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October 24, 1997

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Contents

Federal Register

Vol. 62, No. 206

Friday, October 24, 1997

Agriculture Department
See Farm Service Agency
See Forest Service
See Grain Inspection, Packers and Stockyards Administration

Arms Control and Disarmament Agency
NOTICES
Meetings:
Director's Advisory Committee, 55390

Army Department
See Engineers Corps
NOTICES
Environmental statements; notice of intent:
Armored security vehicle, 55396–55397
Meetings:
Armed Forces Epidemiological Board, 55397

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Inorganic lead; occupational exposure; comment and information request; republication, 55407–55408

Coast Guard
PROPOSED RULES
Ports and waterways safety:
Chelsea River, Boston Inner Harbor, MA; double hull tankships use; meeting, 55366–55367
NOTICES
Meetings:
Anchored barges carrying oil or hazardous materials in bulk without attending tugs; issues, 55451–55452

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Technical Information Service

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 55390–55392

Comptroller of the Currency
RULES
Risk-based capital:
Small business loan obligations; transfers with recourse, 55490–55493

Corporation for National and Community Service
NOTICES
Meetings; Sunshine Act, 55396

Defense Department
See Army Department
See Engineers Corps
See Navy Department

Employment and Training Administration
NOTICES
Adjustment assistance:
Batesville Casket et al., 55423–55424
Dana Corp., 55424
Kimberly-Clark Corp., 55424
Paragon Electric Co., 55424–55425
Reliable Battery, LLC, 55425
Simpson Industries et al., 55425–55426
Solid Surface Craftsman, 55426
Standard Industries, Inc., 55426
Agency information collection activities:
Proposed collection; comment request, 55426–55427
NAFTA transitional adjustment assistance:
Berg Electronics, Inc., 55427
Dana Corp., 55427
Kimberly-Clark Corp., 55427
McDonnell Douglas, 55427–55428
Paragon Electric Co., 55428

Employment Standards Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 55428–55429
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 55429–55430

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
PROPOSED RULES
Danger zones and restricted areas:
Severn River, MD; Naval Station Annapolis small boat basin, 55367–55368
NOTICES
Environmental statements; notice of intent:
Brunswick Harbor Navigation Project, GA, 55397

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Connecticut, 55336–55341
New York, 55341–55344
Clean Air Act:
Acid rain program—
Continuous emission monitoring; excess emissions, etc., rules streamlining, 55460–55488
Hazardous waste:
Identification and listing—
Exclusions, 55344–55348
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Connecticut, 55368–55375

NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 55400
Weekly receipts, 55399–55400
Meetings:
Industrial Combustion Coordinated Rulemaking Advisory Committee, 55400–55401

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Meetings:
President's Export Council, 55392

Farm Service Agency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 55389

Federal Aviation Administration
RULES
Class E airspace; correction, 55458
PROPOSED RULES
Airworthiness directives:
Pratt & Whitney Canada, 55364–55365

Federal Communications Commission
RULES
Personal communications services:
Licenses in C block (broadband PCS)—
Installment payment financing, 55348–55357
PROPOSED RULES
Personal communications services:
Licenses in C block (broadband PCS)—
Installment payment financing, 55375–55380

Federal Deposit Insurance Corporation
RULES
Risk-based capital:
Small business loan obligations; transfers with recourse, 55490–55493

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
ANR Pipeline Co., 55398–55399
Applications, hearings, determinations, etc.:
Natural Gas Pipeline Co. of America, 55398
Union Electric Co. et al., 55398

Federal Maritime Commission
NOTICES
Meetings; Sunshine Act, 55401–55402

Federal Mine Safety and Health Review Commission
RULES
Freedom of Information Act; implementation, 55332–55336
NOTICES
Government Performance and Results Act:
Strategic plan for 1997-2002 FYs; availability, 55430

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 55402
Formations, acquisitions, and mergers, 55402–55403
Permissible nonbanking activities, 55403–55404
Meetings; Sunshine Act, 55404

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 55404–55406

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Topeka shiner, 55381–55388
NOTICES
Migratory bird hunting:
Federal Cartridge Co.; tungsten-polymer shot approval as nontoxic for waterfowl hunting; application approval, 55417

Food and Drug Administration
RULES
Food for human consumption:
Food labeling—
Dietary supplements and conventional foods; nutrient content claims; high potency and antioxidant definitions and use of sugar free claims; correction, 55331
NOTICES
Agency information collection activities:
Proposed collection; comment request, 55408–55409
Meetings:
Grassroots regulatory partnership workshop, 55410

Forest Service
NOTICES
Environmental statements; notice of intent:
Tahoe National Forest, CA, 55389

General Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 55406–55407

Grain Inspection, Packers and Stockyards Administration
NOTICES
Meetings:
Grain Inspection Advisory Committee, 55390

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 55410

Housing and Urban Development Department
NOTICES
Grant and cooperative agreement awards:
Lead-based paint hazard control, 55416

Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 55416

Immigration and Naturalization Service
RULES
Nonimmigrant classes:
Treaty trader and investor aliens; E classification
Correction, 55458
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 55419–55421

Indian Affairs Bureau
RULES
Land and water:
Indian highway safety program; competitive grant selection criteria, 55331–55332

Inspector General Office, Health and Human Services Department
NOTICES
Social Security Act:
Permissive exclusion authority; implementation criteria, 55410–55412

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Vector supercomputers from—
Japan, 55392–55393

Justice Department
See Immigration and Naturalization Service
See Prisons Bureau

Labor Department
See Employment and Training Administration
See Employment Standards Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 55421–55423

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Montana, 55417–55418
Committees; establishment, renewal, termination, etc.:
Southeast Oregon Resource Advisory Council, 55418
Realty actions; sales, leases, etc.:
Arizona; correction, 55418–55419

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 55430–55431

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 55431

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 55452–55453
Motor vehicle theft prevention standards; exemption petitions, etc,:
Saab Cars, USA, Inc., 55453–55454

National Institute of Standards and Technology
NOTICES
Meetings:
Polymer nanocomposite flammability technology cooperative research consortium, 55393

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 55412–55416
National Heart, Lung, and Blood Institute, 55414
National Institute of Allergy and Infectious Diseases, 55415
National Institute of Diabetes and Digestive and Kidney Diseases, 55414–55415
National Institute of Neurological Disorders and Stroke, 55414–55415
Scientific Review Center Special Emphasis Panel, 55415–55416

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic swordfish, 55357–55362
Northeastern United States fisheries—
Summer flounder, 55362–55363
NOTICES
Environmental statements; availability, etc.:
Makah Tribe; gray whale harvesting, 55393–55394
Permits:
Endangered and threatened species, 55394–55395

National Science Foundation
NOTICES
Meetings:
Engineering Education and Centers Special Emphasis Panel, 55431

National Skill Standards Board
NOTICES
Meetings, 55431

National Technical Information Service
NOTICES
Meetings:
Advisory Board, 55395–55396

Navy Department
NOTICES
Meetings:
Naval Academy, Board of Visitors, 55398

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Consumers Energy Co., 55433–55434
Meetings:
Commercial nuclear reactors operation; integrated review of assessment processes, 55434–55435

Reactor Safeguards Advisory Committee, 55435
Site decommissioning management plan; sites:
Removals from list—
Consumers Energy Co.; meeting, 55435–55436
Applications, hearings, determinations, etc.:
Entergy Gulf States, Inc., 55432–55433

Postal Service
NOTICES
Meetings; Sunshine Act, 55436

Presidential Documents
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
Digital Television Broadcasters, Advisory Committee on Public Interest Obligations of; amendment (EO 13065), 55329

Prisons Bureau
NOTICES
Environmental statements; notice of intent:
Scranton, PA; U.S. penitentiary construction, 55421

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 55442–55443
Chicago Stock Exchange, Inc., 55443–55448
Philadelphia Stock Exchange, Inc., 55448–55450
Applications, hearings, determinations, etc.:
Emerald Funds, 55436–55437
Integrity Life Insurance Co. et al., 55438–55440
Old Mutual South Africa Equity Trust et al., 55440–55441
Public utility holding company filings, 55441–55442

Social Security Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 55450–55451

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Abandoned mine land reclamation; enhancement, 55365–55366

Surface Transportation Board
NOTICES
Agreements under sections 5a and 5b; applications for approval, etc.:
Middlewest Motor Freight Bureau, Inc., 55454–55455
Railroad operation, acquisition, construction, etc.:
St. Lawrence & Atlantic Railroad Co., 55455
Railroad services abandonment:
CSX Transportation, Inc., 55456

Thrift Supervision Office
RULES
Risk-based capital:
Small business loan obligations; transfers with recourse, 55490–55493

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
RULES
Organization, functions, and authority delegations:
Federal Aviation Administrator; secretarial succession, 55357
PROPOSED RULES
Privacy Act; implementation, 55380–55381

Treasury Department
See Comptroller of the Currency
See Thrift Supervision Office

United States Enrichment Corporation
NOTICES
Meetings; Sunshine Act, 55456

Veterans Affairs Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 55456–55457

Separate Parts In This Issue

Part II
Environmental Protection Agency, 55460–55488

Part III
Department of the Treasury, Comptroller of the Currency, and Federal Deposit Insurance Corporation, and Office of Thrift Supervision, 55490–55493

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

13038 (Amended by EO 13065).....55329

13062 (See EO 13065) 13065 55329

8 CFR

214.....55458

12 CFR

3.....55490

325.....55490

567.....55490

14 CFR

71.....55458

Proposed Rules:

39.....55364

21 CFR

101.....55331

25 CFR

181.....55331

29 CFR

2702.....55332

30 CFR

Proposed Rules:

707.....55365

874.....55365

33 CFR

Proposed Rules:

165.....55366

334.....55367

40 CFR

9.....55460

52 (2 documents) 55336, 55341

72.....55460

73.....55460

74.....55460

75.....55460

77.....55460

78.....55460

261.....55344

Proposed Rules:

52.....55368

47 CFR

1.....55348

24.....55348

Proposed Rules:

1.....55375

24.....55375

49 CFR

1.....55357

Proposed Rules:

10.....55380

50 CFR

630.....55357

648.....55362

Proposed Rules:

17.....55381

Federal Register
Vol. 62, No. 286
Friday, October 24, 1997

Presidential Documents

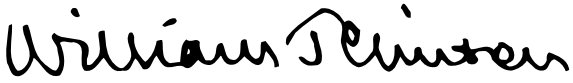
Title 3—

The President

Executive Order 13065 of October 22, 1997

Further Amendment to Executive Order 13038 Advisory Committee on Public Interest Obligations of Digital Television Broadcasters

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to add up to three more members to the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, it is hereby ordered that the second sentence of section 1 of Executive Order 13038, as amended by section 5 of Executive Order 13062, is further amended by deleting ''not more than 22'' and inserting ''up to 25'' in lieu thereof. Further, the words ''or Co-Chairs'' shall be added after the word ''Chair'' in the fourth sentence of section 1 of the order.



THE WHITE HOUSE,
October 22, 1997.

[FR Doc. 97–28427
Filed 10–23–97; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 62, No. 206
Friday, October 24, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 95N–0245, 95N–0282, and 95N–0347]

RIN 0910–AA59

Food Labeling; Nutrient Content Claims: Definition for ''High Potency'' and Definitions of ''Antioxidant'' for Use in Nutrient Content Claims for Dietary Supplements and Conventional Foods; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of September 23, 1997 (62 FR 49868). The document amended the agency regulations to: Define the term ''high potency'' as a nutrient content claim; define nutrient content claims using the term ''antioxidant'' (e.g., ''good source of antioxidants,'' ''high in antioxidants,'' ''more antioxidants''); and to correct an omission pertaining to the use of ''sugar free'' claims on dietary supplements. The document was published with an incorrect RIN number. This document corrects that error.

EFFECTIVE DATE: March 23, 1999.

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

In FR Doc. 97–24732, appearing on page 49868 in the **Federal Register** of Tuesday, September 23, 1997, the following correction is made:

1. On page 49868, in the first column, in the heading, ''RIN 0905–AD96'' is corrected to read ''RIN 0910–AA59''.

Dated: October 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–28224 Filed 10–23–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 181

RIN 1076–AD82

Indian Highway Safety Program Competitive Grant Selection Criteria

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) intends to make funds available to federally recognized tribes on an annual basis for the purpose of financing tribal highway safety projects designed to reduce the incidence of traffic accidents within Indian country. Due to the limited funding available for the Indian Highway Safety Program, the BIA will review and select from proposed tribal projects on a competitive basis. This final rule addresses the selection criteria.

EFFECTIVE DATE: November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Jaynes, Chief, BIA Division of Safety Management, (505) 248–5060.

SUPPLEMENTARY INFORMATION: This rule was published as a proposed rule for comment on May 16, 1997 (62 FR 27000). No written comments were received. Accordingly, the proposed rule is published as the final rule without changes.

This rule is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Department of the Interior has certified to the Office of Management and Budget (OMB) that this final rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This rule is not a significant rule under Executive Order 12866 and does not require approval by the OMB. This rule does not constitute a major Federal action significantly affecting the human environment and, therefore, no detailed statement is needed under the National Environmental Policy Act of 1969. Furthermore, this rule does not have significant takings implications in accordance with Executive Order 12630, does not have significant Federalism effects, and does not have a significant economic impact of a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act of 1995

This final rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

Under 23 U.S.C. 402, the Department of Transportation (DOT) funds both the DOT State Highway Safety Program and the BIA Indian Highway Safety Program. The information contained in each grant application under both programs is identical. The Indian Highway Safety Program competitive grant application solicits only the information DOT requires for its State Highway Safety Program and uses it for substantially the same purpose of awarding Highway Safety Program funds to applicants. OMB has reviewed and approved the information collection requirements for the DOT State Highway Safety Program. No additional OMB authorization is needed.

List of Subjects in 25 CFR Part 181

Indians, Highways and roads, Highway safety.

For the reasons set forth in the preamble, a new part 181 is added to subchapter H of title 25 of the Code of Federal Regulations as follows.

PART 181—INDIAN HIGHWAY SAFETY PROGRAM

Sec.
181.1 Purpose.
181.2 Definitions.
181.3 Am I eligible to receive a program grant?
181.4 How do I obtain an application?
181.5 How are applications ranked?
181.6 How are applicants informed of the results?
181.7 Appeals.

Authority: 23 U.S.C. 402; 25 U.S.C. 13.

§ 181.1 Purpose.

This part will assist the BIA Indian Highway Safety Program Administrator to disperse funds DOT/NHTSA has made available. The funds assist selected tribes with their proposed Highway Safety Projects. These projects are designed to reduce traffic crashes, reduce impaired driving crashes, increase occupant protection education, provide Emergency Medical Service training, and increase police traffic services.

§ 181.2 Definitions.

Appeal means a written request for review of an action or the inaction of an official of the BIA that is claimed to adversely affect the interested party making the request.

Applicant means an individual or persons on whose behalf an application for assistance and/or services has been made under this part.

Application means the process through which a request is made for assistance or services.

Grant means a written agreement between the BIA and the governing body of an Indian tribe or Indian organization wherein the BIA provides funds to the grantee to plan, conduct, or administer specific programs, services, or activities and where the administrative and programmatic provisions are specifically delineated.

Grantee means the tribal governing body of an Indian tribe or Board of Directors of an Indian organization responsible for grant administration.

Recipient means an individual or persons who have been determined as eligible and are receiving financial assistance or services under this part.

§ 181.3 Am I eligible to receive a program grant?

The Indian Highway Safety Program grant is available to any federally recognized tribe. Because of the limited financial resources available for the program, the Bureau of Indian Affairs (BIA) is unable to award grants to all applicants. Furthermore, some grant recipients may only be awarded a grant to fund certain aspects of their proposed tribal projects.

§ 181.4 How do I obtain an application?

BIA mails grant application packages for a given fiscal year to all federally recognized tribes by the end of February of the preceding fiscal year. Additional application packages are available from the Program Administrator, Indian Highway Safety Program, P.O. Box 2003, Albuquerque, New Mexico 87103. Each application package contains the necessary information concerning the application process, including format, content, and filing requirements.

§ 181.5 How are applications ranked?

BIA ranks each timely filed application by assigning points based upon four factors.

(a) *Factor No. 1—Magnitude of the problem* (Up to 50 points available). In awarding points under this factor, BIA will take into account the following:

(1) Whether a highway safety problem exists.

(2) Whether the problem is significant.

(3) Whether the proposed tribal project will contribute to resolution of the identified highway safety problem.

(4) The number of traffic accidents occurring within the applicant's jurisdiction over the previous 3 years.

(5) The number of alcohol-related traffic accidents occurring within the applicant's jurisdiction over the previous 3 years.

(6) The number of reported traffic fatalities occurring within the applicant's jurisdiction over the previous 3 years.

(7) The number of reported alcohol-related traffic fatalities occurring within the applicant's jurisdiction over the previous 3 years.

(b) *Factor No. 2—Countermeasure selection* (Up to 40 points available). In awarding points under this factor, BIA will take into account the following:

(1) Whether the countermeasures selected are the most effective for the identified highway safety problem.

(2) Whether the countermeasures selected are cost effective.

(3) Whether the applicant's objectives are realistic and attainable.

(4) Whether the applicant's objectives are time framed and, if so, whether the time frames are realistic and attainable.

(c) *Factor No. 3—Tribal Leadership and Community Support* (Up to 10 points available). In awarding points under this factor, BIA will take into account the following:

(1) Whether the applicant proposes using tribal resources in the project.

(2) Whether the appropriate tribal governing body supports the proposal plan, as evidenced by a tribal resolution or otherwise.

(3) Whether the community supports the proposal plan, as evidenced by letters or otherwise.

(d) *Factor No. 4—Past Performance* (+ or − 10 points available). In awarding points under this factor, BIA will take into account the following:

(1) Financial and programmatic reporting requirements.

(2) Project accomplishments.

§ 181.6 How are applicants informed of the results?

BIA will send a letter to all applicants notifying them of their selection or non-selection for participation in the Indian Highway Safety Program for the upcoming fiscal year. BIA will explain to each applicant not selected for participation the reason(s) for non-selection.

§ 181.7 Appeals.

You may appeal actions taken by BIA officials under this part by following the procedures in 25 CFR part 2.

Dated: October 9, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–28010 Filed 10–23–97; 8:45 am]

BILLING CODE 4310–02–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2702

Regulations Implementing the Freedom of Information Act

AGENCY: Federal Mine Safety and Health Review Commission (Commission).

ACTION: Final rulemaking.

SUMMARY: The Federal Mine Safety and Health Review Commission is revising its regulations implementing the Freedom of Information Act (FOIA), to reflect recent changes to the FOIA as a result of the Electronic Freedom of Information Act Amendments of 1996. This revision also implements certain changes in the manner in which FOIA requests are processed by the Commission, and in the rates charged to certain categories of requesters for time spent by Commission employees searching for and reviewing documents.

DATES: This rule is effective October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Norman Gleichman, General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington DC 20006–3867, telephone (202) 653–5610, FAX (202) 653–5030; or Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington DC 20006–3867, telephone (202) 653–5625, FAX (202) 653–5030.

SUPPLEMENTARY INFORMATION:

I. Background

On October 2, 1996, the President signed into law the Electronic Freedom of Information Act Amendments of 1996

(EFOIA), Pub. L. 104–231, 110 Stat. 3048 (1996), which amends the FOIA, 5 U.S.C. 552. Among other things, EFOIA requires agencies to promulgate regulations that provide for expedited processing of requests for records. In addition, EFOIA changes the time limit for responding to a FOIA request from ten to twenty days and specifies the circumstances in which an agency may extend the time within which it will respond to a FOIA request, and enables a requester to request ''expedited processing'' of a FOIA request where he can demonstrate a ''compelling need'' for the information requested. EFOIA also contains provisions regarding the availability of documents in electronic form, the treatment of electronic records, and the establishment of ''electronic reading rooms.''

The Commission issues amendments to its regulations implementing the Freedom of Information Act, 29 CFR part 2702, in order to comply with EFOIA. In addition, the Commission is making some minor adjustments in its procedures for responding to FOIA requests and in the fees charged to certain categories of requesters for time spent by Commission employees searching for and reviewing documents responsive to requests.

II. Analysis of the Regulations

Section 2702.1 Purpose and Scope

The Commission is adding new language to this section to refer to EFOIA. In addition, the Commission is adding new language to indicate that additional guidance on obtaining information from the Commission can be found in the document entitled ''Reference Guide for Obtaining Information from the Federal Mine Safety and Health Review Commission,'' and that this document is available upon request from the Commission.

Section 2702.2 Location of Offices

This section has been modified to provide updated information concerning the addresses of the Commission's headquarters and regional offices, and to include a new address for the Commission's regional office in Denver, Colorado.

Section 2702.3 Requests for Information

Paragraph (a) contains language from the previous § 2702.3 regarding the procedure for submitting a FOIA request to the Commission. Paragraph (a) also contains new language directing requesters to describe the record requested to the fullest extent possible and specify the preferred form or format of the response, including an electronic format. In addition, paragraph (a) contains language indicating the Commission will accommodate requesters as to the form or format requested if the record is readily reproducible in that form or format, and that the Commission will respond in the most accessible form or format if the requester does not specify the preferred form or format of the response.

Paragraph (b) contains language derived from the previous section § 2702.3 concerning determinations by the Commission whether to respond to a FOIA request and appeals of adverse determinations. The language in previous paragraph (b) has been modified to indicate that where it is not possible to obtain the consent of a majority of the Commissioners to the initial determination made by the Executive Director as the result of a tie vote, the recommendation of the Executive Director would control and be deemed to be approved by the Commission. In addition, the language of paragraph (b) has been modified to indicate that the time periods for making the initial determination whether to comply with a request, and for appealing from an adverse determination, have been extended from 10 to 20 working days.

Paragraph (c) contains new language, based on provisions of EFOIA, providing that the Commission may propose extending the 20-day time period for responding to a FOIA request for up to 10 additional days in the case of ''unusual circumstances.'' Paragraph (c) defines ''unusual circumstances'' that may justify such a delay as:

(i) The need to search for and collect requested records from other facilities separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are requested in a single request;

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the agency having substantial subject matter interest in the request; or

(iv) The need to consult with the submitter of requested information.

Paragraph (c) also contains language providing that when the Commission determines it cannot make a response determination within an additional 10 working day period, it will notify the requester and provide him with an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. Paragraph (c) further provides that a refusal by a requester to reasonably modify the request or arrange for an alternative time frame shall be considered as a factor in determining whether ''exceptional circumstances'' exist for purposes of paragraph (d) of § 2702.3, described below. In addition, paragraph (c) contains new language providing that, whenever it reasonably appears that certain requests by the same requester, or a group of requesters acting in concert, actually constitute a single request that would otherwise satisfy the ''unusual circumstances'' specified in the paragraph, and the requests involve clearly related matters, such requests may be aggregated for purposes of this paragraph, but that multiple requests involving unrelated matters will not be aggregated.

Paragraph (d) contains new language providing that if the Commission is unable to comply with the extended time limit for responding to a request set forth in paragraph (c) of § 2702.3, it may request additional time to complete its review of the records, and request a court to retain jurisdiction and allow it such additional time to complete its review, if it can show that exceptional circumstances exist and that it is exercising due diligence in responding to the request. Paragraph (d) further states that, for the purposes set forth herein, ''exceptional circumstances'' do not include a delay that results from a predictable workload of requests, unless the Commission demonstrates reasonable progress in reducing its backlog of pending requests. Paragraph (d) also provides that refusal by a requester to reasonably modify the scope of a request or arrange an alternative time frame for processing the request (or a modified request) under paragraph (c) shall be considered as a factor in determining whether exceptional circumstances exist.

Paragraph (e) contains new language, based upon a provision of EFOIA, authorizing a person requesting records from the Commission to request expedited processing of his request in cases in which he can demonstrate a compelling need for the records requested. A ''compelling need'' is defined in paragraph (e) to mean:

(i) That a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The information is urgently needed by a person primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.

Paragraph (e) further provides that a person making a request for expedited processing shall make a showing of compelling need by means of a statement certified by that person to be true and correct to the best of his knowledge and belief. In addition, paragraph (e) provides that the Commission will provide notice to a requester of its determination whether to grant expedited processing in response to a requester's claim of compelling need within 10 calendar days after receipt of the request. Paragraph (e) also provides that the Commission will provide expeditious consideration of administrative appeals of determinations whether to provide expedited processing, and will process the request as soon as practicable once a determination has been made to grant expedited processing.

Paragraph (f) contains new language, based upon a provision of EFOIA, providing that when the Commission denies a request for records, in whole or in part, it will make a reasonable effort to estimate the volume of the records denied and provide this estimate to the person making the request, unless providing such an estimate would harm an interest protected by the exemption pursuant to which the request is denied.

Paragraph (g) contains new language providing that the Commission will provide any reasonably segregable portion of a record to the person requesting it after the deletion of any exempt portions of the record. Paragraph (g) also contains language, based upon a provision of EFOIA, providing that the Commission will indicate the amount of information deleted on the released portion of the record, at the place in the record the deletion is made, if technically feasible, unless indicating the extent of the deletion would harm an interest protected by the exemption pursuant to which the deletion is made.

Section 2702.4 Materials Available

The language of previous § 2702.4 has been modified to indicate the availability of the Commission's reference guide for requesting records or publicly available information from the Commission, and to make other minor clarifying changes in the description of the materials available from the Commission.

Section 2702.5 Fee Applicable—Categories of Requesters

The language of § 2702.5 has been revised slightly to clarify the circumstances under which a series of FOIA requests from a requester, or a group of requesters acting in concert, will be aggregated for the purpose of assessing fees.

Section 2702.6 Fee Schedule

Paragraph (a) has been revised to reflect adjustments in the fees charged to certain categories of requesters for time spent by Commission employees in searching for information and records. The fees have been raised from $10 to $15 per hour for clerical time, and from $20 to $30 per hour for professional time.

Paragraph (b) has been revised slightly, primarily to reflect an adjustment in the fee charged to certain categories of requesters for the initial examination by the Commission's Executive Director of documents located in response to a request to determine if they may be withheld from disclosure. This fee has been raised from $30 to $45 per hour.

Language has been added to paragraph (c) to indicate that the fee charged for copying computer tapes or discs, photographs, and other nonstandard documents will be the actual direct cost incurred by the Commission.

Section 2702.7 No Fees; Waiver or Reduction of Fees

The language of § 2702.7 is essentially unchanged. Minor, non-substantive revisions have been made to the language of paragraph (b).

Matters of Regulatory Procedure

E.O. 12866, Regulatory Planning and Review

The Commission has determined that these revised rules are not subject to Office of Management and Budget review because they do not constitute ''significant regulatory action'' within the meaning of Executive Order 12866.

Regulatory Flexibility Act

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601–611) that these rules will not have a substantial economic impact on a substantial number of small entities. This rule implements the Freedom of Information Act (5 U.S.C. 552), a statute concerning the release of Federal Government records, and does not economically impact Federal Government relations with the private sector. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

Paperwork Reduction Act

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these revised rules do not contain any information collection requirements or recordkeeping requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 2702

Administrative practice and procedure, Freedom of information.

For the reasons set out in the preamble, 29 CFR 2702 is amended as follows:

PART 2702—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 2704 is revised to read as follows:

Authority: Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95–165 (30 U.S.C. 801 et seq.); 5 U.S.C. 552; Pub. L. 104–231, October 2, 1996, 110 Stat. 3048.

2. Section 2702.1 is revised to read as follows:

§ 2702.1 Purpose and scope.

The Federal Mine Safety and Health Review Commission (Commission) is an independent agency with authority to adjudicate contests between the Mine Safety and Health Administration of the U.S. Department of Labor and private parties, as well as certain disputes solely between private parties, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* The purpose of these rules is to establish procedures for implementing the Freedom of Information Act, 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104–231, 110 Stat. 3048; to provide guidance for those seeking to obtain information from the Commission; and to make all designated information readily available to the public. Additional guidance on obtaining information from the Commission can be found in the document entitled ''Reference Guide for Obtaining Information from the Federal Mine Safety and Health Review Commission,'' which is available upon request from the Commission. The scope of these rules may be limited to requests for information that is not presently the subject of litigation before the Commission and that is not otherwise governed by the Commission's Procedural Rules at 29 CFR part 2700.

3. Section 2702.2 is revised to read as follows:

§ 2702.2 Location of offices.

The Commission maintains its central office at 1730 K Street NW., 6th Floor, Washington DC 20006–3867. It has two regional offices for Administrative Law Judges, one at Skyline Towers No. 2, Tenth Floor, 5203 Leesburg Pike, Falls Church, Virginia 22041–3474, and the other at 1244 Speer Boulevard, Suite 280, Denver, Colorado 80204–3582.

4. Section 2702.3 is revised to read as follows:

§ 2702.3 Requests for information.

(a) All requests for information should be in writing and should be mailed or delivered to Executive Director, Federal Mine Safety and Health Review Commission, 6th Floor, 1730 K Street NW., Washington, DC 20006–3867. The words ''Freedom of Information Act Request'' should be printed on the face of the envelope. Requests for information shall describe the particular record requested to the fullest extent possible and specify the preferred form or format (including electronic formats) of the response. The Commission shall accommodate requesters as to form or format if the record is readily reproducible in the requested form or format. When requesters do not specify the preferred form or format of the response, the Commission shall respond in the form or format in which the record is most accessible to the Commission.

(b) A determination whether to comply with the request will be made by the Executive Director, with the consent of a majority of the Commissioners. In the event of a tie vote of the Commissioners regarding the Executive Director's determination whether to comply with a request, the Executive Director's recommendation will be deemed approved by the Commission. Except in unusual circumstances, as described in paragraph (c) of this section the determination will be made within 20 working days of receipt. Appeals of adverse decisions may be made, in writing, to the Chairman of the Commission, at the same address, within 20 working days. Determination of appeals will be made by the Chairman within 20 working days after receipt. If the records to be disclosed are not provided with the initial letter setting forth the determination as to the request, the records will be sent as soon as possible thereafter.

(c)(1) In unusual circumstances as described in this paragraph, when additional time is needed to respond to the initial request, the Commission shall acknowledge the request in writing within the 20-day period, describe the circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided in paragraph (d) of this section. With respect to a request for which a written notice has extended the time limit by 10 additional working days, and the Commission determines that it cannot make a response determination within that additional 10 working day period, the requester will be notified and provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. Refusal by the requester to reasonably modify the request or arrange for an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of paragraph (d) of this section. For purposes of this paragraph, ''unusual circumstances'' that may justify a delay are:

(i) The need to search for and collect the requested records from other facilities that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are requested in a single request;

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the agency having substantial subject matter interest in the request; or

(iv) The need to consult with the submitter of requested information.

(2)Whenever it reasonably appears that certain requests by the same requester, or a group of requesters acting in concert, actually constitute a single request that would otherwise satisfy the unusual circumstances specified in this paragraph, and the requests involve clearly related matters, such requests may be aggregated for purposes of this paragraph. Multiple requests involving unrelated matters will not be aggregated.

(d) In the event that the Commission is unable to comply with the time limits for responding to a request specified in paragraphs (a) and (c) of this section, it may request additional time to complete its review of the records, and request a court to retain jurisdiction and allow it such additional time to complete its review, if it can show that exceptional circumstances exist and that it is exercising due diligence in responding to the request. For purposes of this paragraph, ''exceptional circumstances'' do not include a delay that results from a predictable workload of requests, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing the request (or a modified request) under paragraph (c) of this section shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this paragraph.

(e)(1) A person requesting records from the Commission pursuant to this section may request expedited processing of his request in cases in which he can demonstrate a compelling need for the records requested. For purposes of this paragraph a compelling need means:

(i) That a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The information is urgently needed by a person primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.

