.5–7.a–c).	Parking in the Core Area Growth Parking.
33.510.263.B—(33.510.263.B.1.a–c (1)–(2),B.2–4.a)	Preservation Parking.
33.510.263.E—(33.510.263.E.1.a–b,E.3.a–c)	Residential/Hotel Parking.
33.510.263.F—33.510.263.F.2	RX Zone Parking.
33.510.263.G—33.510.263.G.4—(33.510.263.G.4.a.(1)–(2),G.4.d(1)–(3))	All Parking Surface parking lots.
33.510.264 33.510.264.A (33.510.264.A.1.a–c (1)–(4),A.2.a,A.4.a)	Parking in Lloyd District Growth Parking.
33.510.264.B 33.510.264.B.1.a–c(1)–(2),B.2.a–c,B.4.a c	Preservation Parking.
33.510.264.F	All Parking.
33.510.264.F (33.510.264.F.4.e.(1)–(3))	Surface parking lots.
33.510.265	Parking in the Goose Hollow Subdistrict and Central Eastside Sectors 2 and 3.
33.510.265.A (33.510.265.A.1.a–c,A.2.a,A.4.a)	Growth Parking.
33.510.265.B (33.510.265.B.1.a–c(1)–(4),B.2.a,b) (33.510.265.B.4.a–c)	Preservation Parking.
2. Incorporated Portion of New Chapter 33.808, Central City Parking Review	
33.808.050	Loss of Central City Parking Review Status.
33.808.100 33.808.100.G	General Approval Criteria for Central City Parking Review.
33.808.100.J 33.808.100.J.2.a 33.808.100.M	If the site is in the Core Area.
Map Number	Map Title
3. Incorporated Maps	
510–8	Core and Parking Sectors—EPA.

4. Incorporated Portion of CCTMP Administration Section

Code No.	Code title
VI.D.1.a.(1)–(5)	Administrative Section: Preservation Parking.

[2] The Portland City Council adopted the *Central City Transportation Management Plan (CCTMP), Plan and Policy*, and other supporting documents which include these Zoning Code Amendments, on December 6, 1995. The CCTMP was adopted by Ordinance No. 169535, Resolution 35472, and was effective on January 8, 1996.

[3] The CCTMP is intended to advance a ''buildout'' vision of the Central City Plan to the year 2010 and beyond. The chief implementing mechanism is the Zoning Code Amendments. Although the CCTMP eliminated the ceiling on downtown parking, it provided for the expansion of the system of maximum parking ratios to the entire area of the Central City.

b. Funding based Transportation Control Measures: (1) Increased Transit Service, specifically regional increase in transit service hours averaging 1.5 percent annually; completion of the Westside Light Rail Transit facility; and completion of Light Rail Transit (LRT) in the South/North corridor by the year 2007; and (2) Bicycle and Pedestrian Facilities, including multimodal facilities, an RTP Constrained Bicycle System, and Pedestrian facilities.

C. Verification of Continued Attainment

Oregon will analyze on an annual basis the CO air quality monitoring data to verify continued attainment of the CO NAAQS, in accordance with 40 CFR Part 50 and EPA's Redesignation guidance. This data, along with the previous year's data, will provide the necessary information for determining whether the region continues to attain the NAAQS.

Oregon will prepare updated emissions inventory summaries for 1996, 1999, 2001, 2003, and 2007. These updates will be submitted to EPA Region 10 within 12 months following the end of the periodic emissions inventory calendar year. In preparing the updates, Oregon will review the emission factors, growth factors, rule effectiveness and rule penetration factors, and other significant assumptions used to prepare the emissions forecast. Oregon will verify the factors or adjust them where more accurate information is available. New emission sources will be included in the updates.

Oregon will compare each updated emissions summary to the emissions forecast and the attainment inventories and evaluate any changes which have occurred. If significant changes have occurred, Oregon will, in consultation with EPA Region 10, determine if a more extensive periodic emissions inventory is necessary. If a more extensive inventory is necessary, it will be submitted to EPA within 23 months after the end of the reporting period.

D. Contingency Plan

The level of CO emissions in the Portland area will largely determine the area's ability to stay in compliance with the CO NAAQS in the future. Despite Oregon's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Section 175A(d) of the CAA requires that, when violations of the NAAQS occur, Oregon implement all measures with respect to the control of CO which were contained in the SIP for the area before redesignation of the area as an attainment area. Therefore, Oregon has provided contingency measures in the Maintenance Plan with a schedule for implementation in the event of future exceedances or violations of the CO NAAQS. The plan contains triggering mechanisms to determine when contingency measures are needed.

Oregon has developed a contingency plan which utilizes actual validated CO monitoring results to trigger activation of the CO contingency measures. A two-tiered level of escalating response and contingencies for the Portland CO Contingency Plan, based on risk of violation and actual violation, is proposed as follows:

If monitored (8-hour average) CO levels at a site within the Central City registers a second high concentration equaling or exceeding 90 percent of the NAAQS level (8.1 ppm or greater) during a calendar year period, Oregon will identify a planning group to recommend a strategy for implementation to forestall violations of the NAAQS. Within six months of the validated 90 percent second high CO concentration, the planning group will determine a schedule of selected strategies to either prevent or correct any violation of the 8-hour NAAQS for CO. The contingency strategies to be considered will include, but not be limited to: (1) Increased parking pricing in the Central City; (2) increased funding for transit; (3) congestion pricing on major regional transportation corridors; (4) a trip reduction program; (5) regional mandatory parking ratios; and (6) accelerated implementation of bicycle and pedestrian networks.

If a violation of the CO NAAQS occurs, and is validated by Oregon, the following contingency measures will automatically be implemented: (1) New Source Review requirements for proposed major sources and major modifications in the Maintenance Plan area (and the area of significant air quality impact) will be modified. The requirement to install Best Available Control Technology (BACT) will be replaced with a requirement to install Lowest Achievable Emission Rate (LAER) technology. In addition, the industrial growth allowance established in section 4.51.3.2.3 of the Oregon CO SIP will be eliminated. These requirements will take effect upon validation of the violation. BACT and a growth allowance may be reinstated if provided for in a new Maintenance Plan adopted and approved by EPA; and (2) The downtown parking lid will be reinstated. However, the reinstatement of the downtown parking lid will be implemented only if the violation occurs in the downtown area formerly under the parking lid requirement.

E. Additional Maintenance Plan Commitments

Oregon has incorporated the following commitments into the Maintenance Plan: (1) Coordination with the Southwest Washington Air Pollution Control Authority in Vancouver, Washington, on interstate air quality issues; (2) Submittal of rules to implement the enhanced vehicle inspection program before EPA approval of the Maintenance Plan (refer to previous discussion on the I/M program); (3) Submittal of revisions to the New Source Review regulations before EPA approval of the Maintenance Plan (refer to previous discussion on NSR); (4) Preparation of periodic emissions inventory updates for 1996, 1999, 2001, 2003, and 2007, and submittal of the updates to EPA within 12 months following the end of the periodic emissions inventory calendar year; (5) Submittal of a backup emission reduction measure as a revision to the SIP if the federal Low Emission Vehicle (fedLEV) is delayed beyond 2001. This measure will be presented for adoption by the Oregon Environmental Quality Commission by November 1, 1999; (6) Preparation of reports on activity in the industrial growth allowance program for the periods 1996–1997, 1998–2001, 2002–2003, and 2004–2007, and submittal of those reports to EPA within 12 months following the end of the activity period; and (7) Maintenance of documentation of approved TCM substitutions.

F. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, Oregon has agreed to submit a revised maintenance SIP by December 31, 2004. Oregon will develop the next ten year Maintenance Plan (2007–2017) in coordination and conjunction with Metro.

5. Meeting Applicable Requirements of Section 110 and Part D

In section III.2 above, EPA sets forth the basis for its conclusion that Oregon has a fully approved SIP which meets the applicable requirements of section 110 and Part D of the CAA.

IV. This Action

EPA is proposing to approve the Portland area CO Maintenance Plan because it meets the requirements set forth in section 175A of the CAA. In addition, EPA is proposing to redesignate the Portland CO nonattainment area to attainment

because Oregon has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA is also proposing to approve Oregon's 1990 base year and 1991 (periodic) emissions inventories.

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

V. Administrative Review

A. Executive Order 12866

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

The CO SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the CO NAAQS. This proposed redesignation should not be interpreted as authorizing or proposing to authorize Oregon to delete, alter, or rescind any of the CO emission limitations and restrictions contained in the approved CO SIP. Changes to CO SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 179(a) of the CAA) and in a SIP deficiency call made pursuant to sections 110(a)(2)(H) and 110(k)(2) of the CAA.

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D, of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-State relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 27 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

Authority: 42 U.S.C. 7401–7671q.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 27, 1997.

Chuck Clarke,

Regional Administrator.

[FR Doc. 97–14941 Filed 6–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5836–7]

National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions From Wood Furniture Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments to final rule.

SUMMARY: This action proposes amendments to the National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions from Wood Furniture Manufacturing Operations promulgated in the **Federal Register** on December 7, 1995 (60 FR 62930). This action proposes to revise the definition of wood furniture component to exclude foam seat cushions not made at a wood furniture manufacturing facility from this definition, and therefore, from the requirements of this national emission standards for hazardous air pollutants (NESHAP). Because the proposed revisions clarify the applicability of the final rule to eliminate potential overlapping requirements with other NESHAP, the EPA does not anticipate receiving adverse comments. Consequently, these proposed revisions also are being issued as a direct final rule in the final rules section of this **Federal Register**. If no significant and timely comments are received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

DATES: Comments on these proposed changes must be received on or before July 9, 1997. Anyone requesting a public hearing must contact the EPA no later than June 20, 1997. If a hearing is held, it will take place on July 7, 1997 beginning at 10:00 a.m.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) on the proposed changes to

the NESHAP to: Air and Radiation Docket and Information Center (6102), Attention, Docket No. A–93–10, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Kim Teal, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5580.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards and the proposed changes, contact Mr. Paul Almodóvar, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–0283. For information regarding the applicability of this action to a particular entity, contact Mr. Robert Marshall, Manufacturing Branch, Office of Compliance, (2223A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 564–7021.

SUPPLEMENTARY INFORMATION:

Electronic Comment Submission

Comments on the proposed changes to the NESHAP also may be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments also will be accepted on diskette in WordPerfect 5.1 or ASCII file format. All comments in electronic form must be identified by the docket number A–93–10. No confidential business information should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

For additional information, see the direct final rule published in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Wood furniture manufacturing.

Dated: May 30, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–14989 Filed 6–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 266, 268, and 271

[FRL–5837–8]

RIN 2050–AE05

Land Disposal Restrictions: Extension of Comment Period on Land Disposal Restrictions, Phase IV, Second Supplemental Proposal on Treatment Standards for Metal Wastes and Mineral Processing Wastes, Mineral Processing and Bevill Exclusion Issues, and the Use of Hazardous Waste as Fill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: extension of comment period.

SUMMARY: EPA is extending the public comment period on the Second Supplemental Phase IV proposal (62 FR 26041, May 12, 1997) for 30 days beyond the original 60-day comment period.

DATES: Public comments must be submitted to EPA by August 12, 1997.

ADDRESSES: To submit comments, the public must send an original and two copies to Docket Number F–97–2P4P–FFFFF, located at the RCRA Docket. The mailing address is: RCRA Information Center (5305G), Office of Solid Waste, U.S. Environmental Protection Agency Headquarters, 401 M Street, S.W., Washington, D.C. 20460. Hand deliveries of comments should be made to the RCRA Information Center at Crystal Gateway 1, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The phone number is (703) 603–9230. Commenters must place Docket Number F–97–2P4P–FFFFF on their comments.

In an effort to reduce unnecessary paper use, EPA is asking prospective commenters to voluntarily submit one copy of their comments, in addition to the paper copy, in either of two electronic methods: diskettes or the Internet. Commenters can send their comments to the RCRA Information Center on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. Please use mailing envelopes designed to physically protect the submitted diskettes. To send copies by Internet, address them to: rcra-docket@epamail.epa.gov. All comments sent by Internet must be ASCII files, avoiding the use of special characters and any form of encryption. Comments in electronic format should also be identified by the docket number F–97–2P4P–FFFFF.

Commenters should not submit electronically any confidential business information (CBI). EPA emphasizes that submission of comments electronically is not mandatory, nor will it result in any advantage or disadvantage to any commenter. For further information on the electronic submission of diskettes, contact Sue Slotnick at the Waste Treatment Branch, (703) 308–8462, or Rhonda Minnick at (703) 308–8771.

FOR FURTHER INFORMATION CONTACT: For general information or to order paper copies of this **Federal Register** document, contact the RCRA Hotline Monday through Friday between 9:00 a.m. and 6:00 p.m. EST, toll free at (800) 424–9346; or (703) 412–9810 from Government phones or if in the Washington, D.C. local calling area; or (800) 553–7672 for the hearing impaired. Questions can also be directed to the Waste Treatment Branch (5302W), Office of Solid Waste (OSW), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, phone (703) 308–8434; or call Sue Slotnick, Waste Treatment Branch staff, (703) 308–8462.

SUPPLEMENTARY INFORMATION: On August 22, 1995, EPA proposed the Phase IV Land Disposal Restrictions rule (60 FR 43654) containing proposed treatment standards for newly listed and characteristic wastes, among other issues. In the first supplemental proposal (61 FR 2338, January 25, 1996), EPA proposed treatment standards and changes to the definition of solid waste for mineral processing materials. Some of the provisions from these two notices were promulgated in a final rule entitled ''Land Disposal Restrictions—Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions'' (62 FR 25997 May 12, 1997). For other issues raised in the original and first supplemental proposals—metal wastes, mineral processing wastes, and Bevill issues—EPA has presented new options, discussed in the Second Supplemental Proposed Rule (62 FR 26041, May 12, 1997).

The National Mining Association, ASARCO Incorporated, and the Environmental Defense Fund have requested that EPA extend the comment period for the Second Supplemental Proposal, citing the need for more time

to thoroughly analyze the new options and background information. In today's notice, EPA is extending the comment period by 30 days. The comment period will close on August 12, 1997.

Dated: May 29, 1997.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 97–14938 Filed 6–6–97; 8:45 am]

BILLING CODE 6560–50–P

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Extension and Revision to a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request an extension of a currently approved information collection. CCC issues invitations to purchase or process commodities for food donation programs monthly. Vendors respond by making offers using various CCC commodity bid forms. The information from these forms is manually entered into the bid evaluation program to determine the lowest landed cost and award data for the creation of contracts.

DATES: Comments on this notice must be received on or before August 8, 1997 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, DC 20503 and to Donna Ryles, Planning and Analysis Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–1505, fax (816) 926–1648.

SUPPLEMENTARY INFORMATION:

Title: CCC Commodity Offer Forms—5 CFR 1320.

OMB Number: 0560–0177.

Expiration Date: 10/31/97.

Type of Request: Extension and Revision to a Currently Approved Information Collection.

Abstract: The United States donates agricultural commodities domestically and overseas to meet famine or other relief requirements, to combat malnutrition, and sells or donates commodities to promote economic development.

CCC issues invitations to purchase or sell agricultural commodities and services for use in domestic and export programs. Vendors respond by making offers using various CCC commodity offer forms. These forms include: KC–324, Steamship Line Service Offer Form; KC–327, Domestic Offer Form; KC–331, Bulk Grain Procurement Offer Form; KC–332, Bulk Grain Sales Offer Form; KC–333, Export Offer Forms; KC–334, Discharge/Delivery Survey Summary; KC–337, Rate Schedule; KC–340, Cotton Sales; KC–366, Shipment Information Log Form. CCC verifies that the form is responsive and enters the information on the form into the bid evaluation process for the creation of contracts.

Regulations governing paperwork burdens on the public require that before an agency collects information from the public, the agency must receive approval from OMB. In accordance with those regulations, CCC is seeking approval for these forms to provide for the submission of offers.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 15–30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Business and other for profit organizations.

Estimated Number of Respondents: 1,061.

Estimated Number of Annual Responses per Respondent: 129.

Estimated Total Annual Burden on Respondents: 4,699 hours.

Proposed topics for comment include: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, DC 20503, and to Donna Ryles, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–1505, fax (816) 926–1648.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations 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.

Signed at Washington, D.C., on May 29, 1997.

Vicki J. Hicks,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–14998 Filed 6–6–97; 8:45 am]

BILLING CODE 3410–05–P

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Appalachian States Low-Level Radioactive Waste Commission Meeting

AGENCY: Appalachian States Low-Level Radioactive Waste Commission.

ACTION: Annual meeting.

SUMMARY: The Appalachian States Low-Level Radioactive Waste Commission will hold an annual meeting on June 24, 1997. The meeting is open to the public. An executive session will be held from 9:15 a.m. to 10 a.m. which will be closed to the public.

DATES: June 24, 1997, 9 a.m.–1 p.m.

ADDRESS: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Marc S. Tenan, Executive Director, 207 State Street, Harrisburg, PA 17101, 717–234–6295.

SUPPLEMENTARY INFORMATION: The Appalachian States Low-Level Radioactive Waste Commission

(Commission) was established by the Appalachian States Low-Level Radioactive Waste Compact Consent Act (Public Law 100–319, May 19, 1988). The Commission represents the states of Delaware, Maryland and West Virginia, and the Commonwealth of Pennsylvania to assist in the establishment of a regional low-level radioactive waste disposal facility as required by the Low-Level Radioactive Waste Policy Amendments Act (Public Law 99–240, January 15, 1986).

The primary purpose of this meeting is to: consider a revised budget for 1997–98; consider a proposed budget for 1998–99; elect officers; and hear a status report on the siting of a regional LLRW disposal facility. A draft agenda can be obtained by contacting the Commission at 717–234–6295.

Marc S. Tenan,

Executive Director.

[FR Doc. 97–14945 Filed 6–6–97; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meetings and intent to prepare a draft environmental impact statement

SUMMARY: In accordance with the National Environmental Policy Act and with section 315 of the Coastal Zone Management Act of 1972, as amended, the State of Alaska and the National Oceanic and Atmospheric Administration (NOAA) intend to conduct public scoping meetings on the proposed Kachemak Bay National Estuarine Research Reserve (NERR) to solicit comments on significant issues related to the preparation of a Draft Environmental Impact Statement (DEIS) and Draft Management Plan (DMP). The DEIS and DMP will address research, monitoring, education and resource protection needs for the reserve.

DATE AND TIME: Tuesday, June 24, 1997 at 6:30 p.m.

ADDRESSES: Homer City Hall, City Council Chambers, 491 East Pioneer Avenue, Homer, Alaska 99663.

DATE AND TIME: Thursday, June 26, 1997 at 6:30 p.m.

ADDRESSES: Seldovia Community Center, Seldovia, Alaska 99603.

FOR FURTHER INFORMATION CONTACT: Glenn Seaman, Alaska Department of Fish and Game, at (907) 267–2331, or Matt Menashes, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resources Management, NOAA, at (301) 713–3132, ext. 165.

SUPPLEMENTARY INFORMATION: In May 1997, NOAA approved the nomination of Kachemak Bay in Alaska as a proposed National Estuarine Research Reserve. Research reserves provide natural coastal habitats as field laboratories for baseline ecological studies and education programs. Research and monitoring programs are designed to enhance scientific understanding of the coastal environment and aid in resource management decision making.

The Kachemak Bay NERR is proposed to be managed by the Alaska Department of Fish and Game (ADFG), in cooperation with the Alaska Department of Natural Resources (ADNR). The ADFG has statutory authority to manage the state's critical habitat areas system, in which Kachemak Bay is included. The ADNR has management authority over the Kachemak Bay State Park, which is included in the proposed boundaries for the Kachemak Bay NERR.

The ADFG has developed a preliminary draft management plan outline for the NERR which identifies specific needs and priorities related to research, monitoring, education, and resource protection at the proposed site. It also outlines an administrative plan, volunteer program and facilities development needs, public access, and visitor use policies.

At the public meetings, ADFG and NOAA will provide a synopsis of the process for developing a DMP and will solicit comments on significant environmental issues that will be incorporated into a DEIS.

The public meetings will be held in Homer, Alaska, at the City Council Chambers, 491 West Pioneer Avenue, on June 24, 1997, from 6:30 p.m. to 8:30 p.m., and in Seldovia, Alaska, at the Seldovia Community Center, on June 26, 1997 from 6:30 p.m. to 8:30 p.m.

Interested parties who wish to submit suggestions, comments or substantive information regarding the scope or content of the proposed DEIS/DMP are invited to attend either of the above meetings. Parties who wish to respond in writing should do so by July 9, 1997, to Glenn Seaman, Habitat and Restoration Division, Alaska Department of Fish and Game, 333 Raspberry Road, Anchorage, AK 99518–1599, or Matthew Menashes, Sanctuaries and Reserves Division, NOAA, 1305 East-West Highway N/ORM2, Silver Spring, MD 20910.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: June 3, 1997.

Nancy Foster,

Assistant Administrator, for Ocean Services and Coastal Zone Management.

[FR Doc. 97–15000 Filed 6–6–97; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060297A]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Golden Crab Committee and Advisory Panel, Spiny Lobster Committee and Advisory Panel, Habitat and Environmental Protection Committee, Calico Scallop Committee, Snapper Grouper Committee, Controlled Access Committee, Mackerel Committee, and a Council session.

DATES: The meetings will be held from June 16–20, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Pier House Resort, One Duval Street, Key West, FL; telephone: (305) 296–4600.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571–4366; fax: (803) 769–4520; email: susan.buchanan@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

June 16, 1997, 1:00 p.m. to 3:00 p.m.—Joint Golden Crab Committee and Advisory Panel

The committee and advisory panel will hear reports regarding the status of Golden Crab Fishery Management Plan (FMP) implementation and the numbers

of permits that have been issued and disapproved, the status of the golden crab resource, and a report on golden crab data collection. The committee and advisory panel will discuss potential need for framework action or plan amendment for the golden crab fishery.

June 16, 1997, 3:00 p.m. to 5:00 p.m.—Joint Spiny Lobster Committee and Advisory Panel

The committee and advisory panel will hear reports on the status of the Florida trap certificate program and the status of the spiny lobster resource, and discuss potential need for framework action or plan amendment.

June 16, 1997, 6:00 p.m. until all business is complete—Atlantic Coast Cooperative Statistics Program Scoping Meeting (ACCSP)

As a partner in the ACCSP, the Council will hold a scoping meeting to solicit public input on ways to improve commercial and recreational fisheries data collection.

June 17, 1997, 8:30 a.m. to 12:00 noon—Habitat and Environmental Protection Advisory Panel

The committee will review the timeframe for development of the Council Habitat Plan, discuss the national habitat workshop, review the Habitat Advisory Panel's recommendations, and review the draft Habitat Plan outline.

June 17, 1997, 1:30 p.m. to 5:00 p.m.—Calico Scallop Committee

The committee will meet to review previous scoping meeting information, review requests for management action from industry, discuss a preliminary options paper, and develop measures to be included in the Calico Scallop FMP.

June 18, 1997, 8:30 a.m. to 10:30 a.m.—Snapper Grouper Committee

The committee will meet to hear a report on the Red Snapper Assessment and clarify management measures in Amendment 9 to the Snapper Grouper FMP if deemed necessary.

June 18, 1997, 10:30 a.m. to 12:00 noon—Controlled Access Committee

The committee will meet to clarify the Council's intent for NMFS on issues that arise in the interim period before implementation of Amendment 8 to the Snapper Grouper FMP.

June 18, 1997, 1:30 p.m. to 5:00 p.m.—Mackerel Committee

The committee will meet to hear the status of Mackerel Amendment 8 and framework action, review the Mackerel Amendment 9 options paper, and develop South Atlantic Council management measures for Amendment 9 and recommendations for Gulf Council measures.

June 19, 1997, 9:00 a.m. to 5:00 p.m.—Council Session

The full Council will convene to review public scoping comments on the issue of sale of bag limit (recreational) caught fish, review the options paper on this issue, and take action on how to proceed with this issue; hear the Snapper Grouper Committee Report and clarify management measures in Snapper Grouper Amendment 9 if neccessary; hear the Controlled Access Committee report and clarify the Council's intent for NMFS on issues that arise in the interim period before implementation of Snapper Grouper Amendment 8; hear the Mackerel Committee report and decide on management measures to include in Mackerel Amendment 9; hear the Golden Crab Committee report and decide if there is need for framework action or plan amendment; hear the Spiny Lobster Committee report and decide if there is need for framework action or plan amendment; and hear the Calico Scallop Committee report before deciding which management measures to include in the FMP.

June 20, 1997, 8:30 a.m. to 11:00 a.m.—Council Session

The full Council will convene to hear the Habitat Committee report, receive an update on Magnuson-Stevens Act Implementation, hear a status report on the Atlantic Coastal Cooperative Statistics Program, hear agency and liaison reports, and discuss other business.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by June 9, 1997.

Dated: June 2, 1997.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–14921 Filed 6–6–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052797E]

Endangered Species; Permits

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

ACTION: Notice of receipt of application for a scientific research permit (P770 #73) and an request to modify permit 1010 (P503S).

SUMMARY: Notice is hereby given that NMFS Coastal Zone and Estuarine Studies Division has applied in due form for a scientific research permit to take listed Snake River salmon, and that the Idaho Department of Fish and Game has applied in due form for a modification to Permit 1010.

DATES: Written comments or requests for a public hearing on this application must be received on or before July 9, 1997.

ADDRESSES: The applications and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments, or requests for a public hearing on either application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: NMFS Coastal Zone and Estuarine Studies Division (P770 #73) requests a five-year scientific research permit under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). This permit would be a continuation of work covered under Permit 852, and is to monitor wild smolt migrations of Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and to conduct genetic analysis. The applicant requests authorization to capture, PIT-tag, and release up to 30,000 wild juveniles, with 450 indirect mortalities, per year. The applicant also wishes to lethally take up to 800 wild juveniles (80 from each of 10 different populations) and up to 300 (100 from each of 3 different populations) listed hatchery juveniles per year. In low abundance years, lethal take will be suspended, and replaced with non-lethal fin clip for DNA analysis.

Idaho Department of Fish and Game (P503S) requests a modification to existing permit 1010, to allow the release of maturing spring chinook salmon from their captive rearing program.

Those individuals requesting a hearing should set out the specific reasons why a hearing on the particular

application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: May 30, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–14919 Filed 6–6–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052397E]

Marine Mammals

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

ACTION: Issuance of scientific research permit no. 662–1345.

SUMMARY: Notice is hereby given that Ms. Dena Matkin, Box 22, Gustavus, Alaska 99826, has been issued a permit to ''take'' by harassment, humpback whales (*Megaptera novaeangliae*) and killer whales (*Orcinus orca*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Regional Office, NMFS, NOAA, 709 West 9th Street, Federal Building, Juneau, Alaska 99802 (907–586–7221).

SUPPLEMENTARY INFORMATION: On March 20, 1997, notice was published in the **Federal Register** (62 FR 13368) that the above-named applicant had submitted a request for a scientific research permit to take (inadvertently harass) up to 400 killer whales and up to 100 humpback whales for purposes of scientific research, over a 5-year period. The purpose of the research is to continue long-term, year-round photo-identification work in Southeastern Alaska to define the population size, structure and range of killer whales, and to obtain identification of photographs of humpback whales opportunistically in conjunction with the killer whale research. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 30, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–14922 Filed 6–6–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Public Forum on Certificate Authorities and Digital Signatures: Enhancing Global Electronic Commerce

AGENCY: Technology Administration, Commerce.

ACTION: Notice of public forum and request for public comments.

SUMMARY: The Department of Commerce requests public comments on various aspects of the public key infrastructure related to certificate authorities and digital signatures. This request for public comment will enable the Department, and other Executive Branch agencies, to benefit from the expertise and views of the private sector, states, localities, non-profits, industry associations and other national and international entities. Specific questions that the Department seeks public comments on are listed in ''Supplementary Information''. A ''Public Forum on Certificate Authorities and Digital Signatures: Enhancing Global Electronic Commerce'' is being sponsored by the Department on this topic. The comments received by the Department will aid in effectively supporting Administration initiatives on electronic commerce issues.

DATES: The ''Public Forum on Certificate Authorities and Digital Signatures: Enhancing Global Electronic Commerce'' will be held on July 24, 1997, from 8:00 a.m. to 6:00 p.m.

Advanced registration for the ''Public Forum'' is due by July 16, 1997.

Written comments are due by July 16, 1997.

Requests to participate as a panelist in the ''Public Forum'' are due by July 2, 1997.

ADDRESSES: The ''Public Forum on Certificate Authorities and Digital Signatures: Enhancing Global Electronic Commerce'' will take place at the Green Auditorium, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

Written comments should be sent to: Director, Information Technology Laboratory, ATTN: ''Public Forum on Certificate Authorities and Digital Signatures'', Technology Building, Room A231, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Electronic comments may be sent to ECFORUM@NIST.GOV. Electronic comments should be in ASCII, MS word or WordPerfect formats. No comments will be accepted by voice phone or by fax.

PUBLIC INFORMATION: The Department, based on comments received and expressions of interest, will organize the Public Forum as a series of panels, with short presentations and then a period for questions from the audience. Not all issues included in this notice may be covered in the public forum, and the Department may organize the program along lines different than the questions are presented. Members of the public who are interested in serving on a panel are asked to contact the individual listed in **FOR FURTHER INFORMATION CONTACT** below. Due to time and physical constraints, and in order to develop an effective program, not all requests can be honored.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Information Technology Laboratory, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001. (301) 975–3696.

For planning purposes, advanced registration is requested by July 16, 1997. To register, please fax your name, postal address, telephone and e-mail address to: 301–948–1233, ATTN: ''July 24 Public Forum''. Space permitting, registration will also be available at the door. The July 24th meeting is open to the public. There is no registration fee for the Public Forum.

SUPPLEMENTARY INFORMATION: The ''Public Forum'' on Certificate Authorities and Digital Signatures:

Enhancing Global Electronic Commerce'' will be held on July 24, 1997 at the Green Auditorium, Administration Building, National Institute of Standards and Technology, Gaithersburg, MD.

Copies of written submissions received by July 16, 1997, will be made available at the Public Forum.

Issues for Public Comment and Themes of the Public Forum

The emergence of a public key infrastructure, and the demands of global electronic commerce, have generated significant private sector and governmental efforts to develop a reliable system of certificate authorities that enable use of trustworthy digital signatures.

The Department of Commerce, and other Executive Branch agencies, seek public comment on and are planning a Public Forum that encompasses the following issues. By seeking comment from the varied parties and interests, reflecting the many initiatives that are underway, the Executive Branch will be better able to assess emerging initiatives on digital signatures and certificate authorities; ensure that the federal government's PKI activities take advantage of the latest developments and directions in the private sector; and aid federal government officials and industry representatives participating in domestic and international fora on these issues.

1. *State government initiatives through ''digital signature laws.''* Some two dozen states have passed some form of ''digital signature laws'' in the last two years. The Department encourages comments from relevant state government agencies on the experiences and issues that have arisen during the process of implementing these laws, including the status of any registration of certificate authorities. Comments that reflect the systematic aspects of digital signature laws are especially encouraged. Comments are also encouraged by users and stakeholders in the systems that result from passage of these ''digital signature laws.''

2. *The evolving legal framework of certificate authorities and digital signatures.* A number of private sector efforts are underway to examine and recommend changes to the legal and regulatory framework that could contribute to a reliable system of certificate authorities. The Department notes the efforts, among others, of the American Bar Association (''Digital Signature Guidelines'') and the National Commission on Uniform State Laws. The Department encourages comments from all private sector efforts which are undertaking efforts in this area.

3. *The technology and business challenges of certificate authorities and digital signatures.* In response to user demands, an industry of certificate authorities is emerging. The Department seeks comments from those entities that are offering services and technologies that relate to issuing certificates and digital signatures.

4. *User requirements and expectations.* A multitude of sectors can be expected to utilize a reliable system of certificate authorities and digital signatures. The Department seeks comments from any and all sectors that are developing performance requirements and user expectations in this area. Comments are encouraged from non-profits and governmental entities, as well as for-profit enterprises.

5. *An international perspective.* A number of countries and international fora are examining the issues of a reliable system of certificate authorities and use of digital signatures. The Department notes the activities of UNCITRAL, the OECD, as well as recent developments in Germany, Japan, the European Union, etc. The Department invites comments from international representatives on the issues outlined in this notice and participation in the Public Forum.

Comments received in response to this notice will be made part of the public record and will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230. The Department intends to publish the proceedings of the Public Forum, and all public comments, as soon as possible after the July 24th meeting.

Dated: June 3, 1997.

Mary L. Good,

Under Secretary of Commerce for Technology.

[FR Doc. 97–14991 Filed 6–6–97; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

Technology Administration

Notice of Public Meeting on the Proposed Experimental Program To Stimulate Competitive Technology (EPSCoT)

AGENCY: Technology Administration, Department of Commerce.

SUMMARY: The Technology Administration will hold an open meeting on June 27, 1997 to solicit input on the proposed Experimental Program to Stimulate Competitive Technology (EPSCoT) from representatives of state and local government, universities, and the private- and non-profit sectors, who are involved with technology development, diffusion, commercialization, and using technology to promote economic growth. The purpose of the meeting is to determine what activities are currently being conducted in the states to foster technology-based economic growth and how a new competitive, cost-shared federal grant program with the mission of fostering the development of indigenous technology assets in states that are traditionally under represented in Federal R&D funding could be structured. The following states would currently be eligible to participate in the EPSCoT: Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming, as well as the Commonwealth of Puerto Rico.

DATES: The meeting will be held on Friday, June 27, 1997 from 9:00 a.m. until 12:30 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Crown Plaza, New Orleans, Louisiana. Individuals wishing to attend the meeting should contact Maureen Wood, Office of the Under Secretary for Technology, at (202) 482–1091 by close of business June 25, 1997.

FOR FURTHER INFORMATION CONTACT: Anita Balachandra, Technology Administration, U.S. Department of Commerce at (202) 482–1320.

SUPPLEMENTARY INFORMATION: The Technology Administration (TA) is proposing a new, competitive, matching grant program called the Experimental Program to Stimulate Competitive Technology (EPSCoT) to foster the development of indigenous technology assets in states that traditionally have been under represented in the distribution of Federal R&D expenditures.

Technology is the engine of economic growth and, as such, its development, deployment, and diffusion are critical to U.S. competitiveness. Although it is often said that nations do not compete, companies do, it is apparent that sub-national units—regions within states and clusters of states—do compete, not simply with one another, but also internationally. This is because in a global economy, capital, labor, and technology are increasingly mobile and they are attracted to regions with the most promising opportunities. To this

end, regional policies and infrastructures play a large role in determining both where companies locate and their ability to be competitive in a global marketplace.

Commerce Department research shows that firms that adopt advanced technologies create more jobs at higher wages than those that do not. Furthermore, regions that boast concentrations of high-tech industries enjoy high growth rates and standards of living. Regions thus compete to attract federal research facilities, private investment, and skilled labor. Recent research suggests that a region's technological infrastructure is among the most important factors that businesses consider when making location decisions. Accordingly, regions are searching for strategies to attract and retain high-tech firms and the jobs that they bring. These strategies may involve building on existing strengths at research universities, providing extension services to local businesses, or integrating existing business assistance resources, but ultimately their success is contingent upon an institutional capacity to support technology-based economic development.

In the Federal government's efforts to foster competitiveness, it must ensure that all regions of the nation develop the necessary infrastructure to support indigenous technology development. Most less populated states, whose manufacturers tend to be small- and medium-sized, are at a competitive disadvantage because there is generally no research base on which local businesses can build. The EPSCoT seeks to remedy this disadvantage.

The EPSCoT seeks to build on the NSF's successful Experimental Program to Stimulate Competitive Research (EPSCoR) which was established in 1979 to stimulate sustainable improvements in the quality of the academic science and technology infrastructure of states that traditionally have been under represented in receiving federal R&D funds. Within these states, the EPSCoR's primary emphasis is on improving the competitive performance of major research universities. By focusing on building the science base of these regions, primarily in universities, the EPSCoR has successfully strengthened the research capacity of universities in these states; yet, there remains a technology ''gap.''

Improving the competitive performance of universities, which is an essential component of a successful technology-based economy, is often not sufficient to establish new companies, develop new job opportunities or raise the standard of living.

That is why the Department of Commerce proposes to create an EPSCoT—the technology counterpart to the EPSCoR. EPSCoT would help to bridge the gap between university research and the local economy. It would develop essential economic development tools to foster regional technology-based economic growth. The program would stimulate the development of indigenous technological infrastructure and institutional capabilities of states through a variety of means, including outreach activities, technology development and deployment, technology transfer, education and training, and better linking universities, firms, and state and local governments.

Dated: June 2, 1997.

Gary Bachula,

Deputy Under Secretary for Technology.

[FR Doc. 97–14990 Filed 6–6–97; 8:45 am]

BILLING CODE 3510–18–M

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 19 June 1997 at 10:00 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, NW, Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200.

Dated in Washington, D.C., 2 June 1997.

Charles H. Atherton,

Secretary.

[FR Doc. 97–14932 Filed 6–6–97; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

June 3, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 10, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68241, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on June 10, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	1,344,461 dozen.
341	2,161,374 dozen.
347/348	2,582,282 dozen.
641	937,712 dozen.
847	358,966 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–14995 Filed 6–6–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

June 3, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 10, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66263, published on December 17, 1996). Also see 61 FR 69081, published on December 31, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on June 10, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC):

Category	Adjusted twelve-month limit [1]
340/640	1,061,072 dozen.
342/642	390,897 dozen.
347/348	1,788,141 dozen.
443	235,060 numbers.
447	13,473 dozen.

[1] the limits have not been adjusted to account for any imports exported after December 31, 1996.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–14992 Filed 6–6–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Korea

June 3, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Categories 619/620 is being reduced for carryforward used in 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 59087, published on November 20, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the

implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period which began on January 1, 1997 and extends through December 31, 1997.

Effective on June 11, 1997, you are directed to reduce the limit for Categories 619/620 to 92,159,820 square meters [1], as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–14994 Filed 6–6–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Sri Lanka

June 3, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryover, carryforward, special carryforward, allowance for handloomed products and recrediting of unused carryforward and special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68246, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1997 and extends through December 31, 1997.

Effective on June 11, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	348,201 dozen.
314	4,889,784 square meters.
331/631	3,413,769 dozen pairs.
333/633	6,789 dozen.
334/634	930,823 dozen.
335/835	236,415 dozen.
338/339	1,593,341 dozen.
340/640	1,582,463 dozen.
341/641	2,408,975 dozen of which not more than 1,605,982 dozen shall be in Category 341 and not more than 1,605,982 dozen shall be in Category 641.
342/642/842	783,189 dozen.
345/845	156,107 dozen.
350/650	134,871 dozen.
351/651	373,215 dozen.
352/652	1,366,230 dozen.
359–C/659–C [2]	1,077,651 kilograms.
360	366,089 numbers.
363	9,767,844 numbers.
369–D [3]	656,633 kilograms.
369–S [4]	658,118 kilograms.
434	7,036 dozen.
435	18,012 dozen.
440	12,009 dozen.
611	2,419,785 square meters.
635	507,896 dozen.
638/639/838	969,631 dozen.
644	326,622 numbers.
645/646	141,375 dozen.
647/648	1,218,930 dozen.
840	213,976 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–14993 Filed 6–6–97; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1996.

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Submission of Information #3038–0031, Procurement Contracts.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038–0031, Procurement Contracts, to OMB for review and clearance under the Paperwork Reduction Act of 1995, (Pub. L. 104–13). The information collected consists of procurement activities relating to solicitations, amendments to solicitations, requests for quotations, construction contracts, award of contracts, performance bonds and payment information for individuals (vendors) or contractors engaged in providing supplies and services.

DATES: Comments must be received on or before July 9, 1997.

ADDRESS: Persons wishing to comment on this information collection should contact the Desk Officer, CFTC, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the submission are available from the Agency Clearance Officer, (202) 418–5160.

Title: Procurement Contracts.

Control Number: 3038–0031.

Action: Extension.

Respondents: Businesses (including small businesses).

Estimated Annual Burden: 604 total hours.

Respondents	Estimated number of respondents	Annual responses	Est. avg. hours. per response
Businesses	151	151	4.0

Issued in Washington, DC on June 3, 1997.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 97–14891 Filed 6–6–97; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 97–C0007]

In the Matter of One Price Clothing Stores, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 C.F.R. § 1605.13(d). Published below is a provisionally-accepted Settlement Agreement with One Price Clothing Stores, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 23, 1997.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 97–C0007, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Howard N. Tarnoff, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: June 4, 1997.

Sadye E. Dunn,

Secretary.

Consumer Product Safety Commission

[CPSC Docket No. 97–C0007]

In the Matter of One Price Clothing Stores, Inc. a Corporation

Settlement Agreement

1. One Price Clothing Stores, Inc. (hereinafter, ''One Price'' or ''Respondent''), a corporation, enters into this Settlement Agreement (hereinafter, ''Agreement'') with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order incorporated herein. This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondent knowingly sold and offered for sale, in commerce, certain rayon and rayon/cotton blend skirts featuring a sheer chiffon layer and sheer rayon scarves that failed to comply with the Standard for the Flammability of Clothing Textiles (hereinafter, ''Clothing Standard'', 16 CFR § 1610.

I. The Parties

2. The ''staff'' is the staff of the Consumer Product Safety Commission (hereinafter, ''Commission''), an independent regulatory agency of the United States Government established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2053.

3. Respondent One Price is a corporation organized and existing under the laws of the State of Delaware with principal corporate offices at Highway 290— Commerce Park, 1875 East Main Street, Duncan, South Carolina 29334.

II. Allegations of the Staff

A. Rayon and Rayon/Cotton Blend Skirts

4. Between June 1994 and August 1994, Respondent sold or offered for sale, in commerce, 9,800 style 0609 rayon skirts and 8,400 style 1101 rayon/cotton blend skirts featuring a sheer chiffon layer.

5. The skirts identified in paragraph 4 above are subject to the Clothing Standards, 16 CFR § 1610, issued under section 4 of the Flammable Fabrics Act (FFA), 15 U.S.C. § 1193.

6. The staff tested the skirts identified in paragraph 4 above for compliance with the requirements of the Clothing Standard. *See* 16 CFR §§ 1610.3 and .4. The test results showed that the skirts violated the requirements of the Clothing Standard and, therefore, were dangerously flammable and unsuitable for clothing because of rapid and intense burning.

7. On August 5, 1994, the staff informed Respondent that the skirts identified in paragraph 4 above failed to comply with the Clothing Standard and requested that One Price review its entire product line for other potential violations.

8. Respondent knowingly sold and offered for sale, in commerce, the skirts identified in paragraph 4 above, in violation of section 3 of the FFA, 15 U.S.C. § 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. § 1194(e)(1).

B. Rayon Scarves

9. Between February 1995 and August 1995, Respondent sold or offered for

sale, in commerce, 6,000 style 3525 sheer rayon scarves.

10. The scarves identified in paragraph 9 above are subject to the Clothing Standard, 16 C.F.R. § 1610, issued under section 4 of the FFA, 15 U.S.C. § 1193.

11. The staff tested the scarves identified in paragraph 9 above for compliance with the requirements of the Clothing Standard. The test results showed that the scarves violated the requirements of the Clothing Standard, and, therefore, were dangerously flammable and unsuitable for clothing because of rapid and intense burning.

12. Respondent knowingly sold and offered for sale, in commerce, the scarves identified in paragraph 9 above, in violation of section 3 of the FFA, 15 U.S.C. § 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. § 1194(e)(1).