(2) A demonstration of compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of his knowledge and belief. Notice of the determination whether to grant expedited processing in response to a requester's claim of compelling need shall be provided to the person making the request within 10 calendar days after receipt of the request. The Commission will provide expeditious consideration of administrative appeals of determinations whether to provide expedited processing. Once a determination has been made to grant expedited processing, the Commission will process the request as soon as practicable.

(f) In denying a request for records, in whole or in part, the Commission shall make a reasonable effort to estimate the volume of the records denied, and provide this estimate to the person making the request, unless providing such an estimate would harm an interest protected by the exemption pursuant to which the request is denied.

(g) Any reasonably segregable portion of a record shall be provided to the person requesting it after the deletion of any exempt portions of the record. The amount of information deleted shall be

indicated on the released portion of the record, at the place in the record the deletion is made if technically feasible, unless indicating the extent of the deletion would harm an interest protected by the exemption pursuant to which the deletion is made.

5. Section 2702.4 is revised to read as follows:

§ 2702.4 Materials available.

Materials which may be made promptly available from the Commission include, but are not limited to:

(a) A guide for requesting records or publicly available information from the Commission;

(b) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(c) Indices providing identifying information to the public as to the opinions described in the preceding paragraph which may be relied upon, used, or cited as precedent;

(d) Statements of policy and interpretations which have been adopted by the Commission and are not published in the **Federal Register**.

6. Section 2702.5(e) is revised to read as follows:

§ 2702.5 Fees applicable—categories of requesters.

* * * * *

(e) For purposes of paragraphs (b) through (d) of this section, whenever it reasonably appears that a requester, or a group of requesters acting in concert, is attempting to break down a single request into a series of requests relating to the same subject matter for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly.

7. In Section 2702.6 the first sentence of paragraph (a) and paragraphs (b) and (c) are revised to read as follows:

§ 2702.6 Fee schedule.

(a) *Search fee.* The fee for searching for information and records shall be $15 per hour for clerical time and $30 per hour for professional time. * * *

(b) *Review fee.* The review fee shall be charged for the initial examination by the Executive Director of documents located in response to a request in order to determine if they may be withheld from disclosure, and for the deletion of portions that are exempt from disclosure, but shall not be charged for review by the Chairman or the Commissioners. See § 2702.3. The review fee is $45 per hour.

(c) *Duplicating fee.* The copy fee for each page of paper up to 8½″ x 14″ shall be $.15 per copy per page. Any private section services required will be assessed at the charge to the Commission. The fee for copying computer tapes or discs, photographs, and other nonstandard documents will be the actual direct cost incurred by the Commission. If duplication charges are likely to exceed $25, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.

8. Section 2702.7(b) is revised to read as follows:

§ 2702.7 No fees; waiver or reduction of fees.

* * * * *

(b) Documents shall be furnished without any charge, or at a charge reduced below the fees otherwise applicable, if disclosure of the information is determined to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

* * * * *

Issued this 15th day of October, 1997 at Washington, D.C.

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 97–28206 Filed 10–23–97; 8:45 am]

BILLING CODE 6735–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–7202a; FRL–5902–2]

Approval and Promulgation of Implementation Plans; Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA today is approving State Implementation Plan (SIP) revisions submitted by the State of Connecticut. These revisions consist of 1990 base year ozone emission inventories, and establishment of a Photochemical Assessment Monitoring System (PAMS) network.

The inventories were submitted by Connecticut to satisfy a Clean Air Act (CAA) requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions in accordance with guidance from the EPA. The ozone emission inventories submitted by Connecticut are for the State's portion of the New York, New Jersey, Connecticut severe area, and the greater Hartford serious area. The PAMS SIP revision was submitted to satisfy the requirements of the CAA and the PAMS regulations. The intended effect of this action is to approve as a revision to the Connecticut SIP the state's 1990 base year ozone emission inventories, and to approve the PAMS network into the State's SIP.

DATES: This action is effective on December 23, 1997 unless EPA receives adverse or critical comments by November 24, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts, 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Region I office, and at the Connecticut Department of Environmental Protection, Bureau of Air Management, 79 Elm Street, Hartford, CT 06106–1630. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, Air Quality Planning Group, EPA Region I, JFK Federal Building, Boston, Massachusetts, 02203; telephone (617) 565–9266.

SUPPLEMENTARY INFORMATION: Connecticut submitted its 1990 base year emission inventories of ozone precursors to the EPA on January 13, 1994, as a revision to the State's SIP. Revisions to the inventories were received on February 3, 1994, and February 16, 1995. Connecticut submitted a SIP revision establishing a PAMS network into the State's overall ambient air quality monitoring network on March 2, 1995. This notice is divided into four parts:

I. Background Information
II. Analysis of State Submission
III. Final Action
IV. Administrative Requirements

I. Background Information

1. Emission Inventory

Under the CAA as amended in 1990, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented

that reduce emissions and move areas towards attainment. The CAA requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce volatile organic compound (VOC) emissions by 15 percent within six years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions, non-reactive VOC emissions that do not form ozone, and to exclude certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the ''Emission Inventory Requirements for Ozone State Implementation Plans,'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)–(e) of title I of the CAA. The EPA has issued a General Preamble describing the EPA's preliminary views on how the agency intends to review SIP revisions submitted under title I of the Act, including requirements for the preparation of the 1990 base year inventory (see 57 FR 13502 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). In this action EPA will rely on the General Preamble's interpretation of the CAA, and the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's rule and the supporting rationale.

Those States containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the CAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources within 2 years of enactment (November 15, 1992). This inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compound (VOC), nitrogen oxides (NO_X), and carbon monoxide (CO). The inventory is to address actual VOC, NO_X, and CO emissions for the area during a peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498 (April 16, 1992)).

2. PAMS Network

On March 2, 1995, the Connecticut Department of Environmental Protection (DEP) submitted to the EPA a SIP revision incorporating PAMS into the ambient air quality monitoring network of State or Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS). The State will establish and maintain PAMS as part of its overall ambient air quality monitoring network.

Section 182(c)(1) of the CAA and the General Preamble (57 FR 13515) require that the EPA promulgate rules for enhanced monitoring of ozone, NO_X, and VOCs no later than 18 months after the date of the enactment of the Act. These rules will provide a mechanism for obtaining more comprehensive and representative data on ozone air pollution in areas designated nonattainment and classified as serious, severe, or extreme.

The final PAMS rule was promulgated by the EPA on February 12, 1993 (58 FR 8452). Section 58.40(a) of the revised rule requires the State to submit a PAMS network description, including a schedule for implementation, to the Administrator within six months after promulgation or by August 12, 1993. Further, § 58.20(f) requires the State to provide for a PAMS network within nine months after promulgation of the final rule or by November 12, 1993.

On October 14, 1993, the Connecticut DEP submitted a draft PAMS network plan. The EPA reviewed the submittal and informed the State it was approvable and met the requirements of section 58.40(a) via a letter dated July 21, 1994. On March 2, 1995, Connecticut submitted a formal amendment to the SIP regarding PAMS Air Quality Monitoring. A letter finding the submittal complete was sent to the State on April 24, 1995. Since network descriptions may change annually, they are not part of the SIP as recommended by the document, ''Guideline for the Implementation of the Ambient Air Monitoring Regulations, 40 CFR part 58'' (EPA–450/4–78–038, OAQPS, November 1979).

Ambient air quality monitoring network descriptions undergo annual system reviews as required by 40 CFR section 58.20(d). The review covers the SLAMS, National Air Monitoring Station (NAMS) and PAMS networks. In addition, 40 CFR section 58.25 pertaining to SLAMS, section 58.36 pertaining to NAMS, and section 58.46 pertaining to PAMS each require that any changes to the network description as identified during the annual review must be approved by EPA.

The Connecticut PAMS SIP revision is intended to meet the requirements of section 182(c)(1) of the Act and to comply with the PAMS regulations, codified at 40 CFR part 58. The Connecticut DEP held a public hearing on the PAMS SIP revision on January 7, 1994.

II. Analysis of State Submission

1. Emission Inventory

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing emission inventory submissions to the EPA. Section 110(a)(2) of the Act provides that each emission inventory submitted by a State must be adopted after reasonable notice and public hearing.[1] Final approval of the inventory will not occur until the State revises the inventory to address public comments. Changes to the inventory that impact the 15 percent reduction calculation and require a revised control strategy will constitute a SIP revision. EPA created a ''de minimis'' exception to the public hearing requirement for minor changes. EPA defines ''de minimis'' for such purposes to be those in which the 15 percent reduction calculation and the associated control strategy or the maintenance plan showing, do not change. States will aggregate all such ''de minimis'' changes together when making the determination as to whether the change constitutes a SIP revision. The State will need to make the change through the formal SIP revision process, in conjunction with the change to the control measure or other SIP programs.[2] Section 110(a)(2) of the Act similarly

[1] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

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

provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

On January 13, 1994, Connecticut submitted to the EPA as a SIP revision the 1990 base year inventories for its two ozone nonattainment areas. Prior to the State's submittal of final inventories, the State had submitted draft inventories to EPA for review during July, August, and October 1992. EPA reviewed the draft inventories and sent comments to the state by letter dated November 20, 1992. Revised inventories were submitted to EPA in January and May of 1993 which addressed many of EPA's comments. The State held a public hearing on the inventory on July 20, 1993. EPA reviewed the May submittal and provided comments to the State through the hearing process by letter dated August 30, 1993. These comments included comments developed by an EPA contractor's review of the Connecticut inventories. The contractor's comments are summarized within a report dated April 16, 1993. Connecticut submitted its final 1990 base year emission inventories as revisions to the State's SIP on January 13, 1994. Additional revisions were submitted on February 3, 1994, and February 16, 1995.

The EPA Region I Office has compared the final Connecticut inventories with the deficiencies noted in the various comment letters and concluded that the State has adequately addressed the issues presented in the comment letters.

B. Emission Inventory Review

Section 110(k) of the CAA sets out provisions governing the EPA's review of base year emission inventory submittals in order to determine approval or disapproval under section 182(a)(1) (see 57 FR 13565–13566 (April 16, 1992)). The EPA is approving the Connecticut ozone base year emission inventories based on the Level I, II, and III review findings. This section outlines the review procedures performed to determine if the base year emission inventories are acceptable or should be disapproved.

The Level I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the State and assesses whether the emissions were developed according to current EPA guidance.

The Level III review process is outlined here and consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the QA program contained in the IPP was performed and its implementation documented.
2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.
3. The point source inventory must be complete.
4. Point source emissions must have been prepared or calculated according to the current EPA guidance.
5. The area source inventory must be complete.
6. The area source emissions must have been prepared or calculated according to the current EPA guidance.
7. Biogenic emissions must have been prepared according to current EPA guidance or another approved technique.
8. The method (e.g., Highway Performance Modeling System or a network transportation planning model) used to develop vehicle miles travelled (VMT) estimates must follow EPA guidance, which is detailed in the document, ''Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources,'' U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992.
9. The MOBILE model (or EMFAC model for California only) was correctly used to produce emission factors for each of the vehicle classes.
10. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.

The base year emission inventory will be approved if it passes Levels I, II, and III of the review process. Detailed Level I and II review procedures can be found in ''Quality Review Guidelines for 1990 Base Year Emission Inventories,'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. Level III review procedures are specified in EPA memoranda noted in the margin.[3]

The emission inventories prepared by Connecticut for its two, serious ozone nonattainment areas meet each of Level III's ten criteria. Documentation of the EPA's evaluation, including details of the review procedure, is contained within the technical support document prepared for the Connecticut 1990 base year inventory, which is available to the public as part of the docket supporting this action.

2. PAMS Network

The Connecticut PAMS SIP revision will provide the State with the authority to establish and operate the PAMS sites, will secure State funds for PAMS, and will provide the EPA with the authority to enforce the implementation of PAMS, since its implementation is required by the Act.

The criteria used to review the proposed SIP revision are derived from the PAMS regulations, codified at 40 CFR Part 58, and are included in ''Guideline for the Implementation of the Ambient Air Monitoring Regulations, 40 CFR part 58'' (EPA–450/4–78–038, Office of Air Quality Planning and Standards, November 1979), the September 2, 1993, memorandum from G. T. Helms entitled, ''Final Boilerplate Language for the PAMS SIP Submittal,'' the CAA, and the General Preamble.

The September 2, 1993, Helms memorandum stipulates that the PAMS SIP, at a minimum, must:

1. Provide for monitoring of criteria pollutants, such as ozone and nitrogen dioxide and non-criteria pollutants, such as nitrogen oxides, speciated VOCs, including carbonyls, as well as meteorological parameters;
2. Provide a copy of the approved (or proposed) PAMS network description, including the phase-in schedule, for public inspection during the public notice and/or comment period provided for in the SIP revision or, alternatively, provide information to the public upon request concerning the State's plans for implementing the rules;
3. Make reference to the fact that PAMS will become a part of the State or local air monitoring stations (SLAMS) network;
4. Provide a statement that SLAMS will employ Federal reference methods (FRM) or equivalent methods while most PAMS sampling will be conducted using methods approved by the EPA.

The Connecticut PAMS SIP revision provides that the State will implement PAMS as required in 40 CFR part 58, as amended February 12, 1993. The State will amend its SLAMS and its NAMS monitoring systems to include the PAMS requirements. It will develop its PAMS network design and establish monitoring sites pursuant to 40 CFR

[3] Memorandum from J. David Mobley, Chief, Emissions Inventory Branch, to Air Branch Chiefs, Region I–X, ''Final Emission Inventory Level III Acceptance Criteria,'' October 7, 1992; and memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region I–X, ''Emission Inventory Issues,'' June 24, 1993.

part 58 in accordance with an approved network description and as negotiated with the EPA through the 105 grant process on an annual basis. The State has begun implementing its PAMS network as required in 40 CFR part 58.

The Connecticut PAMS SIP revision also includes a provision to meet quality assurance requirements as contained in 40 CFR part 58, Appendix A. The State's SIP revision also assures EPA that the PAMS monitors will meet monitoring methodology requirements contained in 40 CFR part 58, Appendix C. Lastly, the State's SIP revision requires that the Connecticut PAMS network will be phased in over a period of five years as required in 40 CFR 58.44. The State's PAMS SIP submittal and the EPA's technical support document are available for viewing at the EPA Region I Office as outlined under the **ADDRESSES** section of this **Federal Register** document. The Connecticut PAMS SIP submittal is also available for viewing at the Connecticut State Office as outlined under the **ADDRESSES** section of this **Federal Register** document.

III. Final Action

1. Emission Inventory

Connecticut has submitted complete inventories containing point, area, biogenic, on-road mobile, and non-road mobile source data, and accompanying documentation. Emissions from these sources are presented in the following table:

VOC [4]

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
NY–NJ–CT	59.42	8.67	43.83	20.95	54.41	187.28
Hartford	178.05	33.74	127.12	78.44	383.39	800.74

[4] Note that these VOC inventory numbers include emissions of perchloroethylene. EPA has determined that perchloroethylene is photochemically non-reactive and does not significantly contribute to ozone production. Therefore, these inventory numbers have been adjusted to remove emissions of this compound in the proposed conditional approval of Connecticut's 15 percent plans published elsewhere in today's FEDERAL REGISTER.

NO_X

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
NY–NJ–CT	2.73	43.72	55.73	15.73	NA	117.91
Hartford	8.07	87.31	175.56	82.61	NA	353.55

CO

[Ozone Seasonal Emissions in Tons Per Day]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
NY–NJ–CT	3.51	13.09	356.87	165.52	NA	538.99
Hartford	10.90	20.30	1,032.9	530.41	NA	1,594.51

Connecticut has satisfied all of the EPA's requirements for providing a comprehensive, accurate, and current inventory of actual ozone precursor emissions in the Connecticut portion of the NY–NJ–CT severe area and the Hartford serious ozone nonattainment area. The inventories are complete and approvable according to the criteria set out in the November 12, 1992 memorandum from J. David Mobley, Chief Emission Inventory Branch, TSD to G. T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, AQMD. In today's final action, the EPA is approving the SIP 1990 base year ozone emission inventories submitted by Connecticut for the state's portion of the NY–NJ–CT severe area and the Hartford serious nonattainment area as meeting the requirements of section 182(a)(1) of the CAA.

2. PAMS Network

In today's action, the EPA is fully approving the revision to the Connecticut ozone SIP for PAMS.

The EPA is publishing these actions without prior proposal because the Agency views them as noncontroversial amendments and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve these SIP revisions and is soliciting public comment on them. This action will be effective December 23, 1997 unless, by November 24, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final actions. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 23, 1997.

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.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have 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).

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 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 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 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 December 23, 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).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: September 19, 1997.

John P. DeVillars,

Regional Administrator, Region I.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7641q.

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(74) to read as follows:

* * * * *

§ 52. 370 Identification of plan.

(c) * * *

(74) A revision to the Connecticut SIP regarding ozone monitoring. Connecticut will modify its SLAMS and its NAMS monitoring systems to include a PAMS network design and establish monitoring sites. Connecticut's SIP revision satisfies 40 CFR 58.20(f) PAMS requirements.

(i) Incorporation by reference.

(A) PAMS SIP Commitment Narrative, which incorporates PAMS into the ambient air quality monitoring network of State or Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS).

(ii) Additional material.

(A) Letter from the Connecticut Department of Environmental Protection dated March 2, 1995 submitting a revision to the Connecticut State Implementation Plan.

3. Section 52.384 is added to read as follows:

§ 52.384 Emission inventories.

(a) The Governor's designee for the State of Connecticut submitted the 1990 base year emission inventories for the Connecticut portion of the New York-New Jersey-Connecticut severe ozone nonattainment area and the Hartford serious ozone nonattainment area on January 13, 1994 as revisions to the State's Implementation Plan (SIP). Revisions to the inventories were submitted on February 3, 1994 and February 16, 1995. The 1990 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for these areas.

(b) The inventories are for the ozone precursors which are volatile organic compounds, nitrogen oxides, and carbon monoxide. The inventories

covers point, area, non-road mobile, on-road mobile, and biogenic sources.

(c) Taken together, the Connecticut portion of the New York-New Jersey-Connecticut severe nonattainment area and the Hartford serious nonattainment area encompass the entire geographic area of the State.

[FR Doc. 97–27855 Filed 10–23–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY22–1–163, FRL–5913–7]

Approval and Promulgation of Implementation Plans; New York; 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 New York. This revision establishes and requires the implementation of an enhanced inspection and maintenance (I/M) program in the counties of the Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk (except Fisher's Island), and Westchester Counties. The intended effect of this action is to give interim approval to the State's proposed enhanced I/M program for an interim period to last 18 months. This action is being taken under section 110 of the Clean Air Act and section 348 of the National Highway System Designation Act.

EFFECTIVE DATE: This rule will be effective November 24, 1997.

ADDRESSES: Copies of the State's submittal are available at the following addresses for inspection during normal business hours at the following locations: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866 and New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Rudolph K. Kapichak, Mobile Source Team Leader, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

On November 27, 1996, (61 FR 60242) EPA proposed conditional interim approval of New York's enhanced I/M program. New York submitted revisions to the existing program on March 27, 1996 to satisfy applicable requirements of the Clean Air Act (CAA) and the National Highway System Designation Act of 1995 (NHSDA).

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals. The NHSDA also directs EPA and the states to review the interim program results at the end of the 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 estimate 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 that Congress intended for these programs to start-up as soon as possible, which EPA had believed should have been 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 these programs.

Since publication of New York's proposed conditional approval, the State presented new information that led EPA to believe that ''as soon as practicable'' is not November 15, 1997 for New York. As a result, EPA recognizes New York's intent to start the program as soon as possible, but no later than November 15, 1998. In recognizing this later start date, EPA considered a number of issues related to the start of this program. Specifically:

- **Emission Credits**

Most I/M programs currently planned are requiring biennial inspections, however, New York will require annual inspections. As a result, New York will complete one full cycle of inspections, as will other states with biennial programs, by November 1999. This will allow New York to achieve all of the I/M program related emission reduction credits claimed in the 15 percent plan and the 9 percent rate-of-progress (ROP) plan. New York submitted these plans on September 4, 1997. EPA will take action on the State's 15 percent and 9 percent ROP plans at a later date.

- **Revisions to the Test Procedure and Equipment Specifications**

On December 17, 1996, New York held a kickoff meeting with test equipment vendors and potential bidders to discuss the State's requirements regarding time of delivery and adherence to the State's standard of performance. As a result, the State asked that by April 1, 1997 vendors express their interest in providing such test equipment prior to the November 15, 1997 program start date required by EPA. None of the vendors expressed such interest, and in fact considered the schedule time-constrained and unfeasible. This forced the State to reevaluate its overall program development plans and ultimately led New York to abandon its requirement for vendors to adhere to a standard of performance for the test equipment.

- **Potential Benefits to Other States**

The State has developed a new transient test procedure that provides mass emission measurement results (similar to IM240) with less expensive analyzer equipment generally associated with Acceleration Simulation Mode (ASM) testing. Development of this new test procedure has taken considerable time and effort on the part of New York. A mass emissions transient test (METT), like the one developed by New York, captures overall vehicle emissions during a simulated trip while an ASM test uses one constant speed and load. As a result, the ''NYTEST'' procedure has the potential for significant cost savings and may provide other states with another viable transient test procedure.

- **Network Size**

New York anticipates that 2,500 to 3,000 test-and-repair stations will need to be retrofitted to accommodate testing of the downstate vehicle fleet, which is approximately five million vehicles. Given that other states have begun program implementation and are further along in this process, New York will need to compete for similar equipment from a very limited number of sources. As a result, the magnitude of this program will require a longer phase-in period to ensure that sufficient stations are properly equipped prior to program start up.

If New York fails to start its program according to the schedule described in this notice, the interim approval granted under the provisions of the NHSDA, which allows the State to take full credit

for the I/M program in its 15 percent plan for the interim period, will convert to a disapproval after a finding letter is sent to the State by EPA. As a result, New York would be required to include additional provisions in its SIP to provide the necessary emission credit reductions. Because the start date is not being imposed pursuant to a commitment to correct a deficient SIP under section 110(k)(4), the failure to start the program by this date will not convert the SIP approval to a disapproval automatically. EPA is imposing the start date under its general SIP approval authority of section 110(k)(3), which does not require automatic conversion; therefore, the approval will be converted to a disapproval only upon EPA's notification of the State by letter.

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 a program evaluation process which includes both qualitative and quantitative measures and has been deemed acceptable by EPA. Due to the September 19, 1997 proposed I/M Rule revisions (62 FR 49184), the long-term program evaluation requirement has been proposed to be delayed for one year and will allow for equivalent test methodology.

As per the NHSDA requirements, this interim rulemaking will expire on May 24, 1999. A full approval of New York's final I/M SIP revision, which will include the State's program evaluation and final adopted State regulations, is still necessary under sections 110, 182, 184 and 187 of the CAA. After EPA reviews the State's submitted program evaluation and final regulations, final rulemaking on New York's SIP revision will occur.

Specific requirements of the New York enhanced I/M SIP and the rationale for EPA's proposed action are explained in the November 27, 1996 notice and will not be restated here.

II. Public Comments/Response to Comments

This section discusses the content of the comments submitted to the docket during the federal comment period for the notice of proposed rulemaking, published in the November 27, 1996 **Federal Register**, and provides EPA's responses to those comments. Comments were received from the State of New York and Environmental Advocates. Copies of the original comment letters, along with EPA's summary and response to comments, are available at EPA's Region II office at the address listed in the **ADDRESSES** section of this document.

Comment: Implementation Date

New York commented that EPA's action establishing November 15, 1997, as the implementation date is inconsistent with the provisions of the NHSDA. New York believes that states should be given 12 months from the publication of this document to begin implementing the new program.

Response to Comment

As stated earlier in this notice, 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. EPA believes that Congress intended for these programs to be implemented as soon as possible, and had determined that this should have been on or before November 15, 1997 so that six months or more of program data could be obtained for program evaluation. However, since publication of New York's proposed conditional approval, the State presented new information that led EPA to believe that ''as soon as practicable'' is not November 15, 1997 for New York. As a result, EPA recognizes New York's intent to start the program as soon as possible, but no later than November 15, 1998.

Comment: Definition of ''Program Implementation''

New York's comment expresses concern that EPA has defined program implementation to mean that the program is completely implemented in all areas. New York believes EPA must adjust this definition to ensure that sufficient test data is collected for the program evaluation and allow analyzer manufacturers sufficient time to produce and supply the necessary equipment.

Response to Comment

EPA defines program ''start-up'' as a fully operational program that has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of the State's required areas. This definition allows for the collection of sufficient test data for program implementation as well as any retooling requirements. Therefore, no change in this definition is warranted.

Comment: Orange County

Environmental Advocates commented that New York's program does not meet the applicability requirements of the federal I/M regulation because the State failed to include southern Orange County as part of the area to be covered by the enhanced I/M program.

Response to Comment

It is true that New York has not yet submitted to EPA an I/M plan that addresses southern Orange County. However, after considering a number of factors unique to the implementation of an I/M program in southern Orange County, EPA sees no reason to disapprove the current submission for the rest of the New York metropolitan area. Such action would delay implementation of the plan submitted thus far which covers the vast majority of the vehicles in the New York metropolitan area. These factors are listed below:

- **County-Wide Implementation**

Implementation of an I/M program is more feasible on a county-wide basis. Southern Orange County is anomalous in the New York-Northern New Jersey-Long Island Area Air Quality Control Region (AQCR), since its severe nonattainment designation applies only to a portion of a county. Therefore, implementation of an I/M program in such an area must account for a number of impracticalities such as: identification of subject vehicles by home or business address, and enforcement against vehicle cross registration outside the program area.

- **Existing Network**

At present, Orange County is not covered by an I/M program. Southern Orange County was designated as severe nonattainment for ozone in 1992. Since an I/M program will eventually be required in all of Orange County, EPA will act on the plan to be submitted by the State for this county at a later date.

- **Population Size**

Southern Orange County covers only about one third of the County and represents less than one percent of the total population of New York's portion of the New York-Northern New Jersey-Long Island AQCR.

When considered as a whole, EPA believes that these factors and common sense support its decision to approve New York's submittal which covers the remainder of New York's portion of the AQCR. The Agency will take action on this issue and complete the necessary applicability analysis when New York submits its I/M plan for Orange County and the rest of the upstate region. EPA believes that the rejection of New York's entire plan now on the basis that a minute portion of the relevant area is excluded would not advance the goals of this program. In fact, EPA believes

that such inflexibility would be counterproductive at this juncture.

As previously stated, this unique circumstance results from the nature of I/M implementation itself and Orange County's dual nonattainment designation. Other SIP requirements applicable to southern Orange County as part of the New York City AQCR are not susceptible to the same analysis because the Act does not suggest a similar sensitivity to population density as is appropriate in administering the I/M program applicable to individual vehicle owners.

III. Supplemental State Submittals

Under the terms of EPA's November 27, 1996 proposed conditional interim approval notice, the State was required to make commitments within 30 days to correct three major deficiencies with the I/M program SIP by dates certain. On December 24, 1996, New York submitted such a letter to EPA from David Sterman, Deputy Commissioner of the New York Department of Environmental Conservation. The contents of this letter and subsequent correspondence are discussed below.

A. Consumer Price Index Adjustment of the $450 Repair Cost Waiver

States are required annually to adjust the $450 repair cost waiver by the Consumer Price Index (CPI). By January 1, 2000, the adjustment is to be made retroactive to 1989. Deputy Commissioner Sterman's December 24, 1996, letter indicated that the State will adjust the repair cost waiver by the CPI as required by federal law. Additionally, the letter indicates that the State will make the adjustment back to 1989. Therefore, the State has met this condition.

B. Enhanced I/M Performance Standard Modeling

States are required to submit modeling demonstrating that the proposed I/M program will achieve the required emission reductions by the relevant dates and meet the relevant I/M performance standard. On September 4 and 16, 1997, New York submitted modeling results and assumptions showing that its program meets EPA's high enhanced performance standard. New York assumed use of the NYTEST, a test method based on RG240 for which no final emission reduction credits have been developed. (See the following discussion about equipment specifications for further details.) Based on available data at the time of this notice, EPA has concluded that there is sufficient evidence to support New York's claim that this test deserves emission reduction credit about half way between a 2-mode ASM test and an IM240 test. EPA is also planning to further evaluate this test procedure along with others to determine the adequate level of credit it deserves, but expects that the test will meet the level claimed by New York. The modeling results submitted by the State on September 4, 1997, and subsequent demonstration submitted on September 16, 1997, show that the proposed I/M program meets the high enhanced performance standard. As a result, the State has met this condition.

C. Test Procedures, Standards and Equipment

States are required to submit written test procedures, pass/fail standards, and equipment specifications. These are to be established and followed for each model year and vehicle type included in the I/M program. New York's I/M program will use a mass emissions transient test (METT), known as NYTEST, which is based on EPA's description of Repair Grade 240-second METT. The State submitted information to support its assertion that the proposed program would achieve reductions estimated to be half way between a 2-mode ASM test, and EPA's IM240 test. As required in the November 27, 1996 **Federal Register** notice, New York submitted I/M program test procedures, standards, and equipment specifications on January 31, 1997. Due to revisions made since then, New York submitted the revised test procedures, standards, and equipment specifications on September 16, 1997. Therefore, this condition has been met.

IV. De minimus Conditions

EPA is taking final interim approval action upon the New York I/M SIP, under section 110 of the CAA. As discussed in detail later in this document approval is being granted on an interim basis for an 18-month period under the authority of the NHSDA.

The State must correct six minor, or de minimus, deficiencies related to the CAA requirements for enhanced I/M. Although satisfaction of these deficiencies does not affect the interim approval status of the State's rulemaking, these deficiencies must be corrected in the final I/M SIP revision to be submitted at the end of the 18-month interim period:

(1) New York must submit quality control measures in accordance with the requirements set forth in 40 CFR part 51.359.

(2) New York must complete the development of the inspector training and certification program.

(3) New York must finalize plans for its data collection system.

(4) New York must complete the public information program, including the repair station report card.

(5) New York must commit to perform on-road testing in accordance with the requirements set forth in section 51.371 of the federal I/M regulation.

(6) New York must complete the development of the quality assurance program.

V. Further Requirements for I/M SIP Approval

This approval is being granted on an interim basis for a period of 18 months, under the authority of section 348 of the NHSDA. At the end of this period, the approval of the emission reduction credits will lapse. At that time, EPA must take final rulemaking action upon the State's SIP under the authority of section 110 of the CAA. Final approval of New York's I/M program emission reduction credits will be granted based upon the following criteria:

(1) The State has complied with all the conditions of its commitment to EPA;

(2) EPA's review of the State's program evaluation confirms that the appropriate amount of program credit was claimed by the State and achieved with the interim program;

(3) Final program regulations are submitted to EPA; and

(4) The State's I/M program meets all of the requirements of EPA's I/M rule, including those *de minimus* deficiencies identified in the November 27, 1996 proposal (61 FR 60242) as minor for purposes of interim approval.

VI. Final Rulemaking Action

EPA is granting interim approval of New York's revised enhanced I/M program based primarily upon its decentralized program effectiveness claims. The approval will cover a period of 18 months, allowing the State to demonstrate ''actual'' effectiveness of its program. It must be noted that actual effectiveness findings will not affect this approval, but may affect the emission reduction credits granted.

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.

VII. Administrative Requirements

A. Executive Order 12866

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 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, 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 the approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitments, 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 (''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 annual 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 annual 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 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 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 December 23, 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 6, 1997.

Jeanne M. Fox,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart HH—New York

2. Section 52.1683 is amended by adding paragraphs (c), (d), and (e) to read as follows:

* * * * *

(c) The State of New York's March 27, 1996 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, as amended on September 16, 1997, and September 17, 1997, is approved with an interim period to last 18 months. If New York fails to start its program by November 15, 1998, the interim approval granted under the provisions of the NHSDA, which EPA believes allows the State to take full credit in its 15 percent plan for all of the emission reduction credits in its proposal, will convert to a disapproval after a finding letter is sent to the State by EPA.

(d) The State must correct six minor, or de minimus, deficiencies related to the CAA requirements for enhanced I/M. The minor deficiencies are listed in EPA's interim final rulemaking on New York's motor vehicle inspection and maintenance program published on October 24, 1997. Although satisfaction of these deficiencies does not affect the interim approval status of the State's rulemaking, these deficiencies must be corrected in the final I/M SIP revision to be submitted at the end of the 18-month interim period.

(e) EPA is also approving this SIP revision under Section 110(k) for its strengthening effect on the plan.

[FR Doc. 97–28273 Filed 10–23–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–5913–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting a petition submitted by General Motors Corporation (GM) to exclude (or ''delist'') certain solid wastes from the lists of hazardous wastes contained in subpart D of part 261. EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a Subtitle D landfill. This exclusion applies only to the wastewater treatment plant (WWTP) sludge generated at GM's Orion Assembly Center in Lake Orion, Michigan. Today's action excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill, but imposes testing conditions to ensure that the future-generated waste remains qualified for this exclusion.

EFFECTIVE DATE: October 24, 1997.

ADDRESSES: The regulatory docket for this final rule which contains the complete petition and supporting documents is located at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604–3590, and is available for viewing from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Call Steven Pak at (312) 886–4446 for appointments. The public may copy material from the regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this rule, contact Steven Pak at the address above or at (312) 886–4446.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under sections 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in subpart D of part 261. Specifically, section 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273; and section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists. Petitioners must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, where there is reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, the Administrator must determine that such factors do not warrant retaining the waste as a hazardous waste.

B. History of This Rulemaking

On January 12, 1996, GM petitioned EPA to exclude from hazardous waste control the WWTP sludge generated at its Orion Assembly Center. After evaluating the petition, on April 18, 1997, EPA proposed to exclude GM's waste from the lists of hazardous wastes in subpart D of part 261 (see 62 FR 19087). This rulemaking addresses the public comments received on the proposal and finalizes the proposed decision to grant GM's petition.

II. Disposition of Delisting Petition

General Motors Corporation, Orion Assembly Center, 4555 Giddings Road, Lake Orion, Michigan 48361–1001

A. Proposed Exclusion

GM petitioned EPA to exclude an annual volume of 1,500 cubic yards of WWTP filter press sludge from the list of hazardous wastes contained in section 261.31, and subsequently provided additional information to complete its petition. The WWTP sludge is listed as EPA Hazardous Waste No. F019—''Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.'' The listed constituents of concern for EPA Hazardous Waste No. F019 are hexavalent chromium and cyanide (complexed) (see Appendix VII of part 261).

In support of its petition, GM submitted detailed descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, and analytical testing results for representative samples of the petitioned waste, including (1) the hazardous characteristics of ignitability, corrosivity, reactivity, and toxicity; (2) total constituent and Extraction Procedure for Oily Wastes (OWEP, SW–846 Method 1330) analyses for the eight toxicity characteristic metals listed in section 261.24, plus antimony, beryllium, cobalt, copper, hexavalent chromium, nickel, tin, thallium, vanadium, and zinc; (3) total constituent and Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) analyses for 163 volatile and semi-volatile organic compounds; (4) total constituent and TCLP analyses for total sulfide, total cyanide, and complexed cyanide; and (5) total constituent analysis for oil and grease, total organic carbon, and percent solids.

EPA evaluated the information and analytical data provided by GM and tentatively determined that GM had successfully demonstrated that the petitioned waste is not hazardous. See the proposed exclusion (62 FR 19087; April 18, 1997) for a detailed explanation of EPA's evaluation.

B. Response to Comments

EPA received public comment on the April 18, 1997, proposal from one interested party, the Ecology Center.

Comment: The commenter states that due to the levels of metals and organic compounds in the petitioned waste, land disposal cannot be regarded as long-term protection of human health and the environment since the metals will remain forever and all landfills will eventually leak. The commenter cites a General Accounting Office report and stresses that serious problems, such as groundwater contamination, are encountered in a large number of ''state-of-the-art'' hazardous waste landfills.

Response: EPA has assumed that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for GM's WWTP sludge. The impacts of this scenario were predicted with EPA's Composite Model for Landfills (EPACML) which was developed by EPA to predict the transport of hazardous constituents through soil and ground water from a waste management unit to a receptor well serving as a drinking-water source. EPA stated in the final toxicity characteristic (TC) rule that the EPACML and the toxicity characteristic leaching procedure (TCLP) would be used for the delisting program in the future (see 55 FR 11833; March 29, 1990). The method EPA uses to apply the EPACML to delisting yields conservative yet reasonable estimations of contaminant fate and transport (56 FR 32993; July 18, 1991). One of the assumptions EPA used in applying the EPACML is that any liner beneath the landfill would eventually fail. Another assumption is that the landfill is an infinite source of hazardous constituents, whereas the levels of constituents emanating from a landfill may actually decrease over time. In addition, the model ignores certain attenuative mechanisms in the subsoils that in reality would tend to reduce the levels of constituents. Thus, EPA has modeled the WWTP sludge under a worst-case scenario of a ''leaking'' Subtitle D landfill and has determined that the levels of inorganic and organic constituents at a hypothetical drinking

water well are below health-based levels of concern.

Comment: The commenter states that while GM's WWTP sludge appears to pass the TCLP procedure, Subtitle D landfills generate unspecified quantities of organic acids and compounds some of which may lead to increased metal solubilities due to complexation reactions. The commenter concludes that laboratory procedures cannot be relied upon to represent real-world conditions.

Response: While no laboratory test is universally appropriate in all circumstances, EPA does not agree with the commenter that no laboratory procedure can be relied upon to represent ''real-world'' conditions. The TCLP was designed, through extensive research and field studies, to simulate the leaching of both inorganic and organic compounds under the acidic conditions expected in actively decomposing municipal landfills. The specific environment modeled by the TCLP is disposal of industrial waste with municipal waste in a Subtitle D landfill. EPA believes that this co-disposal represents a reasonable worst-case management scenario. EPA also believes that the extraction fluids employed in the TCLP procedure are more aggressive than the organic acids generated from municipal wastes and that the TCLP is reasonably accurate in addressing the mobility of metals and other constituents. See 51 FR 21653, June 13, 1986, for further discussion of the TCLP. EPA is not aware of any factors that question the appropriateness of the TCLP for GM's petitioned waste.

Comment: The commenter states that because of the metal content of the WWTP sludge and other metal bearing wastes generated by the automotive and related industries, land disposal results in a loss of valuable and non-renewable resources. The commenter identifies several commercially available metal recovery technologies used by the metal finishing industry and summarizes the advantages of metal recovery over conventional treatment and disposal. The commenter recommends that GM conduct an economic and technical feasibility study using the methodology of total cost accounting.

Response: One of the objectives of RCRA is to conserve valuable material and energy resources by minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment. However, RCRA's general objectives do not supersede the specific hazardous waste listing and delisting scheme established under RCRA. Having fully considered all of the relevant factors, EPA has determined that GM's petitioned waste does not meet the criteria for being considered a hazardous waste. RCRA's objective of resource recovery does not require, and indeed does not authorize, EPA to forego or reverse this determination.

Similarly, the national policy under the Pollution Prevention Act (PPA) establishes a hierarchy which prefers pollution prevention at the source over recycling and prefers recycling over treatment and disposal in an environmentally safe manner. EPA fully supports this hierarchy and believes it sets forth a desirable general order of preferences for pollution control. Again, however, this policy is not a statutory or regulatory mandate. Nothing in the PPA requires or even contemplates that EPA must retain materials that EPA finds to be non-hazardous on the lists of hazardous wastes simply because there exists an ability to perform resource recovery on these materials.

EPA has no authority to retain GM's petitioned waste as a listed hazardous waste simply because doing so would effectively promote reclamation over disposal. There is no question that waste minimization and resource recovery are desirable and are being encouraged by the EPA. EPA remains fully committed, in its waste programs and elsewhere, to promoting pollution prevention objectives. While EPA cannot require GM to evaluate the feasibility of metals recovery as the commenter recommends, EPA does encourage GM to consider the request.

C. Changes to Proposed Verification Testing Conditions

In the proposed rulemaking, EPA included delisting levels for 14 constituents that would be protective of human health and the environment and that the TCLP/OWEP extract of the petitioned waste could not exceed. However, the proposed levels of 180 mg/l for barium and 9 mg/l for chromium are greater than the hazardous waste toxicity characteristic (TC) levels of 100.0 mg/l and 5.0 mg/l respectively (see section 261.24). Today's rule lowers the proposed delisting levels for barium and chromium to levels below the TC levels to ensure that the petitioned waste, even though otherwise protective of human health and the environment, remains below the TC levels.

Paragraph 1 in Table 1 of Appendix IX to part 261 now reads ''1. Verification Testing: GM must implement an annual testing program to demonstrate, based on the analysis of a minimum of four representative samples, that the constituent concentrations measured in the TCLP (or OWEP, where appropriate) extract of the waste are within specific levels. The constituent concentrations must not exceed the following levels (mg/l) which are back-calculated from the delisting health-based levels and a DAF of 90: Arsenic—4.5; Cobalt—189.; Copper—126.; Nickel—63.; Vanadium—18.; Zinc—900.; 1,2-Dichloroethane—0.45; Ethylbenzene—63.; 4-Methylphenol—16.2; Naphthalene—90.; Phenol—1800.; and Xylene—900. The constituent concentrations must also be less than the following levels (mg/l) which are the toxicity characteristic levels: Barium—100.0; and Chromium (total)—5.0.''

D. Final Agency Decision

For the reasons stated in both the proposal and this rule, EPA's conclusion is that GM's petitioned waste may be excluded from hazardous waste control. EPA, therefore, is granting a final exclusion for the WWTP sludge generated at a maximum rate of 1,500 tons per year (or 1,500 cubic yards per year) at GM's Orion Assembly Center. This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261 are satisfied.

Although management of the waste covered by this exclusion is removed from Subtitle C jurisdiction, this exclusion applies only where this waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal and/or industrial solid waste.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose (non-RCRA) regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact the State regulatory authority to determine the current status of their waste under State law.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this exclusion does not apply in those authorized States.

IV. Effective Date

This rule is effective October 24, 1997. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. The effect of this rule is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. Therefore, this rule does not represent a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This rule will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this final rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local or tribal governments or the private sector. In addition, today's delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: October 6, 1997.

Norman R. Niedergang,

Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Table 1 of Appendix IX of Part 261 is amended to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
General Motors Corporation	Lake Orion, Michigan	Wastewater treatment plant (WWTP) sludge from the chemical conversion coating (phosphate coating) of aluminum (EPA Hazardous Waste No. F019) generated at a maximum annual rate of 1,500 tons per year (or 1,500 cubic yards per year), after October 24, 1997 and disposed of in a Subtitle D landfill.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		1. *Verification Testing:* GM must implement an annual testing program to demonstrate, based on the analysis of a minimum of four representative samples, that the constituent concentrations measured in the TCLP (or OWEP, where appropriate) extract of the waste are within specific levels. The constituent concentrations must not exceed the following levels (mg/l) which are back-calculated from the delisting health-based levels and a DAF of 90: Arsenic—4.5; Cobalt—189; Copper—126; Nickel—63; Vanadium—18; Zinc—900; 1,2-Dichloroethane—0.45; Ethylbenzene—63; 4-Methylphenol—16.2; Naphthalene—90; Phenol—1800; and Xylene—900. The constituent concentrations must also be less than the following levels (mg/l) which are the toxicity characteristic levels: Barium—100.0; and Chromium (total)—5.0. 2. *Changes in Operating Conditions:* If GM significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, GM may handle the WWTP filter press sludge generated from the new process under this exclusion after the facility has demonstrated that the waste meets the levels set forth in paragraph 1 and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced. 3. *Data Submittals:* The data obtained through annual verification testing or paragraph 2 must be submitted to U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604–3590, within 60 days of sampling. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be made available for inspection. All data must be accompanied by a signed copy of the certification statement in 260.22(I)(12).

* * * * * * *

[FR Doc. 97–28274 Filed 10–23–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 24

[WT Docket No. 97–82; FCC 97–342]

Installment Payment Financing for Personal Communications Services (PCS) Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Second Report and Order* the Commission orders resumption of installment payments for the broadband Personal Communications Services (PCS) C and F blocks, with the payment deadline reinstated as of March 31, 1998. The Commission adopts disaggregation, amnesty, and prepayment options designed to assist C block licensees experiencing financial difficulties. These options will allow C block licensees to build systems or surrender spectrum to the Commission for reauction. The Commission's objectives in this proceeding are to ensure that the C block licensees have opportunities to provide service to the public while maintaining the fairness and integrity of the Commission's auctions program.

EFFECTIVE DATE: The effective date of the rule changes herein is December 23, 1997. The information collection contained in these rules becomes effective on OMB approval but no sooner than December 23, 1997. The Commission will publish a document on a later date announcing the effective date of the information collection.

FOR FURTHER INFORMATION CONTACT: Jerome Fowlkes or Sandra Danner, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This *Second Report and Order* in WT Docket No. 97–82, adopted on September 25, 1997 and released on October 16, 1997, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (202) 857–3800. The complete *Second Report and Order* also is available on the Commission's Internet home page (http://www.fcc.gov).

Summary of Action

I. Background

1. In the *Competitive Bidding Fifth Report and Order*, the Commission established a variety of incentives to encourage small businesses to participate in the auction of C block 30 MHz and F block 10 MHz broadband PCS licenses. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Fifth Report and Order, 59 FR 37566 (July 22, 1994) (*Competitive Bidding Fifth Report and Order*). Provisions to promote participation by small businesses in broadband PCS included limiting eligibility in the initial C and F block auctions to entrepreneurs and small businesses, offering varying bidding credits, and offering installment payment plans. The installment payment plan for C block permitted licensees that qualified as small businesses to pay 90% of the bid price over a period of ten years, with interest only paid for the first six years and interest and principal for the remaining four. *See* 47 CFR § 24.711(b)(3). In addition, there were other installment payment options available for bidders

qualifying as entrepreneurs. *See* 47 CFR §§ 24.711(b)(1)–(3). All bidders in the C block auction, however, qualified as small businesses. Installment payments for small business F block licensees were limited to 80% of the bid price over ten years, and payments consist of interest only for the first two years, then interest and principal for the remaining eight years. *See* 47 CFR § 24.716(b)(3). Entrepreneurs were also eligible for less favorable installment payment terms. *See* 47 CFR §§ 24.711(b)(1)–(2).

2. On May 6, 1996 and July 16, 1996, the Commission concluded its broadband PCS C block auctions. Ninety bidders (including the C block reauction winners) won 493 C block licenses. The broadband PCS D, E, and F block auction concluded on January 14, 1997, and 88 bidders won 491 F block licenses. Net high bids received for C block 30 MHz licenses, including C block reauction bids, totalled approximately $10.2 billion; net high bids received for F block 10 MHz licenses totalled $642.3 million.

3. While many C block licenses were purchased for prices below or comparable to those for the A or B blocks, a handful of large bidders bid extremely high prices per pop for major markets, even adjusted for the value of the government financing we provide. The aggregate results of the C block auction, when measured in average price per pop paid, are markedly higher than the other PCS bands, even after adjusting for financing, and even though many individual small licensees bid prices comparable to those paid for the A and B block PCS licenses.

4. When formulating its original auction rules in 1994, the Commission considered the possibility of debt restructuring and observed that it would follow current procedures under the existing debt collection rules and procedures. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Second Report and Order, 59 FR 22980 (May 4, 1994) (*Competitive Bidding Second Report and Order*).

5. The *Notice of Proposed Rulemaking* to revise the part 1 auction rules sought comment on several topics related to auction installment debt. *See* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making, 62 FR 13540 (March 21, 1997) (*Part 1 Proceeding*). The Commission sought comment on imposing late payment fees on installment payments; the default provisions of § 1.2104(g) in the event of installment payment defaults; and revised procedures for granting grace period requests.

6. On March 31, 1997, in response to a joint request from several C block licensees seeking to modify their installment payment obligations, and because of other debt collection issues, the Wireless Telecommunications Bureau (Bureau) suspended the deadline for payment of installment payments for all C block licensees. On April 28, 1997, the Bureau extended the suspension to F block licensees.

7. On June 30, 1997, the Bureau conducted a public forum in Washington, D.C. (''FCC Public Forum'') to discuss broadband PCS C and F block installment payment issues, including the alternative financing arrangements proposed in connection with the Public Notices issued on June 2, 1997. An FCC Task Force also was established which included representatives from the Bureau, the Office of Plans and Policy, the Office of General Counsel, and the Office of Communications Business Opportunities. This Task Force was charged with evaluating proposals for alternative financing arrangements submitted by PCS C and F block licensees and recommending to the Commission how to respond to those proposals. Both before and after the FCC Public Forum, numerous comments, reply comments, and *ex parte* letters and presentations were submitted to the Commission as part of this proceeding. The Commission thus has before it a wide range of proposals from entrepreneur block licensees, financial institutions and investors, equipment vendors, and other interested parties.

II. Second Report and Order

8. The Commission requires C and F block licensees to resume their Note payments on March 31, 1998. They will also be required to pay on that date one-eighth of the Suspension Interest, and thereafter, pay one-eighth of the Suspension Interest with each regular installment payment made until the Suspension Interest is paid in full. ''Suspension Interest'' is the entire amount of the unpaid simple interest that was accrued at the rate set forth in each licensee's Note(s) during the period beginning with the date on which each license was conditionally granted through and including March 31, 1998 (''Suspension Period''). After March 31, 1998, payment due dates will conform to those indicated in the Notes executed by the licensees. C block licensees will be entitled to elect to continue making payments under their original C block Notes. In addition, the Commission adopts three options relating to the rules governing installment payments for the C block. These are designed to help to resolve the financing issues facing C block licensees and restore certainty to the marketplace, while at the same time helping the Commission meet its statutorily mandated public interest considerations set forth under Section 309(j) of the Communications Act.

9. These goals will also be furthered by generally applying the same rules regarding eligibility that were used in the C block auction to the reauction of C block licenses. *See* 47 CFR § 24.709. All applicants for the reauction meeting the current definition of ''entrepreneur'' will be eligible to bid in the reauction. The Commission will also allow all entities that were eligible for and participated in the original C block auction to bid in the reauction. Further, with the exception of incumbent licensees who choose to disaggregate portions of spectrum they currently hold, and those licensees who surrender licenses under the prepayment option, all C block licensees who return licenses to the Commission will be eligible to bid on all markets in the reauction.

A. Resumption of Payments

10. Effective March 31, 1998, the Commission rescinds the Order and Public Notice suspending payments for the C and F block licenses and reinstates the installment payment plans for all C and F block licensees. The Commission directs that all payments due and owing on and after March 31, 1998 be made in accordance with the terms of each licensee's Note, associated Security Agreement, and the Commission Orders and regulations. All Suspension Interest will become due and payable over a two-year period and all Commission rules regarding installment payments and defaults for the broadband PCS C and F blocks will remain in effect. Any C or F block licensee that fails to remit the payment due on March 31, 1998, and remains delinquent for more than 60 days (*i.e.*, fails to make the March 31, 1998, payment on or before May 30, 1998), will be in default on its license. *See* 47 CFR § 1.2110(e)(4)(i). The 60-day period is an exception to the existing rules that provide for an automatic 90-day non-default period. Given the one year suspension, the Commission believes that providing a shorter automatic grace period is justified.

11. Any licensee that continues under its original Note(s), will be required to pay on March 31, 1998, one-eighth of the Suspension Interest; thereafter, regular payments will become due and payable in accordance with the provisions of the licensee's original Note. The Commission concludes that it

could place a significant burden on licensees to require payment of the entire amount of the Suspension Interest on March 31, 1998. Therefore, the Commission requires that broadband PCS C and F block licensees submit one-eighth of the Suspension Interest on March 31, 1998, and one-eighth of the Suspension Interest with each regular installment payment made thereafter until the Suspension Interest is paid in full. After March 31, 1998, payment due dates will conform to those indicated in the Note(s) executed by the licensees. While the first regular installment payment next made after March 31, 1998, will be pro-rated to account for the resumption of payments on March 31, 1998, all regular installment payments thereafter will be in the amounts shown on the amortization schedule attached to and made a part of each Note, as amended, plus the applicable payments of Suspension Interest. For example, for those licensees granted in September, 1996 whose regular installments occur on March 31, June 30, September 30, and December 31 of each year, the next regular payment due after March 31, 1998, will be due on June 30, 1998, and will include the amount of interest accrued from April 1, 1998, through and including June 30, 1998, plus one-eighth of the Suspension Interest. The next regular payment will be due on September 30, 1998, and will be due in the amount shown on the amortization schedule attached to the Note (*i.e.*, interest from July 1, 1998, through and including September 30, 1998), plus one-eighth of the Suspension Interest. Regular payments will continue on each and every December 31, March 31, June 30, and September 30 thereafter until the Note is paid in full. For these licensees, the payment due on December 31, 1999, will be the last payment due that includes any amortized Suspension Interest. All payments after that date will continue in accordance with the terms of the amortization schedule attached to the Note executed by the licensee. All installment payments previously made by licensees who elect one of the three options will be applied in accordance with the provisions set forth under the discussion of each option below.

12. The Commission delegates to the Bureau authority to set forth all procedures for implementing the resumption of payments.

13. Broadband PCS C block licensees choosing to surrender their licenses pursuant to the amnesty option described below and those surrendering licenses that are not prepaid pursuant to the prepayment option described below will be required to return to the Commission each original Note and Security Agreement for cancellation by the Commission. The Commission will not entertain any requests for an extension of the March 31, 1998 deadline beyond the automatic 60-day non-default period discussed above. The licensees have already been afforded a significant period to licensees during which payments were not required. Therefore, the Commission intends to deny any requests for a grace period beyond the automatic 60-day non-default period adopted herein, including any requests made pursuant to § 1.2110 of the Commission's rules. *See* 47 CFR § 1.2110(e)(4)(ii).

14. C block licensees may resume payments under their current Note or elect one of the three options described below.

B. Disaggregation of Spectrum for Reauction

15. Under the disaggregation option adopted today by the Commission, any C block licensee may disaggregate a portion of its spectrum from each of its licenses and surrender it to the Commission for reauction. The licensee must disaggregate 15 MHz of spectrum it holds across all Basic Trading Areas (BTAs) in an Major Trading Area (MTA). These provisions prevent licensees from selectively surrendering spectrum for which they may believe they paid too much, or otherwise discarding spectrum in markets that may be more difficult to serve (commonly referred to as ''cherry-picking'' of licenses or spectrum). The Commission limits the ability of licensees to selectively disaggregate spectrum within an MTA also to facilitate attempts by new bidders to aggregate spectrum and initiate service. Because the Commission is allowing disaggregation on an MTA-by-MTA basis, special exemptions for built-out systems, such as the one adopted under the amnesty option discussed below, are unnecessary. In cases where a licensee has built-out a BTA, it can choose either to retain all 30 MHz in each of the BTAs it has licenses for in an MTA, or it can operate its built-out system with 15 MHz. The Commission believes that this flexibility mitigates the need for a build-out exception for this option.

16. Licensees electing this option will be required to return half of their spectrum at 1895–1902.5 MHz paired with 1975–1982.5 MHz, which is spectrum contiguous to the PCS F block. The surrender of spectrum adjacent to the F block will provide sufficient contiguous spectrum for both the incumbent and new licensees to offer competitive PCS services.

17. Under the disaggregation option, the Commission will reduce the amount of the debt owed by an amount equal to the *pro rata* portion of the spectrum returned to the Commission, *i.e.*, by 50%, subject to coordination with the Department of Justice pursuant to applicable federal claims collection standards. The Commission will retain the *pro rata* portion of the down payments applicable to the spectrum. The following illustrates how this proposal would operate in practice:

Company X holds a 30 MHz license in a BTA market; paid the Commission $100,000 in its down payment; and owes the Commission $900,000 on a net bid of $1,000,000. Company X could disaggregate 15 MHz and surrender it to the Commission for reauction, and the Commission would retain $50,000 of the down payment. In return, the Commission would reduce the licensee's obligation to the government to $450,000.

The face amount of the licensee's Note will be adjusted to reflect the new principal, and the Note will then be amortized from the original date of execution to calculate the payments at the new face amount of the Note. All installment payments made as of March 31, 1997 (including any payments due prior to and on March 31, 1997) will be applied to reduce the amount of the Suspension Interest calculated on the new principal balance to be made in eight equal payments beginning March 31, 1998.

18. Where applicable, the existing disaggregation rules will govern this option. *See* 47 CFR § 24.714. However, the broadband disaggregation rules were not designed for the surrender of spectrum to the Commission. Thus, existing rule provisions on designated entity transfer restrictions, unjust enrichment, installment payments, abbreviated license terms and construction requirements, restrictions on the amount of spectrum that can be disaggregated, and similar rules will not apply to disaggregation to the Commission authorized by this option. In order to take advantage of the disaggregation option, licensees will be required to make an election consistent with the procedures specified in this *Second Report and Order.*

19. In order to avoid unjust enrichment, licensees (defined as qualifying members of the licensee's control group, and their affiliates) will be prohibited from bidding in the subsequent reauction for spectrum the incumbent licensee has disaggregated. However, they will be permitted to acquire spectrum for any BTA for which

the incumbent licensee has not disaggregated spectrum. The Commission does not believe that it would be fair for these entities to benefit from a reauction after taking advantage of the disaggregation option. To ensure further against unjust enrichment, these entities will also be barred from reacquiring the spectrum they have surrendered to the Commission through a secondary market transaction for a period of two years from the start of a reauction.

20. The Commission believes that the disaggregation option set forth above is consistent with the goals in this proceeding and serves the public interest. First, this option preserves the credibility and integrity of the Commission's rules. The relief provided is another means of making more efficient use of the spectrum. It does not provide a windfall or unfair advantage to the C block licensees availing themselves of the disaggregation option. The disaggregating licensee continues to pay for spectrum at its net high bid price, and the Commission receives full payment for the spectrum retained by the licensee. In addition, the Commission will retain 50% of the down payment consistent with the amount of spectrum being surrendered to the Commission. Moreover, disaggregation with a *pro rata* adjustment in debt is consistent with the Commission's rules with regard to private party disaggregation.

21. Second, the disaggregation option is fair and equitable to all interested parties. Losing bidders and other eligible parties will have an opportunity to bid on the disaggregated spectrum in the reauction. Also, by limiting disaggregation of spectrum to 15 MHz blocks on a BTA within an MTA basis, the Commission increases the likelihood that the licenses available for reauction will be in quantities and geographic clusters that are commercially viable. In addition, by providing this limited opportunity to ''pick and choose'' which licenses to disaggregate, and not requiring the surrender of all 30 MHz of the spectrum it holds in an MTA, this option is fair to those who have built-out some of their markets. This option does not materially alter the competitive landscape for commercial mobile radio services. Given the current state of the market and the Commission's existing rules, it is reasonable to expect that some C block spectrum will be transferred to competitors through reauction or private sale. The Commission's action here facilitate this process, by reducing the amount of spectrum that would otherwise be marketed in a piecemeal fashion. Moreover, as noted above, other parties will have an opportunity to bid on this spectrum in the reauction and, because of the spectrum's proximity to the F block, the spectrum may be particularly attractive to prospective licensees.

22. Third, the disaggregation option is consistent with the Section 309(j) obligation for the Commission to promote opportunities for designated entities, including small businesses. This option should assist current C block licensees in moving forward with the deployment of their service offerings. Disaggregation will also provide opportunities for other small businesses to enter the PCS market in the future. Finally, by requiring C block licensees to disaggregate the 15 MHz of spectrum adjacent to the F block, the Commission provides opportunities for existing F block licensees to aggregate spectrum in a manner that could benefit their planned or prospective service offerings.

C. Surrender Licenses for Reauction (Amnesty)

23. The Commission concludes that it serves the public interest to adopt an amnesty option that permits any C block licensee to surrender all of its licenses in exchange for relief from its outstanding debt and waive any applicable default payments, subject to coordination with the Department of Justice pursuant to applicable federal claims collections standards. The Commission adopts the amnesty option for purposes of speeding use of the C block spectrum to provide services to the American public. The surrender of licenses under this option will provide qualified parties with an opportunity to obtain C block licenses at the market value of the licenses prevailing at the time of the reauction. The amnesty option adopted today is equitable to all parties because, while amnesty relieves a licensee from further debt obligations and any applicable default payments, a coordinated surrender of licenses facilitates expeditious reauctioning of the spectrum and will provide new market opportunities for all eligible entities. In addition, rapid reauction of those licenses surrendered will also comply with the Congressional directive that we promote competition and participation in the telecommunications industry by small businesses.

24. A C block licensee must make the amnesty election in accordance with the procedures set forth below in this *Second Report and Order.* The Commission will reauction those licenses surrendered on an expedited basis under the reauction rules discussed in the *Further Notice of Proposed Rulemaking* adopted with this *Second Report and Order.* Licensees electing the amnesty option will be eligible to bid for any and all licenses at the reauction.

25. Licensees electing the amnesty option will not have their down payment returned. This will discourage speculation and ensure that all bidders, new entrants as well as existing licensees, participate in the reauction without undue advantage. Retention of the down payments—10% of the bid price for most licensees—is consistent with the Commission's previous decisions and actions affecting C block bidders. The Commission has retained any payments made by those C block bidders who have failed to make their first or second down payments. In forgiving the outstanding debt the Commission affords significant relief to the licensees by allowing them to avoid anticipated defaults. In addition, these licensees will not be deemed in default or delinquent in meeting government debt obligations. Nor will they be subject to any applicable default payments or in violation of any Commission rules or license conditions.

26. Subject to one exception identified below, licensees choosing to take advantage of the amnesty option will be required to surrender all of their licenses to the Commission. The requirement that all licenses be surrendered precludes licensees from ''cherry picking.'' The simultaneous multiple-round auction design enables bidders to place bids on many licenses at once and to aggregate desired licenses in a manner that facilitates workable business plans. If licensees could ''cherry pick'' which licenses to surrender, the interdependency of the licenses would be harmed. Licenses surrendered pursuant to such a ''cherry picking'' scheme might lack the potential for beneficial aggregation within MTAs, and therefore would likely be less valuable to potential bidders and impair business plans of new investors.

27. As an exception to the all-or-nothing requirement, licensees that have met or exceeded the five year build-out requirements by September 25, 1997, the date of adoption of this *Second Report and Order,* will not be required to surrender licenses for built-out markets. In addition, these licensees will be permitted to retain those BTA licenses in which such build-out has occurred. However, licensees availing themselves of this exception may not pick and choose BTAs within an MTA but will be required, instead, to keep all of the other BTAs in the MTA in which the build-out requirement has been met

and to pay for those licenses under the terms of their Notes. The build-out exception facilitates the achievement of the statutory goal set forth in Section 309(j) that it encourages the rapid provision of service to the public, and responds to the needs of licensees that have already commenced operations or have otherwise invested significantly in certain of their C block licenses. The Commission has an interest in minimizing the competitive impact of the changes that it makes to the auction rules, consistent with its broader policy objectives. The exception adopted today is one method by which the Commission can ensure that the menu of options available to the C block is fair to those licensees that have rapidly built-out their markets and initiated provision of competitive service.