III. Response of One Price

13. One Price denies the allegations of the staff set forth in paragraphs 4 through 12 above that it knowingly sold or offered for sale, in commerce, the skirts and scarves identified in paragraphs 4 and 9 above, in violation of section 3 of the FFA, 15 U.S.C. § 1192. One Price notes that it knows of no claims or reports of any injuries associated with the skirts and scarves identified in paragraphs 4 and 9 above. Further, One Price points out that it took immediate action, as soon as the allegations of problems with these items were brought to its attention.

IV. Agreement of the Parties

14. The Commission has jurisdiction over this matter under the Consumer Product Safety Act (CPSA), 15 U.S.C. §§ 2051 *et seq.*, the Flammable Fabrics Act (FFA), 15 U.S.C. §§ 1191 *et seq.*, and the Federal Trade Commission Act (FTCA), 15 U.S.C. §§ 41 *et seq.*

15. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the FFA or the Clothing Standard. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

16. The parties agree that this Agreement resolves the allegations of the staff enumerated in Section II above, and the Commission will not initiate any other criminal, civil, or administrative action against Respondent for those alleged violations, based upon information currently known to the staff.

17. Upon final acceptance of this Agreement by the Commission and issuance of the Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the FFA as alleged, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

18. The Commission may disclose the terms of this Agreement and Order to the public consistent with Section 6(b) of the CPSA, 15 U.S.C. § 2055(b).

19. Upon provisional acceptance of this Agreement and Order by the Commission, this Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1605.13(d). If the Commission does not receive any written request not to accept this Agreement and Order within 15 days, this Agreement and Order shall be deemed finally accepted on the 20th day after the date it is published in the **Federal Register,** in accordance with 16 CFR 1605.13(e).

20. Upon final acceptance by the Commission of this Agreement and Order, the Commission shall issue the attached Order, incorporated herein by reference. This Agreement becomes effective after service of the incorporated Order upon Respondent.

21. A violation of the attached Order shall subject Respondent to appropriate legal action.

22. This Agreement may be used in interpreting the incorporated Order. Agreements, understandings, representations, or interpretations made outside of this Agreement may not be used to vary or contradict its terms.

23. The provisions of this Agreement and Order shall apply to Respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality.

Dated: May 6, 1997.

By:

Grant H. Gibson,

Vice President and General Counsel, One Price Clothing Stores, Inc., Highway 290, Commerce Park, 1875 East Main Street, Duncan, SC 29334.

Dated: May 6, 1997.

By:

Howard N. Tarnoff,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance.

David Schmeltzer,

Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission, Washington, DC 20207.

Order

Upon consideration of the Settlement Agreement entered into between Respondent One Price Clothing Stores, Inc. and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Respondent; and it appearing that the Settlement Agreement and Order is in the public interest,

I

It is Ordered That the Settlement Agreement and Order be and hereby is accepted.

II

It is further Ordered That Respondent pay to the United States Treasury a civil penalty of *FIFTY THOUSAND DOLLARS* ($50,000) within twenty (20) days after service upon Respondent of the Final Order.

III

It is further Ordered That for a period of three years following the service upon Respondent of the Final Order in this matter, Respondent notify the Commission within 30 days following the consummation of the sale of a majority of its stock or following a change in any of its corporate officers responsible for compliance with the terms of this Consent Order Agreement.

Provisionally accepted and Provisional Order issued on the 4th day of June, 1997.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–15006 Filed 6–6–97; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Learn and Serve America National Clearinghouse

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (Corporation) announces the availability of

approximately $1.5 million over three years to manage a Learn and Serve America (LSA) national clearinghouse. The Corporation invites applications for a cooperative agreement from organizations that will make use of the world wide web, new technological developments, and other traditional methods to develop and implement plans to compile, store, market, and disseminate the training and technical assistance (T/TA) resources provided by the Corporation, other T/TA providers, and the service-learning field.

DATES: Application guidelines will be available June 15, 1997. Applications must be submitted to the Corporation no later than 3:00 p.m. (EST) August 1, 1997.

ADDRESSES: Requests for applications should be submitted to Bonnie Martinez, Attn: Application Request, Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525. Applications must be submitted to the Corporation for National and Community Service, Box CH, 1201 New York Avenue, Washington, DC 20525. Applicants are requested to include three copies of applications to facilitate the review process.

FOR FURTHER INFORMATION CONTACT: Bonnie Martinez at the Corporation for National and Community Service, telephone (202) 606–5000, ext.135.

SUPPLEMENTARY INFORMATION: The Corporation is a Federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service. This service addresses the nation's educational, public safety, environmental, and other human needs to achieve direct and demonstrable results. In supporting service programs, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

I. Functions of the Learn and Serve America National Clearinghouse

(1) Develop and implement a plan for conducting periodic information and technical assistance needs assessments of all categories of LSA grantees and the service-learning field, including assessing the availability of current resources of services to meet those needs.

(2) Compile, analyze, and disseminate service-learning research and evaluation materials, including intergenerational service-learning materials.

(3) Facilitate communication among entities receiving LSA funds.

(4) Provide information, curriculum materials, and technical assistance relating to the planning and operation of service-learning programs to entities eligible to receive grants or subgrants under LSA.

(5) Provide information regarding methods to make service-learning programs accessible to individuals with disabilities.

(6) Gather, analyze, market, and disseminate information on successful service-learning and intergenerational service-learning programs, components of these successful programs, innovative youth leadership skills curricula related to service-learning, and service-learning projects.

(7) Coordinate the activities of the clearinghouse with appropriate entities to avoid duplication of effort.

(8) Create and maintain a service-learning archive, including materials developed by past and present LSA grantees and subgrantees.

(9) Gather, analyze, and disseminate information about LSA grantee and subgrantee programs and participants.

(10) Develop and implement an outreach and marketing plan to promote the services and resources of the clearinghouse.

(11) Carry out such other activities as the Chief Executive Officer of the Corporation determines to be appropriate.

II. Amount and Duration of Funding

The first year's award will total approximately $500,000. The cooperative agreement may be renewed each year for up to three years based on performance, need, and the availability of funds.

III. Eligibility

Public or private nonprofit organizations that have extensive experience with service-learning, including use of adult volunteers to foster service-learning, are eligible to apply. Organizations with prior clearinghouse experience are preferred.

IV. Applications

The Corporation will enter into only one cooperative agreement in this area. Based on previous clearinghouse competitions and the Corporation's estimate of the number of eligible applicants, the Corporation expects fewer than ten applications to be submitted.

Dated: June 3, 1997.

Barry W. Stevens,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 97–14924 Filed 6–6–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

[CFDA No.: 84.033]

Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions that participate in the Federal Work-Study (FWS) Program to submit the Campus-Based Reallocation Form (ED Form E40–4P).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution that participated in the FWS Program for the 1996–97 award year (July 1, 1996 through June 30, 1997) to submit a Campus-Based Reallocation Form to request supplemental FWS funds for the 1997–98 award year (July 1, 1997 through June 30, 1998). The information collected is used to determine whether an institution is eligible to receive supplemental FWS funds for the 1997–98 award year.

DATES: *Closing Date for Submitting a Campus-Based Reallocation Form.* If an institution that participated in the FWS Program for the 1996–97 award year wants to ensure that it will be considered for supplemental FWS funds for the 1997–98 award year, the institution must submit the Campus-Based Reallocation Form by July 11, 1997. The Department will not accept a form submitted by facsimile transmission.

ADDRESSES: *Campus-Based Reallocation Form Delivered by Mail.* The Campus-Based Reallocation Form delivered by mail must be addressed to Mr. Milton Thomas, Jr., Institutional Financial Management Division, U. S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of the mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If a Campus-Based Reallocation Form is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an

institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

Campus-Based Reallocation Form Delivered by Hand. A Campus-Based Reallocation Form delivered by hand must be taken to Mr. Milton Thomas, Jr., Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. Hand-delivered Reallocation Forms will be accepted between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. A Campus-Based Reallocation Form that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: The Department will reallocate unexpended FWS Federal funds from the 1996–97 award year as supplemental allocations for the 1997–98 award year under the FWS Program. Supplemental allocations will be issued this Fall in accordance with the reallocation procedures contained in the Higher Education Act of 1965, as amended (HEA). Under section 442(e) of the HEA, unexpended FWS funds returned to the Secretary must be reallocated to eligible institutions that used at least 10 percent of the total FWS Federal funds granted to the institution to compensate students employed in community services. Because reallocated FWS funds will be distributed on the basis of fair share shortfall criteria, institutions must also have a fair share shortfall to receive these funds. Institutions must use all the reallocated FWS Federal funds to compensate students employed in community services. To ensure consideration for supplemental FWS Federal funds for the 1997–98 award year, an institution must submit the Campus-Based Reallocation Form by July 11, 1997.

Applicable Regulations

The following regulations apply to the Federal Work-Study Program:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Work-Study Programs, 34 CFR Part 675.

(3) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(4) New Restrictions on Lobbying, 34 CFR Part 82.

(5) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(6) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: For technical assistance concerning the Campus-Based Reallocation Form or other operational procedures of the campus-based programs, contact Mr. Milton Thomas, Jr., Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781. Telephone (202) 708–9756. 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.

(Authority: 42 U.S.C. 2752)

Dated: June 3, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–14975 Filed 6–6–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–551–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

June 3, 1997.

Take notice that on May 29, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed a request with the Commission in Docket No. CP97–551–000, pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install and operate an orifice meter in Shawano County, Wisconsin authorized in blanket certificate issued in Docket No. CP82–480–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to install and operate a 2-inch orifice meter, to accommodate increasing residential demand, at its existing Cecil Meter Station. The total cost of the proposed facility is approximately $22,300.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14917 Filed 6–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–592–000]

Baltimore Gas & Electric Company; Notice of Filing

June 3, 1997.

Take notice that on May 12, 1997, Baltimore Gas & Electric Company (BG&E) tendered for filing BG&E's Procedures Implementing Order No. 889–A Standards of conduct and a sample Affirmation Statement to be signed by all BG&E employees affected by those Standards of Conduct.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 16, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14911 Filed 6–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2961–000]

Duquesne Light Company; Notice of Filing

June 3, 1997.

Take notice that on May 15, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated May 7, 1997 with Virginia Power under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Virginia Power as a customer under the Tariff. DLC requests an effective date of May 7, 1997 for the Service Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20406, 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 June 16, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protesting parties to the proceeding. Any party wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14969 Filed 6–6–97; 8:45 am]

BILLING CODE–6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2865–000]

Entergy Power Marketing Corp.; Notice of Filing

June 3, 1997.

Take notice that on May 21, 1997, Entergy Power Marketing Corp. tendered for filing a Notice of Withdrawal of its May 6, 1997 filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such notices or protests should be filed on or before June 13, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14914 Filed 6–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3057–000]

Florida Power Corporation; Notice of Filing

June 3, 1997.

Take notice that on May 20, 1997, Florida Power Corporation tendered for filing an amendment to its open access transmission tariff that provides for Network Contract Demand Transmission Service in addition to the transmission services offered in compliance with Order No. 888. Florida Power requests that the Commission allow the amendment to the tariff to become effective on June 20, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 13, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14909 Filed 6–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–590–000]

Idaho Power Company; Notice of Filing

June 3, 1997.

Take notice that on May 12, 1997, Idaho Power Company (IPCo) tendered for filing revisions to its Standards of Conduct Procedure with respect to implementation of Final Order No. 889.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure. All motions or protests should be filed on or before June 16, 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 submittal are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14910 Filed 6–6–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–800–000]

Montaup Electric Company; Notice of Filing

June 3, 1997.

Take notice that on May 8, 1997, Montaup Electric Company tendered for filing an amendment in the above-referenced docket.

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 notices or protests should be filed on or before June 13, 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 if this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14913 Filed 6–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1655–000]

Nevada Power Company; Notice of Filing

June 3, 1997.

Take notice that on May 21, 1997, Nevada Power Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such notices or protests should be filed on or before June 13, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14915 Filed 6–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2766–000]

Northeast Utilities Service Company; Notice of Filing

June 3, 1997.

Take notice that on April 30, 1997, Northeast Utilities Service Company tendered for filing copies of its activity report for the quarter ending March 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such notices or protests should be filed on or before June 13, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14912 Filed 6–6–97; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–552–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

June 3, 1997.

Take notice that on May 29, 1997, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in docket No. CP97–552–000 a request pursuant to Sections 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, 157.211) for authorization to upgrade its North Powder Meter Station in Union County, Oregon by abandoning certain existing facilities and constructing and operating upgraded replacement facilities under Northwest's blanket certificate issued in docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to upgrade the North Powder Meter Station by removing the existing 2-inch Roots 1M–900 rotary meter and appurtenances and installing a new 2-inch Roots 2M–900 rotary meter and appurtenances. As a result of this proposed upgrade the maximum design capacity of the meter station will increase from approximately 187 Dth per day at 150 psig to approximately 350 Dth per day at 150 psig, as limited by the existing regulators. Northwest states that this meter station upgrade is necessary to accommodate a request by The Washington Water Power Company (Water Power) for increased delivery point capacity at this point for service under existing firm transportation agreements.

Northwest states that the total cost of the meter station upgrade is estimated to be approximately $11,196 which will be reimbursed by Water Power.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14916 Filed 6–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3055–000]

Pennsylvania Power & Light Company; Notice of Filing

June 3, 1997.

Take notice that on May 23, 1997, Pennsylvania Power & Light Company (PP&L), petitioned the Commission for acceptance of PP&L's FERC Electric Tariff Original Volume No. 5 the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 13, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14908 Filed 6–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2956–000]

Cinergy Services, Inc.; Electric Rate and Corporate Regulation Filings

June 2, 1997.

Take notice that the following filings have been made with the Commission:

1. Cinergy Services, Inc.

[Docket No. ER97–2956–000]

Take notice that on May 14, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and MP Energy, Inc.

Cinergy and MP Energy, Inc. are requesting an effective date of May 13, 1997.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. The Cleveland Electric Illuminating Company

[Docket No. ER97–2957–000]

Take notice that on May 14, 1997, The Cleveland Electric Illuminating Company (CEI), filed an Addendum No. 1 to the Electric Power Service Agreement between CEI and Enron Power Marketing, Inc.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97–2958–000]

Take notice that on May 14, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Non-Firm Point-to-Point Transmission Service with PanEnergy Trading and Market Services, L.L.C. and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. This Service Agreement will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Central Louisiana Electric Company, Inc.

[Docket No. ER97–2960–000]

Take notice that on May 14, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing an Amended Appendix B to the Electric Service Interconnection Agreement between CLECO and Louisiana Energy and Power Authority (LEPA) for a reduction in designated firm transmission service provided under Service Schedule FTS in the Agreement.

CLECO states that a copy of the filing has been served on LEPA.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Texas Utilities Electric Company

[Docket No. ER97–2962–000]

Take notice that, on May 15, 1997, Texas Utilities Electric Company (TU Electric), tendered for filing two executed transmission service agreements (TSA's) with Minnesota Power & Light Company and Southern Energy, Inc. for certain Economy Energy Transmission Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA's that will permit them to become effective on or before the service commencement date under each of the two TSA's. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on Minnesota Power & Light Company and Southern Energy, Inc. as well as the Public Utility Commission of Texas.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Tenaska Power Service Company

[Docket No. ER97–2966–000]

Take notice that on May 14, 1997, Tenaska Power Services Company, tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that Tenaska Power Services Company had completed all the steps for pool membership. Tenaska Power Services Company requests that the Commission amend the WSPP Agreement to include it as a member.

Tenaska Power Services Company requests an effective date of May 15, 1997, for the proposed amendment. Accordingly, Tenaska Power Services Company requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Atmos Energy Services, Inc.

[Docket No. ER97–2967–000]

Take notice that on May 14, 1997, Atmos Energy Services, Inc. tendered for filing a notice of cancellation of Atmos Energy Services, Inc's FERC Electric Rate Schedule No. 1.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Power & Light Company

[Docket No. ER97–2969–000]

Take Notice that on May 15, 1997, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated April 9, 1997 with North Carolina Electric Membership Corporation (NCEMC) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds NCEMC as an eligible customer under the Tariff.

PP&L requests an effective date of May 15, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to NCEMC and to the Pennsylvania Public Utility Commission.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–2971–000]

Take notice that on May 15, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 102, an agreement to provide transmission service for the New York Power Authority (the Authority). The Supplement provides for an increase in the annual revenues under the Rate Schedules of $10,652.32. Con Edison has requested that the increase take effect on July 1, 1997.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–2972–000]

Take notice that on May 15, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for

filing a Supplement to its Rate Schedule FERC No. 117, an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO). The Supplement provides for an increase in annual revenues under the Rate Schedule of $139,814.60. Con Edison has requested that this increase take effect on July 1, 1997.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company Of New York, Inc.

[Docket No. ER97–2973–000]

Take notice that on May 15, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 94 for transmission service for the Long Island Lighting Company (''LILCO''). The Rate Schedule provides for transmission of power and energy from the New York Power Authority's Blenheim-Gilboa station. The Supplement provides for an increase in annual revenues under the Rate Schedule of $46,902.50. Con Edison has requested that this increase take effect on July 1, 1997.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company Of New York, Inc.

[Docket No. ER97–2974–000]

Take notice that on May 15, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 78, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the annual revenues under the Rate Schedule of $4,688.20. Con Edison has requested that the increase take effect on July 1, 1997.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company Of New York, Inc.

[Docket No. ER97–2975–000]

Take notice that on May 15, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 60, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the annual revenues under the Rate Schedule of $27,912.32. Con Edison has requested that the increase take effect on July 1, 1997.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company Of New York, Inc.

[Docket No. ER97–2976–000]

Take notice that on May 15, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 60, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for an increase in the annual revenues under the Rate Schedule of $27,912.32. Con Edison has requested that the increase take effect on July 1, 1997. Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company Of New York, Inc.

[Docket No. ER97–2978–000]

Take notice that on May 15, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for The Power Company of America, L.P. to purchase electric capacity and energy pursuant to the negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon The Power Company of America, L.P.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Union Electric Company

[Docket No. ER97–2979–000]

Take notice that on May 15, 1997, Union Electric Company (UE), the transmission provider, tendered for filing a Service Agreement with UE, the transmission customer, for Non-Firm Point-to-Point Transmission Service. UE asserts that the purpose of the Agreement is for UE when it takes transmission service for itself in accordance with FERC regulations, and pursuant to its Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Electric Company; Boston Edison Company; Montaup Electric Company

[Docket No. ER97–2980–000]

Take notice that on May 14, 1997, Commonwealth Electric Company (Commonwealth), tendered for filing on behalf of itself, Montaup Electric Company and Boston Edison Company supplemental data pertaining to their applicable investments, and carrying charges including local tax rates, for the twelve-month period ending December 31, 1995. Commonwealth states that this supplemental data is submitted pursuant to a letter in Docket No. E–7981 dated April 26, 1973 accepting for filing Commonwealth's Rate Schedule FERC No. 21, Boston Edison Company's Rate Schedule FERC No. 67, and Montaup Electric Company's Rate Schedule No. 27.

Commonwealth states that these rate schedules have previously been similarly supplemented for the calendar years 1972 through 1994.

Copies of said filing have been served upon Boston Edison Company, Montaup Electric Company, New England Power Company and the Massachusetts Department of Public Utilities.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Company of Colorado

[Docket No. ER97–2981–000]

Take notice that on May 15, 1997, Public Service Company of Colorado, tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service Company of Colorado and Arizona Public Service Company. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests that this filing be made effective May 1, 1997.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Ohio Edison Company; Pennsylvania Power Company

[Docket No. ER97–2982–000]

Take notice that on May 15, 1997, Ohio Edison Company tendered for

filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Virginia Electric and Power Company under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. UNITIL Power Corp.

[Docket No. ER97–2983–000]

Take notice that on May 15, 1997, UNITIL Power Corp., tendered for filing pursuant to Schedule II Section H of Supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

1. Statement of all sales and billing transactions for the period January 1, 1996 through December 31, 1996, along with the actual costs incurred by UNITIL Power Corp. by FERC account.

2. UNITIL Power Corp. rates billed from January 1, 1996 to December 31, 1996 and supporting rate development.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Victory Garden Phase IV Partnership

[Docket No. QF90–43–002]

On May 14, 1997, Victory Garden Phase IV Partnership (Applicant) of P.O. Box 1910, 13000 Jameson Road, Tehachapi, California 93561 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the facility is a 22 MW, wind-powered small power production facility located in the Tehachapi Mountains, Kern County, California. The Commission previously certified the facility as a small power production facility, *Zond Victory Garden Phase IV Development Corporation,* 57 FERC ¶62,018 (1991). A notice of self-certification was filed on December 13, 1989. The instant application for recertification is requested to assure that the facility will remain a qualifying facility following a change in ownership of Zond Victory Garden Phase IV Development Corporation, one of the general partners in Applicant.

Comment date: Fifteen days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

22. Sky River Partnership

[Docket No. QF91–59–003]

On May 14, 1997, Sky River Partnership (Applicant) of P.O. Box 1910, 13000 Jameson Road, Tehachapi, California 93561, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicant, the facility is a 77.5 MW, wind-powered small power production facility located in the Tehachapi Mountains, Kern County, California. The Commission previously certified the facility as a qualifying small power production facility in *Zond Sky River Development Corporation and ESI Sky River Limited Partnership,* 57 FERC ¶ 62,019 (1991). A notice of self-recertification was filed on December 30, 1991. The facility was recertified in *Sky River Partnership,* 59 FERC ¶ 62,057 (1992). According to the application, the instant recertification is requested to assure that the facility will remain a qualifying facility following a change in the ownership of Zond Sky River Development Corp., one of the Applicant's general partners.

Comment date: Fifteen days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

23. Central Louisiana Electric Company, Inc.

[Docket No. ER97–2959–000]

Take notice that on May 14, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing an Amended Appendix B to the Electric Service Interconnection Agreement between CLECO and City of Lafayette, Louisiana for a reduction in designated firm transmission service provided under Service Schedule FTS in the Agreement.

CLECO states that a copy of the filing has been served on the City of Lafayette, Louisiana.

Comment date: June 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14907 Filed 6–6–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2935–000, et al.]

New York State Electric & Gas Corporation, et al.; Electric Rate and Corporate Regulation Filings

May 30, 1997.

Take notice that the following filings have been made with the Commission:

1. New York State Electric & Gas Corporation

[Docket No. ER97–2935–000]

Take notice that on May 14, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, service agreements under which NYSEG will provide capacity and/or energy to Aquila Power Corporation (Aquila), CPS Utilities (CPS), Delmarva Power & Light Company (Delmarva), Illinois Power Corporation (Illinois), Long Sault, Inc. (Long Sault), Maine Public Service Company (MPS), NIPSCO Energy Services, Inc. (NIPSCO) North American Energy Conservation, Inc. (North American), Northern Indiana Public Service (Northern Indiana), Ohio Edison Company and Pennsylvania Power Company, collectively the Ohio Edison System (OE), Rochester Gas and Electric Corporation (Rochester), Tractebel Energy Marketing, Inc. (Tractebel), Southern Energy Trading and Marketing, Inc. (Southern), Citizens Lehman Power Sales (Citizens), and Cincinnati Gas & Electric Company and PSI Energy, Inc., collectively the Cinergy Operating Companies (Cinergy) in accordance with NYSEG's market-based power sales tariff.

NYSEG has requested waiver of the notice requirements so that the service

agreements with Aquila, CPS, Delmarva, Illinois, Long Sault, MPS, NIPSCO, North American, Northern Indiana, OE, Rochester, Tractebel, Southern, Citizens, and Cinergy become effective as of May 15, 1997, and that the Service Agreements with Southern, Citizens, and Cinergy become effective as of April 30, 1997.

NYSEG served copies of the filing upon the New York State Public Service Commission, Aquila, CPS, Delmarva, Illinois, Long Sault, MPS, NIPSCO, North American, Northern Indiana, OE, Rochester, Tractebel, Southern, Citizens, and Cinergy.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Central Illinois Public Service Company

[Docket No. ER97–2937–000]

Take notice that on May 12, 1997, Central Illinois Public Service Company (CIPS), submitted a Service Agreement, dated May 2, 1997, establishing Wisconsin Public Service Corporation as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of May 2, 1997 for the service agreement and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon Wisconsin Public Service Corporation and the Illinois Commerce Commission.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Company

[Docket No. ER97–2938–000]

Take notice that on May 13, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Air Products and Chemicals, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1997.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation

[Docket No. ER97–2939–000]

Take notice that on May 13, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service, dated May 9, 1997 (the Service Agreement) between PacifiCorp Power Marketing, Inc. (PPMI) and OVEC. OVEC proposes an effective date of May 9, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to PPMI.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

A copy of this filing was served upon PPMI.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Power and Light Company

[Docket No. ER97–2940–000]

Take notice that on May 13, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing Form Of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service establishing Wisconsin Power and Light Company as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of April 13, 1997, and; accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER97–2941–000]

Take notice that on May 13, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service with AIG Trading Corporation, The Dayton Power and Light Company, New York State Electric & Gas Corporation, PacifiCorp Power Marketing, Inc., and Aquila Power Corporation under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to the Transmission Customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, the Ohio Public Utilities Commission, and the New York Public Service Commission.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Carolina Power & Light Company

[Docket No. ER97–2942–000]

Take notice that on May 14, 1997, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Non-Firm Point to Point Transmission Service executed between CP&L and the following Eligible Transmission Customers: Northern Indiana Public Service Company; The Detroit Edison Company; and The Dayton Power and Light Company. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER97–2943–000]

Take notice that on May 14, 1997, Carolina Power & Light Company (Carolina), tendered for filing executed Service Agreements between Carolina and the following Eligible Entities: Northern Indiana Public Service Co.; Alabama Electric Cooperative, Inc.; and ENERZ Corp. Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER97–2944–000]

Take notice that on May 14, 1997, Florida Power & Light Company filed executed Service Agreements with The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc., Equitable Power Services Company, Florida Power Corporation and Southern Company Services, Inc. for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light. FPL requests that each Service Agreement be made effective on April 17, 1997.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. UtiliCorp United Inc.

[Docket No. ER97–2945–000]

Take notice that on May 14, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Carolina Power & Light Company for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. UtiliCorp United Inc.

[Docket No. ER97–2946–000]

Take notice that on May 14, 1997, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Equitable Power Services Company for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Tucson Electric Power Company

[Docket No. ER97–2947–000]

Take notice that on May 14, 1997, Tucson Electric Power Company, tendered for filing four (4) service agreements for firm and non-firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. The four service agreements are:

1. Service Agreement For Firm Point-to-Point Transmission Service with Electric Clearinghouse, Inc. Dated April 28, 1997 (Clearinghouse Agreement).
2. Service Agreement For Firm Point-to-Point Transmission Service with PacifiCorp dated April 28, 1997 (PacifiCorp Agreement).
3. Service Agreement For Non-Firm Point-to-Point Transmission Service with Equitable Power Services Co. Dated May 2, 1997 (Equitable Agreement).
4. Service Agreement For Non-Firm Point-to-Point Transmission Service with The Cincinnati Gas & Electric, PSI Energy, Inc., and Cinergy Services, Inc. dated May 2, 1997 (Cincinnati Agreement).

TEP requests waiver of notice to permit the Clearinghouse Agreement and PacifiCorp Agreement to become effective as of May 1, 1997. TEP requests waiver of notice, if necessary, to permit the Equitable Agreement and the Cincinnati Agreement to become effective on the date service commences. TEP has served a copy of this filing on Electric Clearinghouse, Inc., PacifiCorp, Equitable Power Services Co., and Cinergy Services, Inc. (As agent for The Cincinnati Gas & Electric Company and PSI Energy, Inc.).

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER97–2948–000]

Take notice that on May 14, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with The Wholesale Power Group under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide firm point-to-point service to the Wholesale Power Group as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER97–2949–000]

Take notice that on May 14, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing executed Service Agreements between Virginia Electric and Power Company and (1) BYNG Public Works Authority, (2) Eastern Power Distribution, Inc., (3) Williams Energy Services Company, and (4) DuPont Power Marketing, Inc. under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreements Virginia Power agrees to provide services to (1) BYNG Public Works Authority, (2) Eastern Power Distribution, Inc., (3) Williams Energy Services Company, and (4) DuPont Power Marketing, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. New York State Electric & Gas Corporation

[Docket No. ER97–2950–000]

Take notice that on May 14, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Commonwealth Electric Company (Commonwealth). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Commonwealth and Commonwealth will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on May 15, 1997, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Commonwealth.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Northeast Utilities Service Company

[Docket No. ER97–2951–000]

Take notice that on May 14, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the Village of Rockville Centre under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Village of Rockville Centre.

NUSCO requests that the Service Agreement become effective May 5, 1997.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER97–2952–000]

Take notice that on May 14, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with The Wholesale Power Group under the Open

Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide firm point-to-point service to the Wholesale Power Group as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER97–2953–000]

Take notice that on May 14, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with the Wholesale Power Group under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide firm point-to-point service to the Wholesale Power Group as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER97–2954–000]

Take notice that on May 14, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), filed an executed Service Agreement between GPU Service, Inc. and Carolina Power & Light Company (CP&L), dated May 12, 1997. This Service Agreement specifies that CP&L has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and CP&L to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of May 12, 1997 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Portland General Electric Company

[Docket No. ER97–2955–000]

Take notice that on May 14, 1997, Portland General Electric Company (PGE), tendered for filing its Average System Cost (ASC) as calculated by PGE and determined by the Bonneville Power Administration under the revised ASC Methodology which became effective on October 1, 1984. This filing includes PGE's revised Appendix 1 of the Residential Purchase and Sale Agreement.

PGE states that the revised Appendix 1 shows the ASC to be 36.34 mills/kWh effective October 1, 1996. The Bonneville Power Administration determined the ASC rate for PGE to be 36.34 mills/kWh. However, there is no effect on the residential exchange payments because the amount for fiscal year 1997 was fixed by federal legislation.

Copies of the filing have been served on the persons named in the transmittal letter as included in the filing.

Comment date: June 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–14906 Filed 6–6–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

June 4, 1997.

The Following Notice of Meeting is Published Pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 11, 1997, 10:00 A.M.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda:

* **Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a List of Matters to be Considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 677th Meeting—June 11, 1997, Regular Meeting (10:00 a.m.)

CAH–1.
OMITTED

CAH–2.
DOCKET# P–2487, 004, JOHN M. SKORUPSKI

CAH–3.
DOCKET# P–2721, 012 BANGOR HYDRO-ELECTRIC COMPANY
OTHER#S DI96–10, 001, BANGOR HYDRO-ELECTRIC COMPANY

CAH–4.
DOCKET# P–6287, 010, RAINSONG COMPANY

CAH–5.
DOCKET# P–10854, 003, UPPER PENINSULA POWER COMPANY

Consent Agenda—Electric

CAE–1.
DOCKET# ER97–1431, 000, PEC ENERGY MARKETING, INC.
OTHER#S ER97–1432, 000, DEPERE ENERGY MARKETING, INC.

CAE–2.
DOCKET# ER97–2161, 000, BOSTON EDISON COMPANY

CAE–3.

DOCKET# ER97–2519, 000, PENNSYLVANIA-NEW JERSEY-MARYLAND INTERCONNECTION, LLC
CAE–4.
DOCKET# ER97–2663, 000, WASHINGTON WATER POWER COMPANY
CAE–5.
DOCKET# ER97–2531, 000, TEXAS–NEW MEXICO POWER COMPANY
CAE–6.
DOCKET# ER97–1238, 000, CSW POWER MARKETING, INC.
OTHER#S ER96–1348, 001, CSW POWER MARKETING, INC.
CAE–7.
DOCKET# ER97–1913, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
CAE–8.
DOCKET# ER96–713, 000, PUBLIC SERVICE COMPANY OF COLORADO
OTHER#S EL96–39, 000, PUBLIC SERVICE COMPANY OF COLORADO
CAE–9.
DOCKET# OA96–17, 000, OKLAHOMA GAS AND ELECTRIC COMPANY
CAE–10.
DOCKET# OA96–52, 000, VIRGINIA ELECTRIC AND POWER COMPANY
CAE–11.
DOCKET# OA96–195, 000, NEW YORK STATE ELECTRIC & GAS CORPORATION
OTHER#S ER96–2438, 000, NEW YORK STATE ELECTRIC & GAS CORPORATION
CAE–12.
DOCKET# ER97–1899, 001, OCEAN STATE POWER
OTHER#S ER97–1890, 001, OCEAN STATE POWER II
CAE–13.
OMITTED
CAE–14.
DOCKET# EL96–22, 000, THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT V. TUCSON ELECTRIC POWER COMPANY
CAE–15.
DOCKET# RM94–14, 001, NUCLEAR PLANT DECOMMISSIONING TRUST FUND GUIDELINES
CAE–16.
DOCKET# RM96–6, 001 INQUIRY CONCERNING THE COMMISSION'S MERGER POLICY UNDER THE FEDERAL POWER ACT

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP97–367, 000, ANR PIPELINE COMPANY
CAG–2.
DOCKET# RP96–320, 012, KOCH GATEWAY PIPELINE COMPANY
OTHER#S RP96–320, 013, KOCH GATEWAY PIPELINE COMPANY
CAG–3.
DOCKET# RP97–354, 000, NORTHERN BORDER PIPELINE COMPANY
CAG–4.
DOCKET# RP97–362, 000, NORTHERN BORDER PIPELINE COMPANY
CAG–5.
DOCKET# RP96–403, 003, ANR PIPELINE COMPANY
CAG–6.
DOCKET# RP97–1, 006, NATIONAL FUEL GAS SUPPLY CORPORATION
OTHER#S RP97–1, 005, NATIONAL FUEL GAS SUPPLY CORPORATION
RP97–201, 003, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–7.
DOCKET# RP97–47, 000, ANR PIPELINE COMPANY
CAG–8.
DOCKET# RP97–52, 003, COLUMBIA GULF TRANSMISSION COMPANY
CAG–9.
DOCKET# RP97–59, 003, MIDWESTERN GAS TRANSMISSION COMPANY
OTHER#S RP97–59, 004, MIDWESTERN GAS TRANSMISSION COMPANY
CAG–10.
DOCKET# RP97–118, 000, ANR PIPELINE COMPANY
CAG–11.
DOCKET# RP97–146, 002, U–T OFFSHORE SYSTEM
CAG–12.
DOCKET# RP97–147, 002, HIGH ISLAND OFFSHORE SYSTEM
CAG–13.
DOCKET# RP93–5, 025, NORTHWEST PIPELINE CORPORATION
OTHER#S RP93–96, 005, NORTHWEST PIPELINE CORPORATION
CAG–14.
DOCKET# RP96–310, 002, LOUISIANA-NEVADA TRANSIT COMPANY
CAG–15.
OMITTED
CAG–16.
OMITTED
CAG–17.
DOCKET# RP95–271, 008, TRANSWESTERN PIPELINE COMPANY
OTHER#S RP94–227, 008, TRANSWESTERN PIPELINE COMPANY
CAG–18.
DOCKET# RP96–272, 001, NORTHERN NATURAL GAS COMPANY
CAG–19.
DOCKET# RP97–17, 005, NORTHERN NATURAL GAS COMPANY
CAG–20.
DOCKET# RP97–54, 003, TRAILBLAZER PIPELINE COMPANY
CAG–21.
DOCKET# RP97–64, 005, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–22.
DOCKET# RP97–66, 004, CANYON CREEK COMPRESSION COMPANY
CAG–23.
OMITTED
CAG–24.
DOCKET# RP97–68, 003, STINGRAY PIPELINE COMPANY
CAG–25.
OMITTED
CAG–26.
OMITTED
CAG–27.
DOCKET# PR97–4, 000, PONTCHARTRAIN NATURAL GAS SYSTEM
CAG–28.
DOCKET# RP92–163, 007, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
OTHER#S RP92–170, 007, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
RP92–236, 006, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–29.
DOCKET# RP97–338, 000, RICHFIELD GAS STORAGE SYSTEM
OTHER#S RP97–356, 000, ARKANSAS WESTERN PIPELINE COMPANY
CAG–30.
DOCKET# RP97–269, 001, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–31.
DOCKET# RP97–288, 002, TRANSWESTERN PIPELINE COMPANY
CAG–32.
DOCKET# RP95–197, 028, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP96–211, 010, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–33.
DOCKET# RP96–347, 004, NORTHERN NATURAL GAS COMPANY
OTHER#S RP93–206, 014, NORTHERN NATURAL GAS COMPANY
CAG–34.
DOCKET# TM97–9–29, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–35.
DOCKET# RP96–67, 004, MOJAVE PIPELINE COMPANY
CAG–36.
DOCKET# RS92–25, 010, TRUNKLINE GAS COMPANY
CAG–37.
DOCKET# RS92–86, 019, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP92–108, 014, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
RP92–137, 045, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–38.
DOCKET# MG97–8, 001, PACIFIC INTERSTATE OFFSHORE COMPANY
CAG–39.
DOCKET# CP96–16, 002, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–40.
DOCKET# CP96–627, 001, QUESTAR PIPELINE COMPANY
CAG–41.
DOCKET# CP96–776, 000, WILLIAMS NATURAL GAS COMPANY
CAG–42.
DOCKET# CP97–25, 000, NORTHERN NATURAL GAS COMPANY
CAG–43.
DOCKET# CP93–252, 000, EL PASO NATURAL GAS COMPANY
OTHER#S CP93–252, 001, EL PASO NATURAL GAS COMPANY

CP93–252, 002, EL PASO NATURAL GAS COMPANY
CP93–253, 001, EL PASO NATURAL GAS COMPANY
CP93–253, 002, EL PASO NATURAL GAS COMPANY
CAG–44.
DOCKET# CP96–164, 000, TENNESSEE GAS PIPELINE COMPANY
OTHER#S CP96–254 000 DISTRIGAS OF MASSACHUSETTS CORPORATION
CAG–45.
DOCKET# CP96–596, 000, EL PASO NATURAL GAS COMPANY
CAG–46.
DOCKET# CP97–148, 000, ENRON MOUNTAIN GATHERING, INC.
OTHER#S CP97–40, 000, NORTHERN NATURAL GAS COMPANY
CAG–47.
DOCKET# CP96–248, 004, PORTLAND NATURAL GAS TRANSMISSION COMPANY
CAG–48.
DOCKET# CP96–810, 000, MARITIMES & NORTHEAST PIPELINE, L.L.C.
CAG–49.
DOCKET# RM90–10, 000, NATURAL GAS TRANSPORTATION POLICY UNDER SECTION 311 OF THE NATURAL GAS POLICY ACT
CAG–50.
DOCKET# CP96–687, 000, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.

HYDRO AGENDA

H–1.
RESERVED

ELECTRIC AGENDA

E–1.
DOCKET# EC97–12, 000, SAN DIEGO GAS & ELECTRIC COMPANY AND ENOVA ENERGY, INC.
OTHER#S EL97–15, 001, ENOVA CORPORATION AND PACIFIC ENTERPRISES
EL97–21, 000, SOUTHERN CALIFORNIA EDISON COMPANY V. SAN DIEGO GAS & ELECTRIC CO., ENOVA ENERGY, NC. AND ENSOURCE CORP., ORDER ON DISPOSITION OF FACILITIES AND COMPLAINT.

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

Lois D. Cashell,

Secretary.

[FR Doc. 97–15080 Filed 6–5–97; 11:06 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

June 2, 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 collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 9, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0108.
Title: Emergency Alert Systems—EAS Activation Report.
Form No.: FCC 201.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit entities; not-for-profit institutions.
Number of Respondents: 14,000.
Estimated Hour Per Response: .034 (2 minutes).
Frequency of Response: On occasion reporting requirement.
Estimated Total Annual Burden: 476 hours.
Needs and Uses: The Emergency Broadcast System (EBS) has been changed to the Emergency Alert System (EAS). This change required that all EBS collections and forms be corrected to reflect the name change. The EAS Activation Report postcard was developed as part of the EAS planning program. The program is a tri-agency agreement between the FCC, NOAA National Weather Service, and the Federal Emergency Management Agency (FEMA). The information is needed to maintain accurate records and documentation of broadcast stations and cable systems in compliance with FCC rules, and to enhance and encourage participation in the national, state and local EAS. Any reduction in the frequency of this activity would result in a proportional loss of benefit and would cause a delay in the detection of EAS equipment failures that would cause the loss of national, state and local emergency messages to the public, which in turn, could cause the loss of life and property. In keeping with the objectives of the Paperwork Reduction Act, this collection can now be filed by electronic mail to EAS@fcc.gov.

OMB Approval No.: 3060–0318.
Title: Notification of Commencement of Service or of Additional or Modified Facilities.
Form No.: FCC 489.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit entities.
Number of Respondents: 7,000.
Estimated Hour Per Response: 3.62 hours.
Frequency of Response: On occasion reporting requirement.
Estimated Total Annual Burden: 25,340 hours.
Needs and Uses: FCC Form 489 is a multi-purpose form used by commercial mobile radio service providers subject to 47 CFR Parts 22 and 24 to notify the Commission of commencement of service, satisfaction of construction requirements, additional transmitters, minor modifications to stations and for certain other miscellaneous purposes. In addition to the requirements specified on the form, applicants may be required to file exhibits and showings as specified by the applicable rule part. The requested information is used by Commission staff in carrying out its duties as set forth in Sections 308 and

309 of the Communications Act of 1934. Various sections in 47 CFR Parts 22 and 24 require submission of FCC Form 489. FCC Form 489 is filed by Public Mobile and Personal Communications Services licensees. The form is being revised to add a space for the licensee to provide an Internet/e-mail address and to request the licensee's Taxpayer Identification Number. The TIN is required to comply with the Debt Collection Improvement Act of 1996. A type of licensee ''government entity'' is also being added to the choices prior to the signature on the application. The burden reflects a decrease in the number of respondents from 10,000 to 7,000 and a decrease in total burden hours from 36,200 to 25,340 (3.62 hours per form). This is attributed to an adjustment and re-evaluation of receipts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–14952 Filed 6–6–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Memorandum Opinion and Order, Hearing Designation Order

The Commission has before it for consideration the following matter:

Licensee	City/State	MM docket No.
Martin W. Hoffman, Trustee-In-Bankruptcy for Astroline Communications Company Limited Partnership (Astroline).	Hartford, CT	97–128

(Regarding the renewal application for WHCT–TV, Channel 18, Hartford, Connecticut)

Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the application of Martin W. Hoffman, Trustee-In-Bankruptcy (Trustee) for Astroline Communications Company Limited Partnership (Astroline) for renewal of license of Station WHCT–TV, Channel 18, Hartford, Connecticut, has been designated for hearing upon the following issues:

(1) To determine whether Astroline misrepresented facts to the Commission and the Federal Courts, in connection with statements it made concerning its status as a minority-controlled entity;

(2) To determine, in light of the evidence adduced under the preceding issue, whether the public interest, convenience and necessity would be served by a grant of the renewal application filed by the Trustee (File No. BRCT–881201LG).

A copy of the complete Memorandum Opinion and Order and Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone number 202–857–3800).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–14953 Filed 6–6–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45: FCC 97–181]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of appointment.

SUMMARY: On May 22, 1997, the Commission appointed Commissioner David N. Baker of the Georgia Public Service Commission to the Federal-State Board on Universal Service, filling the position vacated by Kenneth McClure, and acknowledged the contribution of Mr. McClure to this Federal-State Joint Board.

EFFECTIVE DATE: May 22, 1997.

ADDRESSES: After the effective date of the appointment, copies of all filings in the universal service proceeding must be served on Commissioner Baker at the Georgia Public Service Commission, 244 Washington Street, SW, Atlanta, GA 30334–5701.

FOR FURTHER INFORMATION CONTACT: Emily Hoffnar, 202–418–7400.

SUPPLEMENTARY INFORMATION: The creation of the Federal-State Board on Universal Service was authorized by Congress in the Telecommunications Act of 1996, 47 U.S.C. 254(a)(1).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–14896 Filed 6–6–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Preparation for the 1997 World Radiocommunication Conference (WRC–97)

AGENCY: Federal Communications Commission and National Telecommunications and Information Administration.

ACTION: Notice; announcement of draft preliminary proposals to WRC–97.

SUMMARY: The FCC and NTIA have released a third set of Joint Draft Preliminary Proposals for WRC–97. The public is provided a 30-day period, from the date of the release of the notice, to provide comment on the draft proposals. Copies of the draft proposals are available for inspection and photocopying at the FCC's International Reference Center, 2000 M Street, NW, Room 102, Washington, DC, and on-line at http://www.fcc.gov/ib/wrc97/. Final U.S. proposals will be determined by the Department of State based on the recommendations of the FCC and NTIA.

DATES: Comments must be submitted on or before June 16, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554; Director, Office of Spectrum Plans and Policies, National Telecommunications and Information Administration, Department of Commerce, Room 4099, Washington, DC 20230.

FOR FURTHER INFORMATION: Crystal Foster, FCC, 202–418–0749, and William T. Hatch, NTIA, at 202–482–1138.

SUPPLEMENTARY INFORMATION: The FCC's WRC–97 Advisory Committee and NTIA, through the Interdepartment Radio Advisory Committee, announced on May 28, 1997, their approval of a third set of draft preliminary proposals for WRC–97. In accordance with the streamlined procedures developed to improve the United States conference preparation process, the agencies are providing the public with this early opportunity to review and comment on draft proposals before further consideration. Final U.S. proposals will be determined by the Department of State based on the recommendations of the FCC and NTIA.

The joint preliminary draft proposals seek to:

JPDP 21—upgrade to primary the allocations for the Meteorological-Satellite and Earth Exploration-Satellite Services at 401–403 MHz (WRC–97 Agenda Item 1.9.1);

JPDP 22—delete unnecessary provisions for coordinating frequency assignments in the NAVTEX system (Article 14A) now being handled by the International Maritime Organization (WRC–97 Agenda Item 1.6.4);

JPDP 23—add an allocation in the 5250–5350 MHz band for the Earth Exploration-Satellite and Space Research Services (WRC–97 Agenda Item 1.9.2);

JPDP 24—add an allocation in the 8500–8650 MHz band for the Earth Exploration-Satellite and Space Research Services (WRC–97 Agenda Item 1.9.2);

JPDP 25—modify Appendix S3 to adopt Category A spurious emission limits (WRC–97 Agenda Item 1.7);

JPDP 26—add a definition to the Radio Regulations for frequency adaptive systems (WRC–97 Agenda Item 1.5);

JPDP 27—replace Recommendation 621 to improve administration of wind profiler radars and discourage their use of the 400.15–406 MHz band (WRC–97 Agenda Item 1.9.3);

JPDP 28—merge allocations in the 1.5/1.6 GHz bands for Aeronautical Mobile Satellite (Route), Land Mobile Satellite, and Maritime Mobile Satellite Services into the Mobile-Satellite Service (WRC–97 Agenda Item 1.9.1);

JPDP 29—review single sideband receiver population statistics in time for consideration by WRC–99 (WRC–97 Agenda Item 1.4); and

JPDP 30—amend Article S52 to permit use of new digital technology on HF by Maritime Service and approve resolution directing WRC–99 to further update Radio Regulations to provide for digital radio telecommunications in the HF A1A Morse Telegraphy and Telephony Bands (WRC–97 Agenda Item 1.6.5).

Members of the public are invited to provide to the FCC and NTIA comments on the joint preliminary draft proposals. The deadline for comments on this third set of joint preliminary draft proposals is June 16, 1997. Timely comments will be considered by the FCC WRC–97 Advisory Committee.

Commenters should send an original plus one copy of their comment to the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. Comments should clearly note ''Reference No. ISP–96–005'' to ensure proper routing and should refer to specific proposals by their Joint Preliminary Draft Proposal number. Copies of the comments should also be submitted to the Director, Office of Spectrum Plans and Policies, National Telecommunications and Information Administration, Department of Commerce, Room 4099, Washington, DC 20230. Parties preferring to e-mail their comments should address their comments to WRC97@fcc.gov and WRC97@ntia.doc.gov and they should reference ''Second Draft Proposals'' in the subject line.

The draft proposals and comments received will be made available for public inspection at the FCC's International Reference Center, 2000 M Street, NW., Room 102, Washington, DC, 202–418–1492. Copies of the documents can also be purchased through the FCC's duplication contractor, ITS, Inc., 202–857–3800.

Further information about the FCC WRC–97 Advisory Committee, including its schedule of meetings and the draft proposals, is available on the Internet at http://www.fcc.gov/ib/wrc97/. Meetings of the Advisory Committee and its Informal Working Groups are open to the public.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–14895 Filed 6–6–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, June 3, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Nicolas P. Retsinas (Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meetings was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii).

The meeting was held in the Board Room of the FDIC Building located at 550–17the Street, N.W., Washington, D.C.

Dated: June 4, 1997.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 97–15085 Filed 6–5–97; 11:40 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 97–11]

Hoegh-Ugland Auto Liners A/S v. Navajo Shipping Agency, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Hoegh-Ugland Auto Liners A/S (''Complainant'') against Navajo Shipping Agency, Inc. (''Respondent'') was served June 3, 1997. Complainant alleges that Respondent violated section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. section 1709(a)(1), by failing to pay applicable ocean freight and charges after inducing Complainant to issue a new bill of lading on a freight collect basis, knowing that the cargo had already been released to the consignee.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by June 3, 1998, and the final

decision of the Commission shall be issued by October 1, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 97–14968 Filed 6–6–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Hansa U.S.A. Corporation, 2654 N.W. 112th Avenue, Miami, FL 33172, Officers: Marcus Kadur, President, William R. Fulford, Vice President

Tradewinds of Orlando, Inc., 2003 Viscount Row, Orlando, FL 32809, Officers: John Brealey, President, Dawn M. Clay, Vice President

DGM Services, Inc. d/b/a Dangerous Goods Management & DG Express, 13875 Ella Blvd., Suite 1711, Houston, TX 77014, Officers: Jean C. Petillon, President, Marc H. Petillon, Vice President

Speco International Inc., d/b/a K & B Freight Forwarding, 3405 N.W. 9th Avenue, Suite 1205, Ft. Lauderdale, FL 33309, Officer: Martin Katari, President

Seven Ocean Services, Ltd., 10463 Del Norte Way, Los Alamitos, CA 90720, Officer: Harold Deguardo, President

CNS Express Company, 2415 S. Sequoia Drive, Rm. B, Compton, CA 90220, Nancy Lee, Sole Proprietor

Dated: June 3, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–14967 Filed 6–6–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. City Bancorp, Springfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of THE BANK, Springfield, Missouri, a *de novo* bank.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Woodhaven National Bank, Fort Worth, Texas.

2. Norwest Corporation, Minneapolis, Minnesota; to merge with Myers Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire Continental State Bank, Boyd, Texas.

Board of Governors of the Federal Reserve System, June 4, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–15002 Filed 6–6–97; 8:45 am]

BILLING CODE 6210–01–F

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 June 24, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Waseca Bancshares, Inc., Waseca, Minneosta; to engage *de novo* through its subsidiary American Savings, Inc., Farmington, Minnesota, in acquiring an industrial loan and thrift company, pursuant to § 225.28(b)(4)(i) of the Board's Regulation Y. This activity will be conducted throughout Farmington, Minnesota.

Board of Governors of the Federal Reserve System, June 4, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–15003 Filed 6–6–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0213]

Asahi Denka Kogyo K.K.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Asahi Denka Kogyo K.K. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-*tert*-butyl-4-methylphenyl)ester as an antioxidant and/or stabilizer at a level not to exceed 0.25 percent by weight in olefin copolymers in contact with certain food categories, and at levels not to exceed 0.10 percent by weight in either olefin copolymers or polypropylene in contact with certain other food categories.

DATES: Written comments on the petitioner's environmental assessment by July 9, 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: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4542) has been filed by Asahi Denka Kogyo K.K., Shirahata 5-Chome, Urawa City, Saitama 366, Japan. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-*tert*-butyl-4-methylphenyl)ester for use: (1) At levels not to exceed 0.25 percent by weight of olefin copolymers complying with § 177.1520 (21 CFR 177.1520) in contact with foods of types I, II, III, IV–B, VI–B, and VIII, as described in Table 1, and under conditions of use B through H, described in Table 2 of § 176.170(c) (21 CFR 176.170(c)), of this chapter, and with food types IV–A, V, VI–A, VI–C, VII–A, and IX, under conditions of use C through G, as described in § 176.170(c), Tables 1 and 2, respectively; and (2) at levels not to exceed 0.10 percent by weight of either olefin copolymers or polypropylene complying with § 177.1520 which may be used only in contact with foods of types IV–A, V, VI–C, VII–A, and IX, under conditions of use H, as described in § 176.170(c) of this chapter, Tables 1 and 2 respectively.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 9, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 14, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–14892 Filed 6–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel meeting:

Purpose/Agenda: To evaluate and review contract proposals.

Name of Committee: NIDA Special Emphasis Panel.

Date: June 25–26, 1997.

Time: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mr. Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

The meeting will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health)

Dated: June 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–14958 Filed 6–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: June 25, 1997.

Time: 11 a.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers

Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 1, 1997.

Time: 2 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 3, 1997.

Time: 1 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Jean G. Noronha, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 3, 1997.

Time: 2 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 8, 1997.

Time: 2 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 10, 1997.

Time: 4 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Emeline M. Otey, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–4868.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 11, 1997.

Time: 1 p.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Emeline M. Otey, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–4868.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 11, 1997.

Time: 10 a.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Emeline M. Otey, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–4868.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 23, 1997.

Time: 2 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–3936.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: June 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–14959 Filed 6–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences meeting:

Committee Name: Minority Biomedical Research Support Review Subcommittee.

Date: July 10–11, 1997.

Time of Meeting: 8:30 a.m.–5:00 p.m.

Open Session: 8:30 a.m.–9:30 a.m.—July 10, (1 hour).

Agenda: Committee—Related Discussion.

Closed Session: 9:30 a.m.–5:00 p.m.—July 10, 1997, 8:30 a.m.–5:00 p.m.—July 11, 1997.

Place: National Institutes of Health, Building 31—Conference Room C, Bethesda, MD 20892.

Contact Person: Lin J. Hymel, Ph.D., Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19, Bethesda, MD 20892–6200, 301–594–2771.

Purpose: To review institutional research training grant applications.

The meeting will be open to the public as indicated above, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed above in advance of the meeting.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(b)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences: 93.859. Pharmacological Sciences: 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: June 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–14960 Filed 6–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: NIAMS Special Grants Review Committee.

Date: July 30, 1997.

Time: 8:00 a.m.–12:00 p.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Theresa N. Lo, Ph.D., Scientific Review Administrator,

Natcher Building, 45 Center Drive, Rm 5AS–25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review research grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: June 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–14961 Filed 6–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Institute of General Medical Sciences meeting:

Committee Name: Biomedical Research & Research Training Committee (BRRT) Subcommittees A, B, and C.

Date: November 6–7, 1997.

Time: 08:30 a.m. until 5:00 p.m.

Place: National Institutes of Health, Building 31, Conference Rooms 7, 8, & 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

Contact Person: Carol Latker, Ph.D., Irene Glowinski, Ph.D., Arthur Zachary, Ph.D., Office of Scientific Review, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19D, Bethesda, MD 20892–6200.

Telephone: 301–594–3663.

Purpose: To review pre and post doctoral service applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6). Title 5 U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: June 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–14962 Filed 6–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: NIAMS SEP RFA Review Meeting.

Date: July 30–31, 1997.

Time: July 30—12:00 p.m.–5:00 p.m., July 31—8:30 p.m.–adjournment.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Theresa N. Lo, Ph.D., Scientific Review Administrator, Natcher Building, 45 Center Drive, Rm 5AS–25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review research grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: June 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–14963 Filed 6–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Nursing Research Special Emphasis Panel (SEP) meeting;

Name of Sep: Mentored Research Scientist Development Award for Minority Investigators.

Date: June 25, 1997.

Time: 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Mary Stephens-Frazier, Ph.D., Building 45, Room 3AN–18B, 45 Center Drive, Bethesda, MD 20892, (301) 594–5971.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: June 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH

[FR Doc. 97–14964 Filed 6–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Environmental Health Sciences Review Committee.

Date: July 28–29, 1997.

Time: 8:30 a.m. to Adjournment.

Place: National Institute of Environmental Health Sciences, South Campus, Building 101, Conference Room B, Research Triangle Park, North Carolina.

Contact Person: Dr. Ethel B. Jackson, Scientific Review Administrator, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–7826.

Purpose: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Research and Manpower Development, National Institutes of Health.)

Dated: June 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–14965 Filed 6–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: June 9–10, 1997.

Time: 8:30 a.m.

Place: Latham Hotel, Washington, DC.

Contact Person: Dr. Eugene Zimmerman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4202, Bethesda, Maryland 20892, (301) 435–1220.

Name of SEP: Chemistry and Related Sciences.

Date: June 18, 1997.

Time: 1:00 p.m.

Place: Holiday Inn—Georgetown, Washington, DC.

Contact Person: Dr. Chhandra Ganguly, Scientific Review Administrator, 6701 Rockledge Drive, Room 5156, Bethesda, Maryland 20892, (301) 435–1739.

Name of SEP: Biological and Physiological Sciences.

Date: June 19–20, 1997.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Betty Hayden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4206, Bethesda, Maryland 20892, (301) 435–1223.

Name of SEP: Clinical Sciences.

Date: June 23, 1997.

Time: 8:30 a.m.

Place: American Inn, Bethesda, MD.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.

Date: June 27, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4118, Telephone Conference.

Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

Name of SEP: Biological and Physiological Sciences.

Date: June 27, 1997.

Time: 9:00 a.m.

Place: Embassy Suites Hotel, Chevy Chase, MD.

Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

Name of SEP: Behavioral and Neurosciences.

Date: June 27, 1997.

Time: 8:30 a.m.

Place: Capitol Holiday Inn, Washington, DC.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

Name of SEP: Chemistry and Related Sciences.

Date: July 1, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5156, Telephone Conference.

Contact Person: Dr. Chhandra Ganguly, Scientific Review Administrator, 6701 Rockledge Drive, Room 5156, Bethesda, Maryland 20892, Bethesda, Maryland 20892, (301) 435–1739.

Name of SEP: Biological and Physiological Sciences.

Date: July 7–8, 1997.

Time: 8:00 a.m.

Place: Ramada Inn, Rockville, MD.

Contact Person: Dr. Dennis Leszczynski, Scientific Review Administrator, 6701 Rockledge Drive, Room 6170, Bethesda, Maryland 20892, (301) 435–1044.

Name of SEP: Biological and Physiological Sciences.

Date: July 15, 1997.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 5204, Telephone Conference.

Contact Person: Dr. Bob Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5204, Bethesda, Maryland 20892, (301) 435–1259.

Name of SEP: Chemistry and Related Sciences.

Date: July 18, 1997.

Time: 10:00 a.m.

Place: Doubletree Hotel, Rockville, MD.

Contact Person: Dr. Gopa Rakhit, Scientific Review Administrator, 6701 Rockledge Drive, Room 4154, Bethesda, Maryland 20892, (301) 435–1721.

Name of SEP: Multidiciplinary Sciences.

Date: July 21–23, 1997.

Time: 7:00 p.m.

Place: Radisson Hotel Metrodome, Minneapolis, MN.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Multidisciplinary Sciences.

Date: August 10–12, 1997.

Time: 7:00 p.m.

Place: Glidden House Hotel, Cleveland, OH.

Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Chemistry and Related Sciences.

Date: June 12, 1997.

Time: 12:00 p.m.

Place: NIH, Rockledge 2, Room 4170, Telephone Conference.

Contact Person: Dr. Nancy Lamontagne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4170, Bethesda, Maryland 20892, (301) 435–1126.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.

Date: June 26, 1997.

Time: 9:00 a.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

Name of SEP: Biological and Physiological Sciences.

Date: July 11, 1997.

Time: 8:30 a.m.

Place: Ramada Inn, Rockville, MD.

Contact Person: Dr. Abubakar Shaikh, Scientific Review Administrator, 6701 Rockledge Drive, Room 6166, Bethesda, Maryland 20892, (301) 435–1042.

Name of SEP: Clinical Sciences.
Date: July 28–29, 1997.
Time: 2:00 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, Maryland 20892, (301) 435–1198.

Name of SEP: Clinical Sciences.
Date: July 29–30, 1997.
Time: 8:00 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Gertrude McFarland, Scientific Review Administrator, 6701 Rockledge Drive, Room 4110, Bethesda, Maryland 20892, (301) 435–1784.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–15143 Filed 6–5–97; 2:00 pm]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Refugee Resettlement Program; Final Notice of Availability of Formula Allocation Funding for FY 1997 Targeted Assistance Grants for Services to Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of availability of formula allocation funding for FY 1997 targeted assistance grants to States for services to refugees [1] in local areas of high need.

SUMMARY: This notice announces the availability of funds and award procedures for FY 1997 targeted assistance grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of public assistance, and where specific needs exist for supplementation of currently available resources.

This final notice also announces the inclusion of 8 additional qualified counties for targeted assistance formula allocation funding, bringing the total of qualified targeted assistance counties from 39 counties to 47 counties for FY 1997.

The final notice reflects an adjustment in final allocations to States as a result of additional arrival data.

A notice of proposed allocation of targeted assistance funds was published for public comment in the **Federal Register** on April 1, 1997 (62 FR 15520).

FOR FURTHER INFORMATION CONTACT: Toyo Biddle, Director, Division of Refugee Self-Sufficiency, (202) 401–9250.

APPLICATION DEADLINE: The closing date for submission of applications is July 24, 1997. Applications postmarked after the closing date will be classified as late.

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Division of Refugee Self-Sufficiency, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attention: Application for Targeted Assistance Formula Program.

Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Division of Refugee Self-Sufficiency, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

To be considered complete, an application package must include a signed original and two copies of Standard Form 424, 424A, and 424B, dated April 1988. (We will provide copies of these materials to all targeted assistance States.)

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 93.584.

FOR FURTHER INFORMATION ON APPLICATION PROCEDURES: States should contact their State Analyst in ORR.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

This notice announces the availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

The Office of Refugee Resettlement (ORR) has available $49,857,000 in FY 1997 funds for the targeted assistance program (TAP) as part of the FY 1997 appropriation for the Department of Health and Human Services (Pub. L. No. 104–208).

The Director of the Office of Refugee Resettlement (ORR) will use the $49,857,000 appropriated for FY 1997 targeted assistance as follows:

- $35,371,300 will be allocated under the 5-year population formula to 47 qualified counties, as set forth in this notice.
- $9,500,000 will be awarded under a discretionary grant announcement to States to provide supportive services to elderly refugees, particularly those who will soon lose SSI eligibility due to the alien eligibility restrictions in the welfare reform law. A grant

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[1] In addition to persons who meet all requirements of 45 CFR 400.43, ''Requirements for documentation of refugee status,'' eligibility for targeted assistance includes Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, and certain Amerasians from Vietnam who are U.S. citizens. (See section II of this notice on ''Authorization.'') The term ''refugee'', used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the targeted assistance program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival, or until they obtain permanent resident alien status, whichever comes first.

announcement will be issued separately which sets forth application requirements and evaluation criteria.

- $4,985,700 (10% of the total) will be used to fund continuation grants under a discretionary grant announcement that was issued in FY 1996.

In addition, the Office of Refugee Resettlement will have available an additional $5,000,000 in FY 1997 funds for the targeted assistance discretionary program through the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Pub. L. No. 104–208). These funds will augment the 10-percent of the targeted assistance program which is set-aside for grants to localities most heavily impacted by the influx of refugees such as Laotian Hmong, Cambodians and Soviet Pentecostals, including secondary migrants who entered the United States after October 1, 1979.

The Director originally designated $19 million in targeted assistance funds for supportive services to elderly refugees out of concern for the refugee elderly who are about to lose their SSI eligibility due to the recent welfare reform law. In light of the immigrant eligibility provisions regarding SSI and Medicaid proposed in the recent FY 1998 budget agreement between the Administration and Congress, the Director has decided to decrease the amount of discretionary funding for services to elderly refugees at risk of losing SSI from the $19,000,000 proposed for this purpose in the April 1 notice to $9,500,000. We believe the proposed changes in the budget agreement will prevent the termination of SSI benefits to the majority of refugee SSI recipients. The bipartisan budget agreement allows immigrants who entered the U.S. prior to August 23, 1996, and who are or become disabled to be eligible for SSI and Medicaid. While this provision will not protect all refugees currently on SSI, it is estimated that approximately 70%–80% of current refugee elderly SSI recipients will be determined disabled and, as a consequence, will not lose their SSI benefits. In addition, the Administration and Congress have agreed to extend the SSI and Medicaid eligibility period for refugees and asylees from 5 years after entry, (the limit in the welfare reform law), to 7 years after entry. This budget resolution is currently being considered by the House and Senate budget committees and we expect legislation to follow shortly. The Director has decided to allocate $9.5 million to a discretionary program to assist the approximately 20%–30% of elderly SSI recipients who are not likely to be determined disabled and thus lose their SSI benefits beginning in August 1997 as a result.

The Director has decided to allocate the remaining $9.5 million to the regular formula allocation program to enable additional impacted counties to benefit from targeted assistance funding.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), which provides that targeted assistance grants shall be made available ''(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity.''

II. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. No. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513).

III. Client and Service Priorities

Targeted assistance funding must be used to assist refugee families to achieve economic independence. To this end, States and counties are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See 45 CFR 400.79 and 400.156(g).) Each family self-sufficiency plan should address a family's needs for both employment-related services and other needed social services. The family self-sufficiency plan must include: (1) a determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family. In local jurisdictions that have both targeted assistance and refugee social services programs, one family self-sufficiency plan may be developed for a family that incorporates both targeted assistance and refugee social services.

Services funded through the targeted assistance program are required to focus primarily on those refugees who, either because of their protracted use of public assistance or difficulty in securing employment, continue to need services beyond the initial years of resettlement. States may not provide services funded under this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years).

In accordance with 45 CFR 400.314, States are required to provide targeted assistance services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) Refugees who are cash assistance recipients, particularly long-term recipients; (b) unemployed refugees who are not receiving cash assistance; and (c) employed refugees in need of services to retain employment or to attain economic independence.

In addition to the statutory requirement that TAP funds be used ''primarily for the purpose of facilitating refugee employment'' (section 412(c)(2)(B)(i)), funds awarded under this program are intended to help fulfill the Congressional intent that ''employable refugees should be placed on jobs as soon as possible after their arrival in the United States'' (section 412(a)(1)(B)(i) of the INA). Therefore, in accordance with 45 CFR 400.313, targeted assistance funds must be used primarily for employability services designed to enable refugees to obtain jobs with less than one year's

participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with § 400.317, if targeted assistance funds are used for the provision of English language training, such training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities.

A portion of a local area's allocation may be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State. Allowable services include those listed under § 400.316.

Reflecting section 412(a)(1)(A)(iv) of the INA, States must ''insure that women have the same opportunities as men to participate in training and instruction.'' In addition, in accordance with § 400.317, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit. States and counties are expected to make every effort to assure availability of day care services for children in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the targeted assistance program. Refugees who are participating in TAP-funded or social services-funded employment services or have accepted employment are eligible for day care services for children. For an employed refugee, TAP-funded day care should be limited to one year after the refugee becomes employed. States and counties, however, are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are encouraged to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with § 400.317, targeted assistance services must be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background, to the maximum extent feasible. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. Services funded under this notice must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job-skills training, on-the-job training, or English language training, however, need not be refugee-specific.

When planning targeted assistance services, States must take into account the reception and placement (R & P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless, coordinated services to refugees that are not duplicative. See § 400.156(b).

ORR strongly encourages States and counties when contracting for targeted assistance services, including employment services, to give consideration to the special strengths of mutual assistance associations (MAAs), whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also strongly encourages MAAs to ensure that their management and board composition reflect the major target populations to be served.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

Finally, in order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR strongly encourages States and counties to promote and give special consideration to the provision of services through coalitions of refugee service organizations, such as coalitions of MAAs, voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

The award of funds to States under this notice will be contingent upon the completeness of a State's application as described in section IX, below.

IV. Discussion of Comments Received

Thirteen letters of comment were received in response to the notice of proposed availability of FY 1997 funds for targeted assistance. The comments are summarized below and are followed in each case by the Department's response.

Comment: Ten commenters expressed support for the proposed use of $19 million for services to the elderly, particularly those elderly who are about to lose their SSI eligibility. One commenter was opposed to the proposed $19 million discretionary program for elderly services and questioned ORR's legal authority to use these funds in a discretionary manner as opposed to including these funds in the formula allocation program. The commenter recommended that ORR allocate all available TAP funds by formula. One commenter, while supporting the use of the $19 million for the elderly, objected to the awarding of these funds through a discretionary grant program and recommended a block grant instead. Another commenter urged ORR to make the discretionary application process as simple as possible and base awards on the number of SSI refugees in the U.S. over 5 years. Six commenters recommended that the funding be allocated only to States and counties with high concentrations of refugees, not all States. Six commenters felt that ORR should not allocate these funds on the basis of elderly refugee arrivals and should base funding on current place of residence, not initial place of resettlement. Eight commenters strongly recommended that funding be based on the number of elderly refugees

in each area who received SSA notices in February and March 1997, indicating they are likely to be ineligible for SSI. Five commenters felt that local areas should be given the discretion to decide what kinds of services to provide to elderly refugees. One commenter recommended the inclusion of disabled as well as elderly refugees as eligible recipients.

Response: To clarify the question of ORR's legal authority to award $19 million in targeted assistance funds through a discretionary program, there is no prohibition in the statute that precludes the use of TAP funds for discretionary activities. Furthermore, nothing in ORR regulations for the TAP formula program administratively establishes any particular percentage of funds to be spent on the formula program. The commenter will note, however, that the Director has added $9.5 million to the formula allocation amount.

Regarding inclusion of the disabled, in light of the budget agreement between the Congress and the Administration to allow full eligibility for SSI and Medicaid for disabled immigrants, including refugees, who were residing in the U.S. prior to enactment of the welfare reform law, ORR's elderly discretionary grant program will focus only on the elderly. Under the elderly discretionary program, ORR intends to fund only those States with counties that have large concentrations of refugees age 65 and over, which is the population most at-risk of losing SSI. Regarding the suggestion to base funding on the number of refugee SSI recipients who received SSA notices in February and March, 1997, to our knowledge, SSI recipient data that separately identifies refugee recipients are not available from the Social Security Administration. ORR intends to use a formula that focuses on counties heavily impacted by older refugees. ORR utilized data covering FY 1983 through FY 1996 for older refugees age 65 or older or who will reach age 65 or older by October 1, 1999. From these data, ORR developed a list of counties that had a minimum threshold of 500 or more refugees aged 65 or over. Additionally, other States and counties may apply for these funds if they can demonstrate an older refugee population that meets the minimum county threshold of 500 or more older refugees.

Regarding the recommendation that services to the elderly should be developed locally, the announcement to assist elderly refugees makes clear that services should be developed and administered at local levels. In addition, ORR encourages local service providers to work closely with community-based Area Agencies on Aging to collaborate and coordinate services to older refugees.

Finally, regarding the request to keep the application process as simple as possible, ORR shares the commenter's interest and will make every effort to keep the process simple.

Comment: Eight commenters from one State felt that States and counties should have the flexibility to serve refugees in the U.S. over 5 years with targeted assistance formula funds. Several of these commenters stated that there are large numbers of post-5-year refugees in the State who are in need of services, have difficulty accessing mainstream services, and will soon lose their eligibility for assistance. One commenter recommended that ORR allow States to use TAP funds to serve post-5-year refugees provided that existing priority groups are fully served and sufficient TAP funds are available for this purpose.

Response: We continue to believe that targeted assistance formula funds should be used for refugees during their first 5 years in the U.S. in order to concentrate adequate resources on helping refugees to become self-sufficient as soon as possible without becoming long-term welfare recipients. Of particular concern are the large numbers of refugees in the U.S. less than 5 years, who reside in high welfare States and have been on welfare since their arrival. These are the refugees who require top priority from the refugee program. Also of top priority is to make sure that future refugee arrivals never get to the point of being on welfare for most of their first 5 years in the U.S. For these reasons we do not agree with the commenters that the 5-year limitation on targeted assistance formula funds should be changed; the focus on services during the first 5 years is the right focus.

Regarding the comment that many of the post-5-year refugees will soon lose their eligibility for public assistance, it is important to note that most States have decided to allow refugees who were residing in the U.S. prior to August 22, 1996, to continue to be eligible for TANF assistance on the same basis as U.S. citizens.

Finally, we wish to remind States that ORR discretionary funds may be used to serve post-5-year refugees. This year, a substantial amount, approximately $42,685,000, will be available in discretionary funds to serve refugees, including refugees who have been in the U.S. over 5 years.

Comment: Three commenters expressed concern regarding ORR's requirement for family self-sufficiency plans. One commenter questioned whether services should be provided to take refugees to self-sufficiency thereby using resources that would otherwise be available to help some refugees find employment. The commenter felt that the requirement implied that services should be provided to a full-time employed refugee until the family is off aid. Two commenters stated that the family self-sufficiency plan is redundant with individual employability plans. One commenter asked if one plan could be developed in lieu of both plans. Another commenter recommended that ORR eliminate the family self-sufficiency plan requirement and issue waivers to States in the interim.

Response: As stated in several previous notices, the family self-sufficiency plan is a tool that assists both the refugee family and the employment counselor to focus more clearly on what steps need to be taken to achieve self-sufficiency. In many cases, it requires more than one wage-earner to go to work in order for a family to become self-sufficient. The development of a family self-sufficiency plan puts the proper focus on the family as the client unit. The employment plan, in contrast, focuses on one person's employment without addressing what is needed of other adults in the family to get the family unit self-sufficient. We do not view self-sufficiency plans and individual employment plans to be redundant; individual employment plans are part of a family self-sufficiency plan, not a separate entity.

ORR does not insist that employment service providers work with all refugee families until they are self-sufficient at the expense of other clients, but we encourage States and providers to design programs that efficiently use resources to help refugee families become self-sufficient to the maximum extent feasible. By developing a family self-sufficiency plan, at least a refugee family will be able to understand what it takes to not only get a job, but to get off welfare. Experience in a number of States shows that the use of family self-sufficiency plans results ultimately in earlier family self-sufficiency through the attainment of jobs for one or more wage earners at self-supporting wages. We would be happy to connect any State and county that does not understand how to use family self-sufficiency plans to good effect with States and providers experienced in using family self-sufficiency plans effectively.

Comment: One commenter questioned the meaningfulness of requiring targeted

assistance grantees to propose TAP outcome goals aimed at continuous improvement from one year to the next in light of factors such as reduced TAP allocations, inability to serve refugees who have been in the U.S. more than 60 months, and economic factors including recession and high unemployment rates. Another commenter felt that since ORR requires outcomes, less emphasis should be placed on how outcomes are achieved and more local flexibility should be allowed in providing services.

Response: We understand that funding levels and other variables must be taken into account when setting and meeting outcome goals. For this reason, we ask States and counties to set goals in terms of percentages and real numbers. For example, a decrease in funding will likely result in a smaller caseload to be served, but need not necessarily result in a smaller percentage of the caseload entering employment. States and counties also have the opportunity to attach a narrative with the goal plan which explains local factors that affect performance outcomes.

Regarding more local flexibility, we believe States and counties already have a great deal of flexibility in designing services and service delivery.

Comment: Two commenters raised concerns regarding the methodology by which ORR allocates targeted assistance funds and qualifies counties for targeted assistance funds. One commenter recommended that the allocation formula be based on all refugee arrivals to the county with no limitation regarding when the refugees first arrived in the county. The same commenter also recommended that qualification for targeted assistance funds should be based solely on refugee arrivals and not on refugee concentration. One county requested that the TAP funding level for the county remain equal to the county's FY 1996 allocation because of the continued demand for TAP services in the county.

Response: In regard to the suggestion that the TAP allocation formula be based on all refugee arrivals to the county regardless of when the refugees arrived, the targeted assistance allocation formula must be consistent with § 400.315(b) of ORR's regulations which limits the provision of targeted assistance formula services to refugees who have been in the U.S. 5 years or less. In regard to using population as the only qualifying criterion, ORR is required to use all the factors that are outlined in the statute for which data are available. Section 412(c)(2)(A) of the Immigration and Nationality Act identifies large refugee populations, high refugee concentrations, and high use of public assistance by refugees as three factors to take into account for targeted assistance eligibility. While we do not have available welfare dependency data, data are available on refugee population and refugee concentration. Therefore ORR is required to use both factors in determining county qualification.

In regard to a county's request for the same amount of funds as it received in FY 1996, the amount of funds a qualified county receives each year is based on the county's most recent five-year population. By definition, allocations in a formula program must be determined on the basis of a formula that is applied consistently across all grantees in order to ensure equity. Special exceptions and deviations, therefore, cannot be made in a formula allocation program.

V. Eligible Grantees

Eligible grantees are those agencies of State governments that are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1997 targeted assistance awards.

The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency will submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State. However, if a State chooses to determine county allocations differently from those set forth in this notice, in accordance with § 400.319, the FY 1997 allocations proposed by the State must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of its targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. In addition, if a State chooses to allocate its FY 1997 targeted assistance funds in a manner different from the formula set forth in this notice, the FY 1997 allocations and methodology proposed by the State must be included in the State's application for ORR review and approval.

Applications submitted in response to the final notice are not subject to review by State and areawide clearinghouses under Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

VI. Qualification and Allocation

A. Qualified Counties

In the FY 1996 targeted assistance final notice (61 FR 36739 (July 12, 1996), the ORR Director indicated her intention to determine the qualification of counties for targeted assistance funds once every three years, beginning in FY 1996. Therefore, it is ORR's intent that the 39 counties listed as qualified for TAP funding in FY 1996 will remain qualified for TAP funding for FY 1997. We have decided, however, to make 8 additional qualified counties eligible for FY 1997 targeted assistance formula funding and have increased the total amount available for formula allocation funding from $25,871,300 to $35,371,300 to enable an increase in eligible counties. The increase in the total amount available for formula allocations has also resulted in higher allocations for the original 39 counties than appeared in the April 1 notice.

The 8 additional counties deemed to be eligible for targeted assistance funding were the next 8 counties, beyond the original 39 counties listed as qualified in FY 1996, that had the highest ranking based on the sum of a county's rank on refugee arrivals during the 5-year period from FY 1992—FY 1996 and its rank on concentration. Using the same methodology as in FY 1996, each county was ranked on the basis of its most recent 5-year arrival population and its concentration of refugees, with a relative weighting of 2 to 1 respectively. Each county was then ranked in terms of the sum of a county's rank on refugee arrivals and its rank on concentration. The following 8 counties had the highest rank and are listed in order of ranking:

Jefferson County, KY
Hudson County, NJ
Ingham County, MI
Cuyahoga County, OH
Cass County, ND
Broward County, FL
Pierce County, WA
Maricopa County, AZ

The addition of these 8 counties increases the list of qualified targeted assistance counties from the 39 listed in the April 1 notice to 47 counties and increases the number of States to receive targeted assistance funding in FY 1997

from 21 States to 26 States. It is our intent that the 47 counties listed in this notice as qualified to apply for FY 1997 TAP funding will remain qualified for TAP funding through FY 1998. This, of course, is subject to the availability of appropriations.

Since the Commonwealth of Kentucky no longer participates in the refugee program, the Wilson/Fish grantee which has been operating the refugee program since the State dropped out will be the eligible grantee for the Jefferson County allocation.

B. Allocation Formula

Of the funds available for FY 1997 for targeted assistance, $35,371,300 is allocated by formula to States for qualified counties based on the initial placements of refugees, Amerasians, and entrants in these counties during the 5-year period from FY 1992 through FY 1996 (October 1, 1991—September 30, 1996).

With regard to Havana parolees, we are crediting 6,910 Havana parolees who arrived in FY 1996 to qualified counties in Florida based on data the State submitted during the public comment period. We have credited FY 1996 Havana parolees to the remaining qualified targeted assistance counties based on the counties' proportion of the 5-year (FY 1992—FY 1996) entrant arrival population. For FY 1995, Florida's Havana parolees for each qualified county are based on data submitted by the State last year, while Havana parolees credited to counties in other States were prorated based on the counties' proportion of the 5-year (FY 1991—FY 1995) entrant population in the U.S. The allocations in this notice reflect these additional parolee numbers.

VII. Allocations

Table 1 lists the qualified counties, the number of refugee/entrant arrivals in those counties during the 5-year period from October 1, 1991—September 30, 1996, the prorated number of Havana parolees credited to each county based on the county's proportion of the 5-year entrant population in the U.S., the sum of the first three columns, and the amount of each county's allocation based on its 5-year total population.

Table 2 provides State totals for targeted assistance allocations.

TABLE 1.—TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 1997

County	State	Refugees	Entrants	Havana parolees [1]	Total arrivals FY 1992–1996	$35,371,300 total FY 1997 allocation
Maricopa County	Arizona	5,262	600	169	6,031	$465,107
Alameda County	California	4,944	21	6	4,971	383,361
Fresno County	California	5,841	2	0	5,843	450,609
Los Angeles County	California	25,794	689	216	26,699	2,059,012
Merced County	California	1,541	0	0	1,541	118,841
Orange County	California	22,500	38	12	22,550	1,739,044
Sacramento County	California	12,288	5	2	12,295	948,184
San Diego County	California	12,457	516	147	13,120	1,011,807
SAN FRANCISCO AREA	California	11.076	195	64	11,335	874,149
San Joaquin County	California	2,434	7	2	2,443	188,403
Santa Clara County	California	16,297	50	9	16,356	1,261,366
Denver County	Colorado	3,478	3	1	3,482	268,530
District of Columbia	District of Col.	4,001	17	5	4,023	310,252
Broward County	Florida	1,219	2,541	401	4,161	320,894
Dade County	Florida	10,618	40,023	14,038	64,679	4,988,009
Duval County	Florida	3,059	44	20	3,123	240,844
Palm Beach County	Florida	768	2,991	306	4,065	313,491
DeKalb County	Georgia	5,815	23	7	5,845	450,763
Fulton County	Georiga	6,298	238	66	6,602	509,143
CHICAGO AREA	Illinois	18,056	502	136	18,694	1,441,671
Polk County	Iowa	2,939	1	0	2,940	226,731
Jefferson County [2]	Kentucky	2,975	455	97	3,527	272,000
Baltimore County	Maryland	3,384	3	0	3,387	261,204
Suffolk County	Massachusetts	5,790	289	95	6,174	476,135
Ingham County	Michigan	1,788	266	66	2,120	163,493
Oakland County	Michigan	3,995	8	3	4,006	308,941
Hennepin County	Minnesota	5,794	3	0	5,797	447,061
Ramsey County	Minnesota	4,538	10	3	4,551	350,971
St. Louis County	Missouri	5,891	2	0	5,893	454,465
Lancaster County	Nebraska	2,431	34	6	2,471	190,562
Hudson County	New Jersey	2,032	892	271	3,195	246,397
Bernalillo County	New Mexico	1,574	1,300	379	3,253	250,870
Broome County	New York	1,718	28	9	1,755	135,345
Monroe County	New York	3,025	516	152	3,693	284,802
NEW YORK CITY AREA	New York	84,374	1,218	373	85,965	6,629,573
Oneida County	New York	2,633	1	0	2,634	203,133
Cass County	North Dakota	1,597	3	1	1,601	123,468
Cuyahoga County	Ohio	4,625	6	1	4,632	357,217
PORTLAND OREGON AREA	Oregon	11,034	581	148	11,763	907,156
Philadelphia County	Pennsylvania	8,100	78	24	8,202	632,534
Davidson County	Tennessee	3,188	54	8	3,250	250,638
DALLAS AREA	Texas	12,114	612	175	12,901	994,918
Harris County	Texas	10,559	176	45	10,780	831,348
FAIRFAX AREA	Virginia	4,657	8	2	4,667	359,916
Richmond City	Virginia	1,913	109	31	2,053	158,326
Pierce County	Washington	2,867	10	2	2,879	222,027

TABLE 1.—TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 1997—Continued

County	State	Refugees	Entrants	Havana parolees [1]	Total arrivals FY 1992–1996	$35,371,300 total FY 1997 allocation
Seattle Area	Washington	16,562	48	9	16,709	1,288,589
Total		385,933	55,216	17,507	458,656	35,317,300

[1] Includes Havana Parolees (HP's) for FY 1995 and FY 1996. For FY 1995, HP arrivals to the qualifying Florida counties (7855) were based on actual data while HP's in the non-Florida qualifying counties (1327) were prorated based on the counties' proportion of the five year (FY 1991–1995) entrant population in the U.S. For FY 1996, HP arrivals to the qualifying Florida counties (6910) were based on actual data while HP's in the non-Florida qualifying counties (1415) were prorated based on the counties' proportion of the five year (FY 1992–1996) entrant population in the U.S.

[2] The allocation for Jefferson, KY will be awarded to the Kentucky Fish-Wilson project.

TABLE 2.—TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 1997

State	$35,371,300 total FY 1997 allocation
Arizona	$465,107
California	9,034,776
Colorado	268,530
District of Columbia	310,252
Florida	5,863,238
Georgia	959,906
Illinois	1,441,671
Iowa	226,731
Kentucky	272,000
Maryland	261,204
Massachusetts	476,135
Michigan	472,434
Minnesota	798,032
Missouri	454,465
Nebraska	190,562
New Jersey	246,397
New Mexico	250,870
New York	7,252,853
North Dakota	123,468
Ohio	357,217
Oregon	907,156
Pennsylvania	632,534
Tennessee	250,638
Texas	1,826,266
Virginia	518,242
Washington	1,510,616
Total	35,371,300

VIII. Application and Implementation Process

Under the FY 1997 targeted assistance program, States may apply for and receive grant awards on behalf of qualified counties in the State. A single allocation will be made to each State by ORR on the basis of an approved State application. The State agency will, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans.

Pursuant to § 400.210(b), FY 1997 targeted assistance funds must be obligated by the State agency no later than one year after the end of the Federal fiscal year in which the Department awarded the grant. Funds must be liquidated within two years after the end of the Federal fiscal year in which the Department awarded the grant. A State's final financial report on targeted assistance expenditures must be received no later than two years after the end of the Federal fiscal year in which the Department awarded the grant. If final reports are not received on time, the Department will deobligate any unexpended funds, including any unliquidated obligations, on the basis of a State's last filed report.

The requirements regarding the discretionary portions of the targeted assistance program will be addressed separately in the grant announcements for those funds. Applications for these funds are therefore not subject to provisions contained in this notice but to other requirements which will be conveyed separately.

Application for targeted assistance formula funds by the Wilson/Fish grantee in Kentucky for services to refugees in Jefferson County are not subject to the application requirements contained in this notice but to Wilson/Fish requirements that will be conveyed separately.