28. Some licensees made their installment payments (*i.e.*, installments due on that date, and amounts due on December 31, 1996, but not paid until March 31, 1997, based on the automatic 90-day non-default rule) after the suspension. In addition, prior to the suspension of payments, many C block licensees made their regularly scheduled installment payments. Due to the actions taken in this *Second Report and Order*, it would be unjust and inequitable for C block licensees to be treated differently merely because some C block licensees made prior payments while others did not. Consequently, the Wireless Telecommunications Bureau is directed to refund any installment payments made (whether due on or before March 31, 1997) on any license that is surrendered pursuant to this *Second Report and Order*. In addition, the Commission will forgive payment of any due, but unpaid, installment payments for any surrendered license. For licensees exercising the build-out exception and retaining certain licenses, all previously made installment payments will be applied first to reduce the Suspension Interest applicable to those licenses, and any amounts remaining will be refunded.

D. Prepayment

29. Under the prepayment option the Commission adopts, any C block licensee may prepay selective licenses subject to the restrictions described in this *Second Report and Order*. All licenses that are not prepaid in accordance with this option must be surrendered to the Commission in exchange for a forgiveness of the corresponding debt and any penalties. A licensee selecting this option may apply 70% of the total of all down payments it made on the licenses that it elects to surrender to the Commission (''Available Down Payments''), to a prepayment of the Notes for as many of its licenses it wishes to keep. For example, if a licensee held two licenses with net high bids of $100 and $200, then the total down payments would equal $30 ($10 + $20). If the licensee elected to keep the $200 license, the licensee would have $7 ($10 x 70 percent) of its down payment from the $100 license to apply towards the prepayment of the $200 license's Note. If, on the other hand, the licensee elected to prepay the $100 license, then the licensee would have $14 ($20 x 70 percent) of its down payment from the $200 license to apply towards the prepayment of the $100 license's Note. The remaining down payments not applied to prepayment will be retained by the Commission.

30. Additionally, an incumbent may use any ''new money'' to prepay as many of its own licenses as it desires. Any installment payments previously made by the licensee for all its licenses will be added to the Available Down Payments to increase the funds available to prepay its Notes. Interest accrued from the date of the conditional license grant through the Election Date will be forgiven. For purposes of this option, the down payment associated with licenses that are transferred as of the Election Date to subsidiaries or affiliates will be considered transferred with the licenses and the corresponding debt. For example, if ABC Company paid $100,000 each for two licenses and submitted $10,000 in down payments for each license, the total down payments submitted by ABC Company would be $20,000. However, if ABC had subsequently transferred one of its licenses to XYZ Company, a wholly-owned subsidiary, ABC Company would not have any additional money available to purchase its license, and XYZ Company would not have any additional money available to purchase its license. This option, however, is not intended to prohibit additional license transfers consistent with existing Commission rules.

31. The Commission believes that this prepayment option fairly balances competing interests, while maintaining the fairness and integrity of our rules and auctions. The Commission notes that 30% of the down payments is equal to 3% of the net high bids and is consistent with the approach adopted previously for down payments. Under the Commission's existing rules, an applicant is subject to a 3% payment if it fails to make the required down payment. *See* 47 CFR §§ 1.2104(g)(2), 24.704(a)(2). The Commission believes it to be most fair to apply this provision to those licensees who seek the relief provided by this option. If licensees were able to use all of their down payment, they would recoup in full what they paid, and there would be no deterrent effect against bidding excessively in the auction or otherwise gaming the process. Thus, in the next auction to which default payments apply, these rules could be ignored with impunity. Such a result would severely harm the Commission's market-based auction program. It would make it impossible to impose the charges already imposed in past cases, including in C block cases. Further, permitting C block licensees access to the down payments they previously made for licenses they no longer wish to retain is a substantial benefit and fair to these licensees. To allow them to use 100% of those funds would be unfair to other C block licensees who choose to continue to pay under their existing obligations, and to bidders who were unsuccessful in the auction.

32. The Commission declines to discount the Notes. The Commission believes it is fair to other bidders and to the credibility and integrity of the rules for the prepayment to be in the amount of the outstanding debt for the net high bid. In other words, licensees should pay what they bid. To offer deep discounts off the amount of the debt is outside normal commercial practices and otherwise appears to be a ''bail-out'' of C block licensees who have encountered financial difficulties long after the auction was completed and the financial commitments were made. Debt paid off in advance of the maturity date allows the debtor to reap the benefit of not incurring additional interest due on the principal amount owed. To discount the amount of the principal would unfairly permit a windfall to the licensee electing this option. The Commission is cognizant of the financial difficulties for some C block licensees, but is also mindful of a duty to the other C block licensees who are successfully meeting their obligations and continuing build-out efforts for wireless services. Therefore, the Commission believes that it strikes the proper balance by allowing a licensee the benefit of prepaying its debt obligations, thereby reducing the amount of interest that would be payable over the full term of the Note, while avoiding fundamental changes to our rules that unfairly harm other licensees who followed the rules and who continue to meet their payment obligations.

33. Under this prepayment option, an incumbent must prepay all of the BTA licenses in a particular MTA and cannot

arbitrarily select individual BTA licenses in a given MTA to prepay while surrendering other licenses in that MTA, with one exception. The Commission concludes that while a licensee must prepay the debt on all of the BTAs for which it holds licenses in an MTA, a licensee may not have sufficient funds available to it to prepay all of its Notes for the BTA licenses in a given MTA. Therefore, any licensee that has enough funds on hand to prepay one or more BTAs within an MTA, but not enough for the entire MTA, must prepay all of those BTAs within that MTA that it can afford. The Commission concludes that a requirement that all licenses in a given MTA be prepaid precludes licensees from ''cherry picking.'' The simultaneous multiple-round auction design discussed in the *Further Notice of Proposed Rulemaking* enables bidders to place bids on many licenses at once. If licensees were permitted to ''cherry pick'' which licenses in an MTA to prepay and which to surrender under this option, the interdependency of the licenses would be threatened. Licenses surrendered pursuant to such a ''cherry picking'' scheme would lack the potential for aggregation, and consequently would hold much less value to other bidders in the subsequent reauction.

34. The Commission declines to provide an exception for markets in which the five-year build-out requirement has been met as provided under the amnesty option. Under the prepayment option, licensees have the flexibility to select which markets they will retain subject to the restrictions in this *Second Report and Order.* For this reason, licensees have the option of selecting and prepaying for licenses where they have invested capital to meet the build-out requirements and not prepaying in an MTA where they have not. The Commission believes that this flexibility, compared to the all or nothing approach of simple amnesty, mitigates the need for this exception.

35. Finally, for a period of two years from the start date of the reauction, licensees (defined as qualifying members of the licensee's control group, and their affiliates) will be prohibited from reacquiring the licenses surrendered pursuant to this option either through a reauction or any other secondary market transaction. The Commission does not believe that it would be fair to other licensees and bidders for these licensees to benefit from a reauction of those licenses after taking advantage of this option. Furthermore, the Commission does not believe that this option should provide opportunities for licensees to ''selectively'' reduce their license obligations by surrendering a license in hopes of re-obtaining it in a reauction at a lower price.

E. Election Procedures

36. The Commission concludes that a licensee electing to continue under its existing installment payment plan or electing one of the options set forth in this *Second Report and Order,* must file a written notice of such election with the Wireless Telecommunications Bureau on or before the Election Date (''Election Notice''). The ''Election Date'' is January 15, 1998. The Election Notice must be filed on or before January 15, 1998 with the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554 (attn: Wireless Telecommunications Bureau, Auctions and Industry Analysis Division—Election Notice). The Wireless Telecommunications Bureau will provide more information concerning filing procedures in a subsequent public notice.

37. The Commission requires that those licensees electing (i) to continue making payments under their original C block Notes, (ii) the disaggregation option, or (iii) the amnesty option who elect to take advantage of the build-out exception and retain certain of their licenses make the appropriate payment by March 31, 1998 (or by the end of the 60-day grace period allowed), and execute any necessary financing documents pursuant to appropriate requirements and time frames established by the Bureau in order to continue to be eligible under the option chosen.

38. *Continuation Under Existing Note(s).* Any licensee that wishes to continue making installment payments in accordance with the terms of its original C block Note, must elect to do so by submitting the Election Notice of such election.

39. *Disaggregation.* For licensees electing the disaggregation option, the Election Notice must include (i) a list of all licenses being disaggregated, (ii) the original of all licenses being disaggregated, and (iii) all originals of the Notes and Security Agreements for those licenses being disaggregated for cancellation by the Commission. Upon acceptance of the Election Notice, the disaggregated spectrum will be deemed returned to the Commission.

40. *Amnesty.* For licensees electing the amnesty option, the Election Notice must include (i) a list of all licenses being surrendered, (ii) if applicable, a statement indicating that it intends to avail itself of the build-out exception together with a list of those BTA licenses it intends to retain and pertinent information concerning build-out pursuant to the Commission's rules, (iii) the original of all licenses being surrendered, and (iv) all originals of the Notes and Security Agreements for those licenses being surrendered for cancellation by the Commission. Those licensees electing to proceed under the build-out exception will be required to adhere to the specific obligations set forth in their Notes and Security Agreements, as modified for those licenses not being surrendered to the Commission.

41. *Prepayment.* For licensees electing the prepayment option, the Election Notice must include (i) a list of all licenses being prepaid, (ii) a payment in the amount of any additional ''new money'' a licensee desires to apply to the prepayment of its licenses, (iii) the original of all licenses not being prepaid in accordance with this option, and (iv) all originals of the Notes and Security Agreements for those licenses not being prepaid for cancellation by the Commission. Notes which are prepaid will be marked ''Paid-In-Full'' and returned to the licensee.

42. The Commission further concludes that any C block licensee that (i) fails to elect one of the options set forth in this *Second Report and Order* on or before the Election Date, or (ii) fails to elect on or before the Election Date to continue making payments under its original C block Note(s), or (iii) fails to fully and timely execute and deliver to the Commission (or its agent) any required financing documents within the period of time specified by the Bureau, will not be afforded the opportunity granted to licensees who do make a timely election to repay the Suspension Interest over a period of eight equal payments. In such event, the licensee will be required, on or before March 31, 1998, to make all payments that would have been due under its Note(s) but for the effect of the *Suspension Order.* For example, a licensee whose regular installment due date was March 31, 1997, who did not make payment on that date because of the *Suspension Order,* will owe on March 31, 1998, all payments that were due and payable earlier, but unpaid due to the *Suspension Order,* in addition to the regularly scheduled March 31, 1998, payment.

F. Cross Defaults

43. The Commission will not pursue cross default remedies against C block licensees who default on installment payments with regard to other licenses in the C or F blocks. For example, if a

licensee defaults on a C block license and that licensee holds other C block licenses on which it is making its payments, the Commission will not declare it to be in default on its debt associated with the other C block licenses. Similarly, if a licensee defaults on a C block license, and also holds F block licenses on which it is making its payments, the Commission will not declare it to be in default on its F block debt.

44. This decision is warranted in light of the efforts to provide current C block licensees who are experiencing financing difficulties with options for meeting their financial obligations to the Commission. This decision does not affect the Commission's policy with regard to defaults on first or second down payments. The Commission emphasizes that this decision only addresses the context of a licensee's default on an installment payment for a C block license upon other licenses held by that licensee in the C or F blocks. The Commission defers to completion of the *Part 1 Rulemaking* a decision on whether to amend more comprehensively the policy of cross defaults. The Commission also emphasizes that existing installment payment default rules and license conditions will continue to apply for those particular licenses in default after March 31, 1998. Accordingly, upon default, a license will automatically cancel and the Commission will initiate debt collection procedures against the licensee and accountable affiliates. *See* 47 CFR § 1.2110(e)(4)(iii).

III. Conclusion

45. In this *Second Report and Order* the Commission orders resumption of installment payments for the broadband PCS C and F blocks, with the payment deadline reinstated as of March 31, 1998. The Commission also adopt options designed to assist C block licensees that are experiencing financial difficulties to build systems that will promote competition, or to surrender spectrum to the Commission for reauction. These options include disaggregation, amnesty, and prepayment. These provisions will create opportunities for C block licensees to provide service to the public while maintaining the fairness and integrity of our auctions program.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Analysis

46. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 604, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making, 62 FR 13540 (March 21, 1997) (*Part 1 Proceeding*) in WT Docket No. 97–82. The Commission sought written public comment on the proposals in the *Part 1 Proceeding,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.

Need for, and Objectives of, this Action

47. This *Second Report and Order* is designed to assist C block broadband personal communications services (PCS) licensees to meet their financial obligations to the Commission while at the same time helping the Commission meet its goals of ensuring the rapid provision of PCS service to the public.

Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)

48. There were no comments filed in response to the IRFA; however, in this proceeding we have considered the economic impact on small businesses of the rules adopted herein.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

49. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. *See* 5 U.S.C. §§ 603(b)(3), 604(a)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' *See* 5 U.S.C. § 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act. *See* 5 U.S.C. § 601(3). Under the Small Business Act, a ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). *See* 15 U.S.C. § 632.

50. This *Second Report and Order* applies to broadband PCS C and F block licensees. The Commission, with respect to broadband PCS, defines small entities to mean those having gross revenues of not more than $40 million in each of the preceding three calendar years. *See* 47 CFR § 24.720(b)(1). This definition has been approved by the SBA. On May 6, 1996, the Commission concluded the broadband PCS C block auction. The broadband PCS D, E, and F block auction closed on Jan. 14, 1997. Ninety bidders (including the C block reauction winners, prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in the C and F block auctions were eligible for bidding credits and installment payment plans. For purposes of our evaluations and conclusion in this FRFA, we assume that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this order, are small entities.

Description of the Projected Reporting, Recordkeeping, and other Compliance Requirements

51. A licensee electing one of the options set forth in the Order must file a written notice of such election (the ''Election Notice'') with the Wireless Telecommunications Bureau, Auctions and Industry Analysis Division no later than the Election Date. The ''Election Date'' is January 15, 1998. Those licensees electing either (1) to continue making payments under their original C block Notes; (2) the disaggregation option; or (3) the amnesty option but elect to take advantage of the build-out exception and retain certain of their licenses, will be required to execute and submit a modification of their Notes, Security Agreements, Uniform Commercial Code (''UCC'') Financing Statements and any other related documents securing their Notes within the time frame established by the Bureau.

52. *Continuation under Existing Note(s).* Any licensee that wishes to continue making installment payments in accordance with the terms of its original C block Note, must elect to do so by submitting the Election Notice.

53. *Disaggregation.* For licensees electing the disaggregation option, the Election Notice must include the following: (1) A list of all licenses being disaggregated; (2) the original of all licenses being disaggregated; and (3) all originals of the Notes and Security Agreements for those licenses being disaggregated for cancellation by the Commission.

54. *Amnesty.* For licensees electing the amnesty option, the Election Notice must include the following: (1) A list of all licenses being surrendered; (2) if applicable, a statement indicating that the licensee intends to avail itself of the build-out exception together with a list of those BTA licenses it intends to retain and pertinent information

concerning build-out; (3) the original of all licenses being surrendered; and (4) originals of the Notes and Security Agreements for those licenses being surrendered for cancellation by the Commission.

55. *Prepayment.* For licensees electing the prepayment option, the Election Notice must include the following: (1) A list of all licenses being prepaid; (2) a payment in the amount of any additional ''new money'' as a licensee desires to apply to the prepayment of its licenses; (3) the original of all licenses not being prepaid in accordance with this option; and (4) all originals of the Notes and Security Agreements for those licenses not being prepaid for cancellation by the Commission.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

56. The Commission believes that it is in the public interest to adopt these provisions to facilitate use of C block licenses without further regulatory or marketplace delay. The menu approach adopted in this *Second Report and Order* is intended to provide options to facilitate the rapid introduction of service to the public, while recognizing that ultimately the decisions concerning competition and services appropriately are marketplace decisions and should not be determined by government intervention. This decision is intended to be fair to current C block licensees (including small entities), to bidders who were not successful in their attempts to obtain licenses in this spectrum, and to the public desiring new and innovative competitive services. These options minimize the potential significant economic impact on small entities because they meet the unique circumstances facing the C block licensees and permit these small entities to choose one of three alternative solutions to reduce their debt to the Commission. All of the entities affected by this *Second Report and Order* are small entities, and the intent of this *Second Report and Order* is to alleviate, to some extent, the financial difficulties faced by these small entities. These options are relatively straightforward, achieve a degree of fairness to all parties, including losing bidders in the C block auction, continue to promote competition and participation by smaller businesses in providing broadband PCS service, and avoid solutions that merely prolong uncertainty.

57. The Commission received numerous comments and *ex parte* comments that addressed these issues at great length. The majority of commenters favor some type of relief, including debt restructuring, spectrum disaggregation, or a penalty-free license surrender (*i.e.,* amnesty) followed by a reauction. Other commenters express disapproval of any relief, and urge the Commission to strictly enforce its rules. The Commission believes that there may be a need for some measure of relief for these small entities in addition to the suspension of payments previously granted. The Commission believes that the options adopted in this *Second Report and Order* are relatively straightforward and achieve a degree of fairness to all parties, including small entities. Finally, the Commission rejects any proposal of a deferral of payments on the grounds that such proposal would be unfair to unsuccessful bidders who may have withdrawn from the C block when prices became too high.

58. Among other goals, Section 309(j) directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. *See* 47 U.S.C. § 309(j)(3)(B). At the same time, Section 309(j) requires that the Commission ensure the development and rapid deployment of new technologies, products and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. *See* 47 U.S.C. §§ 309(j)(3)(A), (C). In assessing the public interest, the Commission must try to ensure that all the objectives of Section 309(j) are considered. The Commission believes that those goals are best met by promoting efficient competition while maintaining fairness and efficiencies of process in the Commission's rules.

Report to Congress

59. The Commission shall send a copy of the *Second Report and Order,* including the Final Regulatory Flexibility Analysis, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. § 801(a)(1)(A). A copy of the *Second Report and Order* and this Final Regulatory Flexibility Analysis will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

B. Paperwork Reduction Act

60. This *Second Report and Order* contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Second Report and Order,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due December 1, 1997. OMB comments are due December 1, 1997. Comments should address: (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 estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Dates: Written comments by the public on the modified information collections in this *Second Report and Order* are due on or before December 1, 1997. Written comments must be submitted by OMB on the modified information collections on or before December 1, 1997.

Address: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

Further Information: For additional information concerning the information collections contained in this *Second Report and Order* contact Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

Supplementary Information

Title: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees

Type of Review: New Collection.

Respondents

Number of Respondents: The Commission estimates that up to 90 respondents will take the opportunity to elect one of the options in the *Second Report and Order.*

Estimated Time Per Response: The Commission estimates the total burden under the disaggregation and amnesty options would be 4.0 hours per

respondent, a total hour burden of 360 hours, which is the highest estimate and assumes that all 90 potential respondents elect either the disaggregation or amnesty options. The Commission believes that the actual total hour burden will be less than 360 hours. The Commission is of the opinion that the respondents will prepare the submission with in-house staff, such as in-house counsel or the equivalent, in lieu of outside contractors. At the equivalent of the GS 15 hourly rate, $41.24, the total burden would be $41.24 times 360 hours = $14,846.40.

Estimate of total cost burden to respondents: The Commission estimates that there will be no additional cost burden to respondents.

Cost to the Federal Government

GS 7 Legal Instrument Examiners at $14.06 per hour to review the documentation for approximately 0.5 hours per submission, times 90 submissions = $632.70

GS 7 Clerical at $14.06 per hour to process refunds for approximately 1.0 hour per submission, times 90 submissions = $1,265.40

GS 12 Engineers to review the documentation at $24.95 per hour, for approximately 0.5 hours per submission, times 90 submissions = $1,122.75

GS 12 Engineers to review technical analysis at $24.95 per hour, for approximately 0.5 hours per submission, times 90 submissions = $1,122.75

GS 12 Attorneys to review the financial documentation at $24.95 per hour, for approximately 2.0 hours per submission, times 90 submissions = $4,491.00

GS 15 Financial Analysts or Accountants to review the documentation, accounting analysis, and revised payment schedules and to oversee the repayment process at $41.24 per hour, for approximately 2.0 hours per submission, times 90 submissions = $7,423.20

Total = $16,057.80.

C. Authority

61. The above action is authorized under the Communications Act of 1934, §§ 4(i), 5(b), 5(c)(1), 303(r), and 309(j) as amended.

D. Ordering Clauses

62. Accordingly, *it is ordered that,* pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 156(c)(1), 303(r), and 309(j), this *Second Report and Order* is hereby *adopted,* and §§ 1.2110 and 24.709 of the Commission's rules are amended as set forth below, effective December 23, 1997. The information collection contained in these rules becomes effective on OMB approval but no sooner than December 23, 1997. The Commission will publish a document on a later date announcing the effective date of the information collection.

63. *It is further ordered that* the Wireless Telecommunications Bureau's *Suspension Order* dated March 31, 1997, suspending the installment payment obligations for Personal Communications Services (PCS) C block licensees, and the subsequent Public Notice dated April 28, 1997, suspending those obligations for PCS F block licensees are rescinded, effective March 31, 1998, and installment payments for C and F block PCS licensees are reinstated as of that date.

64. *It is further ordered that* on or before January 15, 1998, the Election Date, all C block broadband PCS licensees must elect either (1) to continue making payments under their original C block Notes, or (2) one of the options set forth in Section IV of this *Second Report and Order.* The Election Notice must be filed on or before January 15, 1998 with the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554 (attn: Wireless Telecommunications Bureau, Auctions and Industry Analysis Division—Election Notice).

65. *It is further ordered that* the Secretary shall send a copy of this *Second Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 et seq.

66. *It is further ordered that,* pursuant to 47 U.S.C. § 155(c) and 47 CFR § 0.331, the Chief of the Wireless Telecommunications Bureau *Is granted delegated authority* to prescribe and set forth procedures for the implementation of the provisions adopted herein.

List of Subjects

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 24

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 1 and 24 of Chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 1.2110 is amended by revising paragraph (e)(4)(i) to read as follows.

§ 1.2110 Designated entities.

* * * * *

(e) * * *

(4) * * *

(i) If an eligible entity making installment payments is more than ninety (90) days delinquent in any payment, it shall be in default, except that broadband PCS frequency block C licensees making the March 31, 1998, interest payment pursuant to their elections under the Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licensees, *Second Report and Order,* WT Docket No. 97–82 (released October 16, 1997), shall be in default if they are more than sixty (60) days delinquent on such payment. (The *Second Report and Order* is available in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.)

* * * * *

PART 24—PERSONAL COMMUNICATIONS SERVICES

3. The authority citation for Part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

4. Section 24.709 is amended by adding paragraph (b)(9) to read as follows.

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

* * * * *

(b) * * *

(9) *Special rule for licensees disaggregating or returning certain spectrum in frequency block C.*

(i) In addition to entities qualifying under this section, any entity that was

eligible for and participated in the first auction for frequency block C, which began on December 18, 1995, will be eligible to bid in a reauction of licenses for frequency block C conducted after March 31, 1998.

(ii) The following restrictions will apply for any reauction of frequency block C licenses conducted after March 31, 1998:

(A) Applicants that elected to disaggregate 15 MHz of spectrum from any or all of their frequency block C licenses, as provided in subsection IV.B., Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licensees, *Second Report and Order*, WT Docket No. 97–82 (released October 16, 1997), will not be eligible to apply for such disaggregated licenses until 2 years from the start of the reauction of those licenses. The *Second Report and Order* is available in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.

(B) Applicants that surrendered any of their frequency block C licenses as provided in subsection IV.D. (the ''prepayment option'') Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licensees, *Second Report and Order*, WT Docket No. 97–82 (released October 16, 1997), will not be eligible to apply for the licenses that they surrendered to the Commission until 2 years from the start of the reauction of those licenses.

(C) For purposes of this paragraph, *applicant* shall mean the applicant and its affiliates and any present or former qualifying member of a control group and their affiliates.

* * * * *

[FR Doc. 97–28221 Filed 10–23–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–291]

RIN 9000–AA02

Organization and Delegation of Powers and Duties; Secretarial Succession

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to alter the order of Secretarial succession for the Department to reflect that the Federal Aviation Administrator now serves a statutory term of office.

DATES: The effective date of this amendment is October 24, 1997.

FOR FURTHER INFORMATION CONTACT: David K. Tochen, Office of the General Counsel, Department of Transportation, Washington, DC (202) 366–4710.

SUPPLEMENTARY INFORMATION: In 49 CFR 1.26, the order of succession to act as Secretary of Transportation is set forth: The Deputy Secretary, General Counsel, Assistant Secretary for Transportation Policy, Assistant Secretary for Aviation and International Affairs, Assistant Secretary for Governmental Affairs, Assistant Secretary for Budget and Programs, Associate Deputy Secretary, Saint Lawrence Seaway Development Corporation Administrator, and Assistant Secretary for Administration, in that order. The Saint Lawrence Seaway Development Corporation Administrator is included in the order of succession because that official has a statutory term of office, and therefore is more likely to be in office during a Presidential transition, when someone of that rank must act as Secretary. With the recent appointment of the first Federal Aviation Administrator to serve a statutory term of office (five years—see 49 USC 106(b), as amended by the Federal Aviation Administration Authorization Act of 1994, Public Law 103–305, Section 201, August 23, 1994), that official is also more likely to be in office during a Presidential transition, and is being substituted for the Saint Lawrence Seaway Development Corporation Administrator. This amendment reflects this change in the order of Secretarial Succession.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary under 5 USC 553(b)(3)(A), and it may be made effective in less than 30 days after publication in the **Federal Register** under 5 USC 553(d)(2) as a change in internal policy.

List of Subjects in 49 CFR Part 1

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

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 49 USC 322; Public Law 101–522, 28 USC 2672, 31 USC 3711 (a)(2).

2. In § 1.26, paragraph (a) introductory text is republished and paragraph (a)(8) is revised to read as follows:

§ 1.26 Secretarial succession.

(a) The following officials, in the order indicated, shall act as Secretary of Transportation, in case of the absence or disability of the Secretary, until the absence or disability ceases, or, in case of a vacancy, until a successor is appointed:

* * * * *

(8) Federal Aviation Administrator.

* * * * *

Issued in Washington, DC, on October 15, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–27960 Filed 10–23–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 970710171–7240–02; I.D. 041097A]

RIN 0648–AJ63

Atlantic Swordfish Fishery; Annual Quotas

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations governing the Atlantic swordfish fishery to: establish the U.S. swordfish quota for the North Atlantic Ocean at 2,464 metric tons (mt) dressed weight (dw) for 1997, at 2,398.6 mt dw for 1998, and at 2,333.2 mt dw for 1999, with one half of each year's longline/harpoon subquota allocated to each of two semiannual fishing seasons (June 1 through November 30 and December 1 through May 31); define the South Atlantic swordfish stock and set a 188 mt dw quota for that stock for 1997, with one-half allocated to each of the two semiannual fishing seasons; and implement the same management measures for the South Atlantic swordfish stock as are currently in place for the North Atlantic stock.

DATES: All provisions of this final rule are effective October 21, 1997, except for the amendments to §§ 630.4(a), 630.7(c), (bb) and (cc), and 630.23(a) and (b) and the revision to § 630.21 which are effective November 20, 1997.

ADDRESSES: Copies of the Final Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this

action may be obtained from Rebecca Lent, Chief, Highly Migratory Species (HMS) Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the collection-of-information requirements contained in this rule should be sent to Rebecca Lent and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Jill Stevenson, 301–713–2347, fax: 301–713–1917; or Buck Sutter, 813–570–5447, fax: 813–570–5364.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Background information about the need for revisions to Atlantic swordfish fishery regulations was provided in the proposed rule (62 FR 40039, July 25, 1997) and is not repeated here.

Management Measures

These regulatory changes implement ICCAT recommendations and further the management objectives for the domestic swordfish fisheries:

North Atlantic Quota

NMFS implements ICCAT's 1996 recommendation of a North Atlantic U.S. swordfish quota of 2,464 mt dw for 1997, 2,398.6 mt dw for 1998 and 2,333.2 mt dw for 1999. Each year's quota is divided between a directed fishery quota and an incidental quota. The incidental quota is needed to allow for landings of swordfish taken incidentally during closure of the directed longline swordfish fishery in the North Atlantic and for swordfish taken incidental to other fisheries.

Under existing regulations, up to 15 swordfish can be possessed if taken incidentally when fishing with longline gear for other pelagic fish species. The increases of the incidental quota from 254 mt dw for 1996 to 300 mt dw for each of the years 1997, 1998, and 1999 are made to meet expected incidental harvest levels during directed fishery closures. The 300 mt yearly level is based on the average daily landings noted during previous closures and an anticipated 100 days of closure of the directed fishery each fishing year. The increased incidental catch reserve should ensure that the total ICCAT quota is not exceeded.

The directed fishery annual quota is subdivided into a drift gillnet quota and a longline/harpoon quota. A Biological Opinion (BO) resulting from a consultation conducted under section 7 of the Endangered Species Act (ESA) concluded that the drift gillnet fishery should not operate during the period November 1 through July 31 to avoid jeopardizing the continued existence of the North Atlantic right whale. In accordance with that opinion, a single season quota has been established for the driftnet segment of the directed swordfish fishery. This rule addresses only the quota; NMFS is addressing the operation of the drift gillnet fishery in other rulemakings.

The directed longline/harpoon fishery quota is divided equally into two semiannual quotas, one from June 1 through November 30 and the other from December 1 through May 31. Allocations by gear types are in the same proportions as those previously established for 1994 through 1996. The quotas and subquotas are summarized in Table 1.

Following a closure of the directed fishery, any overharvest or underharvest will be added to, or subtracted from, the incidental catch reserve of 300 mt dw for that year. Any cumulative overharvest/underharvest occurring during any year will then be subtracted from/added to the following year's North Atlantic swordfish quota, per the ICCAT recommendations.

TABLE 1.—NORTH ATLANTIC SWORDFISH ALLOCATIONS (IN MT DW)

	1996	1997	1998	1999
ICCAT Recommended Quota	2,625	2,464	2,398.6	2,333.2
Incidental Catch Quota	254	300	300	300
Directed Fishery Quota (Total—Incidental)	2,371	2,164	2,098.6	2,033.2
Annual Driftnet Quota	47.0	42.8	41.6	40.2
Semiannual Longline and Harpoon Quota	1,162	1,060.6	1,028.5	996.5
Discards Adjustment	342	.....	.....	.....
Landing Quota (Total—Discards)	2,283	2,464	2,398.6	2,333.2

Definition of South Atlantic Swordfish Stock

In this final rule, NMFS defines the South Atlantic swordfish stock to include all swordfish in the Atlantic Ocean south of 5° N. lat., which is consistent with ICCAT's delineation of the northern and southern swordfish stocks.

South Atlantic Quota

NMFS establishes a U.S. swordfish quota of 188 mt dw for 1997 for the South Atlantic, consistent with ICCAT recommendations. This directed fishery quota is further divided into two equal semiannual quotas of 94 mt dw, one for the period June 1 through November 30, and the other for the period December 1 through May 31. Following a closure of the directed longline fishery in the South Atlantic Ocean, no incidental harvest is allowed.

Permits, Reporting and Observers

A uniform system of swordfish management measures is instituted for all U.S.-flagged vessels operating throughout the Atlantic Ocean. The same general swordfish management measures currently in place for vessels operating in the North Atlantic Ocean are extended to vessels operating in the South Atlantic Ocean: Vessel permits, logbook reporting, observer coverage, and other, related management measures (50 CFR part 630).

NMFS is currently considering Amendment 1 to the Fishery Management Plan for Atlantic Swordfish, which would establish a limited access system for vessels fishing in the North Atlantic. If Amendment 1 is adopted, NMFS will issue regulations to implement it. Proposed regulations to do so were published in the **Federal Register** on February 26, 1997 (62 FR 8672). If Amendment 1 is approved and implemented, swordfish permits for the South Atlantic stock will be limited to

those who qualify for a directed permit under Amendment 1.