IX. Application Requirements

A. For States in Their Second Year of Targeted Assistance Funding

The State application requirements for grants for the FY 1997 targeted assistance formula allocation are as follows:

States that are currently operating under approved management plans for their FY 1996 targeted assistance program and wish to continue to do so for their FY 1997 grants may provide the following in lieu of resubmitting the full currently approved plan:

The State's application for FY 1997 funding shall provide:

1. Assurance that the State's current management plan for the administration of the targeted assistance program, as approved by ORR, will continue to be in full force and effect for the FY 1997 targeted assistance program, subject to any additional assurances or revisions required by this notice which are not reflected in the current plan. Any proposed modifications to the approved plan will be identified in the application and are subject to ORR review and approval. Any proposed changes must address and reference all appropriate portions of the FY 1996 application content requirements to ensure complete incorporation in the State's management plan.

2. Assurance that targeted assistance funds will be used in accordance with the requirements in 45 CFR Part 400.

3. Assurance that targeted assistance funds will be used primarily for the provision of services which are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. States must indicate what percentage of FY 1997 targeted assistance formula allocation funds that are used for services will be allocated for employment services.

4. Assurance that targeted assistance funds will not be used to offset funding otherwise available to counties or local jurisdictions from the State agency in its administration of other programs, e.g. social services, cash and medical assistance, etc.

5. The amount of funds to be awarded to the targeted county or counties. If a State with more than one qualifying targeted assistance county chooses to allocate its targeted assistance funds differently from the formula allocation for counties presented in the ORR targeted assistance notice in a fiscal year, its allocations must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. The application must provide a description of, and supporting data for, the State's proposed allocation plan,

the data to be used, and the proposed allocation for each county.

6. Assurance that local administrative budgets will not exceed 15% of the local allocation. Targeted assistance grants are cost-based awards. Neither a State nor a county is entitled to a certain amount for administrative costs. Rather, administrative cost requests should be based on projections of actual needs. States and counties are strongly encouraged to limit administrative costs to the extent possible to maximize available funding for services to clients.

7. All applicants must establish targeted assistance proposed performance goals for each of the 6 ORR performance outcome measures for each targeted assistance county's proposed service contract(s) or sub-grants for the next contracting cycle. Proposed performance goals must be included in the application for each performance measure. The 6 ORR performance measures are: entered employments, cash assistance reductions due to employment, cash assistance terminations due to employment, 90-day employment retentions, average wage at placement, and job placements with available health benefits. Targeted assistance program activity and progress achieved toward meeting performance outcome goals are to be reported quarterly on the ORR–6, the ''Quarterly Performance Report.''

States which are currently grantees for targeted assistance funds should base projected annual outcome goals on the past year's performance. Proposed targeted assistance outcome goals should reflect improvement over past performance and strive for continuous improvement during the project period from one year to another.

8. A line item budget and justification for State administrative costs limited to a maximum of 5% of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project. States that administer the program locally in lieu of the county, through a mutual agreement with the qualifying county, may add up to, but not exceed, 10% of the county's TAP allocation to the State's administrative budget.

States administering the program locally: States that have administered the program locally or provide direct service to the refugee population (with the concurrence of the county) must submit a program summary to ORR for prior review and approval. The summary must include a description of the proposed services; a justification for the projected allocation for each component including relationship of funds allocated to numbers of clients served, characteristics of clients, duration of training and services, and cost per placement. In addition, the program component summary must describe any ancillary services or subcomponents such as day care, transportation, or language training.

B. For New States and States With New Counties

In applying for targeted assistance funds, a State agency is required to provide the following:

1. Assurance that targeted assistance funds will be used in accordance with the requirements in 45 CFR Part 400.

2. Assurance that targeted assistance funds will be used primarily for the provision of services which are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. States must indicate what percentage of FY 1997 targeted assistance formula allocation funds that are used for services will be allocated for employment services.

3. Assurance that targeted assistance funds will not be used to offset funding otherwise available to counties or local jurisdictions from the State agency in its administration of other programs, e.g. social services, cash and medical assistance, etc.

4. Identification of the local administering agency.

5. The amount of funds to be awarded to the targeted county or counties. If a State with more than one qualifying targeted assistance county chooses to allocate its targeted assistance funds differently from the formula allocation for counties presented in the ORR targeted assistance notice in a fiscal year, its allocations must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. The application must provide a description of, and supporting data for, the State's proposed allocation plan, the data to be used, and the proposed allocation for each county.

In instances where a State receives targeted assistance funding for impacted counties contained in a standard metropolitan statistical area (SMSA) which includes a county or counties located in a neighboring State, the State receiving those funds must provide a description of coordination and planning activities undertaken with the State Refugee Coordinator of the neighboring State in which the impacted county or counties are located. These planning and coordination activities should result in a proposed allocation plan for the equitable distribution of targeted assistance funds by county based on the distribution of the eligible population by county within the SMSA. The proposed allocation plan must be included in the State's application to ORR.

6. A description of the State's guidelines for the required content of county targeted assistance plans and a description of the State's review/approval process for such county plans. Acceptable county plans must minimally include the following:

a. Assurance that targeted assistance funds will be used in accordance with the requirements in 45 CFR Part 400.

b. Procedures for carrying out a local planning process for determining targeted assistance priorities and service strategies. All local targeted assistance plans will be developed through a planning process that involves, in addition to the State Refugee Coordinator, representatives of the private sector (for example, private employers, private industry council, Chamber of Commerce, etc.), leaders of refugee/entrant community-based organizations, voluntary resettlement agencies, refugees from the impacted communities, and other public officials associated with social services and employment agencies that serve refugees. Counties are encouraged to foster coalition-building among these participating organizations.

c. Identification of refugee/entrant populations to be served by targeted assistance projects, including approximate numbers of clients to be served, and a description of characteristics and needs of targeted populations. (As per § 400.314)

d. Description of specific strategies and services to meet the needs of targeted populations. These should be justified where possible through analysis of strategies and outcomes from projects previously implemented under the targeted assistance programs, the regular social service programs, and any other services available to the refugee population.

e. The relationship of targeted assistance services to other services available to refugees/entrants in the county including State-allocated ORR social services.

f. Analysis of available employment opportunities in the local community. Examples of acceptable analyses of employment opportunities might include surveys of employers or

potential employers of refugee clients, surveys of presently effective employment service providers, review of studies on employment opportunities/forecasts which would be appropriate to the refugee populations.

g. Description of the monitoring and oversight responsibilities to be carried out by the county or qualifying local jurisdiction.

h. Assurance that the local administrative budget will not exceed 15% of the local allocation. Targeted assistance grants are cost-based awards. Neither a State nor a county is entitled to a certain amount for administrative costs. Rather, administrative cost requests should be based on projections of actual needs. States and counties are strongly encouraged to limit administrative costs to the extent possible to maximize available funding for services to clients.

i. For any State that administers the program directly or otherwise provides direct service to the refugee/entrant population (with the concurrence of the county), the State must provide ORR with the same information required above for review and prior approval.

7. All applicants must establish targeted assistance proposed performance goals for each of the 6 ORR performance outcome measures for each impacted county's proposed service contract(s) or sub-grants for the next contracting cycle. Proposed performance goals must be included in the application for each performance measure. The 6 ORR performance measures are: entered employments, cash assistance reductions due to employment, cash assistance terminations due to employment, 90-day employment retentions, average wage at placement, and job placements with available health benefits. Targeted assistance program activity and progress achieved toward meeting performance outcome goals are to be reported quarterly on the ORR–6, the ''Quarterly Performance Report.''

States are required to set proposed outcome goals for each of the 6 ORR performance outcome measures. New grantees may use baseline data, as available, and current data as reported on the ORR–6 for social services program activity to assist them in the goal-setting process.

Proposed targeted assistance outcome goals should reflect improvement over past performance and strive for continuous improvement during the project period from one year to another.

8. An identification of the contracting cycle dates for targeted assistance service contracts in each county. States with more than one qualified county are encouraged to ensure that all counties participating in TAP in the State use the same contracting cycle dates.

9. A description of the State's plan for conducting fiscal and programmatic monitoring and evaluations of the targeted assistance program, including frequency of on-site monitoring.

10. Assurance that the State will make available to the county or designated local entity not less than 95% of the amount of its formula allocation for purposes of implementing the activities proposed in its plan, except in the case of a State that administers the program locally as described in item 6i above.

11. A line item budget and justification for State administrative costs limited to a maximum of 5% of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project. States that administer the program locally in lieu of the county, through a mutual agreement with the qualifying county, may add up to, but not exceed, 10% of the county's TAP allocation to the State's administrative budget.

12. Assurance that the State will follow or mandate that its sub-recipients will follow appropriate State procurement and contract requirements in the acquisition, administration, and management of targeted assistance service contracts.

X. Reporting Requirements

States are required to submit quarterly reports on the outcomes of the targeted assistance program, using Schedule A and Schedule C of the new ORR–6 Quarterly Performance Report form.

Dated: June 2, 1997.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 97–14899 Filed 6–6–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–830273

Applicant: William D. Hendricks, Benton, Kentucky.

The applicant requests a permit to take (capture and release) Indiana bats (Myotis sodalis) and Gray bats (Myotis grisescens) throughout the States of Ohio, Indiana, Illinois, Missouri, Kentucky, and Tennessee for the purpose of survival and enhancement of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); FAX: (612/725–3526).

Dated: June 2, 1997.

John A. Blankenship,

Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 97–14918 Filed 6–6–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for Raley's Landing Project, Yolo County, California

AGENCY: Fish and Wildlife Service

ACTION: Notice of receipt.

SUMMARY: This notice advises the public that Raley's has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The application has been assigned permit number PRT–829945. The proposed permit would authorize the incidental take of the valley elderberry longhorn beetle (Desmocerus californicus dimorphus), federally listed as threatened, and/or modification or degradation of its habitat during the development of a commercial center in Yolo County, California. The permit would be in effect for 5 years.

The Service announces the receipt of the Raley's incidental take permit application and the availability of the proposed Raley's Landing Project Habitat Conservation Plan (Plan) which accompanies the incidental take permit application, for public comment. The Plan fully describes the proposed project and the measures Raley's will undertake to mitigate for project impacts to the valley elderberry longhorn beetle. The Service has determined that the Raley's Landing Project Plan qualifies as a ''Low Effect'' Plan as defined by the Fish and Wildlife Service's Habitat Conservation Planning Handbook (November 1996). The Service has further determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). This notice is provided pursuant to section 10(c) of the Endangered Species Act.

Comments are specifically requested on the appropriateness of the No Surprises assurance contained in this application, specifically outlined in section 4.5 of the Plan. In the event of unforeseen or extraordinary circumstances affecting the valley elderberry longhorn beetle, Raley's will not be required to provide additional mitigation measures. If the Service makes a finding of extraordinary circumstances, which warrants requiring additional mitigation or compensation, the primary responsibility to provide this compensation rests with the Federal government. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application and Plan should be received on or before July 9, 1997.

ADDRESS: Comments regarding the permit application or the Plan should be addressed to the Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Please refer to permit number PRT–829945 when submitting comments. Individuals wishing copies of the application and Plan for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. William Lehman or Ms. Tiki Baron, Sacramento Fish and Wildlife Office, 916–979–2725.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act and Federal regulation prohibits the ''taking'' of a species listed as endangered or threatened. However, the Service, under limited circumstances, may issue permits to ''incidentally take'' listed species, which is take that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

Raley's proposes to develop a multi-use commercial center on a 13.74-acre site in Yolo County. The project site, bordered on the east by the Sacramento River, is in an urbanized area of the City of West Sacramento; development of this parcel represents urban in-fill. The project site has been previously developed as evidenced by the remains of several building foundations and is now dominated by ruderal vegetation and invasive non-native trees. Two elderberry shrubs (*Sambucus* sp.), habitat for the valley elderberry longhorn beetle, occur in the northwestern corner of the site in an area approximately .002 acres in size. One of the two shrubs shows evidence of recent valley elderberry longhorn beetle activity.

Raley's proposes to purchase habitat compensation credits for the valley elderberry longhorn beetle at Wildlands, Inc., a mitigation bank approved by the Service. Wildlands will transplant the two shrubs from the project site to Wildlands' mitigation bank site in accordance with procedures specified in the Service's Mitigation Guidelines for the Valley Elderberry Longhorn Beetle, dated September 19, 1996 (Guidelines). Habitat compensation credits at the Wildlands' mitigation bank include planting of additional elderberry seedlings and associated native plants according to the ratios specified in the Guidelines. Monitoring, remedial measures, and reporting also will follow the recommendations provided in the Guidelines. Because the Raley's Landing Project site contains only two elderberry shrubs, and those shrubs are relatively isolated from other valley elderberry longhorn beetle habitat, the Service believes that the transplantation of the shrubs will result in negligible effects to the beetle. Maintenance of the elderberry shrubs at Wildlands' mitigation bank site may in fact provide a net benefit to the species. The proposed project will not affect any other listed species.

The Service has determined that the Raley's Landing Project Plan qualifies as a ''Low Effect'' Plan as defined by the Service's Habitat Conservation Planning Handbook (November 1996). Low Effect Plans are those involving: (1) minor or negligible effects on federally listed and candidate species and their habitats; and (2) minor or negligible effects on other environmental values or resources. The Raley's Landing Project Plan qualifies as a Low Effect Plan for the following reasons:

1. Approval of the Plan will result in minor or negligible effects on the valley elderberry longhorn beetle and its habitat. The Service does not anticipate significant direct or cumulative effects to the valley elderberry longhorn beetle resulting from the removal of low numbers of isolated elderberry shrubs within highly urbanized portions of its range.

2. The project site is already highly disturbed; therefore, site development will not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. This project will result in minor development within an existing urban area. Approval of the Plan will not result in any cumulative or growth inducing impacts and, therefore, will not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of this Plan will not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has therefore determined that approval of the Raley's Landing Project Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). No further National Environmental Policy Act documentation will therefore be prepared.

This notice is provided pursuant to section 10(c) of the Endangered Species Act. The Service will evaluate the permit application, Habitat Conservation Plan, and comments

submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the valley elderberry longhorn beetle. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: May 30, 1997.

David L. McMullen,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–14944 Filed 6–6–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management Alaska

[AK–962–1410–00-P]

Notice for Publication; AA–9205-C, Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(3) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(3), will be issued to Goldbelt, Incorporated for approximately 212 acres. The lands involved are in the vicinity of Juneau, Alaska, and are within Tract A, U.S. Survey No. 2170 and T. 42 S., R. 66 E., Copper River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 9, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Heather A. Coats,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 97–14940 Filed 6–6–97; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00-P]

Alaska Notice for Publication, AA–14015; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Sealaska Corporation for approximately 11,020 acres. The lands involved are within the Tongass National Forest in southeast Alaska.

Copper River Meridian, Alaska

T. 72 S. R. 81 E.,
Sec. 29;
Sec. 32.
T. 76 S. R. 82 E.,
Secs. 7 thru 10;
Secs. 13 thru 19;
Secs. 21 thru 24;
Secs. 26 thru 35.
T. 77 S. R. 82 E.,
Secs. 1, 2 and 3;
Secs. 11 and 12.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Juneau Empire*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 9, 1997 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 97–14943 Filed 6–6–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–5700–10; IDI–32102]

Classification of Lands for Recreation and Public Purposes, Ada County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public lands in Ada County, Idaho, have been examined and determined to be suitable for classification for conveyance to the City of Boise City, under the provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.):*

Boise Meridian, Idaho

T. 4 N., R. 2 E.
Tracts 37 and 38;
Aggregating 77.63 acres, more or less.

DATES: For a period from June 9, 1997 until July 24, 1997. Interested parties may submit comments regarding the proposed classification or conveyance of the lands to the District Manager at the address below.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, Lower Snake River District, 3948 Development Ave., Boise, Idaho 83705.

COMMENTS: Comments may address whether the lands being classified are physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**. Comments may also address the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the stated purpose. Adverse comments will be reviewed by the State Director.

FOR FURTHER INFORMATION CONTACT: John Sullivan, 208–384–3338.

SUPPLEMENTARY INFORMATION: The City of Boise City has filed application to purchase the above described public lands under the requirements of the R&PP Act for the purpose of including them within the Hulls Gulch/Camel's Back Reserve. The lands will be developed and managed for educational, interpretive, and recreational purposes, as described in the Boise City Reserves Master Plan, adopted by the Board of Park and Recreation Commissioners on July 18, 1996.

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining laws, except for mineral leasing and conveyance under the R&PP Act. The segregative effect will automatically expire 18 months from the date of this notice.

The public lands to be conveyed to the City of Boise City will be subject to the following terms, covenants, conditions, and reservations: Excepting and Reserving to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals together with the right to mine and remove the same under applicable laws and regulations.

Subject to:

3. An easement for powerline and incidental purposes granted to Idaho Power Company, and recorded May 7, 1928, in Book 11, Page 457, as Instrument No. 130404, Official Records of Ada County, Idaho. (Affects Tract 38)

4. An easement for overhead powerline purposes granted to Idaho Power Company, and recorded April 30, 1946, in Book 19, Page 441, as Instrument No. 249124, Official Records of Ada County, Idaho. (Affects Tract 37)

5. An easement for powerline and incidental purposes granted to Idaho Power Company, and recorded November 15, 1982, as Instrument No. 8247133, Official Records of Ada County, Idaho. (Affects Tract 38)

6. An easement for various water facility purposes granted to Boise Water Corporation, and recorded September 12, 1983, as Instrument No. 8347536, Official Records of Ada County, Idaho. (Affects Tract 38)

7. An agreement between Orida Investment Corporation, Claremont Realty Company, and The Highlands, Inc., recorded September 12, 1983, as Instrument No. 8347543, Official Records of Ada County, Idaho. (Affects Tract 38)

8. An easement agreement between Orida Investment Corporation, Claremont Realty Company, and The Highlands, Inc., recorded September 12, 1983, as Instrument No. 8347544, Official Records of Ada County, Idaho.

9. An agreement between the City of Boise City, Cambridge Corporation, and Orida Investment Corporation, and recorded July 10, 1985, as Instrument No. 8535816, Official Records of Ada County, Idaho. (Affects Tract 37)

10. An agreement between Orida Investment Corporation and the Cambridge Corporation, recorded October 22, 1985, as Instrument No. 8555973, Official Records of Ada County, Idaho. (Affects Tract 38)

11. An easement for powerline purposes granted to Idaho Power Company, and recorded October 1, 1987, as Instrument No. 8755533, Official Records of Ada County, Idaho. (Affects Tract 38)

12. An easement for underground sewer lines and mains granted to the City of Boise City, and recorded April 16, 1991, as Instrument No. 9118959, Official Records of Ada County, Idaho. (Affects Tract 38)

13. A declaration of easement for equestrian purposes in favor of Claremont Realty Company, and recorded September 10, 1993, as Instrument No. 9375086, Official Records of Ada County, Idaho. (Affects Tract 38)

14. A declaration of easement for water tank and water line purposes in favor of Boise Water Corporation, and recorded September 17, 1993, as Instrument No. 9375754, Official Records of Ada County, Idaho. (Affects Tract 38)

15. An easement for access and utility purposes granted to Boise Water Corporation, and recorded October 20, 1993, as Instrument No. 9386900, Official Records of Ada County, Idaho. (Affects Tract 37)

16. An amendment of grant of easement for various water facilities in favor of Boise Water Corporation to provide correct legal description, and recorded October 20, 1993, as Instrument No. 9386910, Official Records of Ada County, Idaho.

17. A declaration of easement for sewer license and construction purposes recorded on October 20, 1993, as Instrument No. 9386911, Official Records of Ada County, Idaho.(Affects Tract 38)

18. A declaration of easement for water main purposes in favor of Boise Water Corporation, and recorded October 20, 1993, as Instrument No. 9386912, Official Records of Ada County, Idaho. (Affects Tract 38)

19. A resolution approving the acquisition of an easement for construction of City sewer, and recorded October 28, 1993, as Instrument No. 9389970, Official Records of Ada County, Idaho. (Affects Tract 38)

20. A declaration of easement for access and utility purposes in favor of Boise Water Corporation, and recorded December 30, 1993, as Instrument No. 93111858, Official Records of Ada County, Idaho.

21. A declaration of easement for water main purposes in favor of Boise Water Corporation, recorded on July 28, 1994, as Instrument No. 94070544, Official Records of Ada County, Idaho. (Affects Tract 38)

22. An existing unrecorded telephone cable that runs along (under) Sunset Peak Road.

23. A right-of-way for the existing Sunset Peak Road.

24. An existing unrecorded well in Tract 38, known as ''Gamble Well''.

25. An existing unrecorded electrical line in the northerly portion of Tract 37.

26. An existing unrecorded electrical line in the northerly portion of Tract 38.

27. A right-of-way for water detention and access road purposes granted by Bureau of Land Management to the City of Boise City by Right-of-Way No. IDI–32147, under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761).

Note: This R/W was not yet issued, as of the date of this notice. However, the R/W will become final prior to conveyance of the subject lands.

Information relating to this application, including the environmental assessment, is available for review at the Bureau of Land Management, Lower Snake River District Office, 3948 Development Avenue, Boise, Idaho 83705.

Dated: May 29, 1997.

John E. Fend,

Cascade Area Manager.

[FR Doc. 97–14926 Filed 6–6–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–97–1430–00]

Emergency Closure of Public Roads in Granite County, Montana

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of emergency closure of public access roads in Granite County, Montana.

SUMMARY: Notice is hereby given that certain public access roads in Granite County, Montana are temporarily closed to all public use, including vehicle

operation, hiking, and sightseeing, from May 28, 1997 through November 15, 1997. The closure is made under the authority of 43 CFR 8364.1.

The public roads affected by this emergency closure are specifically identified as follows:

The unnamed road passing through the NW¼NE¼, section 4, T12N, R14W, P.M.M. and all spur roads accessed by this road.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees, state, local, and federal law enforcement, and fire protection personnel; the unpatented mine claimant within the area accessed by the closed road and his employees and subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

The public roads temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this emergency temporary closure is to protect persons from potential harm from mining operations, particularly the hazards associated with ore hauling on narrow roads.

DATES: This closure is effective from May 28, 1997 through November 15, 1997.

ADDRESSES: Copies of the closure order and maps showing the location of the closed roads are available from the Garnet Resource Area Office, 3255 Fort Missoula Road, Missoula, MT 59804–7293.

FOR FURTHER INFORMATION CONTACT: DeLon Potter, Garnet Resource Area Manager, at (406) 329–3914.

Dated: May 27, 1997.

DeLon Potter,

Garnet Resource Area Manager.

[FR Doc. 97–14934 Filed 6–6–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–033–97–1220–00]

Temporary Closure of Public Lands: Nevada; Carson City District

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of certain public lands in Churchill, Lyon and Douglas Counties on and adjacent to three Off Highway Vehicle race courses.

SUMMARY: The Acting Assistant District Manager, Non Renewable Resources announces the temporary closure of selected public lands under BLM administration. This action is being taken to provide for public safety and to protect adjacent resources.

EFFECTIVE DATES: June 28, 1997: Top Gun 250 Desert Race, July 26, 1997: Top Gun Twilight Desert Race, August 31, 1997: Yerington to Fallon and Back Desert Race.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Outdoor Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Carson City, Nevada 89706, Telephone: (702) 885–6000.

SUPPLEMENTARY INFORMATION: Valley Off-Road Racing Association has been authorized to conduct these race events across public lands under permit number NV–030–9610. A map of each closure may be obtained from Fran Hull at the contact address. The event permittee is required to clearly mark and monitor the event route during the closure periods. Spectators shall remain in safe locations as directed by event officials and BLM personnel. Spectator and support vehicles are restricted to existing access roads. Spectators and chase personnel must stay at least 25 feet away from the disturbed edge of the race course, must remain on the outside perimeter or the race route unless an authorized access route exists, and may not create additional routes accessing or paralleling the race route unless authorized to do so for rescue purposes. Persons camping on public lands in conjunction with the event must be a minimum fifty yards away from the race route certerline.

Specific Race Information

1. Top Gun 250 Desert Race: This closure will be in effect from 6:00 a.m. until 6:00 p.m. on Saturday, June 28, 1997 during the conduct of a multiple-lap OHV race on roads and washes near Fallon, Nevada in Churchill County. Public lands affected are located within T15N R31E; T15N R32E; T16N R30E; T16N R31E; T16N R32E; T17N R30E; T17N R31E, M.D.M. Public lands to be closed include the race route identified with colorful flagging, paper directional arrows and race related warning signs. Portions of Simpson Pass and Four Mile Canyon Roads between Salt Wells and Sand Springs are included within the Closure area. Spectators are welcome at the Start/Finish area at Top Gun Drag Strip located south of Fallon on Highway 95 and certain Check Points selected by race and BLM officials.

2. Top Gun Twilight Desert Race: This closure will be in effect from noon until midnight on Saturday, July 26, 1997 during the conduct of a multiple-lap OHV race on roads and washes near Fallon, Nevada in Churchill and Lyon Counties. Public lands affected are located within T16N R25E; T16N 26E; T16N R27E; T16N R28E; T16N R29E; T17N R26E; T17N R27E, M.D.M. Portions of Simpson Pass and Wildhorse Basin Roads between Hooten Well and Top Gun Drag Strip are included within the Closure area. Public lands to be closed include the race route and adjacent lands identified with colorful flagging, paper directional arrows and race related warning signs. Spectators are welcome at the Start/Finish area at Top Gun Drag strip located on Highway 95 south of Fallon and certain Check Points selected by race and BLM officials.

3. Yerington to Fallon and Back Desert Race: This closure will be in effect from 6:00 a.m. until 10:00 p.m. on Sunday, August 31, 1997 during the conduct of a point-to-point OHV race on roads and washes between Yerington and Fallon, Nevada in Lyon and Churchill Counties. Public lands affected are located within T13N R24E; T13N R25E; T14N R24E; T15N R24E; T16N R24E; T16N R24E through 31E; T17N R30E; T17N R31E and T18N R30E, M.D.M. Public lands to be closed include the race route and adjacent lands identified with colorful flagging, paper directional arrows and race related warning signs. Portions of Singatse Pass, Churchill Canyon, Adrian Valley, and Eightmile Flat Roads are included within the Closure area. Spectators are welcome at the Yerington and Fallon start/finish areas in addition to certain Check Points as directed by event officials and BLM personnel.

The above restrictions do not apply to race officials, law enforcement and agency personnel monitoring the event.

Authority

43 CFR 8364 and 43 CFR 8372.

Penalty

Any person failing to comply with the closure order may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Dated: May 23, 1997.

Daniel L. Jacquet,

Acting A D M, Non-Renewable Resources.

[FR Doc. 97–14925 Filed 6–6–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–030–1430–01]

Notice of Intent To Prepare a Land Use Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a land use plan amendment.

SUMMARY: The Pocatello Resource Area, Upper Snake River Districts, is proposing to amend the Pocatello Resource Management Plan to allow the disposal of a 20 acre parcel of public land in Bingham County, Idaho.

DATES: The public, state and local governments, and other Federal agencies are invited to participate in the amendment process. Identification of issues, concerns, or other written comments pertaining to this notice will be accepted until July 10, 1997.

SUPPLEMENTARY INFORMATION: The proposed plan amendment would allow the transfer into Bingham County ownership, the following described parcel of public land:

Boise Meridian, Idaho

T. 2S., R. 38E.

Sec. 5: S½NE¼NE¼SE¼, E½SW¼NE¼SE¼, SE¼NE¼SE¼

Comprising 20 acres of public land, more or less.

Disposal of the parcel is proposed to be made pursuant to the Recreation and Public Purposes Amendment Act of 1988. It would be used by Bingham County as a small part of their proposed Rattlesnake Canyon landfill.

The parcel is currently used for wildlife habitat, recreation and livestock grazing as part of the Blackfoot Mountains grazing allotment, #04396.

Public participation in the amendment process will include publication of this notice in the **Federal Register** and local newspapers and the sending of this notice to state and local governments, private individuals, and other interested parties. Depending on the amount of public interest, public meetings may be held in the Pocatello Resource Area Office, Pocatello, Idaho.

ADDRESSES: Any comments on this notice should be mailed by close of business on July 10, 1997 to the Bureau of Land Management, Snake River Resource Area, Attention: Scott Barker, 15 East 200 South, Burley, ID 83318.

FOR FURTHER INFORMATION, CONTACT: Scott D. Barker, Realty Specialist, (208)–677–6678.

Dated: May 29, 1997.

Scott D. Barker,

Realty Specialist.

[FR Doc. 97–14935 Filed 6–6–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–1310–02]

Notice to Lessees; Non-Producing Wells

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice.

SUMMARY: A Notice to Lessees (NTL) has been prepared by the Jackson District of the Bureau of Land Management to implement onshore oil and gas regulations relating ton non-producing wells.

DATES: The NTL is scheduled to become effective on August 1, 1997. Public comments will be received until July 10, 1997.

FOR FURTHER INFORMATION CONTACT:

Sid Vogelpohl, BLM, Division of Mineral Resources, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206. Phone (601) 977–5400.

SUPPLEMENTARY INFORMATION: This NTL, entitled ''Non-Producing Wells'', defines ''shut-in'' and ''temporarily abandoned'' wells and specifies that tests will be required to ensure well integrity and either well productivity or that the well is being properly maintained as shut-in for non-production uses. The NTL applies to lessees and operators of Federal and Indian oil and gas leases within the Jackson District. The Jackson District encompasses the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

A copy of the NTL is available by contacting Sid Vogelpohl at the address or phone number provided above.

Bruce E. Dawson,

District Manager.

[FR Doc. 97–14937 Filed 6–6–97; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1430–01; AA–8964, AA–11330]

Public Land Order No. 7263; Transfer of Administrative Jurisdiction of Public Lands; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order transfers administrative jurisdiction of approximately 8.94 acres of public lands located within the boundaries of the Tongass National Forest from the Department of the Interior, Bureau of Land Management to the Department of Agriculture, Forest Service for a period of 20 years in order to provide the Forest Service with the opportunity to pursue legislation to have the lands permanently returned to the Tongass National Forest. The lands are unpatented homesites that were excluded from the Forest by previous Executive orders.

EFFECTIVE DATE: June 9, 1997.

FOR FURTHER INFORMATION CONTACT: Shirley J. Macke, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–3266.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, administrative jurisdiction of the following described lands is hereby transferred from the Department of the Interior, Bureau of Land Management, to the Department of Agriculture, Forest Service, to be included in the Tongass National Forest, and to be managed in accordance with the various acts that govern uses of National Forest System lands:

Copper River Meridian

(a) Fish Creek (AA–8964)

Executive Order No. 5947, dated November 16, 1932, excluded Homesite No. 197 from the Tongass National Forest. The parcel, located within sec. 23, T. 68 S., R. 99 E., is more particularly described by metes and bounds as: Beginning at corner No. 1, Homesite No. 197, lying westerly of the Salmon River Road on the right bank of Fish Creek, and just northerly of its confluence with the Salmon River, at approximate latitude 55°56′ North, longitude 130°02′ West; Thence N. 5°30′

W., 5.00 chs., paralleling Salmon River Road to corner No. 2; Thence westerly 7.00 chs., to corner No. 3; Thence southerly, 7.06 chs., to corner No. 4; Thence easterly 6.13 chs., to corner No. 5; Thence N. 33° E., 2.50 chs., to corner No. 1, the point of beginning.

The area described contains approximately 5 acres.

(b) Farragut Bay (AA–11330)

Executive Order No. 5449, dated September 25, 1930, excluded Homesite No. 42 from the Tongass National Forest. The parcel, located within sec. 21, T. 55 S., R. 71 E., is more particularly described by metes and bounds as: Beginning at the point for corner No. 1, a meander corner on the easterly shore of Farragut Bay, at approximate latitude 57°06′ North, longitude 133°10′ West; Thence, with meanders along the line of approximate mean high tide, S. 16° E., 4.00 chs., S. 1½° W., 2.00 chs., S. 11½° W., 2.00 chs., S. 32½° W., 4.00 chs., to the point for corner No. 2, a meander corner; Thence S., 53° E., 2.71 chs., to the point for corner No. 3; Thence with meanders along the line of approximate high tide, N. 18° E., 1.56 chs., N. 63½° E., 4.00 chs., to the point for corner No. 4, a meander corner; Thence N., 10½° W., 9.70 chs., to the point for corner No. 5; Thence westerly 2.96 chs., to the point for corner No. 1, the point of beginning.

The area described contains approximately 3.94 acres.

The total areas described in (a) and (b) aggregate approximately 8.94 acres.

2. In the event the lands are permanently returned to the Tongass National Forest pursuant to legislative action, this order will terminate simultaneously with the effective date of the legislation. Otherwise, this order will expire 20 years from the effective date, and administrative jurisdiction will return to the Department of the Interior, Bureau of Land Management, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the order shall be extended.

Dated: May 28, 1997.

Bob Armstrong,

Assistant Secretary of the Interior

[FR Doc. 97–14927 Filed 6–6–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–1430–00; COC60197]

Realty Action: Recreation and Public Purposes (R&PP) Act Classification in Grand County, CO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: In response to an application from Grand County, Colorado, the following public lands have been examined and found suitable for classification for conveyance to Grand County, Colorado, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands are currently leased to Grand County for mineral materials to provide cover material for the Granby Landfill, and would continue to be used for this purpose. The mineral interests, with the exception of oil and gas, will be included in the conveyance of the property to Grand County.

Affected Public Lands

Sixth Principal Meridian, Colorado

T. 2N., R. 77W., sec. 23, Lots 4, 5, & 6

The lands described above contain 119.56 acres.

FOR FURTHER INFORMATION CONTACT: The environmental assessment and other information concerning this proposed conveyance is available for review by contacting Madeline Dzielak at the Kremmling Resource Area Office at 1116 Park Avenue, Kremmling, Colorado 80459, (970) 724–3437.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws, including the mining laws, except for conveyance under the Recreation and Public Purposes Act and conveyance of the mineral estate under Section 209 of the Federal Land Policy and Management Act, for a period of two years from the date of publication of this notice. The segregative effect shall terminate upon issuance of a patent, upon rejection of the application, or two years from the date of publication of this notice.

The following reservations, terms and conditions will be made in a patent issued for the public lands:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for powerline purposes as have been granted to Mountain Parks Electric, its successors and assigns, by right-of-way Colorado 12512 under the Act of February 15, 1901, as amended (43 U.S.C. 959 (1988)).

3. Those rights for access road purposes as have been granted to Grand County, its successors and assigns, by right-of-way Colorado 55167 under Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

4. The provisions of the Recreation and Public Purposes Act amended and to all applicable regulations of the Secretary of the Interior.

5. The lands will revert back to the United States unless substantially used in accordance with the approved Plan and Schedule of Development, on or before 5 years after issuance of patent.

6. Grand County, its assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States, its officers, agents, representatives and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, and personal injury, threat of personal injury, or property damage received or sustained by any personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from Lots 4, 5 and 6 section 23, T. 2N., R. 77W., Sixth Principal Meridian, Colorado, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District Office, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: May 29, 1997.

Mark Morse,

District Manager.

[FR Doc. 97–14936 Filed 6–6–97; 8:45 am]

BILLING CODE 1430–CO–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1110–00]

Visitor Restrictions for Designated Recreation Sites in the Las Cruces District, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Proposed Supplementary Rules; Visitor Restrictions.

SUMMARY: The BLM New Mexico State Director is proposing supplementary rules, which are necessary for the protection of persons, property, and public land and resources currently under the Bureau's administration within the Las Cruces District, New Mexico and those lands acquired for inclusion within the administrative jurisdiction of the BLM as provided for in 43 CFR part 8365.1–6.

DATES: Submit written comments by July 9, 1997.

ADDRESSES: Written comments should be submitted to: New Mexico State Director (933), BLM, P.O. Box 27115, Santa Fe, NM 87502–0115.

FOR FURTHER INFORMATION CONTACT:

- Mark Hakkila, Outdoor Recreation Planner, BLM Mimbres Resource Area, 1800 Marquess, Las Cruces, NM 88005, (505) 525–4341.
- Kevin Carson, Outdoor Recreation Planner, BLM Socorro Resource Area, 198 Neel Ave. NW, Socorro, NM 87801, (505) 835–0412.
- Wes Anderson, Wildlife Biologist, BLM Socorro Resource Area, 198 Neel Ave. NW, Socorro, NM 87801, (505) 835–0412.

SUPPLEMENTARY INFORMATION: These visitor restrictions are necessary for the management of actions, activities, and uses on public land including land that is acquired or conveyed to the BLM. Supplementary rulemaking is provided for under Title 43 CFR Subpart 8365. These regulations establish rules of conduct for the protection of persons, property, and public land resources. As a visitor to public land, the user is required to follow certain rules designed to protect the land and the natural environment, to ensure the health and safety of visitors, and to promote a pleasant and rewarding outdoor experience.

Exceptions to these visitor restrictions may be permitted by the authorized officer subject to limits and restrictions of controlling Federal and State law. Persons granted use exemptions must possess written authorization from the BLM Office having jurisdiction over the area. Users must further comply with the zoning, permitting, rules, or regulatory requirements of other agencies, where applicable.

Under the authority of 43 CFR 8365.1–6, the BLM proposes the following supplementary rules, to be applied on public land in the Las Cruces District, New Mexico:

Proposed Supplementary Rules

Supplementary Rules—Developed Recreation Sites/Areas and Special Recreation Management Areas

In addition to the regulations contained in 43 CFR 4100.0–5, 8365.1, 8365.2, and supplementary rules published in the **Federal Register**, Volume 60, No. 218, page 57015 (FR document 95–27596), the following rules will be applied in accordance with 43 CFR 8365.2:

1. Public land in T. 2 S., R. 1 E., NMPM, section 7, lot 26; T. 2 S., R. 1 W., NMPM, section 1, lots 23, 26 and 49; and section 12, lots 21 and 60, aggregating 119.83 acres in Socorro County, shall be known as the Socorro Nature Area.

- Casual, non-vehicular access is allowed but limited to daylight hours, unless otherwise permitted. Vehicular access through locked gates shall be by permit only. Gates shall be kept closed at all times, even when the area is in use.
- The Socorro Nature Area will be managed as a day-use area. Overnight camping shall be limited to permitted educational or other formally organized groups in designated areas.
- Motorized vehicles including motorcycles and ATVs (four wheelers) shall be limited to existing access road and parking areas. Motorized wheel-chairs and maintenance and emergency vehicles are excepted.
- Permitted visitors must have a copy of their authorization and site regulations with them during use.

Individual picnicking sites are available on a first-come, first-serve basis. Use of any group shelter/picnic area or group camp site shall be by permit only.

- Fires are allowed only in designated fire pits or in other approved cooking devices.
- The following activities are prohibited unless authorized by written permit or for administrative use:

—Straying off of established foot trails;

—Swimming, wading or bathing in any aquatic facilities;

—Failure to maintain quiet between the hours of 10:00 p.m. to 6:00 a.m. or other posted hours;

—Operating or using a public address system.

- Users shall pack out their trash for disposal off-site to an authorized disposal facility.
- The area is not adjudicated for livestock grazing and has been devoted to a public purpose that precludes livestock grazing.

2. Supplemental Restrictions in the Organ Mountains:

- Dogs are prohibited outside of vehicles within the fenced boundary of the Dripping Springs Natural Area (T. 23 S., R. 3 E., Sections 1, 2, 3, 10, 11, and 1; and T. 23 S., R. 4 E., Sections 6 and 7, NMPM), except dogs assisting physically handicapped people.
- Shooting is prohibited within ¼ mile of developed hiking trails in the Organ Mountains (T. 22–26 S., R. 3–4 E., NMPM).
- The area fenced and posted for administrative use only, north and east of the A.B. Cox Visitor Center, is restricted to authorized public entry. Use of this area, including the residences, shop, storage buildings, historic outbuildings, and arroyo site, is prohibited unless specifically authorized by the BLM.

3. Supplemental Restrictions in the Box Special Management Area (T. 3 S., R. 1 W., Section 31, NMPM). Camping is permitted in designated campsites only.

4. Supplemental Restrictions in the Datil Well Campground (T. 2 S., R. 10 W., Sections 10 and 11, NMPM). The trail is open to hiking only. Bicycle and equestrian uses are prohibited.

Penalties

These supplementary rules apply to all persons using public land in the Las Cruces District. Violations of these rules may be punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: May 5, 1997.

William C. Calkins,

State Director.

[FR Doc. 97–14502 Filed 6–6–97; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations Mining Operations; Joshua Tree National Park, San Bernardino County, California

Notice is hereby given in accordance with Section 9.17(a) of Title 36 of the Code of Federal Regulations, Part 9, Subpart A, that the National Park Service has received from Stephen Dwyer, of Palm Desert California, a Plan of Operations to conduct mining operations on the Storm Jade #1 claim in the Eagle Mountain area, of Joshua Tree National Park, located within San Bernardino County, California.

The Plan of Operations is available for public review and comment for a period of 30 days from the publication date of this notice. Analysis of the proposal will not be completed until a validity examination has been conducted in accordance with 36 CFR 9A and NPS policy. The document can be viewed during normal business hours at the Office of the Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twenty-nine Palm, California 92277.

Dated: May 28, 1997.

Ernest Quintana,

Superintendent, Joshua Tree National Park.

[FR Doc. 97–14946 Filed 6–6–97; 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 May 23, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by June 24, 1997.

Patrick Andrus,

Acting Keeper of the National Register.

Arkansas

Garland County

Woodman of Union Building, 501 Malvern Ave., Hot Springs, 97000616

California

Orange County

Old Towne Orange Historic District, Roughly bounded by Walnut Ave., Waverly St., W.O. Hart Park, La Veta Ave., Clark St., and Atchison Topeka Railroad Track, Orange, 97000617

Colorado

Jefferson County

Davies' Chuck Wagon Diner, 9495 W. Colfax Ave., Lakewood, 97000619

Pueblo County

Boone Santa Fe Railroad Depot, 100 Baker Ave., Boone, 97000618

Georgia

Fulton County

West End Historic District, Roughly Bounded by US 20, Lee, White, and Langhorn Sts., Atlanta, 97000621

Sumter County

Ashby Street Shotgun Row Historic District, 207, 209, and 211 Ashby St., Americus, 97000620

Iowa

Johnson County

College Green Historic District (Iowa City MPS) Roughly bounded by Burlington, Summit, Washington, and Van Buren Sts., Iowa City, 97000623

East College Street Historic District (Iowa City MPS) Roughly bounded by Muscatine Ave., Summitt, Washington, and Burlington Sts., Iowa City, 97000624

Saints Peter and Paul Catholic Church, 1165 NE. Taft Ave., Solon vicinity, 97000622

Massachusetts

Bristol County

Coram Shipyard Historic District, 2120, 2125, and 2130 Water St., Dighton, 97000625

Michigan

Calhoun County

Superior Street Commercial Historic District, Roughly bounded by the Kalamazoo River, Cass, Elm, Eaton and Vine Sts., Albion, 97000626

Mississippi

Lincoln County

Paxton House, 2261 Bouie Mill Rd. NW, Brookhaven vicinity, 97000632

Marion County

Downtown Columbia Historic District, Roughly bounded by Broad, and Church Sts., and Meak, Honey and Beef Alleys., Columbia, 97000633

Monroe County

Aberdeen Downtown Historic District, (Aberdeen MPS) Roughly bounded by James, Quincy, Maple, and Washington Sts., Aberdeen, 97000634

Rankin County

East Clinton Historic District, Roughly bounded by the Illinois Gulf Railroad, E. College, Landrum, E. Main, and New Prospect Sts., Clinton, 97000631

Missouri

Callaway County

Bell, M. Fred, Rental Cottage, 302 E. Fifth St., Fulton, 97000627

Cape Girardeau County

House at 323 Themis Street, 323 Themis St., Cape Girardeau, 97000629

Pettis County

Hubbard, C.C., High School, 721 N. Osace Ave., Sedalia, 97000628

Vernon County

Vernon County Courthouse, Bounded by Cherry, Cedar, Walnut, and Main Sts., Nevada, 97000630

Utah

Salt Lake County

Anderson, Frederick C. and Anna, House (Sandy City MPS), 8650 S. Center St., Sandy, 97000641

Gardner, Archibald R. and Violet Clark, House (Sandy City MPS), 31 E. Pioneer Ave., Sandy, 97000642

Jensen, James B. and Ellen May Cushing, House (Sandy City MPS), 95 E. Pioneer Ave., Sandy, 97000635

Nelson, August M. and Mabel Jensen, House (Sandy City MPS), 427 East 8800 South, Sandy, 97000643

Oldman, John and Elizabeth Brown, House (Sandy City MPS), 511 East 8800 South, Sandy, 97000636

Orton—Malstrom House (Sandy City MPS), 9325 South 700 East, Sandy, 97000640

Sandy City Bank (Sandy City MPS), 212 E. Main St., Sandy, 97000637

Sandy Second Ward Chapel (Sandy City MPS), 8630 South 60 East, Sandy, 97000638

Thompson, Niels and Mary Ann Fitzgerald, House (Sandy City MPS), 485 East 8800 South, Sandy, 97000639

Vincent, William Tyler and Amorilla Gammet, House (Sandy City MPS), 92 E. Pioneer Ave., Sandy, 97000644

Vermont

Bennington County

Furnace Grove Historic District, VT 9, 1 mi. E. of jct. of VT 9 and Burgess Rd., Bennington, 97000646

Chittenden County

Moquin's Bakery, 78 Rose St., Burlington, 97000645

Wisconsin

Clark County

Silver Dome Ballroom, The, US 10, 1 mi. W of jct. of US 10 and Collier Rd., Hewett, 97000647.