Gear and Incidental Catch Restrictions

NMFS prohibits the use of any gear other than longline to fish for swordfish in the South Atlantic management area. Further, no incidental swordfish catch allowance is established for any gear in the South Atlantic Ocean.

North and South Atlantic Management Summary

(1) Swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, can be sold only to a dealer (defined at 50 CFR 630.2) holding a valid annual dealer permit (50 CFR 630.4).

(2) Vessel permits are required for all vessels fishing for, or incidentally taking, swordfish in the North or South Atlantic Ocean.

(3) Vessel owners fishing for, harvesting or possessing swordfish in the North Atlantic must comply with all record keeping and reporting requirements set forth in 50 CFR 630.5 (daily logbooks and tally sheets), and, if selected, participate in the observer program as required under 50 CFR 603.10. When the swordfish fishery is closed in the North Atlantic, swordfish can only be landed or possessed if taken incidentally to other fisheries, subject to authorized catch limits, and sold only to dealers holding a valid dealer permit. Swordfish directly or incidentally harvested or possessed from the North Atlantic cannot be sold, traded or bartered outside of the North Atlantic management unit at any time.

(4) Swordfish harvested from the South Atlantic stock and offloaded north of 5° North latitude can be sold only to a dealer holding a permit issued under 50 CFR 630.4. It is not required that swordfish harvested from the South Atlantic stock be sold to dealers holding a permit issued under 50 CFR 630.4 if offloaded at a port south of 5° North latitude.

(5) All permitted vessels harvesting or possessing swordfish from the South Atlantic must comply with all recordkeeping and reporting requirements set forth at 50 CFR 630.5, including ensuring that copies of offloading tally sheets are submitted. During a closure of the South Atlantic swordfish fishery, swordfish cannot be possessed on board a U.S.-flagged vessel operating in the South Atlantic Ocean.

(6) All regulations that apply to the North Atlantic swordfish fishery apply to the South Atlantic fishery, other than the requirement for sale of swordfish to a permitted dealer if the fish are offloaded south of 5° North latitude. These include the prohibition on at-sea transfer and harvest limitations such as minimum size, vessel trip limits, and carcass condition requirements.

Comments and Responses

Comment: Rhode Island commented that the proposed rule was not consistent with the Rhode Island Coastal Management Program (CMP) policy to promote conservation of the resource and the policy to preserve the coastal resources through long-range planning and management designed to produce the maximum benefit for society. They stated that to be consistent, NMFS must modify the proposed rule that initiates the process of rebuilding the swordfish fishery and reduce bycatch of protected species.

Response: The Secretary of Commerce (Secretary) manages the swordfish fishery under the authority of the ATCA and the Magnuson-Stevens Act. The ATCA requires the Secretary to promulgate such regulations as may be necessary to carry out the recommendations of ICCAT. Further, the ATCA prohibits the Secretary from issuing any regulation that has the effect of increasing or decreasing any allocation or quota of fish to the United States agreed to pursuant to a recommendation of ICCAT. This rule establishes the quota recommended by ICCAT, and for this reason NMFS concludes that consistency with Rhode Island CMP was achieved to the maximum extent practicable. NMFS is exploring other management actions to protect Atlantic swordfish, such as time/area closures to minimize bycatch of juvenile swordfish. Concerning bycatch of protected species, NMFS has closed the drift gillnet fishery until November 26, 1997, under an emergency rule (62 FR 30775, June 5, 1997), until a preferred option to avoid the likelihood of jeopardy to the continued existence of the North Atlantic right whale is identified and implemented.

North Atlantic Quota

Comment: Allocations from ICCAT for member countries are given in whole weight (ww). The formulation used to convert ww to dw, the U.S. industry weight standard, in the proposed rule was incorrect.

Response: NMFS has corrected this conversion factor in this final rule.

Comment: Application of the ICCAT recommendation to subtract or add cumulative overharvest or underharvest to the following fishing year applies only to the North Atlantic swordfish fishery.

Response: NMFS agrees and has clarified this provision of the regulations in the final rule.

Comment: Criteria need to be developed to ensure that vessels in the North Atlantic are not making short-term directed fishing trips targeting the incidental trip limit during closure of the directed fishery.

Response: NMFS agrees that this issue warrants further consideration. NMFS will discuss development of an effective management strategy including incidental catch requirements with the HMS and Pelagic Longline Line Advisory Panels recently established under the Magnuson-Stevens Act.

South Atlantic Quota

Comment: NMFS received a comment that the U.S. 1997 allocation for the South Atlantic was insufficient based on landings by U.S.-flagged vessels below 5° N latitude during 1993 and 1994.

Response: In the proposed rule, NMFS requested submission of catch and landing records from the South Atlantic by U.S.-flagged vessels to more accurately ascertain historical harvest levels during 1993 and 1994, the years ICCAT used to set harvest allocations for participating countries. Although NMFS has received several comments indicating that harvests exceeded 188 mt dw during 1993 and 1994, data received to date are inconclusive. NMFS will continue to consider documents submitted, to update data where possible for South Atlantic landings, and to make this information available to ICCAT in order to revise, if appropriate, the U.S. allocation to reflect actual participation in the South Atlantic swordfish fishery.

NMFS notes that in November 1997, ICCAT will consider modifications to the South Atlantic quotas and may adopt a modified quota scheme for future years.

Comment: One comment stated that the fishing year for the South Atlantic swordfish fishery should begin January 1 and that two semiannual periods are not necessary.

Response: NMFS responds that, to be consistent with the North Atlantic, the South Atlantic fishery will remain with two semiannual periods beginning December 1 and June 1. As NMFS continues to monitor this fishery, other management scenarios might be considered.

Comment: Several comments were received regarding the proposed waiver of the dealer permit requirement for the South Atlantic swordfish fishery. Commenters suggested that dealer permits be a requirement to purchase, barter, or trade any swordfish harvested

by a U.S.-flagged vessel, regardless where fish are landed in the Atlantic.

Response: NMFS disagrees because requiring U.S.-flagged vessels to sell only to permitted dealers in the South Atlantic could impose U.S. regulations on non-U.S. citizens or could increase costs to vessels by imposing delays in offloading. However, the swordfish regulations require vessels offloading in the South Atlantic ocean to attach to the reports submitted to NMFS all copies of their tally sheets received from foreign dealers. This requirement will help ensure that the agency receives appropriate information.

Comment: A comment was received stating a need to clarify permitting and reporting requirements.

Response: NMFS has restructured the final rule to summarize recordkeeping and reporting requirements for the North and South Atlantic. Overall permitting requirements are currently under consideration and will be restated when a final rule is issued concerning limited access in the swordfish fishery.

Comment: Several responses were received regarding options for providing an offloading window. Commenters were in general agreement that an offloading window would prevent or reduce market gluts and product handling problems associated with previous closures of the swordfish directed fishery. Several time frames were suggested for this window, ranging from 7 days to unlimited offloading time, as long as the vessel remains in port after the closure date.

Response: NMFS agrees that an expanded time frame to offload fish following a closure of the directed swordfish fishery could facilitate product handling and improve marketing opportunities, but the large number of vessels and potential offloading ports renders an offloading window difficult to enforce. Pending the analysis of costs and benefits to the public, these enforcement concerns could be addressed by strict documentation requirements; however, such new information collections cannot be immediately implemented since OMB review and approval under the Paperwork Reduction Act (PRA) is needed. Such review and approval requires considerable time to obtain. Other possible options to minimize the burden to the Government and to the public of monitoring a delayed offloading are: Vessel monitoring systems, hailing requirements prior to landing, third party observers for offloading, or designated offloading ports for those vessels that will not be offloading prior to the effective date of the closure. NMFS will discuss specifics of possible future offloading strategies with the HMS and Pelagic Longline Advisory Panels.

Comment: Commenters indicated that a system should be developed to certify that distressed vessels are in fact distressed and not trying to avoid the closure date.

Response: To ensure equitable enforcement of the closure, regulations require that all vessels return to port by the announced date of closure of the directed fishery. As is the case in any situation involving safety at sea, vessels in distress should notify the U.S. Coast Guard of the vessel's location, seaworthiness, and anticipated time of arrival in port.

Comment: Several commenters stated a need for more conservative landing quotas and stronger conservation measures to rebuild the swordfish stocks.

Response: This Atlantic swordfish rule is issued under the authority of ATCA, which requires the Secretary to promulgate such regulations as may be necessary to carry out the recommendations of ICCAT. The final rule implements ICCAT quota and management recommendations relative to North and South Atlantic swordfish stocks; therefore, it is subject to ATCA restrictions that prohibit the implementation of regulations that have the effect of increasing or decreasing the ICCAT-recommended quota. NMFS recognizes that further management actions are needed for Atlantic swordfish and has undertaken the following activities: An Advance Notice of Proposed Rulemaking regarding options for banning the sale of Atlantic swordfish below the minimum size (33 lb or 15 kg dw); an analysis of management options, such as time-area closures, to minimize bycatch of juvenile swordfish; development of a rebuilding schedule, as required by the Magnuson-Stevens Act, if swordfish are identified as overfished; and establishment of an HMS Advisory Panel that will assist in the development of any future Fishery Management Plans (FMPs) or FMP amendments.

Changes From the Proposed Rule

Based on comments received on the proposed rule, reanalysis of data and/or requirements of the ESA, the following changes, besides editorial changes, were made to the proposed rule:

(1) Atlantic swordfish quotas are increased relative to the proposed rule based on recalculating the conversion of ICCAT allocations, which are stated in ww, to U.S. industry standards which are stated in dw, and,

(2) A single season quota has been established for the driftnet segment of the directed swordfish fishery.

Classification

This final rule is published under the authority of ATCA. The Assistant Administrator for Fisheries, NOAA has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and for the domestic management of the Atlantic swordfish fishery.

NMFS prepared an EA for this final rule with a finding of no significant impact on the human environment. In addition, an RIR was prepared with a finding of no significant impact. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Because discards are no longer subtracted, the landings quotas for 1997–99 actually increase relative to 1996. Establishment of a South Atlantic management unit and quota reflects recent participation levels and is not overly restrictive. These measures will not have a significant economic impact on a substantial number of small entities. No comments were received that changed the basis for the original certification. Therefore, no Regulatory Flexibility Analysis was prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. This rule imposes new collection-of-information requirements beyond those already approved by OMB. Namely, NMFS is extending the logbook reporting, permitting and observer notification requirements for the North Atlantic swordfish fishery to cover swordfish fishing activities in the South Atlantic.

The regulations require revised reporting and participation in observer programs by vessels already permitted to fish in the North Atlantic and new reporting by those vessels not currently permitted because they fish only in the South Atlantic. The public reporting burden for this collection of information is estimated to average 15 minutes per

response for logbooks, 20 minutes for an initial vessel permit application and 2 minutes per vessel for observer notification. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. These new requirements were approved by OMB under OMB control numbers 0648–0016 (Federal Fisheries Logbooks) and 0648–0205 (Permitting Requirements and Observer Notification). Send comments regarding these information collection requirements to OMB (see **ADDRESSES**).

NMFS reinitiated formal consultation for all HMS commercial fisheries on September 25, 1996, under section 7 of the ESA. The BO resulting from this consultation was issued on May 29, 1997. It concluded that continued operation of the longline component of the swordfish fishery may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. The BO also concluded that the swordfish drift gillnet fishery segment of the Atlantic pelagic fishery is likely to jeopardize the continued existence of the right whale.

Two alternatives that would avoid the likelihood of jeopardy were set forth in the BO, although NMFS had not identified a preferred alternative at that time. Therefore, NMFS extended the emergency closure of the drift gillnet segment of the swordfish fishery until a preferred option is identified and implemented (62 FR 30775, June 5, 1997). On August 29, 1997, an amendment to the BO was issued, which identified a new reasonable and prudent alternative including time/area closures and 100-percent observer coverage. Pending implementation of a modification to the emergency closure, if such is warranted by the preferred option when identified, NMFS has taken action in this final rule to establish a single season quota for the driftnet swordfish fishery.

Other than the amendments to 50 CFR 630.4, 630.7, 630.21 and 630.23, which extend requirements to the South Atlantic swordfish stock, NMFS has determined that there is good cause to waive the 30-day delay in effective date normally required by section 553(d) of the Administrative Procedures Act. The relevant sections define terms, establish quotas, and grant administrative authority for certain actions. None of these sections impose any compliance obligation on any affected person and consequently do not require time to come into compliance.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: October 21, 1997.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, Office of Sustainable Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.1, paragraph (b) is revised to read as follows:

§ 630.1 Purpose and scope.

* * * * *

(b) This part governs the conservation and management of the North Atlantic and South Atlantic swordfish stocks.

* * * * *

3. In § 630.2, the definitions of ''Dealer'' and ''North Atlantic swordfish stock'' are revised and a new definition for the ''South Atlantic swordfish stock'' is added, in alphabetical order, to read as follows:

§ 630.2 Definitions.

* * * * *

Dealer means the person who first receives from a fishing vessel, by way of purchase, barter, or trade, swordfish harvested from the Atlantic Ocean.

* * * * *

North Atlantic swordfish stock means those swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat.

* * * * *

South Atlantic swordfish stock means those swordfish in the Atlantic Ocean, south of 5° N. lat.

* * * * *

4. In § 630.4, paragraph (a) is revised to read as follows:

§ 630.4 Permits and fees.

(a) *Applicability*—(1) *Annual vessel permit.* The owner of a vessel of the United States that fishes for or possesses swordfish from the north or south Atlantic swordfish stocks, or takes such swordfish as incidental catch, regardless of whether retained, must have been issued a valid swordfish vessel permit under paragraph (e) of this section unless such vessel fishes exclusively in the recreational fishery and/or fishes exclusively shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands with only handline gear on board.

(2) *Annual dealer permit.* A dealer in the United States who first receives from a vessel of the United States swordfish harvested from the north or south Atlantic swordfish stocks must have been issued a valid dealer permit under paragraph (e) of this section.

* * * * *

5. Section 630.7 is amended by revising paragraph (c) and by adding new paragraphs (bb) and (cc) to read as follows:

§ 630.7 Prohibitions.

* * * * *

(c) Sell, barter or trade or attempt to sell, barter, or trade a swordfish harvested from or possessed in the North Atlantic Ocean north of 5° N. latitude, including the Gulf of Mexico and Caribbean Sea, to a dealer without a valid dealer permit issued under § 630.4(e).

* * * * *

(bb) Fish for swordfish from the south Atlantic swordfish stock using any gear other than pelagic longline, or possess swordfish while carrying drift gillnet gear on board south of 5° N. latitude.

(cc) Fish for, or retain, a swordfish from the south Atlantic swordfish stock or to sell, barter or trade or attempt to sell, barter, or trade a swordfish harvested from or possessed in the Atlantic Ocean south of 5° N. latitude during a closure of the South Atlantic swordfish fishery under § 630.25(a)(1).

6. Section 630.21 is revised to read as follows:

§ 630.21 Restrictions on transfer, offloading, and sale.

(a) A swordfish harvested from the north or south Atlantic swordfish stocks may not be transferred at sea, regardless of where the transfer takes place or where the swordfish was harvested.

(b) A swordfish harvested from the north Atlantic Swordfish stock may be initially sold, traded, or bartered or attempted to be sold, traded, or bartered only by an owner or operator of a vessel that has been issued a swordfish vessel permit under § 630.4(e), except if the swordfish is off-loaded in Puerto Rico or the U.S. Virgin Islands from a non-permitted vessel that fished exclusively shoreward of the outer boundary of the EEZ around Puerto Rico and the U.S. Virgin Islands with only handline gear on board.

(c) A swordfish harvested from the south Atlantic swordfish stock, may be initially sold, traded, or bartered or attempted to be sold, traded, or bartered only by an owner or operator of a vessel

that has been issued a vessel permit under § 630.4(e).

(d) A swordfish harvested from the north Atlantic swordfish stock may be initially purchased, traded, or bartered or attempted to be purchased, traded, or bartered only by a dealer with a valid dealer permit issued under § 630.4(e).

(e) A swordfish harvested from the north Atlantic swordfish stock by persons aboard a vessel in the recreational fishery may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

7. In § 630.23, the first sentence of paragraph (a) and the first sentence of paragraph (b) are revised to read as follows:

§ 630.23 Harvest limitations.

(a) *Minimum size*. The minimum allowable size for possession on board a fishing vessel for a swordfish taken from the north or south Atlantic swordfish stocks is 29 inches (73 cm) carcass length, measured along the body contour (i.e., a curved measurement) from the cleithrum to the anterior portion of the caudal keel (CK measurement) or, if swordfish are weighed, 33 lb (15 kg) dressed weight. * * *

(b) *Carcass condition*. A swordfish possessed on board a fishing vessel of the United States in the Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, must be in whole or dressed form, and a swordfish landed from a fishing vessel of the United States in an Atlantic coastal port, including the Gulf of Mexico or Caribbean Sea, must be maintained in whole or dressed form through offloading, except such swordfish as are damaged by shark bites. * * *

* * * * *

8. In § 630.24, paragraph (a) is amended by designating the text after the paragraph heading as paragraph (a)(1), paragraphs (a)(2) and (b)(5) are added, and paragraphs (b)(1) through (b)(3), (c), (d)(4), and (e) are revised to read as follows:

§ 630.24 Quotas.

(a) *Applicability*. (1) * * *

(2) A swordfish harvested from the south Atlantic swordfish stock by a vessel subject to the jurisdiction of the United States is counted against the directed-fishery quota for the south Atlantic.

(b) *Directed-fishery quotas*. (1) The annual directed fishery quota for the North Atlantic swordfish stock for the period June 1, 1997, through May 31, 1998, is 2,164 mt dw, of which 2,121.2 mt dw is allocated for the longline/harpoon fishery and of which 42.8 mt dw is allocated for the drift gillnet fishery. The allocation for the longline/harpoon fishery is divided into two equal semiannual quotas of 1,060.6 mt dw, one for the period June 1 through November 30, 1997, and the other for the period December 1, 1997, through May 31, 1998.

(2) The annual directed fishery quota for the North Atlantic swordfish stock for the period June 1, 1998, through May 31, 1999, is 2,098.6 mt dw, of which 2,057 mt dw is allocated for the longline/harpoon fishery and of which 41.6 mt dw is allocated for the drift gillnet fishery. The allocation for the longline/harpoon fishery is divided into two equal semiannual quotas of 1,028.5 mt dw, one for the period June 1 through November 30, 1998, and the other for the period December 1, 1998, through May 31, 1999.

(3) The annual directed fishery quota for the North Atlantic swordfish stock for the period June 1, 1999, through May 31, 2000, is 2,033.2 mt dw, of which 1,993 mt dw is allocated for the longline/harpoon fishery and of which 40.2 mt dw is allocated for the drift gillnet fishery. The allocation for the longline/harpoon fishery is divided into two equal semiannual quotas of 996.5 mt dw, one for the period June 1 through November 30, 1999, and the other for the period December 1, 1999, through May 31, 2000.

* * * * *

(5) The annual directed fishery quota for the south Atlantic swordfish stock for the period June 1, 1997, through May 31, 1998, is 188 mt dw and is divided into two equal semiannual quotas of 94 mt dw, one for period June 1 through November 30, 1997, and the other for the period December 1, 1997, through May 31, 1998.

(c) *Incidental catch quota*. The annual bycatch quota for the north Atlantic swordfish stock is 300 mt dw; no incidental harvest is authorized for the south Atlantic swordfish stock.

(d) * * *

(4) Total landings above or below the specific north Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota. Any adjustments to the 12-month directed-fishery quota will then be apportioned equally between the period June 1 through November 30 and the period December 1 through May 31.

* * * * *

(e) NMFS may adjust the December 1 through May 31 semiannual directed-fishery quota and gear quotas to reflect actual catches during the June 1 through November 30 semiannual period, provided that the 12-month directed-fishery and gear quotas are not exceeded.

* * * * *

9. In § 630.25, the section heading, paragraphs (a)(1) and the first sentence of paragraph (b) are revised to read as follows:

§ 630.25 Closures and incidental limits.

(a) *Notification of a closure*. (1) When a directed-fishery annual, semiannual, or gear quota specified in § 630.24 is reached, or is projected to be reached, NMFS will publish notification in the **Federal Register** closing the entire directed fishery for fish from the North Atlantic swordfish stock, the South Atlantic swordfish stock, the drift gillnet fishery, or the harpoon and longline fisheries, as appropriate. The effective date of such notification will be at least 14 days after the date such notification is filed at the Office of the Federal Register. The closure will remain in effect until an additional directed-fishery or gear quota becomes available.

* * * * *

(b) *Special set-aside for harpoon gear*. The procedures of paragraph (a)(1) of this section notwithstanding, during the period June 1 through November 30, swordfish not exceeding 9,752 kg dw, may be set aside for the harpoon segment of the North Atlantic swordfish fishery. * * *

* * * * *

[FR Doc. 97–28277 Filed 10–21–97; 3:50 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961210346–7035–02; I.D. 102097C]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New York

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of New York has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New York for

the remainder of calendar year 1997, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notice to advise the State of New York that the quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in New York.

DATES: Effective 0001 hours, October 24, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Regina Spallone, Fishery Management Specialist, (978) 281–9347.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 1997 calendar year was set equal to 11,111,298 lb (5,040,000 kg) (March 7, 1997, 62 FR 10473). The percent allocated to vessels landing summer flounder in New York is 7.64699 percent, or 849,680 lb (385,408 kg).

Section 648.100(d)(2) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1996, a total of 940,313 lb (426,519 kg) were landed in New York. The amount allocated for New York landings in 1996 was 844,976 lb (383,275 kg), creating a 95,337 lb (43,244 kg) overage that was deducted from the amount allocated for landings in that state during 1997 (March 7, 1997, 62 FR 10473 and July 15, 1997, 62 FR 37741). The resulting quota for New York is 754,343 lb (342,164 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notice in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. Because the available information indicates that the State of New York has attained its quota for 1997, the Regional Administrator has determined based on dealer reports and other available information, that the state's commercial quota has been harvested.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 000l hours, October 24, 1997, further landings of summer flounder in New York by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1997 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective the date above, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New York for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12286.

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

Dated: October 21, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–28259 Filed 10–21–97; 3:18 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 206
Friday, October 24, 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–33–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PW100 Series Turboprop 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 Pratt & Whitney Canada (PWC) PW100 series turboprop engines. This proposal would require removal of the existing fuel manifold tubes, lock plates, and preformed packing; installation of improved fuel manifold transfer tubes, improved lock plates, and improved preformed packing; and, after installation, the performance of a leak check. This proposal is prompted by reports of engine fuel leaks which resulted in either inflight engine shutdowns or fire warnings. The actions specified by the proposed AD are intended to prevent engine fuel leaks, which can result in inflight engine shutdowns or fire warnings.

DATES: Comments must be received by December 23, 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–33-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 Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; telephone (514) 677–9411, fax (514) 647–3620. 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) 238–7133, 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–33-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-33-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Pratt & Whitney Canada (PWC) PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW124B, PW125B, PW126A, PW127, PW127E, PW127F series turboprop engines. Transport Canada advises that they have received reports of several incidents of PW100 series engine fuel leaks which resulted in either inflight shutdowns or fire warnings. The investigation showed that most of these fuel leaks occurred shortly after fuel manifold maintenance actions, and that they were caused by an incorrect installation and the quality of o-ring seals installed. The manufacturer has determined that the current transfer tube lock plates installed in accordance with PWC Service Bulletin (SB) No. 21077, Revision 7, dated October 10, 1996, are sensitive to installation errors and can be bent out of position. This condition, if not corrected, can result in engine fuel leaks, which can result in inflight engine shutdowns or fire warnings.

Pratt & Whitney Canada has issued SB No. 21516, dated August 14, 1997, and SB No. 21549, dated September 18, 1997, which introduces new fuel manifold transfer tubes and new fuel manifold drain transfer tubes. Pratt & Whitney Canada has also issued SB No. 21373, Revision 3, dated October 11, 1996, which introduces a new lock plate to accommodate the fuel manifold transfer tubes to prevent the incorrect installation and hold the transfer tubes in position. In addition, PWC has issued SB No. 21364, Revision 1, dated April 28, 1995, that address the o-ring quality control problem by introducing a preformed packing with a better quality control during manufacturing process. Transport Canada classified these SBs as mandatory and issued AD CF–96-22, dated November 19, 1996, in order to assure the airworthiness of these engines in Canada.

These engine models are manufactured in Canada and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would require removal of the existing fuel manifold tubes, lock plates, and performed packing and installation of improved fuel manifold transfer tubes, lock plates, and preformed packing, at the earliest of the following: (1) the next time, after the effective date of this AD, that the engine or module is at a maintenance base that can do the modifications specified, regardless of the scheduled maintenance action or reason for engine removal; (2) or at the next fuel nozzle change; or (3) prior to November 30, 1998. This calendar end-date was determined based upon risk assessment. After installation, but prior to further flight, this AD requires performing a leak check. The actions would be required to be accomplished in accordance with the SBs described previously.

The FAA estimates that 1,216 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would not take any additional work hours per engine to accomplish the proposed actions, as the actions may be performed during regularly scheduled maintenance or overhaul. Required parts would cost approximately $370 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $449,920.

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:

Pratt & Whitney Canada: Docket No. 97-ANE–33-AD.

Applicability: Pratt & Whitney Canada (PWC) PW118, W118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, W121A, PW123, PW123B, PW123C, PW123D, PW123E, PW124B, PW125B, PW126A, PW127, PW127E, PW127F series engines installed on but not limited to Dornier 328, Fokker 50, Jetstream ATP, ATR42, ATR42–500, ATR72, Embraer EMB–120, Canadair CL215T, CL415, and DeHavilland Dash-8–100/-200/-300/-315.

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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine fuel leaks, which can result in inflight engine shutdowns or fire warnings, accomplish the following:

(a) Remove the existing fuel manifold tubes, lock plates, and performed packing and replace with the improved fuel manifold transfer tubes and fuel manifold drain transfer tubes in accordance with the applicable PWC Service Bulletins (SB) No. 21516, dated August 14, 1997, and SB No. 21549, dated September 18, 1997, and SB No. 21077, Revision 7, dated October 10, 1996; and the improved lock plates in accordance with PWC SB No. 21373, Revision 3, dated October 11, 1996, using the improved preformed packing in accordance with PWC SB No. 21364, Revision 1, dated April 28, 1995, as follows, whichever occurs first following the effective date of this AD:

(1) At the next engine removal, regardless of cause; or

(2) At the next fuel nozzle change; or

(3) Prior to November 30, 1998.

(b) After the installation of the improved fuel manifold tubes and lockplates, but prior to further flight, perform a leak check in accordance with the applicable maintenance manual.

(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. Operators shall submit their requests 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 October 17, 1997.

Mark C. Fulmer,

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

[FR Doc. 97–28217 Filed 10–23–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 707 and 874

RIN 1029–AB89

Enhancing Abandoned Mine Lands AML, Reclamation

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

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intent to develop a rule that would increase the amount of reclamation of abandoned mine lands being accomplished under Title IV of the Surface Mining Control and Reclamation Act of 1977. OSM is seeking to involve the public in the development of the proposed rule by making an early draft available for review and written comment.

DATES: *Written comments:* OSM will accept written comments until 5:00 p.m. Eastern Time on November 24, 1997.

Public meetings: OSM plans to hold meetings with interested persons at appropriate locations to discuss this proposal. A schedule for these meetings will be published in the **Federal Register** on or about October 31, 1997.

ADDRESSES: *Written comments:* Hand-deliver or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 117, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Electronic Mail: You may send comments through the Internet to OSM's Administrative Record at: osmrules@osmre.gov.

Telefax: Copies of the early draft may be obtained from FAX ON DEMAND by calling 202–219–1703 and following the instructions on the recorded announcement.

FOR FURTHER INFORMATION CONTACT: D.J. Growitz, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW, Washington, D.C. 20240; telephone (202) 208–2634. E-mail: dgrowitz@osmre.gov.

SUPPLEMENTARY INFORMATION: OSM is seeking to increase reclamation under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Abandoned Mine Land (AML) fund does not contain, and is never expected to contain, enough money to reclaim all the known AML problems and sites. Under current OSM regulations, AML-funded reclamation that includes the extraction of incidental coal must be at least 50 percent funded by the AML agency. OSM is considering a proposal that envisions reclamation projects that will require less than 50 percent government funding because reclamation contracts would be partially funded by the recovery and sale of the incidental coal. OSM will need to amend the current definition of government-financed construction to eliminate the 50 percent funding requirement for AML projects.

OSM believes that there would be adequate assurances to protect the environment in the AML program as described in 30 CFR Subchapter R. Those regulations, which set forth the criteria for an AML program, require adherence to all applicable State and Federal laws, require programs to follow proper financial policies and procedures, and require that AML contracts be issued under and monitored in accordance with state law.

OSM is considering proposing a rule which will establish special requirements when the AML agency contracts for reclamation projects with less than 50 percent government financing to ensure that the provision is not misused, that necessary protections are in place for citizens and landowners, and that acceptable environmental restoration occurs. The AML agency would consult with the Title V regulatory authority to assess whether proposed project sites are appropriate for AML reclamation activity based on the economical and technical feasibility of mining those sites under a Title V permit. The consultation would also include consideration of whether existing environmental problems at the AML site might be impacted by nearby mining activities. If the site is determined to be appropriate for Title IV reclamation activities, the AML agency would be required to: (1) determine site characteristics for Acid Mine Drainage and other existing environmental problems; (2) require the projects be carried out in accordance with time-tested AML regulations and procedures; (3) provide for site specific reclamation requirements, including performance bonds, when appropriate and in accordance with state procedures; (4) delineate any coal or coal waste material that would need to be extracted in order to accomplish the reclamation; and (5) require the AML contractor to provide consent documents that authorize coal extraction and document the disposition of the coal and associated revenues for use by the AML authority in determining financial conditions of the contract. If the AML authority determines that coal extraction is not incidental to the reclamation project, the project would be subject to all the regulatory requirements of Title V.

The proposed rule, when developed, will be published in the **Federal Register** for public comment in accordance with the requirements of the Administrative Procedure Act, and public hearings will be held on request.

Dated: October 4, 1997.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 97–28321 Filed 10–23–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–95–139]

Captain of the Port Boston; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Captain of the Port Boston (COTP Boston) will hold a meeting to discuss modifying the existing regulation for the waters of the Chelsea River, Boston, Inner Harbor, in order to encourage the use of double hull tankships. This meeting is open to the public. Proposed amendments may increase the size of tankships permitted to transit through his regulated waterway provided enhanced safety systems are in place. Proposed amendments should be based on a performance standard consistently applied to all tankships transiting through the Chelsea Street Bridge.

DATES: The meeting will be held on November 4, 1997 from 9 a.m. to 12 p.m. Written material and requests to make oral presentations should reach the COTP Boston on or before October 27, 1997.

ADDRESSES: Comments should be mailed to Captain of the Port Boston, Coast Guard Marine Safety Office, 455 Commercial Street, Boston, MA 02109–1045. Comments may also be hand-delivered to the above address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Michael H. Day, Coast Guard Marine Safety Office Boston, MA; telephone (617) 223–3000.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Request for Comments

The Coast Guard encourages interested persons to participate by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this specific Notice of Meeting (CGD01–97–080) and the specific issue to which each comment applies, and gives reasons for

each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″ × 11″ unbound format suitable for copying and electronic filing. If this is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard has also scheduled a public hearing on November 4,1 997, at 9 a.m., to receive oral presentations. The public meeting will be held in the Function Room on the first floor of Building 1, at the Coast Guard Integrated Support Company, 427 Commercial St., Boston, MA.

Background

The Chelesa Street Bridge is a bascule-type bridge owned by the City of Boston and originally constructed in 1939. It spans the Chelsea River providing a means for vehicles to travel between Chelsea, MA and East Boston, MA. Several petroleum-product transfer facilities are located on the Chelsea River, upstream and downstream of the Chelsea Street Bridge. Transit of tankships through the bridge is necessary to access the facilities upstream of the bridge. The narrow bridge-span opening creates a very difficult passage through the bridge for larger vessels. Adding to the difficulty are the close proximity of neighboring shore structures and, at times, vessels moored at facilities adjacent to the bridge.

In 1986, the bridge and its fendering system were in a dilapidated condition, which further complicated vessel transits. Additionally, the Northeast Petroleum Terminal (locally referred to as the Jenny Dock) and the Mobil Oil Terminal were located downstream of the bridge on the north and south bank of the river respectively. If one or more vessels were moored at either of those facilities, the already short and narrow approach to the bridge was further restricted, thus reducing the maneuverability space of vessels during the approach and transit through the bridge. Meetings between the Coast Guard, marine operators, and pilots indicated that restrictions on length and width of particular vessel traffic were necessary to achieve an acceptable level of safety for navigating this difficult area. Additionally, with the double hull requirements set forth in the Oil Pollution Act of 1990 (OPA–90), several tanker designs keeping the present cargo capacities while meeting the requirements of OPA–90 will create a tanker with a beam up to 92 feet.

Agenda of Meeting

Due to the above mentioned concerns, the Coast Guard seeks comments on the following specific items.

Existing Safety Zone Regulations

On June 27, 1986, (51 FR 23415) the Coast Guard promulgated the safety zone regulations published in 33 CFR 165.120. These regulations extend over the waters of the Chelsea River for 100 yards upstream and downstream of the bridge, restrict water traffic transiting the Chelsea Street Bridge and implement vessel operational constraints. The Coast Guard justified these restrictions and constraints by citing more than 75 bridge allisions and other incidents involving vessels transiting the Chelsea Street Bridge during the period from 1978 through 1985.

Vessel Size Restrictions

Currently, only vessels meeting certain draft and physical dimensions (overall length and overall width) are allowed to enter the safety zone. No vessel greater than 661 feet in length, or greater than 90.5 feet in beam, may transit the safety zone. No vessel greater than 630.5 feet in length, or 85.5 feet or greater in beam, may transit the safety zone between sunset and sunrise. No tankship greater than 550.5 feet in length may transit the safety zone with a draft less than 18 feet forward and 24 feet aft. Current regulations authorize the restrictions to be relaxed with specific approval from the Captain of the Port.

Extending the Width of Tankers Permitted Through the Bridge

While focusing on the physical dimensions of tank vessels transiting the Chelsea River, the current regulation does not address added or redundant systems aboard these vessels which may be used to enhance port and vessel safety and minimize potential pollution incidents. A slightly wider or longer double-hulled tankship with enhanced operational system transiting the Chelsea River may, in fact, have a margin of safety greater than the currently used smaller, less equipped tankships due to the former's improved maneuvering, handling, and safety characteristics.

Maneuvering

These enhanced systems may include: redundant power systems, redundant propulsion, controllable pitch propellers, improved steering capabilities, bow thrusters and other safety systems.

Procedural

All sessions are open to the public. At the Chairperson's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations at the meeting should notify Lt. Michael H. Day no later than October 27, 1997. Written material for distribution at the meeting should reach the COTP Boston no later than October 27, 1997. If a person submitting material would like copies distributed in advance of the meeting, that person should submit 25 copies to the COTP Boston no later than October 27, 1997.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meeting, contact COTP Boston as soon as possible.

Dated: September 30, 1997.

J.L. Grenier,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 97–28287 Filed 10–23–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Naval Restricted Area, Naval Station Annapolis, Maryland

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps is proposing to establish a new restricted area in the waters of the small boat basin off the Severn River, in Annapolis, Maryland to prohibit public entry into the area. The restricted area is needed for the security of U.S. navy facilities and watercraft and navigational safety for U.S. Naval Academy training vessels in that area. The water area in the small boat basin has always been closed to the public, however, as a result of the closure of the adjacent Naval Surface Warfare Center and the planned future public ownership of that facility, the water may become accessible by the public.

DATES: Comments must be submitted on or before November 24, 1997.

ADDRESSES: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Headquarters Regulatory Branch, at (202) 761–1783, or Mr. Steve

Elinsky, Corps Baltimore District, at (410) 962–4503.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the regulations in 33 CFR part 334 by adding a new § 334.155 which establishes a naval restricted area at the Naval Station Annapolis small boat basin, off the Severn River at Annapolis, Maryland. The Commanding Officer of the Naval Station Annapolis, has requested that the Corps establish the restricted area for reasons of security and navigational safety. The small boat basin plays an integral role in the training of midshipmen of the U.S. Naval Academy. The basin is used continuously by the Naval Academy as a training area for maneuvering and seamanship exercises. Over the past 40 years, the small boat basin has been surrounded by restricted U.S. Navy property of the Naval Station Annapolis and the Naval Surface Warfare Center (NSWC), and accordingly, access to the basin was limited to Naval personnel. In 1995, the Congress approved the Department of Defense Base Realignment and Closure Commission's recommendation to close the NSWC at that location. The NSWC property is slated to become the property of Anne Arundel County and presumably that area and the shoreline of the basin could become accessible to the public. Public access to the basin from the NSWC property by non-U.S. Navy/Department of Defense personnel would pose an unacceptable security risk to the Naval Station. Navigational safety would also be a problem if non-Naval vessels are allowed to operate in the basin and because 260 feet of the NSWC seawall is located at the entrance to the basin, which is only 170 feet wide, any mooring by vessels along the seawall would further restrict the entrance and present a hazard to boats entering and leaving the basin. In addition to the publication of this proposed rule, the Baltimore District Engineer is soliciting public comment on these proposed changes to the restricted area rules by distribution of a public notice to all known interested parties.

Procedural Requirements

A. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District Office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

D. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger Zones.

For the reasons set out in the preamble, we propose to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3)

2. Add new § 334.155 to read as follows:

§ 334.155 Severn River, Naval Station Annapolis, Small Boat Basin, Annapolis, MD; naval restricted area.

(a) *The area.* The waters within the Naval Station Annapolis small boat basin and adjacent waters of the Severn River enclosed by a line beginning at the southeast corner of the U.S. Navy Marine Engineering Laboratory; thence to latitude 38°58′56.5″, longitude 76°28′11.5″; thence to latitude 38°58′50.5″, longitude 76°27′52″; thence to the southeast corner of the Naval Station's seawall.

(b) *The regulations.* No person, vessel or other craft shall enter or remain in the restricted area at any time except as authorized by the enforcing agency.

(c) *Enforcement.* The regulations in this section shall be enforced by the Superintendent, U.S. Naval Academy, in Annapolis, Maryland, and such agencies as he/she may designate.

Dated: October 20, 1997.

Approved.

Robert W. Burkhardt,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 97–28196 Filed 10–23–97; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–7202b; FRL–5902–3]

Approval and Promulgation of Implementation Plans; Conditional Approval of Implementation Plans; Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing action on State Implementation Plan (SIP) revisions submitted by the State of Connecticut. The EPA is proposing approval of Connecticut's 1990 base year ozone emission inventories, and establishment of a Photochemical Assessment Monitoring Stations (PAMS) network, as revisions to the Connecticut SIP for ozone. The EPA proposes a conditional approval of SIP revisions submitted by the State of Connecticut to meet the 15 Percent Rate of Progress (ROP) Plan requirements of the Clean Air Act (CAA). A conditional approval is also proposed for the Connecticut contingency plan.

The inventory was submitted by Connecticut to satisfy a CAA requirement that those States containing ozone nonattainment areas (NAAs)

classified as marginal to extreme submit inventories of actual ozone season emissions from all sources in accordance with EPA guidance. The PAMS SIP revision was submitted to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network by November 15, 1993. The 15 percent ROP and contingency plans were submitted to satisfy CAA provisions that require ozone nonattainment areas classified as moderate and above to devise plans to reduce volatile organic compound (VOC) emissions 15 percent by 1996 when compared to a 1990 baseline.

In the final rules section of today's **Federal Register**, the EPA is approving the Connecticut 1990 base year inventories, and the establishment of a PAMS network as a direct final rule without prior proposal, because the Agency views these as noncontroversial revision amendments and anticipates no adverse comments. A detailed rationale for each approval is set forth in the direct final rule. A direct final rule is not being published for the Connecticut 15 percent ROP and contingency plans. If no adverse comments are received on the direct final rule, no further activity is contemplated in relation to this proposed rule for these revisions. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Public comments on this document are requested and will be considered before taking final action on this SIP revision. Comments on this proposed action must be postmarked by November 24, 1997.

ADDRESSES: Written comments on this action should be addressed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Region I office, and at the Connecticut Department of Environmental Protection, Bureau of Air Management, 79 Elm Street, Hartford, Connecticut, 06106–1630. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, Air Quality Planning Unit, EPA Region I, JFK Federal Building, Boston, Massachusetts 02203; telephone (617) 565–9266.

SUPPLEMENTARY INFORMATION: For supplementary information regarding the Connecticut 1990 base year emission inventories, and establishment of a PAMS network, see the information provided in the direct final action of the same title which is located in the rules section of the **Federal Register**.

Background

Section 182(b)(1) of the CAA as amended in 1990 requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide VOC emissions by 15 percent from a 1990 baseline. The plans were to be submitted by November 15, 1993 and the reductions were required to be achieved within 6 years of enactment or November 15, 1996. The Clean Air Act also sets limitations on the creditability of certain types of reductions. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (new car emissions standards) promulgated prior to 1990 or for reductions resulting from requirements to lower the Reid Vapor Pressure (RVP) of gasoline promulgated prior to 1990. Furthermore, the CAA does not allow credit for corrections to Vehicle Inspection and Maintenance Programs (I/M) or corrections to Reasonably Available Control Technology (RACT) rules (so called ''RACT fix-ups) as these programs were required prior to 1990.

In addition, sections 172(c)(9) and 182(c)(9) of the CAA require that contingency measures be included in the plan revision to be implemented if the area misses an ozone SIP milestone, or fails to attain the standard by the date required by the CAA.

There are two nonattainment areas in Connecticut, one classified as a serious area, the other as a severe area. Connecticut is, therefore subject to the 15 percent ROP requirements. The areas are referred to as the Greater Hartford serious ozone nonattainment area (the ''Hartford area''), and the Connecticut portion of the New York, New Jersey, Connecticut severe area (the ''NY–NJ–CT area''), which is a multi-state ozone nonattainment area. Connecticut did not enter into an agreement with New York and New Jersey to do a multi-state 15 percent plan, and therefore submitted a plan to reduce emissions only in the Connecticut portion of this area. EPA is taking action today only on the Connecticut portion of NY–NJ–CT 15 percent plan.

Connecticut submitted final 15 percent ROP plans to EPA on January 14, 1994. The plans, however, did not contain adopted rules for all of the VOC control measures listed within, and so they were deemed incomplete by EPA by letter dated January 26, 1994. During 1994, Connecticut submitted the adopted rules necessary for its 15 percent ROP plan. Revised 15 percent ROP and contingency plans were submitted on July 5, 1994 and December 30, 1994. By letter dated January 26, 1995, EPA notified Connecticut that the 15 percent ROP plans had been found complete, thereby stopping a sanctions clock which had been started on January 26, 1994 due to the lack of complete 15 percent plans from the state.

The EPA has analyzed Connecticut's submittal and believes that the 15 percent ROP and contingency plans can be given conditional approval because the State correctly determined the required level of emission reductions, and the plans would strengthen the SIP by achieving reductions in VOC and Nitrogen Oxide (NO_X) emissions. These plans, however, reference an enhanced automobile inspection and maintenance program which the State no longer intends to implement. By letter dated August 22, 1997 the Connecticut DEP committed to submittal of revised 15 percent ROP and contingency plans, and a revised I/M program, by April 1, 1998, that would reflect emission reduction credit appropriate for the type of automobile I/M program that the State will implement. Additionally, the letter contains a commitment to initiate testing of motor vehicles by January 1, 1998. Based on these commitments, the EPA is proposing a conditional approval of the plans. For a complete discussion of EPA's analysis of the Connecticut 15 Percent ROP and Contingency plans, please refer to the Technical Support Document for this action which is available as part of the docket supporting this action. A summary of the EPA's findings follows.

Emission Inventory

The base from which States determine the required reductions in the 15 Percent Plan is the 1990 emission inventory. The EPA is approving the Connecticut 1990 emission inventories with a direct final action in the rules section of today's **Federal Register**. The inventory approved by the EPA exactly matches the one used in the 15 Percent ROP plan calculations, with one minor exception of less than ½ ton per summer day (tpsd) out of a total anthropogenic emission estimate of 416.9 tpsd for this area. EPA deems this discrepancy inconsequential.

Calculation of Target Level Emissions

Connecticut subtracted the non-creditable reductions from the Federal Motor Vehicle Control Program (FMVCP) from the 1990 inventory, and accurately adjusted the inventory to account for the reid vapor pressure (RVP) of gasoline sold in the state in 1990. These modifications result in the 1990 adjusted inventory.

The total emission reduction required to meet the 15 percent ROP Plan requirements equals the sum of the following items: 15 percent of the adjusted inventory, reductions that occur from noncreditable programs such as the FMVCP and RVP programs as required prior to 1990, reductions needed to offset any growth in emissions that takes place between 1990 and 1996, and reductions that result from corrections to the I/M or VOC RACT rules. Table 1 summarizes these calculations for the two ozone nonattainment areas within the state:

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS

[Tons/day]

	NY–NJ–CT	Hartford
1990 anthropogenic emission inventory [1]	131.7	414.2
1990 adjusted inventory [2]	121.8	389.3
15 percent of adjusted inventory	18.3	58.4
Noncreditable reductions	9.9	24.9
1996 target	103.5	330.9
1996 [3] projected, uncontrolled emissions	129.6	415.7
Required reduction [4]	26.1	84.8

[1] Manmade emissions only. Perchloroethylene emissions excluded due to negligible photochemical reactivity.
[2] Adjusted inventory subtracts non-creditable FMVCP and RACT reductions from the anthropogenic inventory.
[3] 1996 emissions for on-road mobile sources were calculated using an emission factor that reflected the level of control achieved by the FMVCP in 1996.
[4] Required Reductions were obtained by subtracting 1996 target from the 1996 projected uncontrolled inventory.

Measures Achieving the Projected Reductions

Connecticut has provided plans to achieve the reductions required for the two ozone nonattainment areas within the state. The following is a description of each control measure Connecticut used to achieve emission reduction credit within its 15 percent ROP plans. The EPA agrees with the emission reductions projected in the State submittals except where noted in the text and in Table 2 under the heading ''Noncreditable Reductions.''

A. Point Source Controls

Non-CTG Sources

Connecticut has claimed 3.1 tpsd in emission reduction credit from the implementation of VOC RACT on stationary sources. The reductions are claimed from facilities subject to the State's non-CTG RACT rule. The State's rule has been submitted to EPA, but has not as of yet been approved by EPA into the State's SIP. EPA intends to take final action on the State's rule by the time final action are issued for the State's 15 percent plans. The State's 15 percent plans included documentation for the level of emission reduction credit claimed. The emission reductions claimed by the State are approvable.

Gasoline Loading Racks, Rule Effectiveness Improvement

The Connecticut DEP plans on undertaking a rule effectiveness improvement program to improve compliance with a regulation on gasoline loading racks. The State's SIP outlines the manner in which Connecticut intends to improve compliance with this rule, including conducting 3 unannounced inspections at each of the 14 facilities in the state over a 24 month period. Additionally, the State submitted a rule effectiveness improvements protocol to EPA which outlines the manner in which the State will verify that these emission reductions have occurred. At the conclusion of the State's rule effectiveness program, a report documenting the results of the effort will be submitted to the EPA. The State anticipates achieving a 3.6 tpsd emission reduction statewide for this source category due to the rule effectiveness improvement program, and due to the effect that the sale of reformulated gasoline in the State will have on gasoline loading rack emissions.

B. Area Source Controls

Vehicle Refueling (Stage II)

Connecticut has adopted and submitted to EPA a Stage II vehicle refueling regulation. EPA approved the rule into the State's SIP on December 17, 1993 (58 FR 65930). Connecticut calculated 1996 vehicle refueling emissions and underground tank breathing emissions jointly, and determined that a 15.6 tpsd emission reduction would occur from these emission sources. Emissions from underground tanks will be reduced due to the sale of reformulated gasoline in the State.

Automobile Refinishing

On November 29, 1994, EPA issued a final guidance memorandum that allowed States to assume a 37% control level for this source category without adopting a State rule due to a pending National rule. The State correctly applied this guidance and determined that emissions will be reduced 7.4 tpsd statewide due to implementation of the federal rule.

Architectural Coatings

In a memo dated March 22, 1995, EPA provided guidance on the expected reductions from a pending national rulemaking on AIM coatings. The memo projects that emissions would be reduced by 20% for both architectural coatings and industrial maintenance coatings. The State correctly applied this guidance and determined that emissions will be reduced 6.5 tpsd statewide due to implementation of the federal rule.

Cutback Asphalt, Increased Rule Effectiveness

The December 30, 1994 revision to the Connecticut 15 percent ROP plans included a plan to increase the rule effectiveness of the State's cutback asphalt regulations, such that a total of 15.3 tpsd in emission reductions would be achieved. The State's SIP outlines the manner in which Connecticut intends to improve compliance with this rule, including notifying all towns in the

State of their responsibilities pursuant to the rule, and requiring all towns to annually report their cutback asphalt usage. The State submitted a rule effectiveness improvements protocol to EPA which outlines the manner in which the State will verify that these emission reductions have occurred. At the conclusion of the State's rule effectiveness program, a report documenting the results of the effort will be submitted to the EPA. The emission reductions claimed by the State are approvable.

Effect of Reformulated Gasoline on Remaining Gasoline Marketing Operations

Reformulated gasoline will be required to be sold in Connecticut in 1996. This fuel has a lower volatility than conventional gasoline, and therefore produces less evaporative emissions than conventional gasoline. Appendix C of Connecticut's 15 percent plan outlines the effect that the sale of ''Class C'' reformulated gasoline will have on emissions in 1996 from the gasoline distribution network. The State estimated the emission reduction expected from the source categories where this reduction was not previously quantified, such as bulk gasoline storage tanks, barges, gasoline trucks in transit, and Stage I tank filling operations. The net result was a 1.0 tpsd emission reduction statewide. The projected emission reductions are approvable.

C. On-Road Mobile Source Controls

Vehicle Inspection and Maintenance

The 15 percent ROP plans relied on an enhanced vehicle I/M program that was developed by Connecticut and submitted to EPA on May 13, 1994. In light of the recent I/M flexibility policy issued by EPA, Connecticut has indicated an interest in re-evaluating their enhanced I/M program to take advantage of the I/M flexibility. However, Connecticut has not yet submitted a revised I/M program design to EPA. By letter dated August 22, 1997, Connecticut committed to submitting a revised I/M program to EPA by April 1, 1998, revised 15 percent and contingency plans reflecting the credit from the revised I/M program by April 1, 1998, and importantly, the State committed to begin testing motor vehicles by January 1, 1998. Since the enhanced I/M program described within the 15 percent plan submitted to EPA on December 30, 1994 will not be implemented, EPA cannot fully approve the emission reductions from this program. However, based on the commitments contained within the State's August 22, 1997 letter, EPA proposes to conditionally approve the Connecticut 15 percent ROP and contingency plans.

Section 182(b)(1) of the CAA requires that States containing ozone nonattainment areas classified as moderate or above prepare plans that provide for a 15 percent VOC emission reduction by November 15, 1996. Most of the 15 percent SIPs originally submitted to the EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, because most States experienced substantial difficulties with these enhanced I/M programs, only a few States are currently actually testing cars using the original enhanced I/M protocol.

In September, 1995, the EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in designing I/M programs appropriate for their needs. The substantial amount of time needed by States to re-design enhanced I/M programs in accordance with the guidance contained within EPA's revised I/M rule, secure state legislative approval when necessary, and set up the infrastructure to perform the testing program has precluded States that revise their I/M programs from obtaining emission reductions from such revised programs by November 15, 1996.

Given the heavy reliance by many States upon enhanced I/M programs to help achieve the 15 percent VOC emission reduction required under CAA section 182(b)(1), and the recent regulatory changes regarding enhanced I/M programs, the EPA recognized that it is no longer possible for many States to achieve the portion of the 15 percent reductions that are attributed to I/M by November 15, 1996. Under these circumstances, disapproval of the 15 percent SIPs would serve no purpose. Consequently, under certain circumstances, EPA will propose to allow States that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs within their 15 percent plans, even though the emission reductions from the I/M program will occur after November 15, 1996.

Specifically, the EPA will propose approval of 15 percent SIPs if the emission reductions from the revised, enhanced I/M programs, as well as from the other 15 percent SIP measures, will achieve the 15 percent level as soon after November 15, 1996 as practicable. To make this ''as soon as practicable'' determination, the EPA must determine that the SIP contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15 percent level is achieved. The EPA does not believe that measures meaningfully accelerate the 15 percent date if they provide only an insignificant amount of reductions.

In the case of the NY–NJ–CT area and the Hartford area, Connecticut has committed to submittal of 15 percent SIPs that would achieve the amount of reductions needed from I/M by November, 1999. The EPA proposes to determine that these SIP revisions contain all measures, including automobile I/M, that achieve the required reductions as soon as practicable.

The EPA has examined other potentially available SIP measures to determine if they are practicable for the two Connecticut ozone nonattainment areas, and if they would meaningfully accelerate the date by which these areas reach the 15 percent level of reductions. The EPA proposes to determine that these SIPs contain the appropriate measures. The rationale for this determination is outlined within the technical support document available in the docket for this action. In summary, several area source measures exist which could conceivably be implemented prior to November 1999. However, these measures would not achieve the same level of emission reductions expected from Connecticut's I/M program, and additionally, would not meaningfully accelerate the achievement of the required reductions.

Reformulated Gasoline (RFG)

Section 211(k) of the Clean Air Act requires that after January 1, 1995, in the nine areas of the country with the worst air quality, only reformulated gasoline be sold or dispensed. Portions of the State of Connecticut are covered by this requirement. On October 28, 1991, Connecticut submitted a letter from their Governor requesting that the portions of the State not specifically required by the CAA to use reformulated gasoline ''opt into'' the reformulated fuels program. This request was published in the **Federal Register** on December 23, 1991, 56 FR 66444. Connecticut correctly used the MOBILE5a model to calculate the emission reductions due to the implementation of the reformulated gasoline program.

Tier I Federal Motor Vehicle Control Program

The EPA promulgated standards for 1994 and later model year light-duty vehicles and light-duty trucks (56 FR

25724, June 5, 1991). Since the standards were adopted after the Clean Air Act amendments of 1990, the resulting emission reductions are creditable toward the 15 percent reduction goal. Connecticut correctly calculated these reductions using the MOBILE5a model.

Employee Commute Option

Connecticut has adopted legislation requiring employers in the State's severe nonattainment area with 100 or more employees implement measures to increase average passenger occupancy by 25%. The EPA has not approved this program into the State's SIP. A discussion with staff from the CT–DEP indicates that this program is not being implemented. The State included the effect of this program in the MOBILE modeling runs done to estimate emission reductions in the severe area. This resulted in the State assuming 0.4 tpsd in emission reduction credit which will not occur in the Connecticut portion of the NY–NJ–CT area due to the failure to implement this program.

D. Non-Road Mobile Source Controls

Use of Reformulated Gasoline in Non-road Engines

On August 18, 1993, EPA's Office of Mobile Sources issued a guidance memorandum regarding the VOC emission reduction benefits for non-road equipment in a nonattainment area that uses Federal Phase I RFG. Connecticut has correctly used the guidance to compute that VOC emissions will be reduced 0.6 tpsd in the severe area, and 2.4 tpsd in the serious area.

Table 2 summarizes the creditable and noncreditable emission reductions contained within the Connecticut 15 percent ROP plans:

TABLE 2.—SUMMARY OF CREDITABLE AND NONCREDITABLE EMISSION REDUCTIONS: CONNECTICUT OZONE NONATTAINMENT AREAS

[Tons/day]

	NY–NJ–CT	Hartford
Required reduction	26.1	84.8
Creditable reductions:		
Non-CTG RACT	0.9	2.2
Gasoline Loading Racks	0.7	2.9
Stage II + Tank Breathing	3.9	11.7
Auto Refinishing	2.0	5.4
AIM Coatings	1.6	4.9
Cutback Asphalt (RE imp.)	3.8	11.5
Reform, other gas market	0.2	0.8
On-road mobile strategies (I/M, Reform, Tier I)	16.1	46.1
Reform, Off-road	0.6	2.4
Total	29.8	87.9
Noncreditable reductions:		
Employee commute option	0.4	.....
Surplus	3.7	3.1

Contingency Measures

Ozone nonattainment areas classified as serious or above must submit to the EPA, pursuant to sections 172(c)(9) and 182(c)(9) of the CAA, contingency measures to be implemented if an area misses an ozone SIP milestone or does not attain the national ambient air quality standard by the applicable date. The General Preamble to Title I, (57 FR 13498 (April 16, 1992)) states that the contingency measures should, at a minimum, ensure that an appropriate level of emission reduction progress continues to be made if attainment or RFP is not achieved and additional planning by the State is needed. The EPA interprets this provision of the CAA to require States with moderate and above ozone nonattainment areas to submit sufficient contingency measures so that upon implementation of such measures, additional emission reductions of three percent of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved in the year after the failure has been identified (57 FR at 13511). States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review.

Analysis of Contingency Measures

Surplus Emission Reduction From 15 Percent Plan

Connecticut's contingency plan included emission reduction credits that were considered surplus reductions from the state's 15 percent ROP plans. A 4.0 tpsd surplus was identified for the NY–NJ–CT area, and a 3.1 tpsd surplus for the Hartford area. EPA notes that due to the lack of implementation of the employee commute program in the NY–NJ–CT area, the adjusted surplus is 3.7 tpsd for that area. This equals the contingency obligation for this area, and so no additional reductions are needed for the NY–NJ–CT area.

NO_X Contingency Measures for Serious Area

The State determined that the serious area would need to achieve additional emission reductions beyond those generated by the 15 percent plan surplus for this area. The State chose to meet the remainder of this requirement using NO_X emission reductions, which is allowed pursuant to guidance issued by EPA on August 23, 1993. The state correctly determined that a 2.2 percent reduction of the adjusted NO_X inventory (321.5 tpsd) would be required to fulfill the emission reduction obligations for the serious area. (The adjusted NO_X inventory is so named because pre-1990 emission reductions from the FMVCP are subtracted to derive the ''adjusted'' NO_X inventory). This yields a 7.1 tpsd NO_X emission reduction obligation.

Connecticut chose to meet the NO_X contingency measure obligation using a portion of the emission reductions achieved by its NO_X RACT rule. Connecticut has submitted a NO_X RACT

rule to the EPA. EPA intends to approve the State's rule prior to or concurrent with final approval of the State's 15 percent and contingency plans. The State's NO_X RACT rule is more stringent than required by the CAA. The State performed an analysis to determine the quantity of emission reductions generated by the rule which are beyond the reductions required by the CAA. The results of the analysis were included with the State's submittal, and indicate that 6.3 tpsd surplus credit will be generated in the severe area, and 3.4 tpsd surplus credit in the serious area.

As stated above, Connecticut needs to identify 7.1 tpsd in NO_X emission reduction credits to fulfill the contingency measure obligation for the serious area. Only 3.4 tpsd are identified from the State's analysis of surplus NO_X credits. However, since the State's NO_X RACT rule contains a Statewide NO_X cap provision, which allows sources from the serious area to over-control and trade emission reduction credits to facilities in the severe area (and vice versa), the State will use a portion of the credit generated in the severe area to meet the remainder (3.7 tpsd) of the serious area's contingency obligation.[5]

Table 3 summarizes the creditable emission reductions contained within the State's contingency plans:

TABLE 3.—SUMMARY OF CREDITABLE AND NONCREDITABLE CONTINGENCY MEASURE REDUCTIONS: CONNECTICUT NONATTAINMENT AREAS

[Tons/day]

	NJ–NJ–CT	Hartford
Required contingency	3.7 (VOC)	3.1 (VOC) 7.1 (NO_X)
Creditable contingency reductions:		
Excess from 15 percent plans (VOC)	3.7	3.1
Beyond CAA NO_X RACT	.....	7.1

Transportation Conformity Budgets

In recognition of the proposed approval of the 15 percent ROP plans, EPA also proposes approval of motor vehicle emission budgets for VOCs and NO_X. Final approval of the 15 percent plan will eliminate the need for the transportation conformity emission reduction tests, which are the build/no build test and the less than 1990 emissions test, for these pollutants.

A control strategy SIP is required to establish a motor vehicle emission budget which places a cap on emissions that cannot be exceeded by predicted highway and transit vehicle emissions. The Connecticut DEP did not provide a break down of the 1996 projected inventory denoting transit emissions as an individual category. Therefore EPA is proposing to utilize the on-road mobile emissions provided in the SIP submittal as the motor vehicle emission budget for transportation conformity purposes. The 1996 projected on-road mobile emission estimates contained within the State's 15 percent plans are shown in the following table:

TABLE 4.—1996 MOTOR VEHICLE EMISSION BUDGETS

	NY–NJ–CT area	Hartford area
VOC	23.2	71.1
NO_X	39.4	126.3

EPA recommends that the DEP submit a specific motor vehicle emission budget for conformity purposes that includes both the highway and transit components. If such a submittal is made, EPA will address the revised motor vehicle budget within the final rulemaking on Connecticut's 15 percent plan.

EPA notes that the DEP derived these emission values using the assumption that the State's motor vehicle I/M program will achieve emission reductions equivalent to the reductions achievable from an enhanced I/M program. As stated elsewhere in this notice, EPA is aware that Connecticut no longer intends to implement an enhanced I/M program, but rather will implement an ''ASM 25/25'' type program beginning on January 1, 1998. The DEP has committed to submittal of a revised 15 percent plan which contains emission estimates reflective of the State's ASM 25/25 motor vehicle emission testing program. If the revised 15 percent plans are found to contain adequate motor vehicle emission budgets, those budgets will supersede the budgets proposed for approval in today's notice. Additionally, the budgets will be adjusted if the State's evaluation of the emission reductions obtained from its I/M program reveal that the projected benefits were inaccurate.

Proposed Action

The EPA has evaluated these submittals for consistency with the CAA, EPA regulations, and EPA policy. The Connecticut 15 Percent ROP plans will achieve enough reductions to meet the 15 percent ROP requirements of section 182(b)(1) of the CAA. In addition, the Connecticut contingency plans will achieve enough emission reductions to meet the three percent reduction requirement under sections 172(c)(9) and 182(c)(9) of the CAA. However, the ability of these plans to achieve the indicated quantity of emission reductions depends in large part on the successful implementation of an automobile emission testing program. By letter dated August 22, 1997, Connecticut indicated that the I/M 240 program described within the December 30, 1994 15 percent plans would not be implemented, and that an ASM 25/25 type program would be implemented in its place beginning on January 1, 1998. The letter states that a preliminary analysis performed by the DEP indicates that Connecticut can meet its emission reduction requirements for 15 percent and contingency plan purposes based on a January 1, 1998 start date for the ASM 25/25 I/M program. The letter also committed to submittal of a revised 15 percent and contingency demonstration, and submittal of a revised I/M program, by April 1, 1998. Based on these commitments, the EPA is proposing

[5] The NY–NJ–CT severe area is also upwind from the Hartford serious area, so these NO_X reductions will contribute to air quality improvement in the serious area. Any NO_X reduction the State uses in its contingency demonstration would no longer be available for use as a trade or other purposes under the CAA.

conditional interim approval of the Connecticut 15 percent and contingency plans as a revision to the SIP.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes 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 action.