[FR Doc. 97–14976 Filed 6–6–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy and 28 CFR 50.7 notice is hereby given that a proposed Agreement And Order Regarding Modification Of The December 23, 1988 Modified Consent Decree (hereafter referred to as ''the Proposed Agreement And Order'') in *United States* v *City of Baton Rouge, et al.,* Civil Action No. 88–191A, was lodged in the United States District Court for the Middle District of Louisiana on May 28, 1997. The proposed Agreement and Order (1) modifies certain injunctive relief and stipulated penalties provisions of the December 23, 1988 Modified Consent Decree and (2) settles the United States' claim for stipulated penalties which have been incurred or would have been incurred under the December 23, 1988 Modified Consent Decree in connection with Baton Rouge's failure to meet the construction schedule for the North Treatment Plant between January 1, 1997 and July 31, 1998.

Under the terms of the proposed Agreement and Order, the City of Baton Rouge is required to complete by July 31, 1998 construction of all improvements necessary to (a) achieve full secondary treatment and (b) to attain compliance with all aspects of National Pollutant Discharge Elimination System permit No. LA0036439 issued to the city of Baton Rouge with effective date November 1, 1996 (hereafter referred to as ''the NPDES permit''). The City of Baton Rouge is also required to comply with the effluent limits set forth in the NPDES permit. Finally, under the proposed Agreement and Order, the City of Baton Rouge is required to pay a penalty of one hundred forty thousand dollars ($140,000).

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resource Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *City of Baton Rouge, et al.,* DOJ No. 90–5–1–1–2769.

The proposed Consent Decree may be examined at the Region 6 Office of the U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $2.00 for a copy (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–14928 Filed 6–6–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

Notice is hereby given that on May 28, 1997, a proposed consent decree in *United States* v. *City of Tacoma,* Case No. C97–5336RJB (W.D. Wash), was lodged with the United States District Court for the Western District of Washington. The Consent Decree resolves claims brought by the trustees for natural resources in Commencement Bay (located adjacent to Tacoma, Washington) against the City of Tacoma and its Department of Public Utilities pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.* The trustees for natural resources in Commencement Bay are the National Oceanic and Atmospheric Administration (NOAA), the Department of the Interior (DOI), the State of Washington, the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe (collectively ''the Trustees''). Pursuant to a memorandum of understanding, the Trustees are jointly conducting a Natural Resource Damage Assessment (NRDA).

Defendants' liability stems from their ownership and operation of a municipal storm water drainage system and other properties that are or have been the source of releases of a series of hazardous substances into the waters of Commencement Bay. The proposed Consent Decree requires the defendant to acquire or perpetually lease five parcels of land located on the Commencement Bay shoreline and spend a total of approximately $3.3 million constructing and maintaining five habitat restoration projects on these properties. The Consent Decree also requires that the City make the following payments and in-kind contributions: (1) $227,000 to the Trustees as reimbursement of past damage assessment costs; (2) $500,000 to the Trustees as reimbursement of anticipated costs in Trustee oversight of the City's construction and maintenance of the restoration projects; (3) $500,000 to the Puyallup and Muckleshoot tribes to support tribal government programs for the planning and implementation of habitat restoration and other activities related to conservation and protection of natural resources in the Commencement Bay Environment; (4) $250,000 in the form of in-kind services to the NRDA and (5) $75,000 operating a pollution-reporting hotline and ancillary support services for five years.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and refer to *United States* v. *City of Tacoma,* DOJ number 90–11–2–1049A.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, 3600 Seafirst Fifth Avenue Plaza, 500 Fifth Avenue, Seattle, WA 98104; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the consent decree, please enclose a check in the amount of $16.00 for consent decree only or $85.75 for consent with attachments (25 cents per page reproduction costs) payable to the ''Consent Decree Library''. When requesting a copy please refer to *United States* v. *City of Tacoma,* DOJ Case number 90–11–2–1049A.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–14929 Filed 6–6–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States, et al.* v. *State of Washington Through the Washington Department of Natural Resources,* Civil Action No. C97–5337 RJB, was lodged on may 28, 1997, with the United States District Court for the Western District of Washington. The proposed consent decree settles claims for natural resource damages in the Commencement Bay Environment in and adjacent to Tacoma, Washington, asserted by the United States on behalf of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce and the U.S. Department of the Interior; the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe (the Natural Resource Trustees). The Defendant State of Washington owns certain areas of aquatic lands in the Commencement Bay Environment. The Washington Department of Natural Resources (WDNR) is the agency charged by state law with primary responsibility for leasing, managing, and otherwise exercising the State of Washington's proprietary interest in State-owned aquatic lands in the Commencement Bay Environment.

The complaint asserts a claim by the United States and the state and tribal trustees under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. § 9607, for damages to natural resources in the Commencement Bay Environment, as well as a claim by the State of Washington as Plantiff for natural resource damages under the Washington Model Toxics Control Act. The Complaint seeks an order that the Defendant pay damages for the injury to, destruction, and/or loss of use of natural resources within the Commencement Bay Environment resulting from releases of hazardous substances at or from Defendant's land, and an order that Defendant reimburse Plaintiffs for costs they have incurred in their assessment of damages. The claims do not include the St. Paul Waterway Problem Area, a subunit of the Commencement Bay Environment, that was the subject of a previous settlement with WDNR.

Under the proposed Consent Decree, the State through WDNR will make available three parcels of aquatic lands (approximately 8.3 acres total) in Commencement Bay for habitat restoration projects to be designed and developed in cooperation with the Trustees, will provide in-kind services to assist the Trustees in developing the restoration projects, and will consult with the Trustees to avoid potential harmful impacts from WDNR activities that the Trustees have determined may be detrimental to Commencement Bay Environment natural resources. In return, the Defendant will be granted a covenant not to sue by the Plaintiffs for liability for natural resources damages in the Commencement Bay Environment.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States, et al.* v. *State of Washington Through the Washington Department of Natural Resources,* DOJ Ref. No. 90–11–2–1049B.

The proposed consent decree may be examined at the office of the United States Attorney, 3600 Seafirst Fifth Avenue Plaza, 500 Fifth Avenue, Seattle, WA 98104; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–14931 Filed 6–6–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Compromise and Settlement Agreement Pursuant to the Comprehensive, Environmental Response, Compensation, and Liability Act (''CERCLA'')

In accordance with Departmental policy, 28 CFR 50.7, and Section 122(i)(2) of CERCLA, 42 U.S.C. § 9622(i)(2), notice is hereby given that a proposed Compromise and Settlement Agreement (''Settlement Agreement'') in *In re Wesley Industries, Inc.,* B.R. No. 90–10338, (S.D. Ala.), was lodged on April 16, 1997 with the United States Bankruptcy Court for the Southern District of Alabama. This Settlement Agreement resolves a cost recovery action brought by the United States against the settling defendant pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. The settling defendant is the past operator of the Chem–4 Superfund Site (''Site'') located in Demopolis, Alabama. The Settlement Agreement grants the United States an allowable administrative expense claim of $50,000 and an allowable unsecured claim of $700,215.10 against the settling defendant's bankruptcy estate.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re Wesley Industries, Inc.,* DOJ #90–11–3–1672.

The proposed Settlement Agreement may be examined at the office of the United States Attorney, 169 Dauphin Street, Suite 200, Mobile, Al 36602; the Region 4 office of the Environmental Protection Agency, 61 Forsythe Street, S.W., Atlanta, GA 30303; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check for the reproduction costs. If you want a copy of the Settlement Agreement, then the amount of the check should be $3.00 (12 pages at 25 cents per page). The check should be made payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–14930 Filed 6–6–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9601 Et Seq

Notice is hereby given that a proposed First Amendment to Consent Decree in *United States* v. *Westinghouse Electric Corporation,* Civil Action Nos. IP 83–9–C and IP 81–448–C, was lodged on June 3, 1997, with the United States District Court for the Southern District of Indiana.

The proposed amendment to consent decree provides for the performance of a removal action with respect to the sludge drying beds and sludge digesters at the Winston-Thomas Wastewater Treatment Facility, located in Bloomington, Indiana. The proposed amendment leaves all other portions of the consent decree, originally lodged with the Court on August 22, 1985, unchanged.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Westinghouse Electric Corporation,* DOJ Ref. #90–7–212A. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed amendment to consent decree may be examined at the office of the United States Attorney, Southern District of Indiana, U.S. Courthouse, 46 East Ohio St., 5th Floor, Indianapolis, Indiana 46204–1986; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; the Monroe County Library, 303 East Kirkwood Ave., Bloomington, Indiana 47408; and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed amendment to consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy please refer to the reference case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–14948 Filed 6–6–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Martin Marietta Materials, Inc. et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court in the Southern District of Indiana, in *United States* versus *Martin Marietta Materials, Inc., et al,* Civil No. IP97–854C–T/G.

On May 27, 1997, the United States filed a Complaint alleging that the proposed acquisition by Martin Marietta of the stock of American Aggregates would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed the same time as the Complaint, requires Martin Marietta to divest the Harding Street, Indianapolis, Indiana aggregate quarry and related assets that it will obtain in connection with the acquisition of American Aggregates.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530 (telephone: 202/307–0924).

Constance K. Robinson,

Director of Operations.

United States District Court for the Southern District of Indiana

Stipulation and Order

United States of America, Plaintiff, v. Martin Marietta Materials, Inc.; CSR Limited; CSR America, Inc.; and American Aggregates Corporation, Defendants. Civil No.: IP97–854C–T/G; Filed: 5/27/97; Judge John Daniel Tinder.

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Southern District of Indiana.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment or until expiration of time for all appeals of any court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event (a) the plaintiff has withdrawn its consent, as provided in paragraph 2 above, or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: May 23, 1997.

For Plaintiff United States

Frederick H. Parmenter,

U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, D.C. 20005, (202) 307–0620.

Judith A. Stewart,

United State Attorney.

Harold R. Bickham,

Assistant United States Attorney, Southern District of Indiana.

For Defendant Martin Marietta Materials, Inc.

Raymond A. Jacobsen, Jr.,

McDermott, Will & Emery, 1850 K Street, N.W., Washington, D.C. 20006–2296, (202) 778–8028.

Scott Megregian,

McDermott, Will & Emery, 1850 K Street, N.W., Washington, D.C. 20006–2296, (202) 778–8096.

For Defendants CSR Limited, CSR America, Inc. and American Aggregates Corporation

C. Benjamin Crisman, Jr.,

Skadden, Arps, Slate, Meagher & Flom, 1440 New York Avenue, N.W., Washington, D.C. 20005–2111, (202) 371–7330.

Alec Y. Chang,

Skadden, Arps, Slate, Meagher & Flom, 1440 New York Avenue, N.W., Washington, D.C. 20005–2111.

Order

It is so ordered, this 27th day of May, 1997.

Sarah Evans Baker,

United States District Judge.

Final Judgment

Whereas, plaintiff, the United States of America, having filed its Complaint herein on May 22, 1997, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is prompt and certain divestiture of assets to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the production and sale of aggregate in Marion County, Indiana;

And Whereas, defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''*Martin*'' means defendant Martin Marietta Materials, Inc., a North Carolina corporation headquartered in Raleigh, North Carolina, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employee acting for or on behalf of any of them.

B. ''*American Aggregates*'' means defendant American Aggregates Corporation, a Delaware corporation headquartered in Dayton, Ohio, and includes it successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any them.

C. ''*CSR America*'' means defendant CSR America, Inc., a Georgia corporation headquarters in Atlanta, Georgia (of which American Aggregates is a subsidiary), and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

D. ''*CSR*'' means defendant CSR Limited, a company formed under the laws of Australia and headquarters in Sydney, New South Wales (of which CSR America is a subsidiary), and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

E. ''*Aggregate*'' means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture asphalt concrete and ready mix concrete. ''Stone products'' refer to any products produced at a quarry.

F. ''*Asphalt concrete*'' means material that is used principally for paving and is produced by combining and heating asphalt cement (also referred to in the industry as ''liquid asphalt'' or ''asphalt oil'') with aggregate.

G. ''*Ready mix concrete*'' means a material used in the construction of buildings, highways, bridges, tunnels, and other products and is produced by mixing a cementing material (commonly portland cement) and aggregate with sufficient water to cause the cement to set and bind.

H. ''*Marion County*'' refers to Marion County, Indiana. Indianapolis, Indiana is located in Marion County.

I. Unless otherwise agreed to by the Department of Justice, in its sole discretion. ''Assets to be Divested'' means:

(1) All rights, titles, and interests, including all fee and all leasehold and rights, in American Aggregates' Harding Street, Indianapolis, Indiana quarry located at 4200 South Harding Street, Indianapolis, Indiana 46217, and the related maintenance facilities and administration buildings (the ''Harding Street Quarry'') including, but not limited to, all real property, capital equipment, fixtures, inventories, trucks, and other vehicles, stone crushing equipment, power supply equipment, scales, interests, permits, assets or improvement related to the production, distribution, and safe of aggregate and stone products at the Harding Street Quarry; and

(2) All intangible assets, including customer lists, contracts to supply third parties aggregate and stone products, and contracts permitting third parties to operate hot-mix plants and concrete plants at the Harding Street Quarry, associated with the Harding Street Quarry.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by person service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all Assets to be Divested, that the purchaser agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Martin is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of this Final Judgment, or five (5) days after its entry by the Court, whichever is later, to divest the Assets to be Divested to a purchaser acceptable to the plaintiff, in its sole discretion.

B. Martin shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. The United States in its sole determination may extend the time period for any divestiture an additional

period of time not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, Martin promptly shall make known, by usual and customary means, the availability of the Assets to be Divested described in this Final Judgment. Martin shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Martin shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Assets to be invested customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Martin shall make available such information to the plaintiff at the same time that such information is made available to any other person.

D. Martin shall not interfere with any negotiations by any purchaser to employ any Martin (or former CSR, CSR America, or American Aggregates) employee who works at, or whose principal responsibility is the manufacture, sale or marketing of aggregate or stone products produced by the Assets to be Divested.

E. Martin shall permit prospective purchasers of the Assets to be Divested to have access to personnel and to make such inspection of the Assets to be Divested, access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operations, or other documents and information customarily provided as part of a due diligence process.

F. Martin shall warrant to the purchaser of the Assets to be Divested that the Assets to be Divested will be operational on the date of sale.

G. Martin shall not take any action, direct or indirect (not including otherwise lawful competitive price action, expansion of capacity or similar competitive conduct), that will impede in any way the operation of the Harding Street Quarry.

H. Martin shall warrant to the purchaser of the Assets to be Divested that there are no known defects in the environmental, zoning, or other permits pertaining to the operation of the Assets to be Divested and that Martin will not undertake, directly or indirectly, following the divestiture of the Assets to be Divested any challenges to the environmental, zoning, or other permits pertaining to the operation of the Assets to be Divested.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the Assets to be Divested and be accomplished by selling or otherwise conveying the Assets to be Divested to a purchaser in such a way as to satisfy plaintiff, in its sole discretion, that the Assets to be Divested can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in the manufacture and sale of aggregate, and stone products. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the plaintiff's sole satisfaction: (1) has the capability and intent of competing effectively in the production and sale of aggregate and stone products in Marion County; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the manufacture and sale of aggregate and stone products in Marion County; and (3) none of the terms of any agreement between the purchaser and Martin give Martin the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in Marion County.

V. Appointment of Trustee

A. In the event that Martin has not divested the Assets to be Divested within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Assets to be Divested.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Assets to be Divested described in Section II, I of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Sections V(C) and VIII of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Martin any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the plaintiff, and shall have such other powers as this Court shall deem appropriate. Martin shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Martin must be conveyed in writing to the plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Martin, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Martin and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Assets to be Divested and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Martin shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best effort to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of Martin, and Martin shall develop financial or other information relevant to the Assets to be Divested as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Martin shall permit prospective acquirers of the assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name,

address and telephone number of each person who, during the preceding month, made an offer to acquire, expresses an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Assets to be Divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Assets to be Divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV of V of this Final Judgment, Martin or the trustee, whichever is then responsible for effecting the divestiture, shall notify the plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify Martin. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets to be Divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the plaintiff of such notice, the plaintiff may request from Martin, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Martin and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the plaintiff has been provided the additional information requested from Martin, the proposed purchaser, and any third party, whichever is later, the plaintiff shall provide written notice to Martin and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the plaintiff provides written notice to Martin and the trustee that it does not object, then the divestiture may be consummated, subject only to Martin's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that the plaintiff does not object to the proposed purchaser or upon objection by the plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by the plaintiff, or by Martin under the proviso in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Martin shall deliver to the plaintiff an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Assets to be Divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Martin has taken to solicit a buyer for the relevant assets.

B. Within twenty (20) calendar days of the filing of this Final Judgment, Martin shall deliver to the plaintiff an affidavit which describes in detail all actions Martin has taken and all steps Martin has implemented on an on-going basis to preserve the Assets to be Divested pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Martin's efforts to maintain and operate the Assets to be Divested as an active competitor, maintain the management, sales, marketing and pricing of the Assets to be Divested, and maintain the Assets to be Divested in operable condition at current capacity configurations. Martin shall deliver to the plaintiff an affidavit describing any changes to the efforts and actions outlined in Martin's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Martin shall preserve all records of all efforts made to preserve and divest the Assets to be Divested.

VIII. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divesture of the Assets to be Divested.

IX. Financing

Martin is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment without prior written consent of the plaintiff.

X. Compliance Inspection

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time.

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Martin made to its principal offices, shall be permitted:

(1) Access during office hours of Martin to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Martin, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

(2) Subject to the reasonable convenience of Martin and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General of the Assistant Attorney General in charge of the

Antitrust Division, made to Martin's principal offices, Martin shall submit such written reports, under oath if requested, with respect any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Martin to the plaintiff, Martin represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Martin marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by the plaintiff to Martin prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Martin is not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____
United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On May 27, 1997, the United States filed a civil antitrust complaint, which alleges that the proposed acquisition by Martin Marietta Materials, Inc. (''Martin'') of American Aggregates Corporation (''American Aggregates'') from CSR America, Inc. (''CSR America'') which is a subsidiary of CSR Limited (''CSR'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that a combination of the two most significant competitors in the aggregate market in Marion County, Indiana would lessen competition in the production and sale of aggregate in Marion County. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing Martin from acquiring control of American Aggregates' aggregate business, or otherwise combining such business with Martin's own business in the United States.

When the Complaint was filed, the United States, also filed a proposed settlement that would permit Martin to complete its acquisition of American Aggregates' aggregate business, but require a certain divestiture that will preserve competition in Marion County. This settlement consists of a Stipulation and Order, a proposed Final Judgment and a Hold Separate Stipulation and Order.

The proposed final Judgment orders Martin to divest certain Marion County assets—American Aggregates, Harding Street, Indianapolis, Indiana quarry and certain related tangible and intangible assets. Martin must complete the divestiture of this quarry and related assets within one hundred and eighty (180) calendar days after the date on which the proposed Final Judgment was filed (i.e., May 27, 1997) in accordance with the procedure specified therein.

The Stipulation and Order, proposed Final Judgment and Hold Separate Stipulation and Order require Martin to ensure that, until the divestiture mandated by the proposed Final Judgment has been accomplished, the Harding Street Quarry and related assets to be divested will be maintained and operated as an independent, ongoing, economically viable and active competitor. Martin must preserve and maintain the quarry to be divested as a saleable and economically viable, ongoing concern, with competitively sensitive business information and decision-making divorced from that of Martin's aggregate business. Martin will appoint a person to monitor and ensure its compliance with these requirements of the proposed Final Judgment.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. Martin, American Aggregates and the Proposed Transaction

Martin is engaged in the business of producing and selling aggregate in Marion County. In Marion County, Martin operates the Kentucky Avenue Quarry which produces aggregate. In 1995, Martin had sales of $660 million.

Through its wholly owned subsidiary, American Aggregates, CSR is engaged in the business of producing and selling aggregate in Marion County. CSR operates two aggregate quarries in or near Marion County that produce aggregate which is used to manufacture asphalt concrete and ready-mix concrete. In 1996, American Aggregates had sales of $120 million.

On February 21, 1997, Martin agreed to acquire all of the outstanding voting securities of American Aggregates, excluding its Michigan operations, from CSR America which is wholly owned by CSR. The purchase price is approximately $234.5 million. This transaction, which would take place in the highly concentrated Marion County aggregate industry, precipitated the government's suit.

B. The Transaction's Effects in Marion County

The Complaint alleges that, the production and sale of aggregate constitutes a line of commerce, or relevant product market, for antitrust purposes, and that Marion County constitutes a section of the country, or relevant geographic market. The complaint alleges that the effect of Martin's acquisition may be to lessen competition substantially in the production and sale of aggregate in Marion County.

Aggregate is material that is used to manufacture asphalt concrete and ready-mix concrete. A considerable amount of the asphalt concrete and ready-mix concrete manufactured for use in Marion County is used on

highways and roads built for the Indiana Department of Transportation and local jurisdictions located within Marion County. No good economic functional substitutes exist for aggregate. Manufacturers and buyers of aggregate recognize aggregate as a distinct product.

Producers of aggregate located in or near Marion County sell and compete with each other for sales of aggregate in Marion County. Due to high transportation costs and long delivery time, producers of aggregate not located in Marion County or in close proximity to Marion County do not sell a significant amount of aggregate for use within Marion County.

The Complaint alleges that Martin's acquisition of American Aggregates would substantially lessen competition for the production and sale of aggregate in Marion County. Actual and potential competition between Martin and American Aggregates for the production and sale of aggregate in Marion County will be eliminated.

Martin and American Aggregates are the only producers of aggregate in Marion County and are two of only three significant producers in close proximity to Marion County. American Aggregates and Martin sell the vast majority of all the aggregate used to manufacture asphalt concrete and ready mix concrete for road and highway construction projects in Marion County contracted for by the Indiana Department of Transportation and local jurisdictions within Marion County. The Indiana Department of Transportation, through its contracts for highway construction, is indirectly the largest purchaser of aggregate in Marion County.

The acquisition of American Aggregates by Martin would create a dominant aggregate company in Marion County. It would reduce the number of significant competitors operating aggregate facilities in Marion County or in close proximity to Marion County from three to two, and significantly reduce the number of competitors located in Marion County supplying aggregate used to manufacture asphalt concrete and ready mix concrete manufactured for highways in Marion County.

As a result of the acquisition, Martin would have significant control over the aggregate market in Marion County, giving it market power to increase the price of aggregate in Marion County. Prices for aggregate are likely therefore to increase. In response to such a price increase, purchasers could not switch to another producer of aggregate.

New entry in Marion County is unlikely to restore the competition lost through Martin's removal of American Aggregates from the marketplace. De novo entry into the production and sale of aggregate requires a significant capital investment and likely would take over two years before any new aggregate production facility could begin production. State and local zoning provisions make it very difficult to open an aggregate production facility in or near Marion County.

C. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: competition for the production and sale of aggregate in Marion County will be substantially lessened; actual and potential competition between Martin and American Aggregates in the production and sale of aggregate in Marion County will be eliminated; and prices for aggregate in Marion County are likely to increase above competitive levels.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the production and sale of aggregate in Marion County by placing in independent hands American Aggregates' Harding Street, Indianapolis, Indiana aggregate quarry used by American Aggregates to serve Marion County, thus maintaining the existing level of suppliers in the market place. In response to a price increase from Martin, purchasers would be able to turn to another producer with significant capacity to produce aggregate in Marion County.

Within one hundred and eighty (180) calendar days after filing the proposed Final Judgment, Martin must divest American Aggregates' Harding Street aggregate quarry and related assets which are located in Marion County. The Harding Street quarry and related assets will be sold to a purchaser who demonstrates to the sole satisfaction of the United States that they will be an economically viable and effective competitor, capable of competing effectively in the production and sale of aggregate in Marion County.

Until the ordered divestiture takes place, Martin must take all reasonable steps necessary to accomplish the divestiture and cooperate with any prospective purchaser. If Martin does not accomplish the ordered divestiture within the specified one hundred and eighty (180) calendar days which may be extended by up to sixty (60) calendar days by the United States in its sole discretion, the proposed Final Judgment provides for procedures by which the Court shall appoint a trustee to complete the divestiture. Martin must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that Martin will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price then available for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six (6) months, if the mandated divestiture has not been accomplished, the trustee shall file promptly with the Court a report that sets forth the trustee's efforts to accomplish the divestiture, explain why the divestiture has not been accomplished, and make any recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems confidential. The parties each will have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to carry out the purpose of the trust.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment neither will impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Martin, CSR, CSR America or American Aggregates.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court

after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person should comment within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written commetns should be submitted to: J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against the defendants. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the production and sale of aggregate in Marion County that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448 (DC Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24598 (1973). Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

> The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

United States v. *Bechtel,* 648 F.2d 660, 666 (9th Cir. 1981) (emphasis added).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' (citations omitted). *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), aff'd sub nom., *Maryland* v, *United States,* 460 U.S. 1001 (1983).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Executed on: May 23, 1997.

Respectfully submitted.

Frederick H. Parmenter,

Attorney, Department of Justice, Antitrust Division, Suite 3000, 1401 H Street, NW., Washington, DC 20530, (202) 307–0620.

[FR Doc. 97–14933 Filed 6–6–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Identification

Criminal Justice Information Services; Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice of Information Collection Under Review: Law Enforcement Officers Killed and Assaulted (LEOKA).

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 8, 1997.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your

comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be direct to SSA Paul J. Gans (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact SSA Paul J. Gans, 304–625–4830, FBI, CJIS, Statistical Unit, PO BOX 4142, Clarksburg WV 26302–9921.

Overview of This Information Collection

(1) Type of information collection: Extension of Current Collection.

(2) The title of the form/collection: Law Enforcement Officers Killed and Assaulted (LEOKA).

(3) The agency form number, if any, and applicable component of the Department sponsoring the collection. Form: I–705. Federal Bureau of Identification, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as brief abstract. Primary: State and Local Law Enforcement Agencies. This collection is needed to provide data regarding Law Enforcement Officers Killed and Assaulted throughout the United States. Data is tabulated and published in the comprehensive annual ''Law Enforcement Officers Killed and Assaulted''.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 4,900 agencies; 58,800 responses (includes Zero Reports); and with an average completion time of 5 minutes a month or 1 hour annually per responding agency.

(6) *An estimate of the total public burden (in hours) associated with this collection:* 4,900 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: June 2, 1997.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 97–14939 Filed 6–6–97; 8:45 am]

BILLING CODE 4410–02–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 14–97]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Tuesday, June 10, 1997, 2:00 p.m.

SUBJECT MATTER: Consideration of Proposed Decisions on claims of Holocaust survivors against Germany.

STATUS: Closed.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC June 3, 1997.

Judith H. Lock,

Administrative Officer.

[FR Doc. 97–15083 Filed 6–5–97; 11:40 am]

BILLING CODE 4410–01–P

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 15–97]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Friday, June 13, 1997, 9:00 a.m.

SUBJECT MATTER: Consideration of Proposed Decisions on claims of Holocaust survivors against Germany.

STATUS: Closed.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, June 3, 1997.

Judith H. Lock,

Administrative Officer.

[FR Doc. 97–15084 Filed 6–5–97; 11:40 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Meeting

AGENCY: Occupation Safety and Health Administration (OSHA), U.S. Department of Labor.

SUMMARY: Notice is hereby given that the Advisory Committee on Construction Safety and Health (ACCSH) will meet on June 25–26, 1997, at the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC. ACCSH was established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

SUPPLEMENTARY INFORMATION: For Further Information Contact: Theresa Berry, Office of Public Affairs, Room N–3647, Telephone 202–219–8615, at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210. An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, Telephone 202–219–7894. All ACCSH meetings and those of its workgroups are open to the public. Individuals with disabilities requiring appropriate accommodations should contact

Theresa Berry no later than June 20 at the address above. ACCSH will meet on June 25 from 9:00 a.m. to 4:30 p.m. in Room N–5437A–C and June 26 from 9:00 a.m. to 1:00 p.m. in Room N–3437A–D.

Various ACCSH Work Groups will meet on June 25, 26, and 27. On June 24, 1997, the Training Work Group will meet in Room S–3215A–B from 9:00 a.m. to 4:30 p.m. and the Confined Space Work Group will meet in Room N–3637 from 11:00 a.m. to 3:00 p.m. On June 26, the Safety and Health Program Management Standard Work Group will meet in Room N–3437A–D from 2:00–4:00 p.m. On June 27, the Training Work Group will meet from 9:00 a.m. to 12:00 p.m. in Room S–3215A–B.

On June 25, ACCSH and OSHA will discuss:

- General activities of the Directorate of Construction (DOC), (focusing on inspection statistics, construction-related fatalities and DOC projects);
- Objectives for FY 1998;
- Rulemaking activity (specifically Safety and Health Programs, Confined Spaces, Fall Protection and Steel Erection);
- Multi-employer Worksite Policy;
- The use of settlement agreements to improve employee protection;
- Washing facilities on construction sites; and
- Allocation of OSHA liability between contractors. In addition, the Work Groups on Training, Confined Spaces and the Safety and Health Program Management Standard will report to the full Advisory Committee and the Committee will discuss those reports.

On June 26, NIOSH will brief the ACCSH on its construction-related activities. OSHA and ACCSH will discuss:

- OSHA reinvention;
- Compliance assistance and resources;
- Respirator standard;
- Decontamination practices and issues for such Substances as lead, asbestos and silica; and
- Training programs.

Interested persons may submit written data, views or comments, preferably with 20 copies, to Theresa Berry, at the address above. Those submissions received prior to the meeting will be provided to ACCSH and will be included in the record of the meeting.

Interested persons may also request to make an oral presentation by notifying Theresa Berry before the meeting. The request must state the amount of time desired, the interest that the person represents, and a brief outline of the presentation. ACCSH may grant requests, as time permits, at the discretion of the Chair of ACCSH.

Signed at Washington, DC this 4th day of June, 1997.

Gregory R. Watchman,

Acting Assistant Secretary of Labor.

[FR Doc. 97–15004 Filed 6–6–97; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

June 3, 1997.

TIME AND DATE: 10:00 a.m., Wednesday, June 11, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Peabody Coal Co.,* Docket No. KENT 93–369 (Issues include whether substantial evidence supports the judge's determination that the operator's violation of 30 C.F.R. § 75.601 was not significant and substantial).

TIME AND DATE: 2:00 p.m., Wednesday, June 11, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Topper Coal Co.,* Docket No. KENT 94–944–R (Issues include whether the judge correctly determined that the operator violated 30 U.S.C. § 813(a) by impeding a spot inspection for smoking materials, that the violation was significant and substantial and the result of high negligence, and that a civil penalty of $5,000 was appropriate).

TIME AND DATE: 10:00 a.m., Wednesday, July 2, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Consolidation Coal Co., et al.,* Docket No. WEVA 94–377 (Issues include whether substantial evidence supports the judge's conclusions that the operator's bleeder system met the requirements of 30 C.F.R. § 75.334(b)(1) and that the two individual respondents were not liable under section 110(c) of the Mine Act for knowingly authorizing a violation of that regulation, and whether to remand for decision the issue of whether an allegedly incomplete cross-sectional reading violated 30 C.F.R. § 75.364(a)(2)).

TIME AND DATE: 10:00 a.m., Thursday, July 10, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Thunder Basin Coal Co.,* Docket No. WEST 94–370 (Issues include whether the judge erred by failing to assess a separate penalty for the operator's violation of 30 C.F.R. § 40.4 and whether the judge correctly applied the penalty assessment criteria of section 110(i) of the Mine Act in assessing a daily penalty for the operator's failure to timely abate that violation).

Any person attending a 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 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 97–15122 Filed 6–5–97; 2:12 pm]

BILLING CODE 6735–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 10:00 a.m., Thursday, June 12, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

Board Briefing

1. Insurance Fund Report.

Matters To Be Considered

1. Requests from Federal Credit Unions to Convert to a Community Charter.

2. Appeal from a Federal Credit Union of the Regional Director's Denial of a Charter Amendment.

3. Final Rule: Amendment to Part 703, NCUA's Rules and Regulations, Investment and Deposit Activities.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, June 12, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

Matter To Be Considered

1. Administrative Actions under Part 747, NCUA's Rules and Regulations. Closed pursuant to exemptions (5) and (8).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–15181 Filed 6–5–97; 4:00 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–344]

Portland General Electric Company, et al., Trojan Nuclear Plant; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Possession-Only License No. NPF–1, issued to Portland General Electric Company (PGE or the licensee), for the Trojan Nuclear Plant, a permanently shut down plant, located in Columbia County, Oregon, on the west bank of the Columbia River.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow processing of fuel and debris in the Trojan Fuel Building as described in the licensee's October 23, 1996, letter containing the license change request and safety analysis. The processing will volatilize and eliminate organic material (polypropylene filter media) which is currently commingled with fuel pellets, pellet fragments, and small metal particles. The consolidated fuel can then be stored in canisters without the potential for radiolytic decomposition of organic material and resultant generation of combustible gases. The licensee has proposed to process the fuel pellets and debris in order to make them suitable for future storage in an Independent Spent Fuel Storage Installation (ISFSI).

The Need for the Proposed Action

The licensee intends to dismantle and decommission the Trojan facility in accordance with the NRC approved Trojan Decommissioning Plan and subsequently terminate the Part 50 license. In order to accomplish this goal the licensee must first place all of the spent fuel and Greater Than Class C (GTCC) radioactive waste in an ISFSI. Some fuel pellets, partial fuel, organic filter media, and metal fines have been commingled as a result of vacuuming of the reactor vessel. The organic material must be eliminated from the mixture to make it suitable for storage in the ISFSI. The Trojan Nuclear Plant license must be amended to authorize this activity.

Environmental Impacts of the Proposed Action

The proposed action does not involve any measurable environmental impacts, since the facility configuration or plant operations will not change. No changes will be made in the types or quantities of effluents that are authorized to be released offsite, and there would be no significant increase in the allowable individual or cumulative radiation exposure. The licensee's analysis indicates that any potential accidents would have consequences within the scope of those previously analyzed in the Shutdown Final Safety Analysis Report. The NRC staff, based on independent evaluation, agrees with the licensee analyses and concludes that the proposed activity is acceptable. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. This would not reduce environmental impacts of plant decommissioning and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Trojan Nuclear Plant, dated August 1973.

Agencies and Persons Consulted

The NRC staff consulted with representatives of the State of Oregon Department of Energy regarding the environmental Impact of the proposed action. The State representatives had no comment.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the license change application dated October 23, 1996, and supplemental information in letters dated December 12, 1996, March 31, 1997, and April 9, 1997; which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Trojan Nuclear Plant at the Branford Price Millar Library, Portland State University, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 2nd day of June 1997.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 97–14966 Filed 6–6–97; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Determination of Substantial Damage With Respect to the Cessation of the Obligation to Contribute by Kane Transfer Company to the Freight Drivers and Helpers Local Union No. 557 Pension Fund

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Pendency.

SUMMARY: This notice advises interested persons that the Pension Benefit

Guaranty Corporation (''PBGC'') has received a request from the Freight Drivers and Helpers Local Union No. 557 Pension Fund for a determination of substantial damage under section 4203(d)(4) of the Employee Retirement Income Security Act, as amended (''ERISA''), with respect to the cessation of the obligation to contribute under the plan by Kane Transfer Company. Section 4203(d) provides a special withdrawal rule for cessations of the obligation to contribute involving plans and employers in the trucking industry (as defined in that section). Under that special rule, an employer that ceases to have an obligation to contribute to a plan is not considered to have withdrawn from the plan if certain conditions are met. One of these conditions is that the employer post a bond or deposit money in escrow. After the bond/escrow requirement has been satisfied, the PBGC may make a finding under section 4203(d)(4) that the cessation has caused substantial damage to the plan's contribution base, in which case the employer will be treated as having withdrawn from the plan and the bond/escrow will be paid to the plan. Any such finding must take into consideration any cessations of the obligation to contribute by other employers. Thus, a finding in any one case may have a bearing on other cases involving the same plan. The purpose of this notice is to advise interested persons of this request for such a finding and to solicit their views on it.

DATES: Comments must be submitted on or before July 24, 1997 to be assured of consideration.

ADDRESSES: All written comments should be addressed to: Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street, NW., Washington, DC 20005–4026. The request for a finding of substantial damage and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, at the above address, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas T. Kim, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4020 ext. 3581 (202–326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4203(d) of ERISA provides a special withdrawal rule for the trucking industry. That industry, for purposes of this rule, is considered to include the long and short haul trucking industry, the household goods moving industry, and the public warehousing industry. The rule is limited to trucking plans, i.e., plans under which substantially all of the contributions required are made by employers primarily engaged in the trucking industry. The rule is also limited to trucking employers, i.e., those employers that have an obligation to contribute under a trucking plan primarily for work in the trucking industry.

Under section 4203(d), a trucking employer will not be considered to have withdrawn from a trucking industry plan merely because the employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan, if certain conditions are met. One condition is that the employer must not continue to perform work within the jurisdiction of the plan. Another condition is that the employer must furnish a bond or establish an escrow account in an amount equal to 50 percent of its withdrawal liability.

After the bond is posted or the escrow established, the PBGC may, within 60 months after the cessation of the employer's covered operations or obligation to contribute, make a determination about the effect of the cessation (considered together with any cessations by other employers) on the plan's contribution base. If the PBGC makes a finding under section 4203(d)(4) that the contribution base has suffered substantial damage, the employer will be treated as having withdrawn from the plan on the date when the obligation to contribute or covered operations ceased. In that event, the bond or escrow will be paid to the plan, and the employer will be liable for the remainder of the withdrawal liability. If the PBGC makes a finding under section 4203(d)(5) that no substantial damage has occurred, or if it does not make a finding of substantial damage under section 4203(d)(4) within the 60-month period referred to above, then the bond will be canceled or the escrow refunded, and the employer will have no further liability with respect to the cessation.

As noted above, each cessation must be considered within the context of other cessations under the same plan in determining its effect on the plan's contribution base. Thus, the treatment afforded one employer's cessation of the obligation to contribute may have a bearing on the treatment given a cessation by another employer. Accordingly, not only the plan and employer involved in a particular case, but other present and former contributing employers, and participants and beneficiaries, may have an interest in the outcome of a request for a finding of substantial damage or no substantial damage.

The Request

The PBGC has received a request from the Freight Drivers and Helpers Local Union No. 557 Pension Fund (the ''Fund'') for a finding that the cessation of the obligation to contribute by Kane Transfer Company (''Kane''), together with cessations by other employers, has resulted in substantial damage to the Fund's contribution base. In the request, the Fund represents among other things that:

1. The Fund is a trucking industry plan within the meaning of section 4203(d)(2), with over 90 percent of its contributing employers engaged in the trucking industry. Kane was a trucking industry employer that operated for approximately 75 years in the Baltimore, Maryland area.

2. Kane ceased its trucking operations for which it was obligated to contribute to the Fund on December 23, 1993. The Fund assessed withdrawal liability against Kane in the amount of $211,405. In lieu of paying the withdrawal liability, Kane placed in escrow an amount equal to 50 percent of its withdrawal liability.

3. Over the 1980–1993 period, the contribution base of the Fund has declined drastically, the number of active employees has shrunk, and the number of retirees has risen to the point where they outnumber active employees. The number of hours for which contributions are required to be made (i.e., the contribution base units) fell by more than half in the 1980–1993 period, from 5,541,200 in 1980 to 3,778,800 in 1989, and to 2,476,400 in 1993. The number of active employees declined from 3,496 in 1980 to 2,699 in 1982, and to 1,446 in 1993, a decline of approximately 60 percent. As of December 31, 1994, there were 2,137 pensioners and 191 beneficiaries receiving payments from the Fund.

4. The contribution rate increased markedly since 1980. In 1994, the highest required contribution rate was $2.725 per hour; in 1980, the comparable rate was $1.125 per hour.

5. Over the past 10 years, there has been a widening gulf between net contributions received and benefits paid. Net contributions and benefit payments were relatively equal from 1985 through 1989, but from 1990 through 1994, benefit payments

exceeded contributions in all but one year. The Fund's request, however, points out that the deficit in contributions has been more than offset by investment income, and that the Fund ''has not yet faced a year when benefit payments exceeded the combined contributions and investment income.''

6. The Fund's unfunded vested benefits in 1992, the year prior to Kane's withdrawal, was $12 million, while in 1993, the figure rose to $18 million, an increase of 43 percent. In contrast, in 1994, the unfunded vested benefits fell to $5.8 million. The request asserts that the decline in 1994 ''occurred as a result of changes in the PBGC interest rates.'' In 1980, the Fund's unfunded vested benefits was approximately $51 million.

Comments

All interested persons are invited to submit written comments on the pending request to the PBGC at the above address. All comments will be made part of the record. Comments received, as well as the relevant information submitted in support of the request, will be available for public inspection at the above address.

Issued at Washington, D.C., on this 2nd day of June, 1997.

John Seal,

Acting Executive Director.

[FR Doc. 97–14942 Filed 6–6–97; 8:45 am]

BILLING CODE 7708–01–P

PRESIDENT'S COMMISSION ON CRITICAL INFRASTRUCTURE PROTECTION

Public Meeting

ACTION: St. Louis PCCIP Public Meeting.

TIME & DATE: 9:00 a.m.—12:00 Noon, Thursday, June 19, 1997.

PLACE: City Hall, Kennedy Room, 208 City Hall, 1200 Market St., St. Louis MO 63103.

MATTERS TO BE CONSIDERED: Advice or comments of any concerned citizen, group or activity on assuring America's critical infrastructures.

Note: A sign-language interpreter will be available for the hearing-impaired.

CONTACT PERSON FOR MORE INFORMATION: Nelson McCouch, Public Affairs Director, (703) 696–9395 nelson.mccouch@pccip.gov.

Robert E. Giovagnoni,

General Counsel, President's Commission on Critical Infrastructure Protection.