EPA is proposing to grant conditional approval of the Connecticut 15 percent and contingency plans. The outstanding issues with these SIP revisions are as follows:

1. By January 1, 1998, Connecticut must begin testing motor vehicles using the ASM 25/25 program which is described within the State's August 22, 1997 letter.

2. By April 1, 1998, Connecticut must submit revised 15 percent and contingency plans as revisions to the State's SIP which show that the emission reductions from the ASM 25/25 automobile emission testing program, when coupled with emission reductions from other measures, will meet the emission reduction goals of these requirements.

3. By April 1, 1998, Connecticut must submit a revised I/M program as a revision to the State's SIP.[6]

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitments in a final rulemaking action, the State must meet its commitments as described in the preceding paragraph. If the State fails to do so, this action will become a limited approval, limited disapproval at the time of the State's failure to meet one of the conditions listed above. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Connecticut SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a limited approval, limited disapproval. If the State meets its commitments within the applicable time frames, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the Connecticut 15 percent and contingency plans. If EPA disapproves the Connecticut I/M program, the 15 percent and contingency plans will receive limited approvals, limited disapprovals at that time. If EPA approves the Connecticut I/M program, the 15 percent and contingency plans will be fully approved in their entirety and replace the conditionally approved program in the SIP.

If EPA determines that it must issue a limited disapproval rather than a final conditional approval, or if the conditional approval is later converted to a limited approval, limited disapproval, such action will trigger EPA's authority to impose sanctions under section 179(a) of the CAA at the time EPA issues the final limited approval, limited disapproval or on the date that Connecticut fails to meet a commitment. In the latter case, EPA will notify Connecticut by letter that the conditional approval has been converted to a limited approval, limited disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. section 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 sections 603 and 604). Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and 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 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 the conditional approval is converted to a disapproval under section 110(k), based on Connecticut's failure to meet a 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 (''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 actions proposed in this notice do 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 approval of pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

[6] Any conditions, such as a program evaluation, that EPA attaches to its approval of the revised I/M program may effectively also become conditions on the continuing validity of Connecticut's 15 percent plans, because the I/M program represents a major portion of CT's 15 percent reductions.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Reporting and recordkeeping, Nitrogen Oxides, Ozone, Volatile organic compounds.

Dated: September 19, 1997.

John P. DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 97–27856 Filed 10–23–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 24

[WT Docket No. 97–82; FCC 97–342]

Installment Payment Financing for Personal Communications Services (PCS) Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this *Further Notice of Proposed Rule Making* the Commission proposes auction rules and procedures for the reauction of licenses surrendered to the Commission pursuant to the Commission's decision in the *Second Report and Order* in Docket 97–82, FCC 97–342 (released October 16, 1997). These proposed rules are necessary to ensure that any licenses surrendered to the Commission can be awarded to parties who are capable of providing service to the public as rapidly as possible. The intended effect of this action is to seek comment on proposed rules and procedures for the reauction of all surrendered C block licenses.

DATES: Comments are due on or before November 13, 1997. Reply comments are due on or before November 24, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This *Further Notice of Proposed Rule Making* in WT Docket No. 97–82, adopted on September 25, 1997, and released on October 16, 1997, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800. The complete *Further Notice of Proposed Rule Making* also is available on the Commission's Internet home page (http://www.fcc.gov).

SUMMARY OF ACTION:

I. Background

1. On September 25, 1997, the Federal Communications Commission (Commission) adopted a *Further Notice of Proposed Rule Making* seeking comment on proposed changes to its C block rules to govern the reauction of any licenses or spectrum surrendered pursuant to the provisions adopted in the *Second Report and Order. See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Second Report and Order*, WT Docket No. 97–82, FCC 97–342 (released October 16, 1997) (''*Second Report and Order*'').

II. Further Notice of Proposed Rule Making

2. In the *Further Notice of Proposed Rule Making*, the Commission proposes to reauction all licenses and spectrum surrendered to the Commission under the *Second Report and Order*. The Commission believes that a reauction of licenses surrendered to the Commission will assure rapid provision of service to the public. A reauction also will ensure that these licenses are available to all applicants in a rapid and fair fashion. A simultaneous reauction of all the licenses turned in to the Commission will benefit all bidders because they will be able to bid for a number of licenses in a single reauction, instead of a series of piecemeal auctions after defaults and revocations, in which opportunities for aggregation might be less favorable.

A. Licenses to be Reauctioned

3. The Commission proposes that the reauction include the following licenses: (1) All licenses representing the disaggregated spectrum surrendered to the Commission under the disaggregation option; (2) all licenses surrendered to the Commission on or before January 15, 1998, by incumbent licensees who choose to take advantage of the Commission's prepayment or amnesty options; and (3) all PCS C block licenses currently held by the Commission as a result of previous defaults. By including all available licenses in the reauction, the Commission can efficiently and fairly speed service to the public. In addition, offering all available licenses will allow for the most efficient aggregation of licenses. The Commission seeks comment on this proposal.

B. Eligibility for Participation

4. As the Commission stated in the *Second Report and Order*, all entrepreneurs, all entities that applied for the original C block auction, and all current C block licensees with exceptions, are eligible to bid in the reauction. The Commission seeks comment on whether it should restrict participation in the reauction to entities that have not defaulted on any FCC payments. *See* 47 U.S.C. 309(j)(5). Should the Commission presume that an entity's prior default on payments for an FCC license or authorization makes that entity not financially or otherwise fit to acquire a reauctioned C block license? Alternatively, the Commission could review financial qualifications through several other means. For instance, the Commission could allow such entity to participate in an auction, but if the applicant is a winning bidder, set for expedited hearing the financial qualifications of the bidder, and allow the applicant to rebut a presumption that it is not financially qualified. *See* 47 CFR 24.832(e), 1.2108(d)(3). Another alternative would be to request that the entity submit more detailed financial information at the application stage, or require that the entity submit a higher upfront payment amount (*e.g.*, a 50% upfront payment requirement) to participate in the reauction. With regard to C block licensees who elect the disaggregation, amnesty, or prepayment options adopted in the *Second Report and Order*, the Commission observes that by making such election and related payments they are not in default on their C block licenses and, thus, would not be restricted from participation in the reauction (except as otherwise set forth in the *Second Report and Order*).

C. Reauction Procedures

5. The Commission proposes below auction design and application procedures for the reauction of C block licenses.

1. Competitive Bidding Design

6. The Commission proposes that all licenses and spectrum surrendered be awarded by means of a simultaneous multiple-round electronic auction. The Commission bases this proposal on its desire to quickly auction available licenses and thereby to promote the most efficient assignment of the spectrum. Consistent with the Commission's normal practice, the specific procedural requirements of the auction would be set out by public notice prior to the auction. In general,

the Commission has indicated that the auction procedures chosen for each service should be those that will best promote the policy objectives identified by Congress. The Commission further concluded in Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order*, 59 FR 22980 (May 4, 1994) (''*Competitive Bidding Second Report and Order*'') that in most cases the goals set forth in Section 309(j) will be best achieved by designing auctions that award authorizations to the parties that value them most highly. As the Commission explained, such parties are most likely to deploy new technologies and services rapidly, and to promote the development of competition for the provision of those and other services.

7. Also, multiple-round bidding during the auction will provide more information to bidders about the value of licenses than single round bidding. With better information, bidders have less incentive to shade their bids downward in order to avoid the ''winner's curse,'' that is, the tendency for the winner to be the bidder who most overestimates the value of the item being auctioned. Finally, multiple-round bidding is likely to be fairer than single-round bidding. Every bidder has the opportunity to win if it is willing to pay the most for it. Thus, the Commission tentatively concludes that multiple-round bidding would be the best method of auctioning all available licenses and the Commission seeks comment on this tentative conclusion.

8. The Commission also tentatively concludes that all surrendered C block licenses should be awarded in a single simultaneous multiple-round auction. A single simultaneous auction will facilitate any aggregation strategies that bidders may have, and it would provide the most information to bidders about license values at a time that they can best put that information to use. The Commission seeks comment on this tentative conclusion.

9. Finally, if the Commission adopts simultaneous multiple-round bidding as its method of auctioning all available licenses, the Commission tentatively concludes that bidding should be allowed only by electronic means, rather than by telephone. Given the Commission's desire to conduct the reauction quickly, as well as recent improvements in the Commission's electronic bidding software, the Commission tentatively concludes that telephonic bidding should be permitted only in exceptional circumstances, to be determined by the Wireless Telecommunications Bureau (''Bureau'') in each instance.

2. Bidding Procedures

10. Subject to the exceptions discussed below, which are designed to speed the reauction process, the Commission tentatively concludes that the reauction should be conducted in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission's rules, 47 CFR part 1, subpart Q, as revised (the Commission initiated a proceeding last February to revise its part 1 rules; *See* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 97–82, 62 FR 13540 (March 21, 1997) (''*Part 1 Proceeding*''), and substantially consistent with the auctions that have been employed in other wireless services. The Commission also proposes to use its part 24 rules, 47 CFR part 24, applicable to the C block to the extent that such rules do not conflict with the Commission's part 1 rules or rules specifically adopted in the *Second Report and Order* for the reauction of C block licenses. Specifically, except as set forth herein, the Commission proposes to apply the part 1 rules regarding competitive bidding mechanisms (47 CFR § 1.2104); bidding application and certification procedures and prohibition of collusion (47 CFR § 1.2105); submission of upfront payment, down payment and filing of long-form applications (47 CFR §§ 1.2106, 1.2107); procedures for filing long form applications (47 CFR § 1.2108); and procedures regarding license grant, denial and default (47 CFR § 1.2109). The Commission seeks comment on this proposal.

11. *Activity Rules.* The Commission tentatively concludes that, as it has done in other simultaneous multiple-round auctions, it will conduct the reauction in three stages. Three stages, with bidders required to be more active in each stage, serves to provide bidders with the flexibility to pursue backup strategies as the auction progresses. However, because the Commission believes that efficiently assigning these licenses for rapid service to the public and increased competition in the CMRS marketplace requires a swift reauction of the licenses, the Commission proposes to use high activity requirements in the reauction. In recent auctions, for example, the Commission has required bidders to be active on 80% of their eligible licenses in Stage I, 90% in Stage II, and 98% in Stage III. The Commission proposes to use similar activity levels in the C block reauction and, to further expedite the auction, to require the Bureau to use its delegated authority to aggressively schedule bidding rounds, quickly transition into the next stage of the auction when bidding activity falls, and use higher minimum bid increments for very active licenses. The Commission seeks comment on these proposals and tentative conclusions.

12. *Reserve Price, Minimum Opening Bid, and Minimum Bid Increments.* Section 1.2104 of the Commission's rules provides that the Commission may establish reserve prices or suggested minimum opening bids. *See* 47 CFR § 1.2104. The Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997) (to be codified at 47 U.S.C. § 309(j)(4)(F)) (''Balanced Budget Act'') directed the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid will be established, unless the Commission determines that a reserve price or a minimum opening bid is not in the public interest. This legislative directive establishes a presumption in favor of reserve prices or minimum opening bids in the reauction. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. Customarily, an auctioneer has the discretion to lower a minimum opening bid in the course of the auction. A minimum opening bid in the C block reauction, more than a reserve price, will help make certain that the public is fairly compensated for spectrum surrendered to the Commission, expedite the auction and give the Commission the flexibility to make adjustments based on the competitiveness of the auction. The Commission seeks comment on this proposal. The Commission also seeks comment on the methodology to be used to establish minimum opening bids and what factors the Commission should consider in doing so. The Commission proposes minimum opening bids for each market equal to 10% of the corresponding high bid for the market in the original C block auction. Such an approach will scale the minimum opening bids in a way that reflects the relative value of the licenses. The Commission also asks that commenters address whether the amount of the minimum opening bid should be capped to ensure that bidding is not deterred on high valuation markets, in particular. Finally, if commenters believe that a minimum opening bid equal to 10% of the high bid in the original C block auction will result in substantial unsold licenses, or is not a

reasonable amount, they should explain why this is so, and comment on the desirability of a higher or lower minimum opening bid.

3. Procedural and Payment Issues

13. *Pre-Auction Application Procedures.* Auction applicants are required to file a short-form application, FCC Form 175, prior to the start of each auction. Although the Commission previously has allowed both electronic and manual filing of such applications, the Commission tentatively concludes that it should require electronic filing of all short-form applications for the reauction. The Commission believes that electronic filing of applications would serve the best interests of auction participants as well as the members of the public monitoring the reauction. The Commission also believes that an electronic filing requirement will help ensure that the reauction will be completed within the time frame contemplated by this *Further Notice of Proposed Rule Making.* The Commission have developed user-friendly electronic filing software and Internet World Wide Web forms to give applicants the ability to easily and inexpensively file and review applications. This software helps applicants ensure the accuracy of their applications as they are filling them out, and assists them in avoiding errors and omissions. In addition, by shortening the time required for the Commission to process applications before the auction, electronic filing will increase the lead time available to applicants to pursue business plans and arrange necessary financing before the short-form deadline. The Commission's experiences from recent auctions show that bidders are confident that the electronic filing system is reliable. For example, in the broadband PCS D, E, and F block auction, 94% of the qualified bidders filed their short-form applications electronically. In the recently completed Wireless Communications Services (''WCS'') auction, all winning bidders filed their long-form applications electronically. In addition, the Commission notes that in the *Part 1 Proceeding,* the Commission tentatively concluded that §§ 1.2105(a) and 1.2107(c) of its rules should be amended to require electronic filing of all short-form and long-form applications. *See* 47 CFR §§ 1.2105(a) and 1.2107(c). The Commission seeks comment on this tentative conclusion.

14. *Upfront Payment.* The Commission's part 1 rules, 47 CFR Part 1, require the submission of an upfront payment as a prerequisite to participation in spectrum auctions. The Commission proposes to set the amount of the upfront payment for the reauction at $.06 per MHz per pop. The Commission adopted the same upfront payment amount for its most recent broadband PCS auction, the D, E, and F block auction, in which all applicants for all blocks made a $.06 per MHz per pop upfront payment. In the *Competitive Bidding Second Report and Order,* the Commission indicated that the upfront payment should be set using a formula based upon the amount of spectrum and population (or ''pops'') covered by the license or licenses for which parties intend to bid. The Commission reasoned that this method of determining the required upfront payment would enable prospective bidders to tailor their upfront payment to their bidding strategies. At the same time, however, the Commission noted that determining an appropriate upfront payment involved balancing the goal of encouraging bidders to submit serious, qualified bids with the desire to simplify the bidding process and minimize implementation costs imposed on bidders. The Commission concluded that the best approach would be to maintain the flexibility to determine the amount of the upfront payment on an auction-by-auction basis because this balancing may yield different results depending upon the particular licenses being auctioned. In light of the its desire that only serious, qualified applicants participate in the reauction, the Commission's proposal of a $.06 per MHz per pop is appropriate. The Commission seeks comment on this proposal. The Commission also seeks comment on alternative methods of establishing an upfront payment, and in particular, on how the Commission may estimate the present market value of the spectrum to be auctioned.

15. *Down Payment and Full Payment.* Consistent with the procedures used in prior auctions, the Commission tentatively concludes that every winning bidder in an auction should be required to tender a down payment sufficient to bring its total amount on deposit with the Commission up to 20% of its winning bid within 10 business days after the issuance of a public notice announcing the winning bidder for the license. *See* 47 CFR § 1.2107(b). The Commission seeks comment on this tentative conclusion.

16. If a winning bidder makes its down payment in a timely manner, the Commission proposes that it file an FCC Form 600 long-form application and follow the long-form application procedures in § 1.2107 of the Commission's rules. *See* 47 CFR § 1.2107. *See also,* 47 CFR § 24.707. After reviewing the winning bidder's long-form application, and after verifying receipt of the winning bidder's 20% down payment, the Commission would announce the application's acceptance for filing, thus triggering the filing window for petitions to deny. The Commission notes that the Balanced Budget Act of 1997 authorizes the Commission to establish a shortened period for the filing of petitions to deny. In light of this authority, as well as the Commission's desire to conclude the reauction process as quickly as possible, the Commission proposes that parties then have 15 days following public notice that an application was accepted for filing to file a petition to deny. If, pursuant to Section 309(d) of the Communications Act, as amended, 47 U.S.C. § 309(j), the Commission dismisses or denies any and all petitions to deny, the Commission would announce by public notice that it is prepared to award the license, and the winning bidder would then have 10 business days to submit the balance of its winning bid. If the bidder does so, the license would be granted. If the bidder fails to submit the required down payment or the balance of the winning bid or the license is otherwise denied, the Commission would assess a default payment as discussed below. The Commission seeks comment on these proposals.

17. *Amendments and Modifications of Applications.* To encourage maximum bidder participation, the Commission proposes to allow applicants to amend or modify their short-form applications as provided in § 1.2105. *See* 47 CFR § 1.2105. In the broadband PCS context, the Commission modified its rules to permit ownership changes that result when consortium investors drop out of bidding consortia, even if control of the consortium changes due to this restructuring. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fourth Memorandum Opinion and Order,* 59 FR 24947 (October 24, 1994). The Commission proposes to adopt the same exception to our rule prohibiting major amendments in the reauction. The Commission seeks comment on these proposals.

18. *Bid Withdrawal, Default and Disqualification.* The Commission tentatively concludes that the withdrawal, default, and disqualification rules for the reauction should be based upon the procedures established in the Commission's general competitive bidding rules. With regard to bids that are submitted in error, the Commission proposes to apply the guidelines that the Commission has fashioned to provide for relief from the

bid withdrawal payment requirements under certain circumstances. The Commission seeks comment on this approach.

4. Anti-Collusion Rules

19. In the *Competitive Bidding Second Report and Order,* the Commission adopted rules to prevent collusion in connection with competitive bidding, explaining that these rules, which are codified at 47 CFR § 1.2105, would enhance the competitiveness of both the auction process and the post-auction market structure. The Commission proposes to apply these same rules to the reauction of licenses surrendered to the Commission. The Commission seeks comment on this proposal.

5. Designated Entity Provisions

20. The Commission proposes to provide small business bidders in the C block reauction with a two tiered bidding credit, which will provide a greater discount to very small businesses. In the C block auction, a winning bidder that qualified as a small business or a consortium of small businesses was able to use a bidding credit equal to 25% of its winning bid. For the reauction, however, the Commission tentatively concludes that it should offer tiered bidding credits, as the Commission did for F block and, more recently, Local Multipoint Distribution Service (LMDS) small business bidders. The Commission proposes to define a second tier of small business, which the Commission will refer to as ''very small businesses,'' as entities that, together with their affiliates and persons or entities that hold interest in such entities and their affiliates, have average gross revenues of not more that $15 million for the preceding three years. Creation of this subcategory of small business enables the Commission to tailor a bidding credit to meet the needs of entities that may be interested in bidding on spectrum surrendered by C block licensees. Thus, the Commission proposes a 35% bidding credit for very small businesses and a 25% bidding credit for small businesses. The Commission seeks comment on these proposals and tentative conclusions.

21. The Commission also tentatively conclude that an installment payment program will not be offered in the reauction. The Commission has conducted several auctions without installment payments. The Commission must balance competing objectives in 47 U.S.C. § 309(j) that require, *inter alia,* that it promote the development and rapid deployment of new spectrum-based services and ensure that designated entities are given the opportunity to participate in the provision of such services. In assessing the public interest, the Commission must try to ensure that all the objectives of Section 309(j) are considered. The Commission has found, for example, that obligating licensees to pay for their licenses as a condition of receipt ensures greater financial accountability from applicants. Thus, the Commission tentatively concludes that it should not extend installment payments to winners in the reauction, given the incentives to entrepreneurs established through the various proposals discussed above. The Commission seeks comment on these tentative conclusions.

III. Procedural Matters

A. Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the rules proposed in the *Further Notice of Proposed Rule Making.* Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice of Proposed Rule Making.* The Commission will send a copy of the *Further Notice of Proposed Rule Making,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Further Notice of Proposed Rule Making* and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

23. This *Further Notice of Proposed Rule Making* is being initiated to secure comment on proposed changes to auction rules to govern the reauction of returned broadband PCS spectrum in the C block. Among other goals, Section 309(j) of the Communications Act of 1934, as amended, directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. 47 U.S.C. § 309(j)(3)(B). Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. 47 U.S.C. §§ 309(j)(3)(A), (C). The Commission is seeking comment on proposed changes to auction rules to govern the reauction of returned broadband PCS spectrum in the C block.

2. Legal Basis

24. This action is taken pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309 (j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 155(c)(1), 303(r), and 309(j).

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

25. The Commission is required to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by its rules. *See* 5 U.S.C. §§ 603(b)(3), 604(a)(3). The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the Commission's rules. 5 U.S.C. §§ 603(b)(3), 604(a)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. § 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act. See 5 U.S.C. § 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. § 632). Under the Small Business Act, a ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. § 632.

26. The rule changes proposed in the *Further Notice of Proposed Rule Making* will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding C block and F block broadband PCS licenses who choose to participate and other small businesses who may acquire licenses through reauction. The Commission, with respect to broadband PCS, defines small entities to mean those having gross revenues of not more than $40 million in each of the preceding three calendar years. *See* 47 CFR § 24.720(b)(1). This definition has been approved by the SBA. On May 6, 1996, the Commission concluded the broadband PCS C block auction. The broadband PCS D, E, and F block auction closed on January 14, 1997. Ninety bidders (including the C block reauction winners, prior to any defaults by winning bidders) won 493 C block

licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in the C and F block auctions were eligible for bidding credits and installment payment plans. For purposes of our evaluations and conclusion in this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this order, are small entities. In addition to the 178 current small business licensees who may participate at the reauction of C block licenses, a number of additional small business entities may seek to acquire licenses through reauction, and thus be affected by these rules.

27. In addition, the Commission proposes to provide small business bidders in the C block reauction with bidding credits, and to that end proposes a two tiered bidding credit which will provide a greater discount to ''very small businesses.'' In the C block auction, a winning bidder that qualified as a small business or a consortium of small businesses was able to use a bidding credit equal to 25 percent of its winning bid. For the reauction, the Commission proposes tiered bidding credits, as were offered for F block and, more recently, Local Multipoint Distribution Service (LMDS) small business bidders. The Commission proposes to define the second tier of very small business as entities that, together with their affiliates and persons or entities that hold interest in such entities and their affiliates, have average gross revenues of not more that $15 million for the preceding three years. Creation of this subcategory of small business will enable the Commission to tailor a bidding credit to meet the needs of entities that may be interested in bidding on spectrum returned by C block licensees. Thus, the Commission proposes a 35 percent bidding credit for very small businesses and a 25 percent bidding credit for small businesses.

28. To assist the Commission analyzing the total number of affected small entities, commenters are requested to provide information regarding how many total broadband PCS small business entities would be affected by the rules proposed in this *Further Notice of Proposed Rule Making.* In particular, the Commission seeks estimates of how many broadband PCS entities, existing and potential, will be considered small businesses or very small businesses.

4. Description of Reporting, Recordkeeping, and Other Compliance Requirements

29. There are no additional reporting, recordkeeping, or other compliance requirements as a result of the *Further Notice of Proposed Rule Making.*

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. The Commission proposes to apply the same rules that were used in the C block auction to the reauction of C block licenses, with some modifications designed to encourage participation by small businesses while at the same time helping to ensure the best use of the spectrum through the competitive bidding process. The Commission proposes to conduct the C block reauction in three stages. Having three stages, with bidders required to be more active in each stage, serves to provide bidders with the flexibility to pursue backup strategies as the auction progresses. The Commission proposes to use high activity requirements in the reauction. In addition, the Commission proposes to use similar activity levels in the C block reauction and, to further expedite the auction, require the Wireless Telecommunications Bureau to use its delegated authority to aggressively schedule bidding rounds, quickly transition into the next stage of the auction when bidding activity falls, and use higher minimum bid increments for very active licenses.

31. The Commission proposes to establish a minimum opening bid for the reauction. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. A minimum opening bid in the C block reauction will help ensure that the public is fairly compensated for licenses returned to the Commission, expedite the auction and give the Commission the flexibility to make adjustments based on the competitiveness of the auction. The Commission proposes minimum opening bids for each market equal to ten percent of the corresponding high bid for the market in the original C block auction. Such an approach will scale the minimum opening bids in a way that reflects the relative value of the licenses.

32. The Commission proposes to require electronic filing of all short-form applications for the reauction. Electronic filing of applications would serve the best interests of auction participants as well as the members of the public monitoring the reauction. The Commission believes that an electronic filing requirement will help ensure that the reauction will be completed within the time frame contemplated by this *Further Notice of Proposed Rule Making.*

33. The Commission proposes to set the amount of the upfront payment for the reauction at $.06 per megahertz per population (''MHz per pop'').

34. The Commission proposes that parties have fifteen (15) days to file a petition to deny following public notice that an application was accepted for filing. If, pursuant to Section 309(d) of the Communications Act, the petitions to deny are dismissed or denied, the Commission would announce by public notice that it is prepared to award the license, and the winning bidder would then have ten (10) business days to submit the balance of its winning bid. If the bidder does so, the license would be granted. If the bidder fails to submit the required down payment or the balance of the winning bid or the license is otherwise denied, a default payment would be assessed.

35. Section 309(j) of the Communications Act of 1934, as amended, directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. *See* 47 U.S.C. § 309(j)(3)(B). Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. 47 U.S.C. §§ 309(j)(3)(A), (C). The Commission believes these provisions in the *Further Notice of Proposed Rule Making* help meet those goals and promote efficient competition while maintaining fairness and efficiencies of process in the Commission's rules.

6. Federal Rules Which Overlap, Duplicate, or Conflict With These Rules

None.

B. Paperwork Reduction Act Analysis

36. This *Further Notice of Proposed Rule Making* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collections contained in this *Further Notice of Proposed Rule Making,* as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other

comments on this *Further Notice of Proposed Rule Making;* OMB comments are due 60 days from date of publication of this *Further Notice of Proposed Rule Making* in the **Federal Register**. Comments should address: (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 estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Dates

Written comments by the public on the proposed or modified information collections in this *Further Notice of Proposed Rule Making* are due on or before December 1, 1997. Written comments must be submitted by OMB on the modified information collections on or before December 1, 1997.

Address

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

Further Information

For additional information concerning the information collections contained in this *Further Notice of Proposed Rule Making* contact Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

Supplementary Information

Title: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees.

Type of Review: Proposed or Modified Collection.

Respondents: The Commission estimates that no more than 255 respondents (i.e., previous C block bidders) will participate in this information collection. The Commission estimates that this information collection, that eligibility is based on previous participation in a C block auction and the bidder identification number from the previous auction, will take 0.5 hours to complete. In addition, the Commission proposes that C block reauction applicants submit more detailed financial information, if necessary. The Commission estimates that this information collection will take 1.0 hours to complete. The Commission estimates that the total burden will be 1.5 hours per respondent or 377.5 total hours.

Estimate of total cost burden to respondents: The Commission estimates that there will be no additional cost burden to respondents.

The cost to the Federal Government is estimated to be:

GS 7 Legal Instrument Examiners at $14.06 per hour to review the documentation for approximately 0.5 hours per submission, times 255 submissions = $1,581.75

GS 12 Attorneys to review the financial documentation at $24.95 per hour, for approximately 2.0 hours per submission, times 255 submissions = $11,227.50

Total = $12,809.25

C. Ex Parte Presentations

The *Further Notice of Proposed Rule Making* is a permit but disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

D. Comments

38. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before November 13, 1997, and reply comments on or before November 24, 1997. In addition, a courtesy copy should be delivered to Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, Room 5202, Washington, DC 20554. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

List of Subjects

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 24

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–28222 Filed 10–23–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–96–1472; Notice 97–10]

RIN 2105–AC60

Privacy Act; Implementation

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: DOT proposes to amend its rules implementing the Privacy Act of 1974 to exempt from certain provisions of the Act the Coast Guard's Vessel Information System. Public comment is invited.

DATES: Comments are due November 24, 1997.

ADDRESSES: Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL401, Docket OST–96–1472, Department of Transportation, C–55, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW, Washington, DC, from 9 AM to 5 PM ET Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard's Vessel Information System (VIS) would collect manage the data needed to provide a nationwide pool of vessel and vessel owner information that will help in identification and recovery of stolen vessels, and deter vessel theft and fraud. Establishment of VIS is required by statute. 46 U.S.C. 12501–07.

Because of the capability to retrieve information by the names or other unique identifiers of individuals, VIS is subject to the Privacy Act, which would impose many restrictions on the use and dissemination of information in the system. However, because VIS would be used for law enforcement purposes, it may be exempted from some of these restrictions.

Privacy Act Exemption

Under subsection (k) of the Privacy Act (5 U.S.C. 552a(k)), qualifying records may be exempted from various provisions of the Act. Among these provisions are the requirement in subsection (c)(3) to maintain an accounting of disclosures of information from a system of records and make that accounting available on request to the record subject; in subsection (d) to grant to a record subject access to information maintained on him/her under the Act; in subsection (e)(1) to maintain only such information as is relevant and necessary to accomplish a purpose of the agency under statute or Executive Order; in subsection (e)(4)(G), (H), and (I) to advise record subjects of the agency procedures to request if a system of records contains records pertaining to them, how they can gain access to such records and contest their content, and the categories of sources of such records; and in subsection (f) to establish rules governing the procedures above.

Under Subsection (k)(2) of the Privacy Act (5 U.S.C. 552a(k)(2)), investigatory material compiled for law enforcement purposes, other than material encompassed within Subsection (j)(2), may be exempted from these provisions, and DOT proposes to exempt VIS accordingly; however, if an individual would be denied any right, privilege, or benefit to which he/she would otherwise be entitled by Federal law, of for which he/she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

Analysis of Regulatory Impacts

This amendment is not a ''significant regulatory action'' within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal will not have a significant economic impact on a substantial number of small entities.

This proposal does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment. This rule does not impose any unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995.

Finally, the proposal does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act of 1995.

List of Subjects in 49 CFR Part 10

Penalties, Privacy.

Accordingly, DOT proposes to amend 49 CFR part 10 as follows:

PART 10—[AMENDED]

1. The authority citation to part 10 would continue to read as follows:

Authority: 5 U.S.C. 552a; 49 U.S.C. 322.

2. Part II.A of the Appendix would be amended by republishing the introductory text and adding a new paragraph 15, to read as follows:

Appendix to Part 10—Exemptions

* * * * *

Part II. Specific exemptions.

A. The following systems of records are exempt from subsection (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a, to the extent that they contain investigatory material compiled for law enforcement purposes in accordance with 5 U.S.C. 552a(k)(2):

* * * * *

15. Vessel Information System, maintained by the Operations Systems Center, U.S. Coast Guard (DOT/CG 590). The purpose of this exemption is to prevent persons who are the subjects of criminal investigations from learning too early in the investigative process that they are subjects, what information there is in Coast Guard files that indicates that they may have committed unlawful conduct, and who provided such information.

* * * * *

Issued in Washington, DC, on October 15, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–27974 Filed 10–23–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE42

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Topeka Shiner as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Topeka shiner (*Notropis topeka*) as an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). The Topeka shiner is a small fish presently known from small tributary streams in the Kansas and Neosho river basins in Kansas; the Missouri, Grand, Lamine, Chariton, and Des Moines river basins in Missouri; the North Raccoon River basin in Iowa; the James and Vermillion river watersheds in South Dakota; and, the Rock River watershed in Minnesota. The Topeka shiner is threatened by habitat destruction, degradation, modification, and fragmentation resulting from siltation, reduced water quality, tributary impoundment, stream channelization, and stream dewatering. The species is also impacted by introduced predaceous fishes. This proposal, if made final, will implement Federal protection provided by the Act for *Notropis topeka*. A determination of critical habitat is neither beneficial nor prudent.