[FR Doc. 97–14898 Filed 6–6–97; 8:45 am]

BILLING CODE 3110–$$–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38704; File No. SR–CHX–97–11]

Self-Regulatory Organizations; Notice of Filing of and Order Granting Temporary Accelerated Approval to a Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Trading Variations

May 30, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 29, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval on a temporary basis to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Article XX, Rule 22 of the CHX's Rules, relating to trading variations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Article XX, Rule 22 of the Exchange's Rules gives the Exchange's Committee on Floor Procedure the authority to fix minimum variations for bids and offers in specific securities or classes of securities. Pursuant to this authority, the Exchange proposes to change its minimum variation to 1/16 of $1.00 per share for securities traded both on the Exchange and the Nasdaq National Market that are selling at or greater than $10.00 and to 1/32 of $1.00 per share for such securities that are selling below $10.00.

The proposed rule change will become effective upon the Commission's approval and implementation of File No. SR–NASD–97–27.[2] The proposed rule change will only be effective until such time as the Commission approves File No. SR–CHX–97–13, a proposed rule change regarding general changes to the Exchange's Rules on trading variations.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act[3] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission notes that it approved File No. SR–NASD–97–27 on May 27, 1997. Securities Exchange Act Release No. 38678 (May 27, 1997).

[3] 15 U.S.C. 78f(b)(5).

Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–97–11 and should be submitted by June 30, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6 and Section 11A of the Act.[4]

The Commission believes the proposed rule change will likely enhance the quality of the market for the affected Nasdaq securities. Nasdaq currently allows quotes as small as 1/32 for Nasdaq securities whose bid price is below $10.00 and, on June 2, 1997, Nasdaq will implement the necessary systems changes to allow market makers and ECNs to quote Nasdaq securities whose bid price is equal to or greater than $10.00 in sixteenths. Allowing the CHX to quote these securities in increments finer than eights will facilitate quote competition.[5] This should help to produce more accurate pricing of such securities and can result in tighter quotations.[6] In addition, if the quoted markets are improved by reducing the minimum increment, the change could result in added benefits to the market such as reduced transaction costs.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** As previously noted, market makers and ECNs will be able to quote Nasdaq securities whose bid is $10.00 or greater in sixteenths beginning June 2, 1997. Currently, bids and offers for these securities are publicly displayed in eights.[7] The proposed rule change will enable the CHX to continue to competitively quote such securities. Requiring the Exchange to wait the full statutory review period for the proposed rule change could place the CHX at a significant competitive disadvantage vis-a-vis other markets. At the same time, the proposal is effective only until the Commission acts on File No. SR–CHX–97–13.[8] This will provide the Commission with a sufficient period to receive and assess comments on SR–CHX–97–11. Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval on a temporary basis to the proposed rule change.[9]

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CHX–97–11) is hereby approved on an accelerated basis until the Commission acts on File No. SR–CHX–97–13.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14902 Filed 6–6–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. §§ 78f(b) and 78k–1. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* § 78c(f).

[5] The rule change is consistent with the Recommendation of the Division of Market Regulation (''Division'') in its Market 2000 Study, in which the Division noted that the 1/8 minimum variation can cause artificially wide spreads and hinder quote competition by preventing offers to buy or sell at prices inside the prevailing quote. *See* SEC, Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments 18–19 (Jan. 1994).*

[6] A study that analyzed the reduction in the minimum tick size from 1/8 to 1/16 for securities listed on the American Stock Exchange (''Amex'') priced between $1.00 and $5.00 found that, in general, the spreads for those securities decreased significantly while trading activity and market depth were relatively unaffected. *See* Hee-Joon Ahn, Charles Q. Chao, and Hyuk Choe, *Tick Size, Spread, and Volume,* 5 J. fin. Intermediation 2 (1996).

[7] Although some ECNs allow increments finer than an eighth, Nasdaq currently rounds all ECN orders for such securities that are priced in sixteenths to the nearest eighth for public display

[8] File No. SR–CHX–97–13 is a companion filing that requests permanent approval of the procedures described herein.

[9] 15 U.S.C. §§ 78f(b)(5) and 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38706; File No. SR–OCC–97–02]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding the Issuance, Clearance, and Settlement of Options on Unit Investment Trust Interests and Investment Company Shares That Hold Portfolios or Baskets of Common Stock

June 2, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], notice is hereby given that on February 21, 1997, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on February 21, 1997, and on May 14, 1997, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC's rules and by-laws to permit OCC to issue, clear, and settle options on publicly traded units of beneficial interest of unit investment trusts (''trust units'') and on publicly treated shares of open-end management investment companies that hold portfolios or baskets of common stock (''fund shares'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, OCC will amend its existing by-laws and rules to accommodate the issuance, clearance, and settlement of options on publicly traded trust units and fund shares that have been proposed for trading by the American Stock Exchange (''Amex'').[3] The Amex currently trades trust units known as Portfolio Depository Receipt (''SPDR's'') based on two Standard & Poor's (''S&P'') indexes. SPDRs are trust units that represent beneficial ownership in the SPDR trust. The SPDR trust was established to accumulate and hold a portfolio of common stocks that is intended to track the price performance and dividend yield of a particular S&P index. The two S&P indexes on which such SPDRs are based are the S&P 500 index and the S&P MidCap 400 index. SPDRs trade similarly to shares of common stock. They are cleared and settled at the National Securities Clearing Corporation (''NSCC'') and are held in book-entry form at The Depository Trust Company (''DTC'').

The Amex also trades fund shares which are issued by an open-end management investment company consisting of seventeen separate series known as World Equity Benchmark Shares (''WEBS'') based on seventeen foreign equity market indexes.[4] The investment objective of each series is to provide results that correspond to the price and yield performance of publicly traded securities in the aggregate in particular markets as represented by a particular foreign equity index. WEBS are common stock (albeit redeemable), are cleared by NSCC, and are held in book-entry form at DTC.

The Amex has proposed trading options on exchange-traded trust units and fund shares pursuant to the same rules and procedures that are generally applicable to trading in options on equity securities with only minor differences that affect their clearance and settlement.[5] These differences are that options on trust units and fund shares would be listed as European-style options only and that each option contract would cover 1000 trust units or fund shares as the unit of trading.

OCC believes that options on trust units and fund shares can readily be processed, settled, and margined like existing options on equity securities. Exercise and assignment activity of options on trust units and fund shares will settle through NSCC. As such, OCC proposes to amend only a few by-laws and rules to accommodate Amex's proposal to trade options on trust units and fund shares.

Under OCC's current by-laws, all equity option contracts have an American-style expiration, except for flexibly structured equity options which may have an American, European, or capped-style of expiration. The general rights of a holder of a single call equity option contract are set forth in Article VI, Section 9(a) of OCC's by-laws, and the general rights of a holder of a single put equity option contract are set forth in Article VI, Section 9(b) of OCC's by-laws. Because options on trust units or fund shares will be deemed equity option contracts under OCC's rules, OCC proposes to amend Section 9(a) and (b) of Article VI to set forth the general rights of a holder of a single European-style equity call option[6] and a single European-style equity put option,[7] respectively, to accommodate both European and American styles of expiration for options on trust units or fund shares.

Furthermore, OCC proposes to amend Section .01 of the Interpretations and Policies relating to Section 9. In pertinent part, Section .01 provides that subsections (a) and (b) of Section 9 apply only to stock option contracts. The proposed amendment clarifies that for purposes of Section .01 the term ''stock option contracts'' will include option contracts on publicly traded interests in trust units, fund shares, or shares in entities similar to investment companies that hold portfolios or baskets of common stock.

OCC also proposes to add Interpretation and Policy .01 to Section 10 of Article VI of the by-laws to reflect that for series of options in which the underlying security is trust units or fund shares the unit of trading is the amount of the underlying security deliverable upon the exercise of the option as specified by the exchange on which the option is traded unless otherwise specified by OCC in accordance with its by-laws and rules.

In addition, OCC proposes to add a new Rule 807 to its rules. New Rule 807 will contain essentially the same provisions as found in Section .08 of the Interpretations and Policies under Section 11 of Article VI of the by-laws.[8] Section .08 will set forth the general rule that, when a flexibly structured option contract with a European-style expiration has been adjusted to require upon exercise the delivery of a fixed amount of cash, the expiration date with respect to the option will be accelerated to fall on or shortly after the date on which the conversion of the underlying security to a right to receive cash occurs. The ability to accelerate an expiration date following an adjustment calling for a fixed amount of cash was added specifically to accommodate European-style, flexibly-structured equity options. Without the ability to accelerate, the option position would have to be maintained until it could be exercised at its regular expiration. For the same reason, OCC proposes to make this applicable to all European-style stock option contracts generally. In connection with the addition of Rule 807, OCC also proposes to amend the term ''expiration date'' as defined in Section 1 of Article I of OCC's by-laws to provide that the expiration date of a stock option contract will be subject to the accerlation provisions of the new rule.

OCC believes the proposed rule change is consistent with Section 17A of the Act[9] and the rules and regulations thereunder because it will provide for the prompt and accurate clearance and settlement of options on trust units and fund shares by using OCC's systems, procedures, and processes for clearing and settling options on equity securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

[3] Securities Exchange Act Release No. 38303 (February 19, 1997), 62 FR 8467 [File No. SR–Amex–96–44].

[4] The initial series offered by this investment company are: the Australia Index Series; the Austria Index Series; the Belgium Index Series; the Canada Index Series; the France Index Series; the Germany Index Series; the Hong Kong Index Series; the Italy Index Series; the Japan Index Series; the Malaysia Index Series; the Mexico (Free) Index Series; the Netherlands Index Series; the Singapore (Free) Index Series; the Spain Index Series; the Sweden Index Series; the Switzerland Index Series; and the United Kingdom Index Series.

[5] *Supra* note 3.

[6] A holder of a single European-style call option contract will have the right on and only on the expiration date, expiring at the expiration time on such date, to purchase from OCC at the aggregate exercise price the number of units of the underlying security represented by such option contract.

[7] A holder of a single European-style put option contract will have the right on and only on the expiration date, expiring at the expiration time on such date, to sell to OCC at the aggregate exercise price the number of units of the underlying security represented by such option contract.

[8] Section 11 sets forth the general rules pertaining to adjustments on stock option contracts. OCC proposes to delete Section .08 from the Interpretations and Policies and to move those provisions to new Rule 807.

[9] 15 U.S.C. 78q–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice is the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–97–02 and should be submitted by June 30, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–14901 Filed 6–6–97; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT's) intention to request an extension for and revision to a currently approved information collection.

DATES: Comments on this notice must be received by August 8, 1997.

ADDRESSES: Comments should be sent to the EAS and Domestic Analysis Division (X–53), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0002.

FOR FURTHER INFORMATION CONTACT: Mr. Luther Dietrich or Mr. Dennis DeVany, Office of the Secretary, Office of Aviation Analysis, X–53, Department of Transportation, at the address above. Telephone: (202) 366–1046/1061.

SUPPLEMENTARY INFORMATION:

Title: Air Carrier's Claim for Subsidy and Air Carrier's Report of Departures Flown in Scheduled Service.

OMB Control Number: 2106–0044.

Expiration Date: July 31, 1997.

Type of Request: Extension for and revision to a currently approved information collection.

Abstract: In 14 CFR part 271 of its Aviation Economic Regulations, the Department provided that subsidy to air carriers for providing essential air service will be paid to the carriers monthly, and that payments will vary according to the actual amount of service performed during the month. The reports of subsidized air carriers of essential air service performed on the Department's Forms 397, ''Air Carrier's Report of Departures Flown in Schedule Service'' (formerly ''Air Carrier's Report of Revenue/Seat Miles Flown in Scheduled Service''), and 398, ''Air Carrier's Claim for Subsidy,'' establish the fundamental basis for paying these air carriers on a timely basis. Typically, subsidized air carriers are small businesses and operate only aircraft of limited size over a limited geographical area. The collection permits subsidized air carriers to submit their monthly claims in a concise, orderly, easy-to-process form, without having to devise their own means of submitting support for these claims.

The collection involved here requests only information concerning the subsidy-eligible flights (which generally constitute only a small percentage of the carriers' total operations) of a small number of air carriers. The collection permits the Department to timely pay air carriers for providing essential air service to certain eligible communities that would not otherwise receive scheduled passenger air service.

Respondents: Small air carriers selected by the Department in docketed cases to provide subsidized essential air service.

Estimated Number of Respondents: 22.

Average Annual Burden per Respondent: 278 hours.

Estimated Total Burden on Respondents: 6,116 hours.

This information collection is available for inspection at the EAS and Domestic Analysis Division (X–53), Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR part 271 can be obtained from Mr. Luther Dietrich at the address and telephone number shown above.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper functioning of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, D.C., on June 3, 1997.

John V. Coleman,

Director, Office of Aviation Analysis.

[FR Doc. 97–14973 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 14–17, 1997, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 909 North Hayden Island Drive, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Reavis, Executive Director, ATPAC, Strategic Operations/Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held July 14 through July 17, 1997, at the Doubletree Hotel, 909 North Hayden Island Drive, Portland, Oregon.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 11, 1997. The next quarterly meeting of the FAA ATPAC is planned to be held from October 6–9, 1997, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on June 3, 1997.

Charles R. Reavis,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 97–14888 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Working Group 48; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource

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 Special Committee 182/EUROCAE Working Group 48 joint meeting to be held June 24–26, 1997, starting at 9:30 a.m. The meeting will be held at EUROCAE, 17 Rue Hamelin, Paris.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Meeting Reports: a. Previous Joint Meeting; b. Working Group 48 Meeting; c. Special Committee 182 Working Groups Meeting; (4) Input to Next Special Committee 190/Working Group 52 Joint Meeting; (5) Web Forum: New Organization/User Experience; (6) Issues for Working Groups: a. Architecture; b. Capacity and Performance; c. System Services; (7) Assign Discussion Papers to Working Groups; (8) Review Position Papers; (9) Working Group Sessions: a. Architecture; b. Capacity and Performance; c. System Services; (10) Working Group Reports; (11) Other Business; (12) Data 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, N.W., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the pubic may present a written statement to the committee at any time.

Issued in Washington, DC, on May 29, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–14887 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Major Investment Study and Draft Environmental Impact Statement: West Valley City, Utah

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent and public scoping meetings.

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to advise the public that a Major Investment Study (MIS) and Draft Environmental Impact Statement (DEIS) will be prepared for transportation improvements in West Valley City, Utah. These improvements will be in a broad corridor encompassing the northern half of West Valley City and the western half of South Salt Lake. The study will include transportation connections to other parts of the metropolitan area in Salt Lake County, Utah. Two scoping meetings will be held on Wednesday, July 9, 1997, from 4:00–6:00 p.m. and from 6:00–8:00 p.m. in the West Valley City Council Chambers, 3600 Constitution Boulevard, West Valley City, Utah, as part of the preparation of the MIS/DEIS. A 45-day scoping period will begin on June 4, 1997 and conclude on July 18, 1997.

FOR FURTHER INFORMATION CONTACT: Donald Cover, U.S. Department of Transportation, Federal Transit Administration, 216 Sixteenth St., Suite 650, Denver, Colorado 80202–5120, Telephone (303) 844–3242; or Brian Hall, West Valley City, Economic Development/Redevelopment Agency, 3600 Constitution Boulevard, West Valley City, Utah 84119–3720, Telephone (801) 963–3363.

SUPPLEMENTARY INFORMATION: FTA, in cooperation with the Federal Highway Administration (FHWA), the Utah Department of Transportation (UDOT), the Utah Transit Authority (UTA), the Wasatch Front Regional Council (WFRC), and West Valley City will prepare a Major Investment Study for transportation improvements in a broad corridor encompassing the northern half of West Valley City and the western half of South Salt Lake. The study will include transportation connections to other parts of the metropolitan area in Salt Lake County, Utah. It is intended that a Draft Environmental Impact Statement will be prepared for transportation improvements in this broad corridor in support of the Major Investment Study.

The MIS/DEIS will consider no-build, transportation system management, and

build alternatives. A multimodal evaluation of transportation improvements in the corridor will be the focus of the study, with both transit and highway improvements, such as traffic management strategies, being considered. Among the transit alternatives to be studied are light-rail transit and expanded bus service. Pedestrian and bicycle improvements will also be considered. A passenger intermodal transportation center will be part of the study with the intent that the intermodal center will serve needs of venues associated with the 2002 Winter Olympic games and other community needs beyond 2002.

This Notice of Intent and Public Scoping Meetings will be distributed to federal, state, and local agencies and jurisdictions to advise them of the MIS/DEIS process and to request comments and suggestions. A 45-day scoping period will begin on June 4, 1997 and concluded on July 18, 1997. An on-going public involvement process will be developed to provide additional opportunities for the public to participate in this planning/environmental process.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the MIS/DEIS should be directed to the FTA and/or West Valley City at the addresses provided above.

Issued on: June 3, 1997.

Louis F. Mraz, Jr.,

Regional Administrator, Federal Transit Administration, Region VIII, Denver, Colorado.

[FR Doc. 97–14904 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–57–P

Corrections

Federal Register

Vol. 62, No. 110

Monday, June 9, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 738, 740, 770, 772, and 774

[Docket No. 961219362–6362–01]

RIN 0694–AB52

Revisions to the Export Administration Regulations: Addition of the Republic of South Korea to Australia Group (AG), Clarification to the Sample Shipments Exemption in ECCN 1C350, and Correction to the Commerce Country Chart

Correction

In rule document 97–3490, beginning on page 6682 in the issue of Wednesday, February 12, 1997, make the following correction:

PART 738— [CORRECTED]

On page 6684, in Supplement Number 1 to part 738, in the Commerce Country Chart, the entry for Moldova is corrected to read as follows:

COMMERCE COUNTRY CHART

Reason for Control

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Crime control			Anti-terrorism	
	CB column	CB column	CB column	NP column	NP column	NS column	NS column	MT column	RS column	RS column	CC column	CC column	CC column	AT column	AT column
Moldova	X	X	X	X	.....	X	X	X	X	X	X	X	.....	.....	.....

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4212-N-01]

Safe Neighborhood Grants; Notice of Funding Availability--Fiscal Year 1997

Correction

In notice document 97–13517, beginning on page 28586 in the issue of Friday, May 23, 1997, make the following correction:

On Page 28593, in the second column, in the eighth line from the bottom, ''July 21, 1997'' should read ''August 21, 1997''.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Wy-989-1050-00-P]

Filing of Plats of Survey, Wyoming

Correction

In notice document 97–13589 appearing on page 28497 in the issue of Friday, May 23, 1997, make the following corrections:

1. On page 28497, in the second column, under **Sixth Principal Meridian, Wyoming** , the entry should read ''T. 15 N., R. 79 W.,''.

2. On page 28497, in the second column, under **Sixth Principal Meridan, Nebraska** section, the entry should read ''T.25 N., R. 9 E.,''.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR-027-FOR]

Arkansas Regulatory Program and Abandoned Mine Land Reclamation Plan

Correction

In rule document 97–10990 beginning on page 23129 in the issue of Tuesday,

April 29, 1997, make the following corrections:

1. On page 23129, the third column, seventh line from the bottom:

a. ''remaining'' should read ''remining''.

b. ''an'' should read ''and''.

2. On page 23130, the first column, under the section heading **FOR FURTHER INFORMATION CONTACT**, the Oklahoma zip code should read ''74135-6548''.

3. On page 23132, in the table under the section ''**Small Operator Assistance**,'' in the fourth line of ''Applicant liabilty'', the State regulations should read ''ASCMRC 795.19...''.

4. On page 23132, in the second column, in the seventh line, ''or'' should read ''of''.

5. On page 23134, in the second column, under the section heading **V. Director's Decision** the fourth line should read ''on April 2, 1996, and as revised on''.

6. On page 23135, in the table, the first citation in the third line under ''Citation/description'' should read ''786.17(c)(4)''.

BILLING CODE 1505-01-D

federal register

Monday
June 9, 1997

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29

Harmonization of Miscellaneous Rotorcraft Regulations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 28929; Notice No. 97–8]

RIN 2120–AG23

Harmonization of Miscellaneous Rotorcraft Regulations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes changes to the type certification requirements for normal and transport category rotorcraft. The change would amend the airworthiness standards to require a cockpit indication of autopilot operating mode to the pilots for certain autopilot configurations, to clarify the burn test requirements for electrical wiring for transport category rotorcraft, and to provide a new requirement for an electrical wire burn test for normal category rotorcraft. The proposed rule would also add a 1.33 fitting factor structural strength requirement to the attachment of litters and berths. The proposed changes to 14 CFR parts 27 and 29 (parts 27 and 29) are harmonized with the European Joint Aviation Requirements (JAR) 27 and 29.

DATES: Comments must be received on or before September 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28929; Room 915G, 800 Independence Avenue SW, Washington, DC 20591. Comments submitted must be marked Docket No. 28929. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll Wright, Regulations Group, ASW–111, Rotorcraft Directorate, Aircraft Certification Service, FAA, Fort Worth, Texas 76193–0111, telephone (817) 222–5120.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket at the address specified under the caption **ADDRESSES**.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered before taking action on this proposal. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28929.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the **Federal Register's** electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register's** webpage at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, NPRM Distribution System, that describes the application procedure.

Background

The FAA has established an Aviation Rulemaking Advisory Committee (ARAC). By a notice in the **Federal Register** (60 FR 4221, January 20, 1995), the FAA announced the establishment of the Harmonization of Miscellaneous Rotorcraft Regulations Working Group. The Working Group was tasked to recommend to ARAC new or revised requirements for pilot indication of autopilot operating mode; burn test for electrical wire; seats, berths, and litters; and other rotorcraft issues. Specifically, the working group received the following tasks:

1. Review §§ 1329 and 29.1329 and supporting policy and guidance material for the purpose of determining the course of action to be taken for rulemaking and/or policy relative to the issue of requiring pilot indication of autopilot operating mode similar to parts 23 and 25 requirements.

2. Review parts 27 and 29 to determine if clarification is needed for the burn test requirements for transports category and whether a new requirement for burn test for electrical wire for normal category rotorcraft is needed. Consider whether § 29.1351(d)(3) should be deleted and if new §§ 27.1365(c) and 29.1359(c) should be created to specify electrical wire insulation burn test requirements.

3. Review §§ 27.785(f)(2) and 29.785(f)(2) to determine if these sections should be revised to specify whether the 1.33 fitting factor for seats should also apply to berths and litters.

4. Review and make recommendations regarding the disharmonizations introduced by the new Rotorcraft 30 Second/2 Minute One-Engine Inoperative Power Ratings (OIE) (59 FR 47764; September 16, 1994) and the Crash Resistant Fuel Systems (CRS) in Normal and Transport Category Rotorcraft (59 FR 50380; October 3, 1994) final rules.

The working group included representatives from four major rotorcraft manufacturers (normal and transport) and representatives from Aerospace Industries Association of American, Inc. (AIA), Association Europeene des Constructeurs de Material Aerospatial (AECMA), Helicopter Association International (HAI), the European Joint Aviation Authorities (JAA), and the FAA Rotorcraft Directorate. This broad participation is consistent with FAA policy to involve all known interested parties as early as practicable in the rulemaking process.

The working group presented its findings to the ARAC, which recommended to the FAA the certain miscellaneous changes be made to the airworthiness standards for both parts 27 and 29.

The FAA has evaluated and accepted the ARAB recommendations and proposes the change contained in this notice.

General Discussion of the Proposals

The following changes are proposed to the airworthiness standard for normal and transport category rotorcraft.

Sections 27.625 and 29.625 Fitting Factors

A new paragraph (d) would be added to §§ 27.625 and 29.625 to require that the 1.33 fitting factor, specified in §§ 27.785 and 29.785 for the attachment of seats, also applies to the attachment for litters and berths. The 1.33 fitting factor is necessary to ensure that fittings subject to wear and tear under normal use and subject to frequent removal and replacement in the aircraft will retain adequate strength to perform their intended function under crash landing conditions. The need for this factor for seat attachments and associated harnesses has been substantiated by service experience and is recognized in 14 CFR parts 23, 25, 27, and 29 and in the equivalent JAR. Also, the need for the 1.33 factor for the attachment of litters, berths, and associated harnesses is included in parts 23 and 25 and JAR 23 and 25 but is not currently included in parts 27 and 29 or JAR 27 and 29. This proposed change would provide the same level of safety for passengers in litters and berths as in seats and would harmonize the fitting factor requirement of parts 23, 25, 27, 29 and the JAR.

Sections 27.785 and 29.785 Seats, Berths, Litters, Safety Belts, and Harnesses

Since the requirements for litters and berths are specified in §§ 27.785(k) and 29.785(k), a new sentence to paragraph (k)(2) is proposed to clarify the requirement for applying the 1.33 fitting factor. This proposed revision would clarify that the 1.33 fitting factor for the attachment of seats specified in proposed §§ 27.625(d) and 29.625(d) also applies to the attachment of litters and berths.

Sections 27.975 and 29.975 Fuel Tank Vents

This proposed revision would remove the phrase ''unless a rollover is shown to be extremely remote'' from §§ 27.975(b) and 29.975(a)(7). The JAA states that the phrase ''unless a rollover is shown to be extremely remote'' results in weakening the desired requirement, so that a postcrash fire could occur on an aircraft not equipped with rollover protection. The FAA agrees that the intent of this rule is to prevent postcrash fires due to rollover and concludes that the phrase does not contribute to the desired result. Also, this proposed revision would resolve a difference between parts 27 and 29 and JAR 27 and 29 introduced by the Crash Resistant Fuel Systems final rule noted earlier.

Sections 27.1329 and 29.1329 Automatic Pilot System

A new paragraph (f) would be added to §§ 27.1329 and 29.1329 to require display of the autopilot mode to the pilots. Current parts 23 and 25 require that ''If the automatic pilot system can be coupled to airborne navigation equipment, means must be provided to indicate to the flight crew the current mode of operation. Selector switch position is not acceptable as a means indication.'' Airplane accidents occurred prior to adoption of the requirement of the display of the autopilot mode in parts 23 and 25 due to the pilot not being aware of the current autopilot mode. This type of accident could occur in rotorcraft. Safety will be enhanced by requiring that the autopilot mode be displayed to the pilots of rotorcraft. This would harmonize parts 27 and 29 with the corresponding JAR.

Section 27.1365 Electric Cables

A new paragraph (c) to § 27.1365 is proposed that would add a burn test to require self-extinguishing insulation on electrical wire and cable installed in normal category rotorcraft. Most European and U.S. rotorcraft manufacturers currently use electrical wire that meets the proposed burn test requirements. This proposal would require that compliant wire be used.

Section 29.923 Rotor Drive System and Control Mechanism Tests

The proposed revision to § 29.923(a) would add the words, ''and (p),'' after the words ''paragraphs (b) through (n).'' The ''and p'' was inadvertently omitted by the OEI final rule, Amendment 29–35. This change is proposed to correct the oversight and to harmonize part 29 with the JAR requirement.

Section 29.1351 General

The proposal would delete the burn test requirements of § 29.1351(d)(1)(iii) and the reference to § 25.1359(d) contained in it. Section 25.1359(d) was removed from part 25 by Amendment 25–72 (55 FR 29756; July 20, 1990). The proposal would move the electrical wire burn test requirements to a new § 29.1359(c) and cite the correct reference, part 25, Appendix F, Part I(a)(3). The proposed change is administrative and will not alter the current requirements.

Section 29.1359 Electrical System Fire and Smoke Protection

As discussed in the previous paragraph, new § 29.1359(c) would contain the electrical wire burn test requirements. The proposal would add paragraph (c) to this section to place the requirement under a more appropriate heading. The proposed change is administrative and will not alter the current requirements.

Paperwork Reduction Act

There are no requirements for information collection associated with this proposed rule that would require approval under the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) would generate benefits that justify its costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would lessen restraints on international trade. These analyses, available in the docket, are summarized below.

Economic Evaluation

Overall, the proposed changes would result in net cost savings by promoting harmonization between the U.S. regulations and the JAR and by eliminating unnecessary duplication of certification requirements. The costs and benefits of the changes regarding the fitting factor for the attachment of berths and litters, removal of the phrase ''unless a rollover is shown to be extremely remote'' (in §§ 27.975(b) and 29.975(a)(7)), autopilot operating mode, and burn test for electrical wire in normal category rotorcraft, are

summarized below. All other revisions involve clarification or administrative changes.

The fitting factor requirement would not impose incremental costs on most rotorcraft manufacturers. One small manufacturer of part 27 rotorcraft indicated additional nonrecurring testing and analysis costs of $2,000 to substantiate the 1.33 factor in an initial new type certification; most likely, this additional cost would not be incurred in subsequent type certifications. Although there have been no identifiable accidents involving litters attributable to insufficient attachment strength, even one minor injury would far exceed the relatively low costs. Codification of the 1.33 fitting factor, which is inherent in most current designs, would ensure that all future designs include this standard, increasing the minimum level of safety.

There would be no incremental costs or benefits associated with removal of the phrase ''unless a rollover is shown to be extremely remote'' in §§ 27.975(b) and 29.975(a)(7) since rotocraft currently meet the minimum fuel spillage requirements under roll-over conditions.

The autopilot display requirement would impose no or insignificant incremental costs on rotocraft manufacturers since new autopilot systems employed in rotocraft are similar to those in airplanes and the mode indicator is typically integral to such systems. Codification of this requirement would ensure that all future rotocraft designs comply with this standard.

Most U.S. and European manufacturers currently use electrical wire that meets the burn test requirements for transport category rotocraft since they produce both part 27 and part 29 rotocraft. However, the few manufacturers that product normal category rotocraft only would likely experience additional costs. One manufacturer estimates additional nonrecurring testing/design costs at $5,000 per type certification and additional wiring costs of $500 per rotocraft. At an estimated production of seven rotocraft per year, the incremental recurring costs would total $3,500 per year for 10 years, or $35,000 total (nondiscounted 1995 dollars), under one type certification. Another manufacturer estimates additional wiring costs of approximately $350 per rotocraft and no additional nonrecurring costs. At an estimated production of 20 rotocraft per year, the incremental recurring costs would total $7,000 per year for 10 years, or $70,000 total (nondiscounted 1995 dollars), under one type certification.

There have been several accidents (and more numerous Service Difficulty Reports) related directly or indirectly to shorted or burned-through electrical wiring; i.e., the insulation offered insufficient protection. Examination of National Transportation Safety Board accident and incident data for the period 1983 through 1995 indicates one accident (in June 1994) caused primarily by a short in the electric wiring that burned a hole in the main fuel line. The post-impact fire destroyed the normal category helicopter. There is a strong possibility that the proposed burn test requirements could have prevented this accident. Benefits in terms of averted equipment damage and just one or two minor injuries from an accident involving a part 27 rotocraft would easily exceed the incremental costs of this proposal. Codification of this requirement would ensure that all future designs comply, increasing the minimum level of safety.

Based on the findings of no significant incremental costs coupled with the benefits of harmonization savings and higher levels of safety, the FAA has determined that the proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed or final rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA requirements in FAA rulemaking actions. The Order defines ''small entities'' in terms of size, ''significant economic impact'' in terms of annualized costs, and ''substantial number'' as a number that is not less than 11 and which is more than one-third of the small entities subject to a proposed or final rule.

The proposed rule would affect manufacturers of future type-certificated normal and transport category rotocraft. For aircraft manufacturers, Order 2100.14A defines a small entity as one with 75 or fewer employees and a significant economic impact as annualized costs of at least $19,500 (1995 dollars). The FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small manufacturers since (1) no part 29 and only two part 27 rotorcraft manufacturers have 75 or fewer employees, and (2) the annualized incremental costs of the rule are less than $19,500.

International Trade Impact Analysis

The proposed rule would not constitute a barrier to international trade, including the export of American rotorcraft to foreign countries and the import of foreign rotorcraft into the United States. Instead, the proposed changes on rotorcraft certification procedures, harmonized with those of the JAA, would lower dual certification costs, thereby enhancing free trade. Each applicant for a new type certificate for normal and transport category rotorcraft, whether the applicant be U.S. or foreign, will be required to show compliance with this rule.

Conclusion

For the reasons discussed above, including the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the Office of Information and Regulatory Affairs (OIRA), in conjunction with the FAA, has determined that this proposed regulation is not a significant regulatory action under Executive Order 12866 and, therefore, is not subject to centralized regulatory review by the OIRA. In addition, the FAA certifies that his regulation 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. This proposal is considered to be nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Proposed Amendments

In consideration of the foregoing, the FAA proposes to amend 14 CFR parts 27 and 29 as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. In § 27.625, a new paragraph (d) is added to read as follows:

§ 27.625 Fitting factors.

* * * * *

(d) Each seat, berth, litter, safety belt and harness attachment to the structure must be shown by analysis, tests, or both, to be able to withstand the inertia forces prescribed in § 27.561(b)(3) multiplied by a fitting factor of 1.33.

3. Section 27.785 is amended by revising the heading and by adding a new sentence to the end of paragraph (k)(2) to read as follows:

§ 27.785 Seats, berths, litters, safety belts, and harnesses.

* * * * *

(k) * * *

(2) * * * The fitting factor required by § 27.625(d) shall be applied.

§ 27.975 [Amended]

4. In § 27.975, paragraph (b) is amended by removing the words ‘‘, unless a rollover is shown to be extremely remote’’.

5. In § 27.1329, a new paragraph (f) is added to read as follows:

§ 27.1329 Automatic pilot system.

* * * * *

(f) If the automatic pilot system can be coupled to airborne navigation equipment, means must be provided to indicate to the pilots the current mode of operation. Selector switch position is not acceptable as a means of indication.

6. In § 27.1365, a new paragraph (c) is added to read as follows:

§ 27.1365 Electric cables.

* * * * *

(c) Insulation on electrical wire and cable installed in the rotorcraft must be self-extinguishing when tested in accordance with Appendix F, Part I(a)(3) of part 25 of this chapter.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

7. The authority citation for part 29, continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

8. In § 29.625, a new paragraph (d) is added to read as follows:

§ 29.625 Fitting factors.

* * * * *

(d) Each seat, berth, litter, safety belt and harness attachment to the structure must be shown by analysis, tests, or both, to be able to withstand the inertia forces prescribed in § 29.561(b)(3) multiplied by a fitting factor of 1.33.

9. Section 29.785 is amended by revising the heading and by adding a new sentence to the end of paragraph (k)(2) to read as follows:

§ 29.785 Seats, berths, litters, safety belts, and harnesses.

* * * * *

(k) * * *

(2) * * * The fitting factor required by § 29.625(d) shall be applied.

§ 29.923 [Amended]

10. In § 29.923, the first sentence of the introductory text of paragraph (a) is revised by adding the phrase ‘‘and (p)’’ immediately following the reference to paragraph (n).

§ 29.975 [Amended]

11. In § 29.975, paragraph (a)(7) is amended by removing the words ‘‘, unless a rollover is shown to be extremely remote’’.

12. In § 29.1329, a new paragraph (f) is added to read as follows:

§ 29.1329 Automatic pilot system.

* * * * *

(f) If the automatic pilot system can be coupled to airborne navigation equipment, means must be provided to indicate to the pilots the current mode of operation. Selector switch position is not acceptable as a means of indication.

13. In § 29.1351, paragraph (d)(1)(iii) is removed.

§ 29.1351 General.

14. In § 29.1359, a new paragraph (c) is added to read as follows:

§ 29.1359 Electrical system fire and smoke protection.

* * * * *

(c) Insulation on electrical wire and cable installed in the rotorcraft must be self-extinguishing when tested in accordance with Appendix F, Part I(a)(3) of part 25 of this chapter.

Issued in Washington, DC, on May 30, 1997.

Thomas E. McSweeney,

Director, Aircraft Certification Service, AIR–1.

[FR Doc. 97–14885 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
June 9, 1997

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Revision of Gate Requirements for High-Lift Device Controls; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 28930; Notice No. 97–9]

RIN 2120–AF82

Revision of Gate Requirements for High-Lift Device Controls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend part 25 of the Federal Aviation Regulations (FAR) to revise the requirements concerning gated positions on the control used by the pilot to select the position of an airplane's high-lift devices. The proposed amendment would update the current standards to take into account the multiple configurations of the high-lift devices provided on current airplanes to perform landings and go-around maneuvers. The proposed amendment would also harmonize these standards with those being proposed for the European Joint Aviation Requirements (JAR).

DATES: Comments must be received on or before September 8, 1997.

ADDRESSES: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 28930, 800 Independence Avenue SW., Washington, DC 20591; or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28930. Comments may also be submitted electronically to: 9–NPRM–CMTS@Afaa.dot.gov. Comments may be examined in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments in the information docket may be examined weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Don Stimson, Flight Test and System Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–1129; facsimile (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. comments relating to any environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket, both before and after the comment period closing date, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28930.'' The postcard will be date stamped and returned to the commenter.

Availability of the NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the **Federal Register's** electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register's** web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should request from the Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Ave. SW., Washington, D.C. 20591, or by calling (202) 267–3484, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Section 25.145(c) of 14 CFR part 25 (part 25) of the Federal Aviation Regulations prescribes conditions under which it must be possible for the pilot, without using exceptional piloting skill, to prevent losing altitude while retracting the airplane's high-lift devices (e.g., wing flaps and slats). The intent of this requirement is to ensure that during a go-around from an approach to landing, the high-lift devices can be retracted at a rate that prevents altitude loss if the pilot applies maximum available power to the engines at the same time the control lever is moved to begin retracting the high-lift devices.

Prior to amendment 23 to part 25, the § 25.145(c) requirement applied to retractions of the high-lift devices from any initial position to any ending position, including a continuous retraction from the fully extended position to the fully retracted position. In amendment 23 to part 25, the FAA revised this requirement to allow the use of segmented retractions if gates are provided on the control the pilot uses to select the high-lift device position.

Gates are devices that require a separate and distinct motion of the control before the control can be moved through a gated position. The purpose of the gates is to prevent pilots from inadvertently moving the high-lift device control through the gated position. Gate design requirements were introduced into part 25 with amendment 23, which revised § 25.145(c) to allow the no altitude loss requirement to be met by segmented retractions of the high-lift devices between the gated positions. Amendment 23 specifies that the no altitude loss requirement applies to retractions of the high-lift devices between the gated positions and between the gates and the fully extended and fully retracted positions. In addition, the first gated control position from the landing position must correspond to the position used to establish the go-around procedure from the landing configuration.

In this notice, the FAA proposes to update the gate design standards to clarify which positions of the high-lift device control should be gated and to harmonize these standards with those being proposed for the European Joint Airworthiness Requirements (JAR–25). The proposal contained in this notice was developed by the Aviation Rulemaking Advisory Committee (ARAC) and presented to the FAA as a recommendation for rulemaking.

The Aviation Rulemaking Advisory Committee

The ARAC was formally established by the FAA on January 22, 1991 (56 FR 2190), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. This advice was sought to develop better rules in less overall time using fewer FAA resources than are currently needed. The committee provides the opportunity for the FAA to obtain firsthand information and insight from interested parties regarding proposed new rules or revisions of existing rules.

There are over 60 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop proposals to recommend to the FAA for resolving specific issues. Tasks assigned to working groups are published in the **Federal Register.** Although working group meetings are not generally open to the public, all interested parties are invited to participate as working group members. Working groups report directly to the ARAC, and the ARAC must concur with a working group proposal before that proposal can be presented to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures. After an ARAC recommendation is received and found acceptable by the FAA, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package will be fully disclosed in the public docket.

Discussion of the Proposals

The FAA proposes to update the gate design standards to clarify which positions of the high-lift device control should be gated and to harmonize these standards with those being proposed for the European Joint Airworthiness Requirements. First, the FAA proposes to re-codify the gate requirements of § 25.145(c) as a new § 25.145(d). Second, the FAA proposes to update and clarify the requirement that the first gated control position from the landing position corresponds to the configuration used to execute a go-around from an approach to landing. Third, the FAA proposes to clarify that performing a go-around maneuver beginning from any approved landing configuration should not result in a loss of altitude, regardless of the location of gated control positions. Fourth, the FAA proposes to add a statement to clarify that the ''separate and distinct motion'' required to move the high-lift device control through a gated position must be made at that gated position.

The existing gate requirements are contained in a separate, but undesignated paragraph at the end of § 25.145(c). To be consistent with current codification practices, the FAA proposes to re-codify these requirements as a new § 25.145(d). Re-codification would not affect the content or intent of the requirement.

Currently, § 25.145(c) requires the first gated control position from the landing position to ''correspond with the high-lift devices configuration used to establish the go-around procedure from the landing configuration.'' The wording of this requirement implies that airplanes have only one configuration that can be used for landing and one configuration that can be used to perform a go-around maneuver. Modern transport category airplanes, however, typically have multiple configurations that can be used for performing a landing or a go-around. Airplane manufacturers provide multiple landing and go-around configurations to optimize an airplane's performance for different environmental conditions (e.g., field elevation and temperature) and for non-normal situations (e.g., inoperative engines or systems).

To provide for airplanes with multiple landing and go-around configurations, the FAA proposes to revise the portion of the gate requirements relating to the placement of the first gated control position from the landing position by inserting the word ''maximum'' preceding ''landing position'' and by replacing ''the high-lift devices configuration'' and ''the go-around procedure'' with ''a configuration of the high-lift devices'' and ''a go-around procedure,'' respectively. The FAA considered allowing the location of the flap gates to be made independent of the go-around position; however, from a human factors standpoint, providing a gate at a go-around position assists the pilot in selecting the proper configuration for a maneuver that is usually unexpected and entails a high workload. The FAA considers that requiring a gate at every approved go-around position would also be undesirable. Too many gates would make it difficult for the pilot to move the control through high-lift device positions that might not be used during normal operations. For go-around maneuvers using a different high-lift device position than the position that is gated, the gate can still serve as a guide for selecting the proper configuration (e.g., the pilot could move the control to the gate and either forward or backward one or more positions).

The FAA is proposing to revise Advisory Circular (AC) 25–7, ''Flight Test Guide for Certification of Transport Category Airplanes'' to provide additional guidance regarding criteria for locating the gate when the airplane has multiple go-around configurations. Public comments concerning this proposed revision to AC 25–7 are invited by separate notice published elsewhere in this issue of the **Federal Register.**

Regardless of the location of any gates, initiating a go-around from any of the approved landing configurations should not result in a loss of altitude. Therefore, the FAA proposes to further revise the existing gate standards to require applicants to demonstrate that no loss of altitude will result from retracting the high-lift devices from each approved landing position to the position(s) corresponding with the high-lift device configuration(s) used to establish the go-around procedure(s) from that landing configuration.

The existing § 25.145(c) also requires that a separate and distinct movement of the high-lift device control must be made to pass through a gated position. The FAA proposes to further clarify the gate design criteria in the proposed § 25.145(d) to specify that this separate and distinct movement can occur only at the gated position. This provision would ensure that the pilot receives tactile feedback when the control reaches a gated position. Although the FAA has always interpreted the current requirements in a manner consistent with this provision, this proposal will assist applicants by clarifying the part 25 design requirements for gated high-lift device control positions.

The amendments proposed in this notice have been harmonized with proposed amendments to JAR–25. The Joint Aviation Authorities intend to publish a Notice of Proposed Amendment (NPA), which, in

combination with the proposed part 25 changes contained in this notice, would achieve complete harmonization of the affected portions of part 25 and JAR–25. When it is published, the NPA will be placed in the docket for this rulemaking.

Regulatory Evaluation Summary

Preliminary Regulatory Evaluation, Initial Regulatory Flexibility Determination, and Trade Impact Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its cots. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: 1) would generate benefits that justify its costs and is not a ''significant regulatory action'' as defined in the Executive Order; 2) is not significant as defined in DOT's Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and 4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Regulatory Evaluation Summary

U.S. manufacturers currently design high-lift device controls in compliance with the proposed rule. Industry representatives indicate that U.S. manufacturers would not have to redesign high-lift device controls on either newly certificated airplanes or derivatives of currently certificated models. The costs of the proposed rule, therefore, would be negligible. However, the FAA solicits information from all manufacturers of transport category airplanes concerning any possible design changes and associated costs that would result from the proposed amendment.

The primary benefit of the proposed rule is the clarification of gate design standards of high-lift device controls. A second benefit is the harmonization of FAR certification requirements for controls on high-lift devices with proposed JAR certification requirements. The FAA has determined that the proposed rule would be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. The Order defines ''small entities'' in terms of size thresholds, ''significant economic impact'' in terms of annualized cost thresholds, and ''substantial number'' as a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed or final rule.

Order 2100.14A specifies a size threshold for classification as a small manufacturer as 75 or fewer employees. Since none of the manufacturers affected by this proposed rule has 75 or fewer employees and any costs of the proposed rule would be negligible, the proposed rule would not have a significant economic impact on a substantial number of small manufacturers.

International Trade Impact Assessment

The proposed rule will not constitute a barrier to international trade, including the export of American airplanes to foreign countries and the import of foreign airplanes into the United States. The proposed gate design requirements in this proposed rule would harmonize with those of the JAA and would, in fact, lessen the restraints on trade.

Federalism Implications

The amended regulations proposed in this rulemaking would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant preparing a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this proposed rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3501 *et seq.*), there are no reporting or recordkeeping requirements associated with this proposed rule.

Conclusion

Because the proposed changes to the flap gate design requirements for transport category airplanes are not expected to result in substantial economic cost, the FAA has determined that this proposed regulation would not be significant under Executive Order 12866. Because this is an issue which has not prompted a great deal of public concern, the FAA has determined that this action is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 25, 1979). In addition since there are no small entities affected by this proposed rulemaking, the FAA certifies, under the criteria of the Regulatory Flexibility Act, that this rule, if adopted. will not have a significant economic impact, positive or negative, on a substantial number of small entities. An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendments

Accordingly, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 25 of the Federal Aviation Regulations (FAR) as follows:

PART 25—AIRWORTHINESS STANDARDS—TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Section 25.145 would be amended by revising paragraph (c) introductory text, revising the undesignated paragraph following paragraph (c)(3), and designating that paragraph as paragraph (d) to read as follows:

§ 25.145 Longitudinal control.

* * * * *

(c) It must be possible, without exceptional piloting skill, to prevent loss of altitude when complete retraction of the high-lift devices from any positive is begun during steady, straight, level flight at 1.1 V_{S1} for propeller powered airplanes, or 1.2V_{S1} for turbojet powered airplanes, with—

(1) * * *

(2) * * *

(3) * * *

(d) If gated high-lift device control positions are provided, paragraph (c) of this section applies to retractions of the high-lift devices from any position from the maximum landing position to the first gated position, between gated positions, and from the last gated position to the fully retracted position. The requirements of paragraph (c) of this section also apply to retractions from each approved landing position to the control position(s) associated with the high-lift device configuration(s) used to establish the go-around procedure(s) from that landing position. In addition, the first gated control position from the maximum landing position must correspond with a configuration of the high-lift devices used to establish a go-around procedure from a landing configuration. Each gated control position must require a separate and distinct motion of the control to pass through the gated position and must have features to prevent inadvertent movement of the control through the gated position. It must only be possible to make this separate and distinct motion once the control has reached the gated position.

Issued in Washington, DC on May 30, 1997.

Thomas E. McSweeney,

Director, Aircraft Certification Service, AIR–1.

[FR Doc. 97–14886 Filed 6–6–97; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
June 9, 1997

Part IV

Department of Education

Federal Pell Grant Program; Notice

DEPARTMENT OF EDUCATION

Federal Pell Grant Program

AGENCY: Department of Education

ACTION: Notice; deadline dates for receipt of applications, reports, and other documents for the 1997–98 award year.

SUMMARY: The Secretary announces the deadline dates for receiving documents from persons applying for grants under, and from institutions participating in, the Federal Pell Grant Program in the 1997–98 award year.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, Program Specialist, Student Financial Assistance Programs, U.S. Department of Education, 600 Independence Avenue, S.W. (ROB–3, Room 3045), Washington, DC 20202–5447. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–730–8913 between 9 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Federal Pell Grant Program, administered by the U.S. Department of Education (Department), provides grants to students attending eligible institutions of higher education to help them pay for their educational costs. The program supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning. Authority for the Federal Pell Grant Program is contained in section 401 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070a.

Deadline Dates

The following tables provide the deadline dates for the Federal Pell Grant Program for the 1997–98 award year.

A.—DEADLINE DATES FOR APPLICATION PROCESSING AND RECEIPT OF STUDENT AID REPORTS (SARS) OR INSTITUTIONAL STUDENT INFORMATION RECORDS (ISIRS)

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date?
Student	A paper original Free Application for Federal Student Aid (FAFSA) or renewal application (Renewal FAFSA).	The address indicated on the FAFSA, Renewal FAFSA, or use envelope provided with form.	June 30, 1998.
Student	FAFSA Express electronic application.	Central Processing System	June 30, 1998.[1]
	Signature Page	The address printed on the signature page.	Aug. 14, 1998.
Student thru institution	An electronic original or renewal application (EDExpress).	Central Processing System	June 30, 1998.[1]
Student	SAR corrections and duplicate requests.	The address indicated on the SAR	Aug. 14, 1998.
Student thru institution	Electronic (ISIR) corrections and duplicate requests.	Central Processing System	Aug. 14, 1998.[1]
Student	Valid SAR	Institution	The earlier of: —the student's last date of enrollment; or —Aug. 31, 1998.
Student thru Central Processing System to institution.	Valid ISIR	Institution receives ISIR from the Central Processing System.	The earlier of: —the student's last date of enrollment; or —Aug. 31, 1998.
Student	Verification documents	Institution	Aug. 31, 1998.
Student	Verified SAR	Institution	Aug. 31, 1998.
Student thru Central Processing System to institution.	Verified ISIR	Institution receives ISIR from the Central Processing System.	Aug. 31, 1998.

[1] The deadline for submitting electronic transactions is prior to midnight (Central Time) on the deadline date. Transmissions must be completed and the records must be accepted for processing before midnight to meet the deadline. Transmissions started but not completed until after midnight are not considered on time.

B. DEADLINE DATES FOR REPORTING FEDERAL PELL GRANT STUDENT PAYMENT DATA

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date?
Institution	At least one acceptable student Payment Data record must be submitted for each Federal Pell Grant recipient at the institution by: —Recipient Data Exchange; or —Floppy Disk Data Exchange; or —Electronic Data Exchange [1]	Institutions transmitting student Payment Data using Recipient Data Exchange or Floppy Disk Data Exchange submit through: —Regular Mail: U.S. Department of Education Student Aid Origination Team, PSS P.O. Box 10800 Herndon, Virginia 20172–7009, or.	An institution is required to submit student Payment Data not later than the earlier of: (a) 30 calendar days after the institution: —makes a payment; or —becomes aware of the need to make an adjustment to previously reported student Payment Data or expected student Payment Data; or

B. DEADLINE DATES FOR REPORTING FEDERAL PELL GRANT STUDENT PAYMENT DATA—Continued

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date?
		Commercial Couriers or Hand Deliveries: U.S. Department of Education Student Aid Origination Team, PSS c/o PRC Inc., G–T01 PGRFMS/DMS, 12001 Sunrise Valley Drive, Reston, Virginia 20191–3423.	(b) September 30, 1998 After September 30, 1998 only if: —downward adjustment of previously reported award; or —initial audit or program review finding per 34 CFR part 690.83
		2. Institutions transmitting Student Payment Data using Electronic Data Exchange submit through:	
	Requests for year-to-date Processed Payment Data	Title IV Wide Area Network Pell Grant User Support Hotline: (202) 708–9141; Institutional Access System#: (800) 474–7268 (Requests also may be made using the addresses in items #1 and #2 above).	Aug. 14, 1998.[2]
	Request for administrative relief based on an administrative error by the Department or Departmental contractors:	U.S. Department of Education Institutional Financial Management Division, AFMS P.O. Box 23791 Washington, DC 20026–0791	Feb. 1, 1999.

[1] An institution that transmits its student Payment Data information via the EDE Electronic Payments service must ensure that its transmission is completed before midnight (local time at the institution's EDE destination point) on September 30, 1998.

[2] Year-to-date data files may be requested after this date, however, there may not be sufficient time for institutions to receive the file, create a payment data batch and submit to ED by the September 30, 1998 deadline date for receipt of all 1997–98 requests for payment.

Proof of Delivery

The Department accepts as proof of delivery, if the documents were submitted by mail or by non-U.S. Postal Service courier, one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly-dated U.S. Postal Service postmark.

[**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method of proof of mailing, an institution should check with the post office at which it mails its submission. An institution is strongly encouraged to use First Class Mail.]

(3) A dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

The Department accepts commercial couriers or hand deliveries between 8 a.m. and 4:30 p.m. Eastern Time on days other than Saturday, Sunday, or Federal holidays.

Other Sources for Detailed Information on the Application and Automated Processes

A more detailed discussion of the student application process for the Federal Pell Grant Program is contained in the *1997–98 Student Guide, Funding Your Education*, the *1997–98 Counselor's Handbook for High Schools*, the *1997–98 Counselor's Handbook for Postsecondary Schools, A Guide to 1997–98 SARs and ISIRs*, and the *1996–97 and 1997–98 Federal Student Financial Aid Handbooks.* A more detailed discussion of the institutional reporting requirement for student Payment Data for the Federal Pell Grant Program is also contained in the *Federal Student Financial Aid Handbooks.*

Applicable Regulations

The regulations applicable to this program are the Federal Pell Grant Program regulations in 34 CFR part 690, the Student Assistance General Provisions regulations in 34 CFR part 668, and the Institutional Eligibility regulations in 34 CFR part 600.

(Authority: 20 U.S.C. 1070a)

(Catalog of Federal Domestic Assistance No. 84.063, Federal Pell Grant Program.

Dated: June 3, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–14974 Filed 6–6–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
June 9, 1997

Part V

Department of Defense

Department of the Army
Corps of Engineers

Regulatory Guidance Letters Issued by the Corps of Engineers; Notice

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide current Regulatory Guidance Letters (RGL's) to all interested parties. RGL's are used by the U.S. Army Corps of Engineers Headquarters as a means to transmit guidance on the permit program (33 CFR 320–330) to its division and district engineers (DE's). Each future RGL will be published in the Notice Section of the **Federal Register** as a means to insure widest dissemination of this information while reducing costs to the Federal Government. The Corps no longer maintains a mailing list to furnish copies of the RGL's to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Regulatory Branch, Office of the Chief of Engineers at (202) 761–1783.

SUPPLEMENTARY INFORMATION: RGL's were developed by the Corps as a system to organize and track written guidance issued to its field agencies. RGL's are normally issued as a result of evolving policy; judicial decisions and changes to the Corps regulations or another agency's regulations which affect the permit program. RGL's are used only to interpret or clarify existing Regulatory Program policy, but do provide mandatory guidance to the Corps district offices. RGL's are sequentially numbered and expire on a specified date. However, unless superseded by specific provisions of subsequently issued regulations or RGL's, the guidance provided in RGL's generally remains valid after the expiration date. The Corps incorporates most of the guidance provided by RGL's whenever it revises its permit regulations.

We are hereby publishing all current RGL's beginning with RGL 92–1 and ending with RGL 96–2. RGL 91–1 expired on December 31, 1996, and RGL 92–4 expired on January 21, 1997, and both have been removed from this publication. We will continue to publish each RGL in the Notice Section of the **Federal Register** upon issuance and in early 1998, we will again publish the complete list of all current RGL's.

Dated: May 28, 1997.

For the Commander.

Robert W. Burkhardt,

Colonel, Corps of Engineers, Executive Director of Civil Works.

Regulatory Guidance Letter (RGL 92–1)

RGL 92–1 Date: 13 May 1992, Expires: 31 December 1997

Subject: Federal Agencies Roles and Responsibilities.

1. Purpose

The purpose of this guidance is to clarify the Army Corps of Engineers leadership and decision-making role as ''project manager'' for the evaluation of permit applications pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. This guidance is also intended to encourage effective and efficient coordination among prospective permittees, the Corps, and the Federal resource agencies (i.e., Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS), and National Marine Fisheries Service (NMFS)). Implementation of this guidance will help to streamline the permit process by minimizing delays and ensuring more timely decisions, while providing a meaningful opportunity for substantive input from all Federal agencies.

2. Background

(a) The Department of the Army Regulatory Program must operate in an efficient manner in order to protect the aquatic environment and provide fair, equitable, and timely decisions to the regulated public. Clear leadership and a predictable decision-making framework will enhance the public acceptance of the program and allow the program to meet the important objective of effectively protecting the Nation's valuable aquatic resources.

(b) On August 9, 1991, the President announced a comprehensive plan for improving the protection of the Nation's wetlands. The plan seeks to balance two important objectives—the protection, restoration, and creation of wetlands and the need for sustained economic growth and development. The plan, which is designed to slow and eventually stop the net loss of wetlands, includes measures that will improve and streamline the current wetlands regulatory system. This Regulatory Guidance Letter is issued in accordance with the President's plan for protecting wetlands.

(c) The intent of this guidance is to express clearly that the Corps is the decision-maker and project manager for the Department of Army's Regulatory Program. The Corps will consider, to the maximum extent possible, all timely, project-related comments from other Federal agencies when making regulatory decisions. Furthermore, the Corps and relevant Federal agencies will maintain and improve as necessary their working relationships.

(d) The Federal resource agencies have reviewed and concurred with this guidance and have agreed to act in accordance with these provisions. While this guidance does not restrict or impair the exercise of legal authorities vested in the Federal resource agencies or States under the CWA or other statutes and regulations (e.g., EPA's authority under section 404(c), section 404(f), and CWA geographic jurisdiction and FWS/NMFS authorities under the Fish and Wildlife Coordination Act and the Endangered Species Act (ESA)), agency comments on Department of the Army permit applications must be consistent with the provisions contained in this regulatory letter.

3. The Corps Project Management/Decision Making Role

(a) The Corps is solely responsible for making final permit decisions pursuant to section 10 and section 404(a), including final determinations of compliance with the Corps permit regulations, the Section 404(b)(1) Guidelines, and Section 7(a)(2) of the ESA. As such, the Corps will act as the project manager for the evaluation of all permit applications. The Corps will advise potential applicants of its role as the project manager and decision-maker. This guidance does not restrict EPA's authority to make determinations of compliance with the Guidelines in carrying out its responsibilities under Sections 309 and 404(c) of the Clean Water Act.

(b) As the project manager, the Corps is responsible for requesting and evaluating information concerning all permit applications. The Corps will obtain and utilize this information in a manner that moves, as rapidly as practical, the regulatory process towards a final permit decision. The Corps will not evaluate applications as a project opponent or advocate—but instead will maintain an objective evaluation, fully considering all relevant factors.

(c) The Corps will fully consider other Federal agencies' project-related comments when determining compliance with the National Environmental Policy Act (NEPA), the Section 404(b)(1) Guidelines, the ESA, the National Historic Preservation Act, and other relevant statutes, regulations, and policies. The Corps will also fully consider the agencies' views when determining whether to issue the permit, to issue the permit with

conditions and/or mitigation, or to deny the permit.

4. The Federal Resource Agencies' Role

(a) It is recognized that the Federal resource agencies have an important role in the Department of the Army Regulatory Program under the CWA, NEPA, ESA, Magnuson Fisheries Conservation and Management Act, and other relevant statutes.

(b) When providing comments, Federal resource agencies will submit to the Corps only substantive, project-related information on the impacts of activities being evaluated by the Corps and appropriate and practicable measures to mitigate adverse impacts. The comments will be submitted within the time frames established in interagency agreements and regulations. Federal resource agencies will limit their comments to their respective areas of expertise and authority to avoid duplication with the Corps and other agencies and to provide the Corps with a sound basis for making permit decisions. The Federal resource agencies should not submit comments that attempt to interpret the Corps regulations or for the purposes of section 404(a) make determinations concerning compliance with the Section 404(b)(1) Guidelines. Pursuant to its authority under Section 404(b)(1) of the CWA, the EPA may provide comments to the Corps identifying its views regarding compliance with the Guidelines. While the Corps will fully consider and utilize agency comments, the final decision regarding the permit application, including a determination of compliance with the Guidelines, rests solely with the Corps.

5. Pre-Application Consultation

(a) To provide potential applicants with the maximum degree of relevant information at an early phase of project planning, the Corps will increase its efforts to encourage pre-application consultations in accordance with regulations at 33 CFR 325.1(b). Furthermore, while encouraging pre-application consultation, the Corps will emphasize the need for early consultation concerning mitigation requirements, if impacts to aquatic resources may occur. The Corps is responsible for initiating, coordinating, and conducting pre-application consultations and other discussions and meetings with applicants regarding Department of the Army permits. This may not apply in instances where the consultation is associated with the review of a separate permit or license required from another Federal agency (e.g., the Federal Energy Regulatory Commission or the Nuclear Regulatory Commission) or in situations where resource agencies perform work for others outside the context of a specific Department of the Army permit application (e.g., the Conservation Reserve Program and technical assistance to applicants of Federal grants).

(b) For those pre-application consultations involving activities that may result in impacts to aquatic resources, the Corps will provide EPA, FWS, NMFS (as appropriate), and other appropriate Federal and State agencies, a reasonable opportunity to participate in the pre-application process. The invited agencies will participate to the maximum extent possible in the pre-application consultation, since this is generally the best time to consider alternatives for avoiding or reducing adverse impacts. To the extent practical, the Corps and the Federal resource agencies will develop local procedures (e.g., teleconferencing) to promote reasonable and effective pre-application consultations within the logistical constraints of all affected parties.

6. Applications for Individual Permits

(a) The Corps is responsible for determining the need for, and the coordination of, interagency meetings, requests for information, and other interactions between permit applicants and the Federal Government. In this regard, Federal resource agencies will contact the Corps to discuss and coordinate any additional need for information from the applicant. The Corps will cooperate with the Federal resource agencies to ensure, to the extent practical, that information necessary for the agencies to carry out their responsibilities is obtained. If it is determined by the Corps that an applicant meeting is necessary for the exchange of information with a Federal resource agency and the Corps chooses not to participate in such a meeting, the Federal resource agency will apprise the Corps, generally in writing, of that agency's discussions with the applicant. Notwithstanding such meetings, the Corps is solely responsible for permit requirements, including mitigation and other conditions—the Federal resource agencies must not represent their views as regulatory requirements. In circumstances where the Corps meets with the applicant and develops information that will affect the permit decision, the Corps will apprise the Federal resource agencies of such information.

(b) Consistent with 33 CFR part 325, the Corps will ensure that public notices contain sufficient information to facilitate the timely submittal of project-specific comments from the Federal resource agencies. The resource agencies comments will provide specific information and/or data related to the proposed project site. The Corps will fully consider comments regarding the site from a watershed or landscape scale, including an evaluation of potential cumulative and secondary impacts.

(c) The Corps must consider cumulative impacts in reaching permit decisions. In addition to the Corps own expertise and experience, the Corps will fully consider comments from the Federal resource agencies, which can provide valuable information on cumulative impacts. Interested Federal agencies are encouraged to provide periodically to the Corps generic comments and assessments of impacts (outside the context of a specific permit application) on issues within the agencies' area of expertise.

7. General Permits

(a) The Corps is responsible for proposing potential general permits, assessing impacts of and comments on proposed general permits, and deciding whether to issue general permits. The Corps will consider proposals for general permits from other sources, including the Federal resource agencies, although the final decision regarding the need to propose a general permit rests with the Corps. Other interested Federal agencies should provide comments to the Corps on proposed general permits. These Federal agency comments will be submitted consistent with established agreements and regulations and will focus on the Federal agencies' area(s) of expertise. The Corps will fully consider such agencies' comments in deciding whether to issue general permits, including programmatic general permits.

(b) The Corps is responsible for initiating and conducting meetings that may be necessary in developing and evaluating potential general permits. Any discussions with a State or local Government regarding proposed programmatic general permits will be coordinated through and conducted by the Corps. Prior to issuing a programmatic general permit, the Corps will ensure that the State or local program, by itself or with appropriate conditions, will protect the aquatic environment, including wetlands, to the level required by the section 404 program.

8. This guidance expires 31 December 1997 unless sooner revised or rescinded.

For the Commander.

Arthur E. Williams,

Major General, USA, Director of Civil Works.

Regulatory Guidance Letter (92–3)

RGL 92–3, Date: 19 Aug 92, Expires: 31 Dec 97

Subject: Extension of Regulatory Guidance Letter (RGL) 86–10 RGL 86–10, subject: ''Special Area Management Plans (SAMP's)'' is extended until 31 December 1997 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

RGL 96–10

Special Area Management Plans (SAMP's)

Issued 10/2/86, Expired 12/31/88

1. The 1980 Amendments to the Coastal Zone Management Act define the SAMP process as ''a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone.'' This process of collaborative interagency planning within a geographic area of special sensitivity is just as applicable in non-coastal areas.

2. A good SAMP reduces the problems associated with the traditional case-by-case review. Developmental interests can plan with predictability and environmental interests are assured that individual and cumulative impacts are analyzed in the context of broad ecosystem needs.

3. Because SAMP's are very labor intensive, the following ingredients should usually exist before a district engineer becomes involved in a SAMP:

a. The area should be environmentally sensitive and under strong developmental pressure.

b. There should be a sponsoring local agency to ensure that the plan fully reflects local needs and interests.

c. Ideally there should be full public involvement in the planning and development process.

d. All parties must express a willingness at the outset to conclude the SAMP process with a definitive regulatory product (see next paragraph).

4. An ideal SAMP would conclude with two products: (1) Appropriate local/State approvals and a Corps general permit (GP) or abbreviated processing procedure (APP) for activities in specifically defined situations; and (2) a local/State restriction and/or an environmental Protection Agency (EPA) 404(c) restriction (preferably both) for undesirable activities. An individual permit review may be conducted for activities that do not fall into either category above. However, it should represent a small number of the total cases addressed by the SAMP. We recognize that an ideal SAMP is difficult to achieve, and, therefore, it is intended to represent an upper limit rather than an absolute requirement.

5. Do not assume that an environmental impact statement is automatically required to develop a SAMP.

6. EPA's program for advance identification of disposal areas found at 40 CFR 230.80 can be integrated into a SAMP process.

7. In accordance with this guidance, district engineers are encouraged to participate in development of SAMP's. However, since development of a SAMP can require a considerable investment of time, resources, and money, the SAMP process should be entered only if it is likely to result in a definitive regulatory product as defined in paragraph 4. above.

8. This guidance expires 31 December 1988 unless sooner revised or rescinded.

For the Chief of Engineers.

Peter J. Offringa,

Brigadier General, USA, Deputy Director of Civil Works.

Regulatory Guidance Letter (RGL 92–5)

RGL 92–5, Date: 29 October 1992, Expires: 31 December 1997

Subject: Alternatives Analysis Under the Section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Air Act.

1. Enclosed for implementation is a joint Army Corps of Engineers/Environmental Protection Agency Memorandum to the Field on alternatives analysis for existing power plants that must be modified to meet requirements of the 1990 Clean Air Act. This guidance was developed jointly by the Corps and EPA.

2. This guidance expires 31 December 1997 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

EPA/Corps Joint Memorandum for the Field

Subject: Alternatives Analysis under the Section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Air Act

1. The 1990 Clean Air Act (CAA) amendments require most electric generating plants to reduce emissions of sulfur dioxide in phases beginning in 1995 and requiring full compliance by 2010. The congressional endorsement of the industry's ability to select the most effective compliance method (e.g., sulfur dioxide scrubbers, low sulfur coal, or other methods) recognizes the expertise of the industry in these cases and is a fundamental element in the CAA market-based pollution control program. Given the need for cooling water, a substantial number of electric power generating plants are located adjacent, or in close proximity, to waters of the United States, including wetlands. Depending on the method chosen by the plants to reduce emissions, we expect that these facilities will be applying for Clean Water Act Section 404 permits for certain proposed activities.

2. The analysis and regulation under Section 404 of the Clean Water Act of activities in waters of the United States conducted by specific power plants to comply with the 1990 Clean Air Act amendments must ensure protection of the aquatic environment consistent with the requirements of the Clean Water Act. The review of applications for such projects will fully consider, consistent with requirements under the Section 404(b)(1) Guidelines, all practicable alternatives including non-aquatic alternatives, for proposed discharges associated with the method selected by the utility to comply with the 1990 Clean Air Act amendments. For the purposes of the Section 404(b)(1) Guidelines analysis, the project purpose will be that pollutant reduction method selected by the permit applicant.

3. For example, a utility may have decided to install sulfur dioxide scrubbers on an existing power plant in order to meet the new 1990 Clean Air Act standards. The proposed construction of the scrubbers, treatment ponds and a barge unloading facility could impact wetlands. In this case, the Section 404 review would evaluate practicable alternative locations and configurations for the scrubbers, ponds and of the docking facilities. The analysis will also consider practicable alternatives which satisfy the project purpose (i.e., installing scrubbers) but which have a less adverse impact on the aquatic environment or do not involve discharges into waters of the United States. However, in order to best effectuate Congressional intent reflected in the CAA that electric utilities retain

flexibility to reduce sulfur dioxide emissions in the most cost effective manner, the Section 404 review should not evaluate alternative methods of complying with the Clean Air Act standards not selected by the applicant (e.g., in this example use of low sulfur coal).

4. In evaluating the scope of practicable alternatives which satisfy the project purpose (e.g., constructing additional scrubber capacity), the alternatives analysis should not be influenced by the possibility that, based on a conclusion that practicable upland alternatives are available to the applicant, the project proponent may decide to pursue other options for meeting Clean Air Act requirements. Continuing the above example, a Corps determination that practicable upland alternatives are available for scrubber waste disposal should not be affected by the possibility that an applicant may subsequently decide to select a different method for meeting the Clean Air Act standards (e.g., use of low sulfur coal that reduces waste generated by scrubbers).

5. The Corps and EPA will also recognize the tight time-frames under which the industry must meet these new air quality standards.

Robert H. Wayland,

Director, Office of Wetlands, Oceans and Watersheds.

John P. Elmore,

Chief, Operations, Construction and Readiness Division; Directorate of Civil Works.

Regulatory Guidance Letter (RGL 93–1)

RGL 93–1, Issued: April 20, 1993, Expires: December 31, 1998 CECW–OR

Subject: Provisional Permits

1. Purpose: The purpose of this guidance is to establish a process that clarifies for applicants when the U.S. Army Corps of Engineers has completed its evaluation and at what point the applicant should contact the State concerning the status of the Section 401 Water Quality Certification and/or Coastal Zone Management (CZM) consistency concurrence. This process also allows for more accurate measurement of the total length of time spent by the Corps in evaluating permit applications (i.e., from receipt of a complete application until the Corps reaches a permit decision). For verification of authorization of activities under regional general permits, the Corps will use the appropriate nationwide permit procedures at 33 CFR 330.6.

2. Background: a. A Department of the Army permit involving a discharge of dredged or fill material cannot be issued until a State Section 401 Water Quality Certification has been issued or waived. Also, a Department of the Army permit cannot be issued for an activity within a State with a federally-approved Coastal Management Program when that activity that would occur within, or outside, a State's coastal zone will affect land or water uses or natural resources of the State's coastal zone, until the State concurs with the applicant's consistency determination, or concurrence is presumed. In many cases, the Corps completes its review before the State Section 401 Water Quality Certification or CZM concurrence requirements have been satisfied. In such cases, applicants and the public are often confused regarding who to deal with regarding resolution of any State issues.

b. The ''provisional permit'' procedures described below will facilitate a formal communication between the Corps and the applicant to clearly indicate that the applicant should be in contact with the appropriate State agencies to satisfy the State 401 Water Quality Certification or CZM concurrence requirements. In addition, the procedures will allow for a more accurate measurement of the Corps permit evaluation time.

3. Provisional Permit Procedures: The provisional permit procedures are optional and may only be used in those cases where: (i) The District Engineer (DE) has made a provisional individual permit decision that an individual permit should be issued, and, (ii) the only action(s) preventing the issuance of that permit is that the State has not issued a required Section 401 Water Quality Certification (or waiver has not occurred) or the State has not concurred in the applicant's CZM consistency determination (or there is not a presumed concurrence). In such cases, the DE may, using these optional procedures, send a provisional permit to the applicant.

a. First, the DE will prepare and sign the provisional permit decision document. Then the provisional permit will be sent to the applicant by transmittal letter. (The sample transmittal letter at enclosure 1 contains the minimum information that must be provided.)

b. Next, the applicant would obtain the Section 401 Water Quality Certification (or waiver) and/or CZM consistency concurrence (or presumed concurrence). Then the applicant would sign the provisional permit and return it to the DE along with the appropriate fee and the Section 401 Water Quality Certification (or proof of waiver) and/or the CZM consistency concurrence (or proof of presumed concurrence).

c. Finally, the Corps would attach any Section 401 Water Quality Certification and/or CZM consistency concurrence to the provisional permit, then sign the provisional permit (which then becomes the issued final permit), and forward the permit to the applicant.

d. This is the same basic process as the normal standard permit transmittal process except that the applicant is sent an unsigned permit (i.e., a provisional permit) prior to obtaining the Section 401 Water Quality Certification (or waiver) and/or CZM consistency concurrence (or presumed concurrence). (See enclosure 2.) A permit can not be issued (i.e., signed by the Corps) until the Section 401 and CZM requirements are satisfied.

4. Provisional Permit: A provisional permit is a standard permit document with a cover sheet. The cover sheet must clearly indicate the following: that a provisional permit is enclosed, that the applicant must obtain the Section 401 Water Quality Certification or CZM concurrence from the State, that these documents must be sent to the Corps along with the provisional permit signed by the applicant, and that the Corps will issue the permit upon receipt of these materials. The issued permit is the provisional permit signed by the applicant and the Corps. The provisional permit must contain a statement indicating that the applicant is required to comply with the Section 401 Water Quality Certification, including any conditions, and/or the CZM consistency concurrence, including any conditions. At enclosure 3 is a sample cover sheet for the provisional permit.

5. Provisional Permit Decision: The DE may reach a final decision that a permit should be issued provided that the State issues a Section 401 Water Quality Certification and/or a CZM concurrence. In order to reach such a decision the DE must complete the normal standard permit evaluation process, prepared and sign a decision document, and prepare a standard permit, including any conditions or mitigation (i.e., a provisional permit). The decision document must include a statement that the DE has determined that the permit will be issued if the State issues a Section 401 Water Quality Certification or waiver and/or a CZM concurrence, or presumed concurrence. The standard permit will not contain a condition that requires or provides for the applicant to obtain a Section 401 Water Quality Certification and/or CZM

concurrence. Once the decision document is signed, the applicant has the right to a DA permit if the State issues a Section 401 Water Quality Certification or waiver and/or a CZM concurrence, or if concurrence is presumed. Once the decision document is signed, the permittee's right to proceed can only be changed by using the modification, suspension and revocation procedures of 33 CFR 325.7, unless the State denies the Section 401 Water Quality Certification or nonconcurs with the applicant's CZM consistency determination.

6. Enforcement: In some cases, applicants might proceed with the project upon receipt of the provisional permit. The provisional permit is not a valid permit. In such cases, the Corps has a discretionary enforcement action to consider and should proceed as the DE determines to be appropriate. This occurs on occasion during the standard permit transmittal process. Since the Corps is not changing the normal process of sending unsigned permits to the applicant for signature, there should not be an increase in the occurrence of such unauthorized activities.

7. Modification: a. In most cases the Section 401 Water Quality Certification, including conditions, and/or CZM consistency concurrence, including conditions, will be consistent with the provisional permit. In such cases, the DE will simply sign the final permit and enclose the 401 water quality certification and/or CZM consistency concurrence with the final permit (i.e., the signed provisional permit).

b. In a few cases such State approval may necessitate modifications to the Corps preliminary permit decision. Such modifications will be processed in accordance with 33 CFR 325.7.

(1) When the modifications are minor and the DE agrees to such modifications, then a supplement to the provisional decision document may be prepared, as appropriate, and the permit issued with such modifications. (This should usually be done by enclosing the State 401 Water Quality Certification and/or CZM consistency concurrence to the permit, but in a few cases may require a revision to the permit document itself.)

(2) When the modification results in substantial change or measurable increase in adverse impacts or the Corps does not initially agree with the change, then the modification will be processed and counted as a separate permit action for reporting purposes. This may require a new public notice or additional coordination with appropriate Federal and/or state agencies. The provisional decision document will be supplemented or may be completely rewritten, as necessary.

8. Denial: If the State denies the Section 401 Water Quality Certification and/or the State nonconcurs with the applicant's CZM consistency determination, then the Corps permit is denied without prejudice.

9. This guidance expires 31 December 1998 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

3 Encls

Sample

Provisional Permit

Transmittal Letter

Dear: _____:

We have completed our review of your permit application identified as [File No., appl. name, etc.] for the following proposed work:

_____

_____

_____

near/in/at _____.

Enclosed is a ''PROVISIONAL PERMIT.'' The provisional permit is NOT VALID and does not authorize you to do your work. The provisional permit describes the work that will be authorized, and the General and Special Conditions [if any] which will be placed on your final Department of the Army (DA) permit, if the State of _____ Water Quality Certification and/or Coastal Zone Management (CZM) consistency requirements are satisfied as described below. No work is to be performed in the waterway or adjacent wetlands until you have received a validated copy of the DA permit.

By Federal law no DA permit can be issued until a State Section 401 Water Quality Certification has been issued or has been waived and/or the State has concurred with a permit applicant's CZM consistency determination or concurrence has been presumed. As of this date the [State 401 certification agency] has not issued a Section 401 Water Quality Certification for your proposed work. If the [State 401 certification agency] fails or refuses to act by [date 401 certification must be issued] the Section 401 Water Quality Certification requirement will be automatically waived. Also, as of this date the [State CZM agency] has not concurred with your CZM consistency determination. If the State does not act by [six months from receipt by the State of the applicant's CZM consistency determination] then concurrence with your CZM consistency determination will automatically be presumed.

Conditions of the State Section 401 Water Quality Certification and/or the State CZM concurrence will become conditions to the final DA permit. Should the State's action on the required certification or concurrence preclude validation of the provisional permit in its current form, a modification to the provisional permit will be evaluated and you will be notified as appropriate. Substantial changes may require a new permit evaluation process, including issuing a new public notice.

Enclosure 1

Final Permit Actions

Normal Permit Process

1. Corps completes permit decision, and state 401/CZM issued/waived
2. Corps sends unsigned permit to applicant
3. Applicant signs permit and returns with fee
4. Corps signs permit

Draft Permit Process

1. Corps completes permit decision, but state 401/CZM not complete
2. Corps sends draft permit to applicant
3. State 401/CZM issued waived
4. Applicant signs permit and returns with fee and 401/CZM action
5. Corps reviews 401/CZM action and signs permit

1. The signed draft permit with the attached 401/CZM action is to be treated as the applicant's request for a permit subject to any 401/CZM certification/concurrence including any conditions.

2. If the 401/CZM action results in a modification to the draft permit, then step 4. would be treated as a request for such modification and if we agree with the modification, then the permit would be issued with the modification and the decision document supplemented, as appropriate. If the Corps does not initially agree with the modification, or it involves a substantial change or measurable increase in adverse impacts, then the modification would be processed as a separate permit action for reporting purposes.

Enclosure 2

Once the State has issued the required Section 401 Water Quality Certification and/or concurred with your CZM consistency determination or the dates above have passed without the State acting, and you agree to the terms and conditions of the provisional permit, you should sign and date both copies and return them to us [along with your $100.00/$10.00 permit fee]. Your DA permit will not be valid until we have returned a copy to you bearing both your signature and the signature of the appropriate Corps official.

If the State denies the required Section 401 Water Quality Certification and/or nonconcurs with your CZM consistency determination, then the DA permit is denied without prejudice. If you should subsequently obtain a Section 401 Water Quality Certification and/or a CZM consistency determination concurrence, you should contact this office to determine how to proceed with your permit application.

If you have any questions concerning your State Section 401 Water Quality Certification, please contact (State 401 certification contact.

If you have any questions concerning your CZM consistency determination, please contact (State CZM contact).

If you have any other questions concerning your application for a DA permit, please contact [Corps contact] at [Corps contact telephone number].

Provisional Permit

Not Valid

Do Not Begin Work

This Provisional Permit is Not Valid until:

(1) You obtain: _____ a Section 401 Water Quality Certification (from State Agency).

_____ a Coastal Zone Consistency determination concurrence from (State Agency).

(2) You sign and return the enclosed provisional permit with the State Section 401 Water Quality Certification and/or CZM concurrence and the appropriate permit fee as indicated below:

_____ $10.00
_____ $100.00
No fee required

(3) The Corps signs the permit and returns it to you. Your permit is denied without prejudice, if the State denies your Section 401 Water Quality Certification and/or nonconcurs with your Coastal Zone Management consistency determination.

Do Not Begin Work

REGULATORY GUIDANCE LETTER (RGL 93–2)

RGL 93–2, Date: 23 August 1993, Expires: 31 December 1998

Subject: Guidance on Flexibility of the 404(b)(1) Guidelines and Mitigation Banking.

1. Enclosed are two guidance documents signed by the Office of the Assistant Secretary of the Army (Civil Works) and the Environmental Protection Agency. The first document provides guidance on the flexibility that the U.S. Army Corps of Engineers should be utilizing when making determinations of compliance with the Section 404(b)(1) Guidelines, particularly with regard to the alternatives analysis. The second document provides guidance on the use of mitigation banks as a means of providing compensatory mitigation for Corps regulatory decisions.

2. Both enclosed guidance documents should be implemented immediately. These guidance documents constitute an important aspect of the President's plan for protecting the Nation's wetlands, ''Protecting America's Wetlands: A Fair, Flexible and Effective Approach'' (published on 24 August 1993).

3. This guidance expires 31 December 1998 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

2 Encls

Memorandum to the field

Subject: Appropriate level of analysis required for evaluating compliance with the section 404(b)(1) guidelines alternatives requirements

1. Purpose: The purpose of this memorandum is to clarify the appropriate level of analysis required for evaluating compliance with the Clean Water Act Section 404(b)(1) Guidelines' (Guidelines) requirements for consideration of alternatives. 40 CFR 230.10(a). Specifically, this memorandum describes the flexibility afforded by the Guidelines to make regulatory decisions based on the relative severity of the environmental impact of proposed discharges of dredged or fill material into waters of the United States.

2. Background: The Guidelines are the substantive environmental standards by which all Section 404 permit applications are evaluated. The Guidelines, which are binding regulations, were published by the Environmental Protection Agency at 40 CFR Part 230 on December 24, 1980. The fundamental precept of the Guidelines is that discharges of dredged or fill material into waters of the United States, including wetlands, should not occur unless it can be demonstrated that such discharges, either individually or cumulatively, will not result in unacceptable adverse effects on the aquatic ecosystem. The Guidelines specifically require that ''no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.'' 40 CFR 230.10(a). Based on this provision, the applicant is required in every case (irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent) to evaluate opportunities for use of non-aquatic areas and other aquatic sites that would result in less adverse impact on the aquatic ecosystem. A permit cannot be issued, therefore, in circumstances where a less environmentally damaging practicable alternative for the proposed discharge exists (except as provided for under Section 404(b)(2)).

3. Discussion: The Guidelines are, as noted above, binding regulations. It is important to recognize, however, that this regulatory status does not limit the inherent flexibility provided in the Guidelines for implementing these provisions. The preamble to the Guidelines is very clear in this regard:

> Of course, as the regulation itself makes clear, a certain amount of flexibility is still intended. For example, while the ultimate conditions of compliance are ''regulatory'', the Guidelines allow some room for judgment in determining what must be done to arrive at a conclusion that those conditions have or have not been met.

Guidelines Preamble, ''Regulation versus Guidelines'', 45 **Federal Register** 85336 (December 24, 1980).

Notwithstanding this flexibility, the record must contain sufficient information to demonstrate that the proposed discharge complies with the requirements of Section 230.10(a) of the Guidelines. The amount of information needed to maker such a determination and the level of scrutiny required by the Guidelines is commensurate with the severity of the environmental impact (as determined by the functions of the aquatic resource and the nature of the proposed activity) and the scope/cost of the project.

a. Analysis Associated with Minor Impacts:

The Guidelines do not contemplate that the same intensity of analysis will be required for all types of projects but instead envision a correlation between the scope of the evaluation and the potential extent of adverse impacts on the aquatic environment. The introduction to Section 230.10(a) recognizes that the level of analysis required may vary with the nature and complexity of each individual case:

> Although all requirements in § 230.10 must be met, the compliance evaluation procedures will vary to reflect the seriousness of the potential for adverse impacts on the aquatic ecosystems posed by specific dredged or fill material discharge activities.

40 CFR 230.10

Similarly, Section 230.6 (''Adaptability'') makes clear that the Guidelines:

> allow evaluation and documentation for a variety of activities, ranging from those with large, complex impacts on the aquatic environment to those for which the impact is likely to be innocuous. It is unlikely that the Guidelines will apply in their entirety to any one activity, no matter how complex. It is anticipated that substantial numbers of permit applications will be for minor, routine activities that have little, if any, potential for significant degradation of the aquatic environment. *It generally is not intended or*

expected that extensive testing, evaluation or analysis will be needed to make findings of compliance in such routine cases.

40 CFR 230.6(9) (emphasis added)

Section 230.6 also emphasizes that when making determinations of compliance with the Guidelines, users:

must recognize the different levels of effort that should be associated with varying degrees of impact and require or prepare commensurate documentation. *The level of documentation should reflect the significance and complexity of the discharge activity.*

40 CFR 230.6(b) (emphasis added)

Consequently, the Guidelines clearly afford flexibility to adjust the stringency of the alternatives review for projects that would have only minor impacts. Minor impacts are associated with activities that generally would have little potential to degrade the aquatic environment and include one, and frequently more, of the following characteristics: are located in aquatic resources of limited natural function; are small in size and cause little direct impact; have little potential for secondary or cumulative impacts; or cause only temporary impacts. It is important to recognize, however, that in some circumstances even small or temporary fills result in substantial impacts, and that in such cases a more detailed evaluation is necessary. The Corps Districts and EPA Regions will, through the standard permit evaluation process, coordinate with the U.S. Fish and Wildlife Service, National Marine Fisheries Service and other appropriate state and Federal agencies in evaluating the likelihood that adverse impacts would result from a particular proposal. It is not appropriate to consider compensatory mitigation in determining whether a proposed discharge will cause only minor impacts for purposes of the alternatives analysis required by Section 230.10(a).

In reviewing projects that have the potential for only minor impacts on the aquatic environment, Corps and EPA field offices are directed to consider, in coordination with state and Federal resource agencies, the following factors:

(i) Such projects by their nature should not cause or contribute to significant degradation individually or cumulatively. Therefore, it generally should not be necessary to conduct or require detailed analyses to determine compliance with Section 230.10(c).

(ii) Although sufficient information must be developed to determine whether the proposed activity is in fact the least damaging practicable alternative, the Guidelines do not require an elaborate search for practicable alternatives if it is reasonably anticipated that there are only minor differences between the environmental impacts of the proposed activity and potentially practicable alternatives. This decision will be made after consideration of resource agency comments on the proposed project. It often makes sense to examine first whether potential alternatives would result in no identifiable or discernible difference in impact on the aquatic ecosystem. Those alternatives that do not may be eliminated from the analysis since Section 230.10(a) of the Guidelines only prohibits discharges when a practicable alternative exists which would have *less adverse impact on the aquatic ecosystem*. Because evaluating practicability is generally the more difficult aspect of the alternatives analysis, this approach should save time and effort for both the applicant and the regulatory agencies.[1] By initially focusing the alternatives analysis on the question of impacts on the aquatic ecosystem, it may be possible to limit (or in some instances eliminate altogether) the number of alternatives that have to be evaluated for practicability.

(iii) When it is determined that there is no identifiable or discernible difference in adverse impact on the environment between the applicant's proposed alternative and all other practicable alternatives, then the applicant's alternative is considered as satisfying the requirements of Section 230.10(a).

(iv) Even where a practicable alternative exists that would have less adverse impact on the aquatic ecosystem, the Guidelines allow it to be rejected if it would have ''other significant adverse environmental consequences.'' 40 CFR 230.10(a) As explained in the preamble, this allows for consideration of ''evidence of damages to other ecosystems in deciding whether there is a 'better' alternative.'' Hence, in applying the alternatives analysis required by the Guidelines, it is not appropriate to select an alternative where minor impacts on the aquatic environment are avoided at the cost of substantial impacts to other natural environmental values.

(v) in cases of negligible or trivial impacts (e.g., small discharges to construct individual driveways), it may be possible to conclude that no alternative location could result in less adverse impact on the aquatic environment within the meaning of the Guidelines. In such cases, it may not be necessary to conduct an offsite alternatives analysis but instead require only any practicable onsite minimization.

This guidance concerns application of the Section 404(b)(1) Guidelines to projects with minor impacts. Projects which may cause more than minor impacts on the aquatic environment, either individually or cumulatively, should be subjected to a proportionately more detailed level of analysis to determine compliance or noncompliance with the Guidelines. Projects which cause substantial impacts, in particular, must be thoroughly evaluated through the standard permit evaluation process to determine compliance with all provisions of the Guidelines.

b. Relationship between the Scope of Analysis and the Scope/Cost of the Proposed Project:

The Guidelines provide the Corps and EPA with discretion for determining the necessary level of analysis to support a conclusion as to whether or not an alternative is practicable. Practicable alternatives are those alternatives that are ''available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.'' 40 CFR 230.10(a)(2). The preamble to the Guidelines provides clarification on how cost is to be considered in the determination of practicability.

Our intent is to consider those alternatives which are *reasonable in terms of the overall scope/cost of the proposed project.* The term economic [for which the term ''cost'' was substituted in the final rule] might be construed to include consideration of the applicants financial standing, or investment, or market share, a cumbersome inquiry which is not necessarily material to the objectives of the Guidelines.

Guidelines Preamble, ''Alternatives'', 45 FR 85339 (December 24, 1980) (emphasis added).

Therefore, the level of analysis required for determining which alternatives are practicable will vary depending on the type of project proposed. The determination of what constitutes an unreasonable expense should generally consider whether the projected cost is substantially greater than the costs normally associated with the particular type of project. Generally, as the scope/cost of the project increases, the level of analysis should also increase. To the extent the Corps obtains information on the costs associated with the project, such information may be considered when making a determination of what constitutes an unreasonable expense.

The preamble to the Guidelines also states that ''[i]f an alleged alternative is unreasonably expensive to the applicant, the alternative is not 'practicable.'" Guidelines Preamble, ''Economic Factors'', 45 FR 85343 (December 24, 1980). Therefore, to the extent that individual homeowners and small businesses may typically be associated with small projects with minor impacts, the nature of the applicant may also be a relevant consideration in determining what constitutes a practicable alternative. It is important to emphasize, however, that it

[1] In certain instances, however, it may be easier to examine practicability first. Some projects may be so site-specific (e.g., erosion control, bridge replacement) that no offsite alternative could be practicable. In such cases the alternatives analysis may appropriately be limited to onsite options only.

is not a particular applicant's financial standing that is the primary consideration for determining practicability, but rather characteristics of the project and what constitutes a reasonable expense for these projects that are most relevant to practicability determinations.

4. The burden of proof to demonstrate compliance with the Guidelines rests with the applicant' where insufficient information is provided to determine compliance, the Guidelines require that no permit be issued. 400 CFR 230.12(a)(3)(iv).

5. A reasonable, common sense approach in applying the requirements of the Guidelines' alternatives analysis is fully consistent with sound environmental protection. The Guidelines clearly contemplate that reasonable discretion should be applied based on the nature of the aquatic resource and potential impacts of a proposed activity in determining compliance with the alternatives test. Such an approach encourages effective decisionmaking and fosters a better understanding and enhanced confidence in the Section 404 program.

6. This guidance is consistent with the February 6, 1990 ''Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines.''

Signed August 23, 1993.

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans, and Watersheds, U.S. Environmental Protection Agency.

Signed August 23, 1993.

Michael L. Davis,

Office of the Assistant Secretary of the Army (Civil Works), Department of the Army.

Memorandum to the Field

Subject: Establishment and Use of Wetland Mitigation Banks in the Clean Water Act Section 404 Regulatory Program

1. This memorandum provides general guidelines for the establishment and use of wetland mitigation banks in the Clean Water Act Section 404 regulatory program. This memorandum serves as interim guidance pending completion of Phase I of by the Corps of Engineers' Institute for Water Resources study on wetland mitigation banking,[2] at which time this guidance will be reviewed and any appropriate revisions will be incorporated into final guidelines.

2. For purposes of this guidance, wetland mitigation banking refers to the restoration, creation, enhancement, and, in exceptional circumstances, preservation of wetlands or other aquatic habitats expressly for the purpose of providing compensatory mitigation in advance of discharges into wetlands permitted under the Section 404 regulatory program. Wetland mitigation banks can have several advantages over individual mitigation projects, some of which are listed below:

(a) Compensatory mitigation can be implemented and functioning in advance of project impacts, thereby reducing temporal losses of wetland functions and uncertainty over whether the mitigation will be successful in offsetting wetland losses.

(b) It may be more ecologically advantageous for maintaining the integrity of the aquatic ecosystem to consolidate compensatory mitigation for impacts to many smaller, isolated or fragmented habitats into a single large parcel or contiguous parcels.

(c) Development of a wetland mitigation bank can bring together financial resources and planning and scientific expertise not practicable to many individual mitigation proposals. This consolidation of resources can increase the potential for the establishment and long-term management of successful mitigation.

(d) Wetland mitigation banking proposals may reduce regulatory uncertainty and provide more cost-effective compensatory mitigation opportunities.

3. The Section 404(b)(1) Guidelines (Guidelines), as clarified by the ''Memorandum of Agreement Concerning the Determination of Mitigation under the Section 404(b)(1) Guidelines'' (Mitigation MOA) signed February 6, 1990, by the Environmental Protection Agency and the Department of the Army, establish a mitigation sequence that is used in the evaluation of individual permit applications. Under this sequence, all appropriate and practicable steps must be undertaken by the applicant to first avoid and then minimize adverse impacts to the aquatic ecosystem. Remaining unavoidable impacts must then be offset through compensatory mitigation to the extent appropriate and practicable. Requirements for compensatory mitigation may be satisfied through the use of wetland mitigation banks, so long as their use is consistent with standard practices for evaluating compensatory mitigation proposals outlined in the Mitigation MOA. It is important to emphasize that, given the mitigation sequence requirements described above, permit applicants should not anticipate that the establishment of, or participation in, a wetland mitigation bank will ultimately lead to a determination of compliance with the Section 404(b)(1) Guidelines without adequate demonstration that impacts associated with the proposed discharge have been avoided and minimized to the extent practicable.

4. The agencies' preference for on-site, in-kind compensatory mitigation does not preclude the use of wetland mitigation banks where it has been determined by the Corps, or other appropriate permitting agency, in coordination with the Federal resource agencies through the standard permit evaluation process, that the use of a particular mitigation bank as compensation for proposed wetland impacts would be appropriate for offsetting impacts to the aquatic ecosystem. In making such a determination, careful consideration must be given to wetland functions, landscape position, and affected species populations at both the impact and mitigation bank sites. In addition, compensation for wetland impacts should occur, where appropriate and practicable, within the same watershed as the impact site. Where a mitigation bank is being developed in conjunction with a wetland resource planning initiative (e.g., Special Area Management Plan, State Wetland Conservation Plan) to satisfy particular wetland restoration objectives, and permitting agency will determine, in coordination with the Federal resource agencies, whether use of the bank should be considered an appropriate form of compensatory mitigation for impacts occurring within the same watershed.

5. Wetland mitigation banks should generally be in place and functional before credits may be used to offset permitted wetland losses. However, it may be appropriate to allow incremental distribution of credits corresponding to the appropriate stage of successful establishment of wetland functions. Moreover, variable mitigation ratios (credit acreage to impacted wetland acreage) may be used in such circumstances to reflect the wetland functions attained at a bank site at a particular point in time. For example,

[2] The Corps of Engineers Institute for Water Resources, under the authority of Section 307(d) of the Water Resources Development Act of 1990, is undertaking a comprehensive two-year review and evaluation of wetland mitigation banking to assist in the development of a national policy on this issue. The interim summary report documenting the results of the first phase of the study is scheduled for completion in the fall of 1993.

higher ratios would be required when a bank is not yet fully functional at the time credits are to be withdrawn.

6. Establishment of each mitigation bank should be accompanied by the development of a formal written agreement (e.g., memorandum of agreement) among the Corps, EPA, other relevant resource agencies, and those parties who will own, develop, operate or otherwise participate in the bank. The purpose of the agreement is to establish clear guidelines for establishment and use of the mitigation bank. A wetlands mitigation bank may also be established through issuance of a Section 404 permit where establishing the proposed bank involves a discharge of dredged or fill material into waters of the United States. The banking agreement or, where applicable, special conditions of the permit establishing the bank should address the following considerations, where appropriate:

(a) Location of the mitigation bank
(b) Goals and objectives for the mitigation bank project;
(c) Identification of bank sponsors and participants;
(d) Development and maintenance plan;
(e) Evaluation methodology acceptable to all signatories to establish bank credits and assess bank success in meeting the project goals and objectives;
(f) Specific accounting procedures for tracking crediting and debiting;
(g) Geographic area of applicability;
(h) Monitoring requirements and responsibilities;
(i) Remedial action responsibilities including funding; and
(j) Provisions for protecting the mitigation bank in perpetuity.

Agency participation in a wetlands mitigation banking agreement may not, in any way, restrict or limit the authorities and responsibilities of the agencies.

7. An appropriate methodology, acceptable to all signatories, should be identified and used to evaluate the success of wetland restoration and creation efforts within the mitigation bank and to identify the appropriate stage of development for issuing mitigation credits. A full range of wetland functions should be assessed. Functional evaluations of the mitigation bank should generally be conducted by a multi-disciplinary team representing involved resource and regulatory agencies and other appropriate parties. The same methodology should be used to determine the functions and values of both credits and debits. As an alternative, credits and debits can be based on acres of various types of wetlands (e.g., National Wetland Inventory classes). Final determinations regarding debits and credits will be made by the Corps, or other appropriate permitting agency, in consultation with Federal resource agencies.

8. Permit applicants may draw upon the available credits of a third party mitigation bank (i.e., a bank developed and operated by an entity other than the permit applicant). The Section 404 permit, however, must state explicitly that the permittee remains responsible for ensuring that the mitigation requirements are satisfied.

9. To ensure legal enforceability of the mitigation conditions, use of mitigation bank credits must be conditioned in the Section 404 permit by referencing the banking agreement or Section 404 permit establishing the bank; however, such a provision should not limit the responsibility of the Section 404 permittee for satisfying all legal requirements of the permit.

Signed August 23, 1993.

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans, and Watersheds, U.S. Environmental Protection Agency.

Signed August 23, 1993.

Michael L. Davis,

Office of the Assistant Secretary of the Army (Civil Works), Department of the Army.

Regulatory Guidance Letter (RGL 93–3)

RGL 93–3, Issued: September 13, 1993, Expires: not applicable

Subject: Rescission of Regulatory Guidance Letters (RGL) 90–5, 90–7, and 90–8

1. On 25 August 1993 the final ''Excavation Rule'' was published in the **Federal Register** (58 FR 45008) and becomes effective on 24 September 1993. This regulation modifies the definition of ''Discharge of Dredged Material'' to address landclearing activities (see 33 CFR 323.2(d)); modifies the definitions of ''Fill Material'' and ''Discharge of Fill Material'' to address the placement of pilings (see 33 CFR 323.2 (e) and (f) and 323.3(c)); and modifies the definition of ''waters of the United States'' to address prior converted cropland (see 33 CFR 328.(a)(8)).

2. Therefore, RGL 90–5, Subject: ''Landclearing Activities Subject to Section 404 Jurisdiction''; RGL 90–7, Subject: ''Clarification of the Phrase 'Normal Circumstances' as it pertains to Cropped Wetlands''; and RGL 90–8, Subject: ''Applicability of Section 404 to Pilings''; are hereby rescinded effective 24 September 1993. Furthermore, although RGL 90–5, Subject: ''Landclearing Activities Subject to Section 404 Jurisdiction'' expired on 31 December 1992 it should continue to be applied until 24 September 1993.

3. In addition, RGL's 90–5, 90–7, and 90–8 as of 24 September 1993 will no longer be used for guidance since the guidance contained in those RGL's has been superseded by the regulation.

For the Director of Civil Works.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter (RGL 94–1)
Issued: 23 May 1994, Expires: 31 December 1999

Subject: Expiration of Geographic Jurisdictional Determinations.

1. Regulatory Guidance Letter (RGL) 90–6, Subject: ''Expiration Dates for Wetlands Jurisdictional Delineations'' is extended until 31 December 1999, subject to the following revisions.

2. This guidance should be applied to all jurisdictional determinations for all waters of the United States made pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection Research and Sanctuaries Act of 1972.

3. To be consistent with paragraph IV.A. of the 6 January 1994, interagency Memorandum of Agreement Concerning the Delineation of Wetlands for Purposes of Section 404 of the Clean Water Act and Subtitle B of the Food Security Act, all U.S. Army Corps of Engineers geographic jurisdictional determinations shall be in writing and normally remain valid for a period of five years. The Corps letter (see paragraph 4.(d) of RGL 90–6) should include a statement that the jurisdictional determination is valid for a period of five years from the date of the letter unless new information warrants revision of the determination before the expiration date.

4. For wetland jurisdictional delineations the ''effective date of this RGL'' referred to in paragraphs 4 and 5 of RGL 90–6 was and remains 14 August 1990. For jurisdictional determinations, other than wetlands jurisdictional delineations, the ''effective date of this RGL'' referred to in paragraphs 4 and 5 of RGL 90–6 will be the date of this RGL.

5. Previous Corps written jurisdictional determinations, including wetland jurisdictional delineations, with a validity period of three years remain valid for the stated period of three years. The district engineer is not required to issue new letters to extend such period from three years to a total of five years. However, if requested to do so, the district engineer will normally extend the three year period to a total of five years unless new

information warrants a new jurisdictional determination.

6. Districts are not required to issue a public notice on this guidance but may do so at their discretion.

7. This guidance expires on 31 December 1999 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

Chief, Operations, Construction and Readiness Division Directorate of Civil Works.

Regulatory Guidance Letter (RGL 94–2)

Issued: 17 AUGUST 1994, Expires: 31 DEC 1999

Subject: Superfund Projects

1. Regulatory Guidance Letter (RGL) 85–07, subject: ''Superfund Projects'' is hereby reissued (copy enclosed).

2. This RGL was previously extended by RGL 89–2. Although the extension expired, RGL 85–07 has continued to be U.S. Army Corps of Engineers policy.

3. This guidance expires 31 December 1999 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Encl

Regulatory Guidance Letter (RGL 85–7)

Issued: 5 July 1985, Expires DEC 1987

Subject: Superfund Projects

1. Recently, the Chief Counsel, Mr. Lester Edelman, responded to a letter from Mr. William N. Hedeman, Jr., Director, Office of Emergency and Remedial Response, Environmental Protection Agency (EPA) which dealt with the need for Department of Army authorizations for the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) actions. This letter summarizes Mr. Edelman's opinion and provides operating guidance for field interaction with the EPA.

2. The EPA's basic position is that Congress did not intend for CERCLA response actions to be subject to other environmental laws. Rather, as a matter of sound practice, CERCLA response actions generally should meet the standards established by those laws. Consequently, it is the EPA's position that neither it nor the states, in pursuing response actions at the location of the release or threatened release under the authority of CERCLA, are required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act for those actions.

3. Mr. Edelman stated in part that he has some reservations about the position that the EPA has taken. Nevertheless, he recognizes that the EPA has the primary authority for the interpretation and application of CERCLA, and therefore would defer to the EPA's reading of its own statutory authorities, at least for the time being.

4. In light of this legal opinion, FOAs should not require applications for the EPA or state response actions at the location of the release or threatened release in pursued under the authority of CERCLA. Any permit applications in process should be terminated.

5. Both the EPA and OCE believe that the FOAs expertise in assessing the public interest factors for dredging and filling operations can contribute to the overall quality of the CERCLA response action. The Director of Civil Works will be establishing a group from his staff to work with the EPA staff to develop a framework for integrating the Corps Section 10, Section 404 and, if appropriate, Section 103 concerns into the EPA's substantive Superfund reviews.

6. Until specific guidance is provided from OCE, FOAs should provide technical support to the EPA regions and/or the states on matters within their field of expertise.

For the Chief of Engineers.

C.E. Edgar III

Regulatory Guidance Letter (RGL 95–1)

Issued: 31 March 1995, Expires: 31 December 2000

Subject: Guidance on Individual Permit Flexibility for Small Landowners

1. Enclosed is a memorandum for the field signed by the Acting Assistant Secretary of the Army (Civil Works) and the Environmental Protection Agency dated 6 March 1995. This memorandum provides guidance on flexibility that the U.S. Army Corps of Engineers should apply when making determinations of compliance with the Section 404(b)(1) Guidelines with regard to the alternatives analysis.

2. This memorandum should be implemented immediately. It constitutes an important aspect of the President's Plan for protecting the Nation's wetlands, ''Protecting America's Wetlands: A Fair, Flexible, and Effective Approach'' (published on 24 August 1993).

3. This guidance expires on 31 December 2000 unless sooner revised or rescinded.

For the Director of Civil Works.

Daniel R. Burns,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Encl

United States Environmental Protection Agency

Office of Water

Washington, DC 20460

United States Department of the Army

Office of the Assistant Secretary

Washington, DC 20310–0103

Memorandum for the Field, March 6, 1995

Subject: Individual Permit Flexibility for Small Landowners

In order to clearly affirm the flexibility afforded to small landowners under Section 404 of the Clean Water Act, this policy clarifies that for discharges of dredged or fill material affecting up to two acres of non-tidal wetlands for the construction or expansion of a home or farm building, or expansion of a small business, it is presumed that alternatives located on property not currently owned by the applicant are not practicable under the Section 404(b)(1) Guidelines. Specifically, for those activities involving discharges of dredged or fill material affecting up to two acres into jurisdictional wetlands for:

(1) The construction or expansion of a single family home and attendant features, such as a driveway, garage, storage shed, or septic field;

(2) The construction or expansion of a barn or other farm building; or

(3) The expansion of a small business facility; which are not otherwise covered by a general permit, it is presumed that alternatives located on property not currently owned by the applicant are not practicable under the Section 404(b)(1) Guidelines. The Guidelines' requirements to appropriately and practicably minimize and compensate for any adverse environmental impacts of such activities remain.

Discussion

The Clean Water Act Section 404 regulatory program provides that the Army Corps of Engineers evaluate permit applications for the discharge of dredged or fill material into waters of the U.S., including wetlands, in accordance with regulatory requirements of the Section 404(b)(1) Guidelines (Guidelines). The Guidelines are substantive environmental criteria used in evaluating discharges of dredged or fill material.

The Section 404(b)(1) Guidelines establish a mitigation sequence that provides a sound framework to ensure that the environmental impacts of permitted actions are acceptable. Under this framework, there is a three-step

sequence for mitigating potential adverse impacts to the aquatic environment associated with a proposed discharge—first avoidance, then minimization, and lastly compensation for unavoidable impacts to aquatic resources.

The Guideline's mitigation sequence is designed to establish a consistent approach to be used in ensuring that all practicable measures have been taken to reduce potential adverse impacts associated with proposed projects in wetlands and other aquatic systems. The Guidelines define the term ''practicable'' as ''available and capable of being done [by the applicant] after taking into consideration cost, existing technology, and logistics in light of overall project purposes'' (40 CFR 230.3(q)). The first step in the sequence requires the evaluation of potential alternative sites under § 230.10(a) of the Guidelines, to locate the proposed project so that aquatic impacts are avoided to the extent practicable.

This policy statement clarifies that, for the purposes of the alternatives analysis, it is presumed that practicable alternatives are limited to property owned by the permit applicant in circumstances involving certain small projects affecting less than two acres of non-tidal wetlands. This presumption is consistent with the practicability considerations required under the Guidelines and reflects the nature of the projects to which the presumption applies—specifically, the construction or expansion of a single family home and attendant features, the construction or expansion of a barn or other farm building, or the expansion of a business. For such small projects that would solely expand an existing structure, the basic project purpose is so tied to the existing structures owned by the applicant, that it would be highly unusual that the project could be practicably located on other sites not owned by the applicant. In these cases, such as construction of driveways, garages, or storage sheds, or with home and barn additions, proximity to the existing structure is typically a fundamental aspect of the project purpose.

In the evaluation of potential practicable alternatives, the guidelines do not exclude the consideration of sites that, while not currently owned by the permit applicant, could reasonably be obtained to satisfy the project purpose. However, it is the experience of the Army Corps of Engineers and EPA that areas not currently owned by the applicant have, in the great majority of circumstances, not been determined to be practicable alternatives in cases involving the small landowner activities described above. Cost, availability, and logistical and capability considerations inherent in the determination of practicability under the guidelines have been the basis for this conclusion by the agencies.

The agencies recognize that the presumption characterized in this policy statement may be rebutted in certain circumstances. For example, a more thorough review of practicable alternatives would be warranted for individual sites comprising a subdivision of homes, if following issuance of this policy statement, a real estate developer subdivided a large, contiguous wetlands parcel into numerous parcels. In addition, the presumption is applicable to the expansion of existing small business facilities. Small businesses are typically confined to only one location and with economic and logistical limitations that generally preclude the availability of practicable alternative locations to meet their expansion needs. Conversely, larger businesses with multiple locations and greater resources are expected to consider opportunities to practicably avoid adverse aquatic impacts by evaluating off-site alternatives.

Finally,it is important to note that this presumption of practicable alternatives is intended to apply to the individual permit process. Alternatives are not evaluated for activities covered by general permits. Many activities related to the construction or expansion of a home, farm, or business, are already covered by a general permit. In addition, in conjunction with the issuance of this policy statement, a nationwide general permit authorizing discharges related to single family residential development is being proposed and will be available for public comment.

If you have any questions regarding this memorandum, please contact Gregory Peck of EPA's Wetlands Division at (202) 260–8794 or Michael Davis of the Corps of Engineer's Regulatory Branch at (202) 272–0199.

Robert Perciasepe,

Assistant Administrator for Water, U.S. Environmental Protection Agency.

John Zirschky,

Acting Assistant Secretary of the Army (Civil Works).

Regulatory Guidance Letter (RGL 96–1)

Issued: 5 November 1996, EXPIRES: 31 December 2001

Subject: Use of Nationwide Permit Number 23 for U.S. Coast Guard Categorical Exclusions

1. We have concurred with the categorical exclusions (CE) (enclosure) submitted by the United States Coast Guard (Coast Guard) pursuant to the subject nationwide permit number 23 at 33 CFR Part 330, including a notification requirement for CE numbers (6) and (8). The U.S. Army Corps of Engineers published the Coast Guard CEs in 61 FR 18573, April 26, 1996, for comment regarding the applicability of nationwide permit number 23 for those activities requiring Department of the Army authorization. This Regulatory Guidance Letter supersedes the Coast Guard CEs previously approved under nationwide permit number 23 in accordance with Regulatory Guidance Letter 83–5, dated 18 April 1983.

2. The Corps has conditioned the nationwide permit to require notification to the appropriate Corps office prior to beginning work under Coast Guard CE number (6) to address potential impacts to wetlands (notification is only required to the Corps for projects where wetland impacts are proposed) and number (8) to address potential impacts/encroachment on Federal navigation projects. The District Engineer will review the notification and will either verify whether the activity meets the terms and conditions of nationwide permit 23, will require evaluation under standard permit procedures, or that additional conditioning of the activity is necessary to ensure that no unacceptable adverse effects will result to wetlands for projects under CE number (6) or to a Federal navigation project under CE number (8). Authorization of the Coast Guard CEs does not restrict the Division or District Engineers' authorities to exercise discretionary authority, or the Corps modification, suspension or revocation procedures. Development of local procedures to streamline coordination is encouraged where a Corps division or district further conditions the nationwide permit to require a notification for additional activities.

3. It should be noted that the Coast Guard provided a complete listing of CEs, including many that do not require Department of the Army authorization. However, to reduce confusion when referencing the CE number, we have included all Coast Guard CEs in the enclosure.

4. This guidance expires 31 December 2001 unless sooner revised or rescinded.

For the Director of Civil Works.

Daniel R. Burns,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Enclosure

U.S. Coast Guard Categorical Exclusion List

The following is a consolidated list prepared from the U.S. Coast Guard **Federal Register** notices (59 FR 38654, July 29, 1994, 60 FR 46317, September 6, 1995, 60 FR 32197, June 20, 1995, and 61 FR 13563, March 27, 1996). The list does not include the procedures the U.S. Coast Guard must follow to determine whether certain activities qualify for a categorical exclusion. Notification to the U.S. Army Corps of Engineers is required prior to initiation of work for activities conducted under numbers (6) (notification is only required to the Corps for projects when wetland impacts are proposed) and number (8).

(1) Routine personnel, fiscal, and administrative activities, actions, procedures, and policies which clearly do not have any environmental impacts, such as military and civilian personnel recruiting, processing, paying, and record keeping.

(2) Routine procurement activities and actions for goods and services, including office supplies, equipment, mobile assets, and utility services for routine administration, operations, and maintenance.

(3) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an existing approved disposal site.

(4) Routine repair, renovation, and maintenance actions on aircraft and vessels.

(5) Routine repair and maintenance of buildings, roads, airfields, grounds and equipment, and other facilities which do not result in a change in functional use, or an impact on a historically significant element or settings.

(6) Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a chance in functional use, a historically significant element, or historically significant setting. (When wetland impacts are proposed, notification is required to the appropriate office of U.S. Army Corps of Engineers prior to initiation of work)

(7) Routine repair and maintenance to waterfront facilities, including mooring piles, fixed floating piers, existing piers, and unburied power cables.

(8) Minor renovations and additions to waterfront facilities, including mooring piles, fixed floating piers, existing piers, and unburied power cables, which do not require special, site-specific regulatory permits. (Notification is required to the appropriate office of U.S. Army Corps of Engineers prior to initiation of work)

(9) Routine grounds maintenance and activities at units and facilities. Examples include localized pest management actions and actions to maintain improved grounds (such as landscaping, lawn care and minor erosion control measures) that are conducted in accordance with applicable Federal, State and local directives.

(10) Installation of devices to protect human or animal life, such as raptor electrocution prevention devices, fencing to restrict wildlife movement on to airfields, and fencing and grating to prevent accidental entry to hazardous areas.

(11) New construction on heavily developed portions of Coast Guard property, when construction, use, and operation will comply with regulatory requirements and constraints.

(12) Decisions to decommission equipment or temporarily discontinue use of facilities or equipment. This does not preclude the need to review decommissioning under section 106 of the National Historic Preservation Act.

(13) Demolition or disposal actions that involve buildings or structures when conducted in accordance with regulations applying to removal of asbestos, PCB's, and other hazardous materials, or disposal actions mandated by Congress. In addition, if the building or structure is listed, or eligible for listing, in the National Register of Historic Places, then compliance with section 106 of the National Historic Preservation Act is required.

(14) Outleasing of historic lighthouse properties as outlined in the Programmatic Memorandum of Agreement between the Coast Guard, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers.

(15) Transfer of real property from the Coast Guard to the General Services Administration, Department of the Interior, and other Federal departments and agencies, or as mandated by Congress; and the granting of leases, permits, and easements where there is no substantial change in use of the property.

(16) Renewals and minor amendments of existing real estate licenses or grants for use of government-owned real property where prior environmental review has determined that no significant environmental effects would occur.

(17) New grants or renewal of existing grants of license, easements, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles; for such existing rights-of-way as electrical, telephone, and other transmission and communications lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and irrigation facilities; and for similar utility and transportation uses.

(18) Defense preparedness training and exercises conducted on other than Coast Guard property, where the legal agency or department is not Coast Guard or Department of Transportation and the lead agency or department has completed its NEPA analysis and documentation requirements.

(19) Defense preparedness training and exercise conducted on Coast Guard property that do not involve undeveloped property or increase noise levels over adjacent property and that involve a limited number of personnel, such as exercises involving primarily electric simulation or command post personnel.

(20) Simulated exercises, including tactical and logistical exercises that involve small numbers of personnel.

(21) Training of an administrative or classroom nature.

(22) Operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs.

(23) Actions performed as a part of Coast Guard operations and the Aids to Navigation Program to carry out statutory authority in the area of establishment of floating and minor fixed aids to navigation, except electronic sound signals.

(24) Routine movement of personnel and equipment, and the routine movement, handling, and distribution of nonhazardous materials and wastes in accordance with applicable regulations.

(25) Coast Guard participation in disaster relief efforts under the guidance or leadership of another Federal agency that has taken responsibility for NEPA compliance.

(26) Data gathering, information gathering, and studies that involve no physical change to the environment. Examples include topographic surveys, bird counts, wetland mapping, and other inventories.

(27) Natural and cultural resource management and research activities that are in accordance with interagency agreements and which are designed to

improve or upgrade the Coast Guard's ability to manage those resources.

(28) Contracts for activities conducted at established laboratories and facilities, to include contractor-operated laboratories and facilities, on Coast Guard-owned property where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable Federal, State, and local laws and regulations.

(29) Approval of recreational activities (such as a Coast Guard unit picnic) which do not involve significant physical alteration of the environment, increase disturbance by humans of sensitive natural habitats, or disturbance of historic properties, and which do not occur in, or adjacent to, areas inhabited by threatened or endangered species.

(30) Review of documents, such as studies, reports, and analyses, prepared for legislative proposals that did not originate in DOT and that relate to matters that are not the primary responsibility of the Coast Guard.

(31) Planning and technical studies which do not contain recommendations for authorization or funding for future construction, but may recommend further study. This includes engineering efforts or environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed and does not exclude consideration of environmental matters in the studies.

(32) Bridge Administration Program actions which can be described as one of the following:

(a) Modification or replacement of an existing bridge on essentially the same alignment or location. Excluded are bridges with historic significance or bridges providing access to undeveloped barrier islands and beaches. (Approach fills regulated by the U.S. Army Corps or Engineers under Section 404 of the Clean Water Act will require a separate individual or general permit.)

(b) Construction of pipeline bridges for transporting potable water.

(c) Construction of pedestrian, bicycle, or equestrian bridges and stream gauging cableways used to transport people.

(d) Temporary replacement of a bridge immediately after a natural disaster or a catastrophic failure for reasons of public safety, health, or welfare.

(e) Promulgation of operating regulations or procedures for drawbridges.

(f) Identification of advance approval waterways under 33 CFR 115.70,

(g) Any Bridge Program action which is classified as a CE by another Department of Transportation agency acting as lead agency for such action.

(33) Preparation of guidance documents that implement, without substantive change, the applicable Commandant Instruction or other Federal agency regulations, procedures, manuals, and other guidance documents.

(34) Promulgation of the following regulations:

(a) Regulations which are editorial or procedural, such as those updating addresses or establishing application procedures.

(b) Regulations concerning internal agency functions or organization or personnel administration, such as funding, establishing Captain of the Port boundaries, or delegating authority.

(c) Regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel.

(d) Regulations concerning manning, documentation, admeasurement, inspection, and equipping of vessels.

(e) Regulations concerning equipment approval and carriage requirements.

(f) Regulations establishing, disestablishing, or changing the size of Special Anchorage Areas or anchorage grounds.

(g) Regulations establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones.

(h) Special local regulations issued in conjunction with a regatta or marine parade; provided that, if a permit is required, the environmental analysis conducted for the permit included an analysis of the impact of the regulations.

(i) Regulations in aid of navigation, such as those concerning rules of the road, International Regulations for the Prevention of Collisions at Sea (COLREGS), bridge-to-bridge communication, vessel traffic services, and marking, of navigation systems.

(35) Approvals of regatta and marine parade event permits for the following events:

(a) Events that are not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local Government. For example, environmentally sensitive areas may include such areas as critical habitats or migration routes for endangered or threatened species or important fish or shellfish nursery areas.

(b) Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local Government and for which the Coast Guard determines, based on consultation with the Government agency, that the event will not significantly affect the environmentally sensitive area.

Regulatory Guidance Letter (RGL 96–2)

Issued 12 December 1997, Expires 31 December 2001

Subject: Applicability of Exemptions under Section 404(f) to ''Deep-Ripping'' Activities in Wetlands

1. Enclosed is a memorandum to the field jointly signed by the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers. The memorandum provides guidance clarifying when ''deep-ripping'' activities within wetlands require Department of Army authorization.

2. This guidance expires 31 December 2001, unless sooner revised or rescinded.

For the Director of Civil Works.

Daniel R. Burns,

Chief, Operations, Construction, and Readiness Division, Directorate of Civil Works.

Enclosure

Department of the Army

U.S. Army Corps of Engineers

United States Environmental Protection Agency

Memorandum to the Field, 12 Dec 1996

Subject: Applicability of Exemptions under Section 404(f) to ''Deep-Ripping'' Activities in Wetlands

Purpose: The purpose of this memorandum is to clarify the applicability of exemptions provided under Section 404(f) of the Clean Water Act (CWA) to discharges associated with ''deep-ripping'' and related activities in wetlands.[1]

Background

1. Section 404(f)(1) of the CWA exempts from the permit requirement certain discharges associated with normal farming, forestry, and ranching practices in waters of the United States, including wetlands. Discharges into waters subject to the Act associated with farming, forestry, and ranching practices identified under Section 404(f)(1) do not require a permit except as provided under Section 404(f)(2).

2. Section 404(f)(1) does not provide a total, automatic exemption for all activities related to agricultural, silvicultural, or ranching practices.

[1] As this guidance addresses primary agricultural-related activities, characterizations of such practices have been developed in consultation with experts at the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service.

Rather, Section 404(f)(1) exempts only those activities specifically identified in paragraphs (A) through (F), and ''other activities of essentially the same character as named'' [44 FR 34264]. For example, Section 404(f)(1)(A) lists discharges of dredged or fill material from ''normal farming, silvicultural and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices.''

3. Section 404(f)(1)(A) is limited to activities that are part of an ''established (i.e., ongoing) farming, silviculture, or ranching operation.'' This ''established'' requirement is intended to reconcile the dual intent reflected in the legislative history that although Section 404 should not unnecessarily restrict farming, forestry, or ranching from continuing at a particular site, discharge activities which could destroy wetlands or other waters should be subject to regulation.

4. EPA and Corps regulations [40 CFR 230 and 33 CFR 320] and preamble define in some detail the specific ''normal'' activities listed in Section 404(f)(1)(A). Three points may be useful in the current context:

a. As explained in the preamble to the 1979 proposed regulations, the words ''such as'' have been consistently interpreted as restricting the section ''to the activities *named* in the statute and other activities of essentially the same character as named, ''and'' 'preclude the extension of the exemption * * * to activities that are unlike those named.'' [44 FR 34264].

b. Plowing is specifically defined in the regulations *not* to include the redistribution of surface material in a manner which converts wetlands areas to uplands [See 40 CFR 233.35(a)(1)((iii)(D)].

c. Discharges associated with activities that establish an agricultural operation in wetlands where previously ranching had been conducted, represents a ''change in use'' within the meaning of Section 404(f)(2). Similarly, discharges that establish forestry practices in wetlands historically subject to agriculture also represent a change in use of the site [See 40 CFR 233.35(c)].

5. The statute includes a provision at Section 404(f)(2) that ''recaptures'' or reestablishes the permit requirement for those otherwise exempt discharges which:

a. Convert an area of the waters of the U.S. to a new use, and
b. Impair the flow or circulation of waters of the U.S. *or* reduce the reach of waters of the U.S.

Conversion of an area of waters of the U.S. to uplands triggers both provisions (a) and (b) above. Thus, at a minimum, any otherwise exempt discharge that results in the conversion of waters of the U.S. to upland is recaptured under Section 404(f)(2) and requires a permit. It should be noted that in order to trigger the recapture provisions of Section 404(f)(2), the discharges themselves need not be the sole cause of the destruction of the wetland or other change in use or sole cause of the reduction or impairment of reach, flow, or circulation of waters of the U.S. Rather, the discharges need only be ''incidental to'' or ''part of'' an activity which is intended to or will foreseeably bring about that result. Thus, in applying Section 404(f)(2), one must consider discharges in context, rather than isolation.

Issue:

1. Questions have been raised involving ''deep-ripping'' and related activities in wetlands and whether discharges associated with these actions fall within the exemptions at Section 404(f)(1)(A). In addition, the issue has been raised whether, if such activities fall within the exemption, they would be recaptured under Section 404(f)(2).

2. ''Deep-ripping'' is defined as the mechanical manipulation of the soil to break up or pierce highly compacted, impermeable or slowly permeable subsurface soil layers, or other similar kinds of restrictive soil layers. These practices are typically used to break up these subsoil layers (e.g., impermeable soil layer, hardpan) as part of the initial preparation of the soil to establish an agricultural or silvicultural operation. Deep-ripping and related activities are also used in established farming operations to break up highly compacted soil. Although deep-ripping and related activities may be required more than once, the activity is typically not an annual practice. Deep-ripping and related activities are undertaken to improve site drainage and facilitate deep root growth, and often occur to depths greater than 16 inches and, in some cases, exceeding 4 feet below the surface. As such, it requires the use of heavy equipment, including bulldozers, equipped with ripper-blades, shanks, or chisels often several feet in length. Deep-ripping and related activities involve extending the blades to appropriate depths and dragging them through the soil to break up the restrictive layer.

3. Conversely, plowing is defined in EPA and Corps regulations [40 CFR part 230 and 33 CFR part 320] as ''all forms of primary tillage * * * used * * * for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops'' [40 CFR 232.3(d)(4)]. As a general matter, normal plowing activities involve the annual or at least regular, preparation of soil prior to seeding or other planting activities. According to USDA, plowing generally involves the use of a blade, chisel or series of blades, chisels, or discs, usually 8–10 inches in length, pulled behind farm vehicle to prepare the soil for the planting of annual crops or to support an ongoing farming practice. Plowing is commonly used to break up the surface of the soil to maintain soil tilth and to facilitate infiltration throughout the upper root zone.

Discussion

1. Plowing in wetlands is exempt from regulation consistent with the following circumstances:

a. it is conducted as part of an ongoing, established agricultural, silvicultural or ranching operation; and
b. the activity is consistent with the definition of plowing in EPA and Corps regulations [40 CFR 230 and 33 CFR 320]; and
c. the plowing is not incidental to an activity that results in the immediate or gradual conversion of wetlands to non-waters.

2. Deep-ripping and related activities are distinguishable from plowing and similar practices (e.g., discing harrowing) with regard to the purposes and circumstances under which it is conducted, the nature of the equipment that is used, and its effect, including in particular the impacts to the hydrology of the site.

a. Deep-ripping and related activities are commonly conducted to depths exceeding 16 inches, and as deep as 6–8 feet below the soil surface to break restrictive soil layers and improve water drainage at sites that have not supported deeper rooting crops. Plowing depths, according to USDA, rarely exceed one foot into the soil and not deeper than 16 inches without the use of special equipment involving special circumstances. As such, deep-ripping and related activities typically involve the use of specialized equipment, including heavy mechanized equipment and bulldozers, equipped with elongated ripping blades shanks, or chisels often several feet in length. Moreover, while plowing is generally associated with ongoing operations, deep-ripping and related activities are typically conducted to prepare a site for establishing crops not previously planted at the site. Although deep-ripping may have to be redone at regular intervals in some circumstances to maintain proper soil drainage, the activity is typically not an annual or routine practice.

b. Frequently, deep-ripping and related activities are conducted as a preliminary step for converting a ''natural'' system or for preparing rangeland for a new use such as farming or silviculture. In those instances, deep ripping and related activities are often required to break up naturally-occurring impermeable or slowly permeable subsurface soil layers to facilitate proper root growth. For example, for certain depressions wetlands types such as vernal pools, the silica-cemented hardpan (durapan) or other restrictive layer traps precipitation and seasonal runoff creating ponding and saturation conditions at the soil surface. The presence of these impermeable or slowly permeable subsoil layers is essential to support the hydrology of the system. Once these layers are disturbed by activities such as deep-ripping, the hydrology of the system is disturbed and the wetland is often destroyed.

c. In contrast, there are other circumstances where activities such as deep-ripping and related activities are a standard practice of an established on-going farming operation. For example, in parts of the Southeast, where there are deep soils having a high clay content, mechanized farming practices can lead to the compaction of the soil below the oil surface, it may be necessary to break up, on a regular although not annual basis, these restrictive layers in order to allow for normal root development and infiltration. Such activities may require special equipment and can sometimes occur to depths greater than 16 inches. However, because of particular physical conditions, including the presence of a water table at or near the surface for part of the growing season, the activity typically does not have the effect of impairing the hydrology of the system or otherwise altering the wetland characteristics of the site.

Conclusion

1. When deep-ripping and related activities are undertaken as part of an *established, ongoing* agricultural silvicultural or ranching operation, to break up compacted soil layers *and* where the hydrology of the site will not be altered such that it would result in conversion of waters of the U.S. to upland, such activities are exempt under Section 404(f)(1)(A).

2. Deep-ripping and related activities in wetlands are *not* exempt, when such practices are conducted in association with efforts to establish for the first time (or when a previously established operation was abandoned) an agricultural, silvicultural or ranching operation. In addition, deep-ripping and related activities are not exempt in circumstances where such practices would trigger the ''recapture'' provision of Section 404(f)(2):

(a) Deep-ripping to establish a farming operation at a site where a ranching or forestry operation was in place is a change in use of such a site. Deep-ripping and related activities that also have the effect of altering or removing the wetland hydrology of the site would trigger Section 404(f)(2) and such ripping would require a permit.

(b) Deep-ripping a site that has the effect of converting wetlands to non-waters would also trigger Section 404(f)(2) and such ripping would require a permit.

3. It is the agencies' experience that certain wetland types are particularly vulnerable to hydrological alteration as a result of deep-ripping and related activities. Depressional wetland systems such as prairie potholes, vernal pools and playas whose hydrology is critically dependent upon the presence of an impermeable or slowly permeable subsoil layer are particularly sensitive to disturbance or alteration of this subsoil layer. Based upon this experience, the agencies have concluded that, as a general matter, deep-ripping and similar practices, consistent with the descriptions above, conducted in prairie potholes, vernal pools, playas and similar depressions wetlands destroy the hydrological integrity of these wetlands. In these circumstances, deep-ripping in prairie potholes, vernal pools, and playas is recaptured under Section 404(f)(2) and requires a permit under the Clean Water Act.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds, Environmental Protection Agency.

Daniel R. Burns,

Cheif, Operations, Construction and Readiness Division, Directorate of Civil Works, U.S. Army Corps of Engineers.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.