DATES: Comments from all interested parties must be received by December 23, 1997. Public hearing requests must be received by December 8, 1997.

ADDRESSES: Comments and materials concerning this proposal should be sent to: Field Supervisor, Ecological Services Field Office, 315 Houston Street, Suite E, Manhattan, Kansas 66502. Comments and materials received will be available for public inspection, by appointment,

during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: William H. Gill, Field Supervisor, or Vernon M. Tabor, Fish and Wildlife Biologist, at the above address (913/539–3474).

SUPPLEMENTARY INFORMATION:

Background

The Topeka shiner was first described by C.H. Gilbert in 1884, using specimens captured from Shunganunga Creek, Shawnee County, Kansas (Gilbert 1884). The Topeka shiner is a small, stout minnow, not exceeding 75 millimeters (mm) (3 inches (in)) in total length. The head is short with a small, moderately oblique mouth. The eye diameter is equal to or slightly longer than the snout. The dorsal fin is large, with the height more than one half the predorsal length of the fish, originating over the leading edge of the pectoral fins. Dorsal and pelvic fins each contain 8 rays. The anal and pectoral fins contain 7 and 13 rays respectively, and there are 32 to 37 lateral line scales. Dorsally the body is olivaceous (olive-green), with a distinct dark stripe preceding the dorsal fin. A dusky stripe is exhibited along the entire longitudinal length of the lateral line. The scales above this line are darkly outlined with pigment, appearing cross-hatched. Below the lateral line the body lacks pigment, appearing silvery-white. A distinct chevron-like spot exists at the base of the caudal fin (Cross 1967; Pflieger 1975; Service 1993).

The Topeka shiner is characteristic of small, low order (headwater), prairie streams with high water quality and cool temperatures. These streams generally exhibit perennial flow, however, some approach intermittency during summer. At times when surface flow ceases, pool levels and cool water temperatures are maintained by percolation through the streambed, spring flow and/or groundwater seepage. The predominant substrate types within these streams are clean gravel, cobble and sand. However, bedrock and clay hardpan overlain by a thin layer of silt are not uncommon (Minckley and Cross 1959). Topeka shiners most often occur in pool and run areas of streams, seldom being found in riffles. They are pelagic (living in open water) in nature, occurring in mid-water and surface areas, and are primarily considered a schooling fish. Occasionally, individuals of this species have been found in larger streams, downstream of known populations, presumably as migrants (Cross 1967; Pflieger 1975; Tabor *in litt.* 1992a).

Data regarding the food habits and reproduction of Topeka shiners are limited and detailed reports have not been published. However, Pflieger (Missouri Department of Conservation, *in litt.* 1992) reports the species as a nektonic (swimming independently of currents) insectivore. In a graduate research report, Kerns (University of Kansas, *in litt.* 1983) states that the species is primarily a diurnal or daytime feeder on insects, with chironomids (midges), other dipterans (true flies), and ephemeropterans (mayflies), making up the bulk of the diet. However, the microcrustaceans cladocera and copapoda (zooplanktons) also contribute significantly to the species' diet. The Topeka shiner is reported to spawn in pool habitats, over green sunfish (*Lepomis cyanellus*) and orangespotted sunfish (*Lepomis humilis*) nests, from late May through July in Missouri and Kansas (Pflieger 1975; Kerns *in litt.* 1983). Males of the species are reported to establish small territories near these nests. Pflieger (*in litt.* 1992) states that the Topeka shiner is an obligate spawner on silt-free sunfish nests, while Cross (University of Kansas, pers. comm. 1992) states that it is unlikely that the species is solely reproductively dependent on sunfish, and suggests that the species also utilizes other silt-free substrates as spawning sites. Data concerning exact spawning behavior, larval stages, and subsequent development is lacking. Maximum known longevity for the Topeka shiner is three years, however, only a very small percent of each year class attains the third summer. Young-of-the-year attain total lengths of 20 mm to 40 mm (.78 to 1.6 in) age 1 fish 35 mm to 55 mm (1.4 to 2.2 in), and age 2 fish 47 mm to 65 mm (1.8 to 2.5 in) (Cross and Collins 1975; Pflieger 1975).

Historically, the Topeka shiner was widespread and abundant throughout low order tributary streams of the central prairie regions of the United States. The Topeka shiner's historic range includes portions of Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota. Stream basins within the range historically occupied by Topeka shiners include the Des Moines, Raccoon, Boone, Missouri, Big Sioux, Cedar, Shell Rock, Rock, and Iowa basins in Iowa; the Arkansas, Kansas, Big Blue, Saline, Solomon, Republican, Smoky Hill, Wakarusa, Cottonwood, and Blue basins in Kansas; the Des Moines, Cedar, and Rock basins in Minnesota; the Missouri, Grand, Lamine, Chariton, Des Moines, Loutre, Middle, Hundred and Two, and Blue basins in Missouri; the Big Blue, Elkhorn, Missouri, and lower Loup basins in Nebraska; the Big Sioux, Vermillion, and James basins in South Dakota. The number of known occurrences of Topeka shiners has been reduced by approximately 80 percent, with approximately 50 percent of this decline occurring within the last 25 years. The species now primarily exists as isolated and fragmented populations.

Recent fish surveys were conducted across the Topeka shiner's range. In Missouri, 42 of the 72 sites historically supporting Topeka shiners were resurveyed in 1992. The species was collected at 8 of the 42 surveyed locales (Pflieger, *in litt.* 1992). In 1995, the remaining 30 historical sites not surveyed in 1992 and an additional 64 locales, thought to have potential to support the species, were sampled. Topeka shiners were found at 6 of the 30 remaining historical locations and at 6 of the 64 additional sites sampled. In total, recent sampling in Missouri identified Topeka shiners at 14 of 72 (19 percent) historic localities, and at 20 of 136 (15 percent) total sites sampled (Gelwicks and Bruenderman 1996). Gelwicks and Bruenderman (1996) also note that the species has apparently experienced substantial declines in abundance in the remaining extant populations in Missouri, with the exception of Moniteau Creek.

In Iowa, 24 locales within 4 drainages were sampled in 1994 at or near sites from which the species was reported extant during surveys conducted between 1975 and 1985. The Topeka shiner was captured at 3 of 24 sites, with these 3 captures occurring in the North Raccoon River basin (Tabor, U.S. Fish and Wildlife Service, *in litt.* 1994). Menzel (*in litt.* 1996) reports 6 collections of the species in 1994 and 1995, also from the same drainage.

In Kansas, 128 sites at or near historic collection localities for the Topeka shiner were sampled in 1991 and 1992, The species was collected at 22 of 128 (17 percent) sites sampled (Tabor, *in litt.* 1992a; Tabor, *in litt.* 1992b). Extensive stream surveys completed in 1995 and 1996 identified 10 new localities for Topeka shiners and reconfirmed the species in a historic locale where it was believed extirpated (Mammoliti, *in litt.* 1996).

In South Dakota, the species was recently captured in low numbers from one stream in the James River basin and four streams in the Vermillion River basin. (Braaten, South Dakota State University, *in litt.* 1991; Schumacher, South Dakota State University, *in litt.* 1991).

In Minnesota, 14 streams in the area likely to be occupied by Topeka shiners

were surveyed over the past 10 years. The species was collected from 5 of 9 (56 percent) streams with historic occurrences, and was not found in the 5 streams with no historic occurrences. These locales are all in the Rock River drainage (Baker, *in litt.* 1996).

In Nebraska, the species was assumed extirpated from all historic locales. However, in 1989 the species was discovered in the upper Loup River drainage, outside its former known range, where two specimens were collected (Michl and Peters 1993). In 1996, a single specimen was collected from a stream in the Elkhorn River basin, within the species' historic range (Nebraska Game and Parks Commission, *in litt.* 1997). In Nebraska, this was the first collection of a Topeka shiner within the known historic range since 1940. It is presently considered extant at these two localities (Cunningham, University of Nebraska—Omaha, pers. comm. 1996).

The Topeka shiner began to decline throughout the central and western portions of the Kansas River basin in the early 1900's. Cross and Moss (1987) report the species present at sites in the Smoky Hill and Solomon River watersheds in 1887, but by the next documented fish surveys in 1935, the Topeka shiner was absent. The Topeka shiner was extirpated from the Wakarusa River watershed during the 1970's (Cross, University of Kansas, pers. comm. 1995). The species disappeared from the Big Blue River watershed (Kansas River basin) in Nebraska after 1940 (Clausen, Nebraska Game and Parks Commission, *in litt.* 1992). The last record of the Topeka shiner from the Arkansas River basin, excluding the Neosho River watershed, was 1891 near Wichita, Kansas (Cross and Moss 1987). In Iowa, the species was extirpated from all Missouri River tributaries except the Rock River watershed prior to 1945. It was also eliminated from the Cedar and Shell Rock River watersheds prior to 1945. Since 1945, the Topeka shiner has subsequently been extirpated from the Boone, Iowa, and Des Moines drainages, with the exception of the North Raccoon River watershed (Harlan and Speaker 1951; Harlan and Speaker 1987; Menzel, Iowa State University, *in litt.* 1980; Dowell, University of Northern Iowa, *in litt.* 1980; Tabor *in litt.* 1994). In Missouri, since 1940 the species has been apparently extirpated from many of the tributaries to the Missouri River where it formerly occurred, including Perche Creek, Petite Saline Creek, Tavern Creek, Auxvasse Creek, Middle River, Moreau River, Splice Creek, Slate Creek, Crooked River, Fishing River, Shoal Creek, Hundred and Two River, and Blue River watersheds.

Previous Federal Action

The Topeka shiner first received listing consideration when the species was included in the Animal Candidate Review for Listing as Endangered or Threatened Species, as a category 2 candidate species, published in the **Federal Register** (56 FR 58816) on November 21, 1991. In 1991, the Service's Kansas Field Office began a status review of the Topeka shiner, including information gathered from stream sampling and requests from knowledgeable individuals and agencies. Included were State fish and wildlife conservation agencies, State health and pollution control agencies, colleges and universities, and other Service offices. The Service subsequently prepared a status report on this species dated February 16, 1993 (Service 1993). In the November 15, 1994, Animal Candidate Review for Listing as Endangered or Threatened Species, published in the **Federal Register** (59 FR 58999), the Topeka shiner was reclassified as a category 1 candidate species. Category 1 candidates comprised taxa for which the Service had substantial information on biological vulnerability and threats to support proposals to list the taxa as endangered or threatened. The Service has since discontinued the category designations for candidates and has established a new policy on the definition of candidate species (formerly category 1 candidates). In the February 28, 1996, Review of Plant and Animal Taxa That Are Candidates for Listing as Endangered or Threatened Species, published in the **Federal Register** (61 FR 7596), the Topeka shiner was reclassified as a candidate species. Candidate species are those species for which the Service has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list as endangered or threatened species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal ''List of Endangered and Threatened Wildlife and Plants.'' A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Topeka shiner (*Notropis topeka*) throughout the species range are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Once abundant and widely distributed throughout the central Great Plains and western tallgrass prairie regions, the Topeka shiner now inhabits less than 10 percent of its original geographic range. The action most likely impacting the species to the greatest degree in the past is sedimentation and eutrophication resulting from intensive agricultural development. Most populations of Topeka shiners occurring west of the Flint Hills region of Kansas are believed to have been extirpated prior to 1935 (Cross and Moss 1987). Minckley and Cross (1959) report that watersheds with high levels of cultivation, and subsequent siltation, and domestic pollution are unsuitable for the species. These streams often cease to flow and become warm and muddy during the summer months. Cross (1970) indicates that some of the areas where depletion of the species has occurred also coincide with areas having poor aquifers. Pflieger (1975) reports that increased siltation as a result of intensive cultivation may have reduced the amount of Topeka shiner habitat in Missouri. Pflieger (*in litt.* 1991) also reports that a known population of the species in Boone County, Missouri was extirpated between 1970 and 1976, presumably due to increased turbidity and nutrient enrichment resulting from urbanization and highway construction. Feedlot operations on or near streams are also known to impact prairie fishes due to organic input resulting in eutrophication (Cross and Braasch 1968).

The species was historically known from open pools of small prairie streams with cool, clear water. Many streams of this nature reportedly existed throughout the geographic range of the Topeka shiner ''prior to the plowing of the prairie sod'' (Cross 1967). These conditions continue to exist in many of the streams in the Flint Hills region of Kansas, primarily due to shallow, rocky soils with numerous limestone exposures which prevent cultivation. This is in contrast to the perturbation of the natural fish faunas and their associated habitats in prairie areas more suitable to intensive rowcrop agriculture, which is characteristic of the vast majority of the natural range of the species (Menzel et al. 1984). Menzel et al. (1984) also notes accelerated rates of soil erosion and instream deposition of fluvium (deposits caused by the action of flowing water) throughout many former prairie streams in Iowa,

encompassed by the former range of the species. Today, outside the Flint Hills region of Kansas, only a few, small isolated areas not severely impacted, or impacted to an extent within the tolerance of the species, continue to exist.

Mainstem reservoir development, tributary impoundment, and channelization have also impacted the species in some areas. Populations located within small tributary streams upstream from both mainstem and tributary impoundments attempt to utilize these water bodies as refuges from drying streams during periods of drought. During this time, the populations are subject to predation by larger predatory fish inhabiting the impounded water bodies. In unaltered systems, fish move downstream during drought to find suitable habitat. Deacon (1961) reports fishes characteristic of the small and mid-sized tributaries of the Neosho and Marais des Cygnes rivers' watersheds occurred in the mainstems following several years of protracted drought in the mid-1950's. Tributary dams also serve to block migration of fishes upstream following drought, effectively prohibiting recolonization of upstream reaches.

Several recently extant populations have been extirpated from tributaries to Tuttle Creek and Clinton reservoirs, both mainstem impoundments in the Kansas River basin of eastern Kansas. The species continues to exist in two tributaries to Tuttle Creek Reservoir; however, during sampling on one of these streams in 1994 only a single Topeka shiner was captured. All populations within the Wakarusa River watershed (Clinton Reservoir) are believed extirpated. Clinton Reservoir's completion coincided with large scale development of tributary impoundments throughout the Wakarusa's upper basin which may have compounded impacts to the species. Layher (1993) reports the extirpation of Topeka shiners from a stream following construction of a single tributary impoundment in Chase County, Kansas. Layher reported that the species had disappeared both upstream and downstream of the dam site, and noted significant habitat changes below the impoundment. Pflieger (*in litt.* 1992) reports that an abundant population of the species in Missouri was extirpated following construction of an impoundment. This population, located downstream from the dam site, was not present when revisited several years after construction. The habitat had changed from clear rocky pools, to pools filled with gravel, layered over by silt and choked with filamentous algae. Pflieger further reports that ''the SCS (Soil Conservation Service) reservoir has profoundly altered the hydrology and biota of this stream by eliminating the scouring floods that formerly created pool habitat and maintained the rocky, silt-free substrate.'' During 1994 sampling efforts in southeast Iowa, a stream with recent records of the species was found to have been impacted by the construction of multiple impoundments throughout its upper reaches and tributaries. No Topeka shiners were captured (Tabor *in litt.* 1994). Impoundment of prairie streams has also resulted in the documented extirpation of other prairie stream minnow species (Winston et al. 1991).

In Kansas, substantial tributary impoundment is occurring throughout the Flint Hills region, threatening Topeka shiners in these locales. As of 1993, 46 tributary impoundments had been completed in or near habitat for the Topeka shiner in the Cottonwood River basin, with an additional 115 planned for construction (Service *in litt.* 1993). Presently in the Mill Creek watershed, the largest remaining complex of habitat for the species, 16 dams have been completed, with an additional 48 planned (Hund, Mill Creek Watershed District, pers. comm. 1997; State Conservation Commission of Kansas, *in litt.* 1992). Dam construction is also a threat to the species throughout the rest of the species' range, but to a lower degree due to less immediate and intensive development.

Stream channelization has also occurred throughout much of the Topeka shiner's range. Channelization negatively impacts many aquatic species, including the Topeka shiner, by eliminating and degrading instream habitat types, altering the natural hydrography (physical characteristics of surface waters), and by changing water quality (Simpson et al. 1982). Intensive channelization of low order streams throughout the species' Iowa and Minnesota range is suspect in the species' drastic decline in these areas. Menzel (*in litt.* 1980) reports the extirpation of Topeka shiners from previous collection sites following stream channelization projects in Iowa. During 1994 status surveys across this portion of the range, most streams were found to have been severely altered from natural conditions (Tabor *in litt.* 1994). Changes included elimination of pool habitats, instream debris, and woody riparian vegetation. Water velocities were consistently high throughout the channel and deep silt was the dominant substrate. It is suspected that the Topeka shiner is an obligate spawner on sunfish (*Lepomis* spp.) nests (Pflieger *in litt.* 1992) or other silt-free substrates, but no sunfish were captured, nor suitable sunfish spawning habitat observed in these channelized streams. At Iowa sites where Topeka shiners were captured, streams were not intensively channelized and many natural conditions persisted.

Intensive land-use practices, dewatering of streams, and continuing tributary impoundment and channelization represent the greatest existing threats to the Topeka shiner. Grazing of riparian zones and the removal of riparian vegetation to increase tillable acreage greatly diminish a watershed's ability to filter sediments, organic wastes and other impurities from the stream system (Manci 1989). Irrigation draw-down of groundwater levels affect surface and subsurface flows which can impact the species. At present, both Federal and State planning for development of watershed impoundments and channelization continue in areas with populations of Topeka shiners. Several impoundments are planned for construction on streams with abundant numbers of the species. Portions of these stream reaches will be inundated by the permanent pools of the reservoirs, imperiling the species' future existence in these localities. Prior to the planning of the impoundments, these populations of Topeka shiners were considered to be the most stable range-wide, due to their occurrence in watersheds dominated by high quality prairie with generally very good grazing management and land stewardship.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Some collecting of Topeka shiners by individuals for use as bait fish and display in home aquaria does occur. However, overutilization is not thought to currently contribute to the decline of the Topeka shiner.

C. Disease or predation. There have been no studies conducted on the impacts of disease or predation upon the Topeka shiner; therefore, the significance of such threats to the species is presently unknown. Disease is not likely to be a significant threat except under certain habitat conditions, such as crowding during periods of reduced flows, or episodes of poor water quality, such as low dissolved oxygen or elevated nutrient levels. During these events, stress reduces resistance to pathogens and disease outbreaks may occur. Parasites, bacteria, and viral agents are generally the most common causes of mortality. Lesions caused by

injuries, bacterial infections, and parasites often become the sites of secondary fungal infections. However, Topeka shiners captured from a Missouri stream in 1996 were discovered to be afflicted with scoliosis, a condition of deformity affecting the vertebrae. Scoliosis can result from contact with environmental contaminants, or severely reduced genetic variability resulting from geographic isolation. No causal factor for this occurrence has been identified.

The green sunfish (*Lepomis cyanellus*) is the most common predator typical of Topeka shiner habitat throughout its range. The spotted bass (*Micropterus punctulatus*) and largemouth bass (*M. salmoides*) are also naturally occurring predators of the Topeka shiner in portions of its range but to a much lower degree due to minimal habitat overlap. These bass species typically occur in only the downstream extremes of Topeka shiner habitat. The construction of impoundments on streams with Topeka shiners and the subsequent introduction of piscivorous (fish eating) fish species not typically found in headwater habitats, such as largemouth bass, crappie (*Pomoxis* spp.), white bass (*Morone chrysops*), northern pike (*Esox lucius*), and channel catfish (*Ictalurus punctatus*), may affect the species during drought or periods of low flows when Topeka shiners seek refuge in the impoundments or permanent stream pools now occupied by these introduced fishes. The most common fishes captured in streams directly upstream and downstream of tributary impoundments in Kansas are largemouth bass, crappie, and bluegill (*Lepomis macrochirus*), and these species are often captured to the exclusion of cyprinids, including Topeka shiner (Mammoliti, Kansas Department of Wildlife and Parks, pers. comm., 1997). Tabor (*in litt.* 1994) captured only largemouth bass from a stream segmented by numerous dams in Iowa. A cooperative report completed by the Soil Conservation Service and Kansas Department of Health and Environment (1981) on the effects of watershed impoundments on Kansas streams states that predacious game fishes increased in abundance, and several minnow species, including the Topeka shiner, decreased in abundance upstream and downstream from dam sites following impoundment. While the extent of predation is undocumented, known populations have apparently been extirpated in the time period immediately following impoundment of several low order streams (Layher 1993; Pflieger, *in litt.* 1992; Tabor, *in litt.* 1992b). Topeka shiners were also reportedly extirpated from a small impoundment previously lacking largemouth bass, following stocking of largemouth bass (Prophet et al. 1981). Extirpation of the Topeka shiner from small, direct tributary streams to large mainstem impoundments has also been documented. These extirpations presumably occurred in part due to predation by introduced piscivorous fishes during drought and low flow periods when Topeka shiners seek refuge in permanent water downstream from their typical headwater habitats (Service 1993).

D. The inadequacy of existing regulatory mechanisms. In Kansas, the Topeka shiner is listed as ''species in need of conservation,'' under the Kansas Nongame and Endangered Species Conservation Act of 1975. This status prohibits the direct taking of specimens but does not protect habitat or give opportunity to review actions or projects which may affect the species in Kansas. Under Missouri law, the species is listed as endangered. This status prohibits direct taking of specimens and provides a limited review process to suggest remediation for actions potentially impacting the species' habitat. Minnesota, Nebraska, and South Dakota consider it a species of concern, with no legal protection. In Iowa, the species has no legal status.

At present, only Missouri provides statutory protection for both the species and its habitat. No significant protections exist for the Topeka shiner and its habitat in the other states encompassing its range. Listing under the Act would provide significant protection against taking of the species, ensure coordinated review of Federal actions which may affect its habitat, and encourage proactive management throughout its range.

E. *Other natural and manmade factors affecting its continued existence.* In the species' Missouri range, possible interspecific competition between the Topeka shiner and the introduced blackstripe topminnow (*Fundulus notatus*) has been suggested (Pflieger, *in litt.* 1992). The absence of the Topeka shiner from suitable habitat, with blackstripe topminnow present, has also been observed in Kansas (Mammoliti, pers. comm. 1997). Both species are nektonic insectivores utilizing similar pool habitat. At present, the extent of possible competition between these species is undocumented. In degraded or suboptimal habitat conditions where Topeka shiners persist, competition by species more tolerant to these conditions, such as red shiner (*Cyprinella lutrensis*), may negatively affect the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Topeka shiner as endangered. Endangered status, which means that the species is in danger of extinction throughout all or a significant portion of its range, is appropriate for the Topeka shiner because of its significantly reduced range, including the apparent extirpation of the species throughout most of its historic range. Threatened status does not appear appropriate considering the extent of the species' population decline and the vulnerability of the remaining populations.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic areas occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Topeka shiner at this time. The Service's regulations (50 CFR 424.12(a)(1)) state that a designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat in any action authorized, funded or

carried out by such agency (agency action). This requirement is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Implementing regulations (50 CFR part 402) define ''jeopardize the continuing existence of'' and ''destruction or adverse modification of'' in very similar terms. To jeopardize the continuing existence of a species means to engage in an action ''that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' Destruction or adverse modification of habitat means an ''alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.'' Common to both definitions is an appreciable detrimental effect to both the survival and the recovery of a listed species. In the case of adverse modification of critical habitat, the survival and recovery of the species has been significantly diminished by reducing the value to the species' designated critical habitat. Thus, actions satisfying the standard for adverse modification also jeopardize the continued existence of the species concerned.

Many activities that pose threats to the continued existence of the Topeka shiner are funded, permitted, or carried out by Federal agencies (e.g., channelization, impoundment, dredge and fill, and other stream and wetland modification projects). Programs that result in these activities in Topeka shiner habitat are most often regulated by the U.S. Army Corps of Engineers and the U.S. Department of Agriculture, Natural Resources Conservation Service, under a variety of authorities, and are thus subject to section 7 consultation under the Act. In areas where suitable habitat exists within the historical range of the Topeka shiner, but the species is not present, the section 7 process would still allow for the jeopardy threshold to be reached. Considerations in such cases would include, but not be restricted to, proximity to extant populations and areas essential for the recovery of the species. As explained above, designation of critical habitat would not provide any additional protection to the species beyond those already provided by listing the species.

Other State or private actions resulting in ''take'' of Topeka shiners would be prohibited by section 9 of the Act, and remediation of those potential threats would not be significantly advanced by designation of critical habitat.

Recovery activities to assist landowners in maintaining or improving the habitat quality of their streams or otherwise addressing known threats to Topeka shiners would not benefit from a designation of critical habitat. However, such conservation and recovery actions could be significantly impaired by public apprehension or misunderstanding of a critical habitat designation.

Intentional taking of the Topeka shiner is not known to be a problem. The Topeka shiner is found in very specialized, easily accessible and identifiable habitat characterized by small volumes of flow. It is possible that a local population could be intentionally eliminated. Publication of maps providing its precise locations and descriptions of critical habitat, as required for the designation of critical habitat, would reasonably be expected to increase the degree of threat to the species, increase the difficulties of enforcement, and could further contribute to the decline of the Topeka shiner.

In light of the above, the Service concludes that designation of critical habitat would not be beneficial to the species and could increase the degree of threat to the species from taking. Therefore, designation of critical habitat for the Topeka shiner is neither beneficial nor prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A number of Federal agencies have jurisdiction and responsibilities potentially affecting the Topeka shiner, and section 7 consultation may be required in a number of instances. Federal involvement is expected to include the Corps of Engineers throughout the species' range in the administration of Section 404 of the Clean Water Act. The U.S. Environmental Protection Agency will consider the Topeka shiner in the registration of pesticides, adoption of water quality criteria, and other pollution control programs. The U.S. Department of Transportation, Federal Highway Administration, will consider the effects of bridge and road construction at locations where known habitat may be impacted. The U.S. Department of Agriculture, Natural Resources Conservation Service and Farm Service Agency, will need to consider the effects of structures and channelization projects installed under the Watershed Protection and Flood Prevention Act, (16 U.S.C. 1001–1009, Chapter 18; Pub.L. 83–566, August 4, 1954, c 656, § 1, 68 Stat. 666; as amended), ''Farm Bill'' programs, and other activities which may impact water quality, quantity, or timing of flows. The Federal Energy Regulatory Commission will consider potential impacts to the Topeka shiner and its habitat resulting from gas pipeline construction over streams and from hydroelectric development.

Private actions, that are not federally funded or permitted, undertaken within or near habitat occupied by Topeka shiners, would not be subject to the regulations as stated above in section 7 of the Act. Some examples of private actions not subject to section 7 consultation include, but are not limited to: farming and ranching practices, construction of private stock watering ponds on normally dry channels, and fuelwood harvest. However, private actions that result in ''take'' of Topeka shiners, as discussed below, would be prohibited by section 9 of the Act.

The Act and its implementing regulations set forth a series of general

prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any species that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/236–8189) or fax (303/236–0027).

It is the policy of the Service to identify, to the extent known at the time a species is listed, specified activities that will and will not be considered likely to result in violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on ongoing and likely activities within a species' range. The Service believes the actions listed below would not result in a violation of section 9.

(1) Grazing within watersheds at levels consistent with the long term management of the range or prairie ecosystem, thus precluding water quality and stream habitat degradation, except where the Service has determined that such activity would negatively impact the species;

(2) Cropping within stream corridors where stable riparian vegetation buffers exist, with the buffers serving as filtering mechanisms for non-point source runoff, decreasing sediment, nutrient, and pesticide input into streams, except where the Service has determined that such activity would negatively impact the species;

(3) Construction of small stock watering ponds in upland areas on normally dry drainage; and

(4) Prescribed burns at levels consistent with the long-term management of the range or prairie ecosystem, except where the Service has determined that such activity would negatively impact the species.

The Service believes that the actions listed below may result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting or handling of the species;

(2) Destruction or alteration of the species' habitat (i.e., actions that change water quality, quantity, and/or timing of flows; dredging or other physical modifications that impact instream habitat;

(3) The introduction of nonnative species;

(4) Use of fertilizers or pesticides inconsistent with approved labeling and application procedures; and

(5) Contamination of soil, streams, or groundwater by spills, discharges, or dumping of chemicals, silt, or other pollutants.

Questions regarding whether a specified activity will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Manhattan, Kansas Field office (see **ADDRESSES** section).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on the species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of the publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to Field Supervisor, Manhattan, Kansas (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determination

The Service has examined the regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Manhattan, Kansas Field Office (See **ADDRESSES** section).

Author

The primary author of this proposed rule is Vernon M. Tabor, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under ''FISHES,'' to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Shiner, Topeka	*Notropis Topeka*	U.S.A. (KS, IA, MN, MO, E, SD).	Entire	E	.....	NA	NA
*	*	*	*	*	*		*

Dated: October 2, 1997

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–28231 Filed 10–23–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 62, No. 206

Friday, October 24, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Revision of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to revise the information collection currently approved for a form used in support of the FSA Farm Loan Program (FLP). The form has been amended to adapt it for additional uses in the servicing of loans, resulting in its name being changed and an increase in burden hours.

DATES: Comments on this notice must be received on or before November 24, 1997 to be assured consideration.

ADDITIONAL INFORMATION: Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW, STOP 0523, Washington, D.C. 20013–0523; telephone (202) 690–4012; electronic mail: pelder@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Form FSA 440–32, ''Verification of Debts and Assets''.

OMB Control Number: 0560–0166.

Expiration Date of Approval: September 30, 1999.

Type of Request: Revision of Currently Approved Information Collection.

Abstract: The information obtained on this form is necessary to ensure the accuracy of information obtained in connection with applications for FSA direct loan assistance. It is used to verify debt information provided by applicants in order to determine their suitability for an Operating Loan, Farm Ownership Loan or Emergency Loan. Additionally, the form has been revised to allow its use by the Agency to verify assets of borrowers that have requested settlement of their debts through cancellation, adjustment or compromise.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 17,335.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 13,001.

Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW, STOP 0523, Washington, D.C. 20013–0523. Copies of the information collection may be obtained from Phillip Elder at the above address. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in this notice 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. This does not affect the deadline for the public to comment to the Department on this notice.

Signed in Washington, D.C., on October 16, 1997.

Bruce Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 97–28198 Filed 10–23–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Giant Multi-Resource Management Project

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Tahoe National Forest, has changed the proposed action for this EIS. The new proposal includes only timber harvest, road construction, road decommissioning, and fuel treatment. The design of the new proposal incorporates and addresses all issues previously identified. The Forest Service now anticipates issuing a Draft EIS in the last quarter of Calendar Year 1997, and filing a Final EIS in the first quarter of Calendar Year 1998.

DATE: Comments concerning the scope of the analysis should be received by November 15, 1997.

ADDRESSES: Send written comments to John Bradford, EIS Team Leader, Foresthill Ranger District, 22830 Foresthill Road, Foresthill, CA 95631.

FOR FURTHER INFORMATION CONTACT: John Bradford, EIS Team Leader, Foresthill Ranger District, 916–478–6254.

SUPPLEMENTARY INFORMATION: On June 2, 1997 a Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register** (Vol. 62, No. 105, Pages 29706–29707).

Dated: October 16, 1997.

John H. Skinner,

Forest Supervisor.

[FR Doc. 97–28207 Filed 10–23–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Grain Inspection Advisory Committee.

Date: November 19–20, 1997.

Place: Omni Royal Orleans Hotel, 621 St. Louis Street, New Orleans, Louisiana.

Time: 8:00 a.m.–12:00 p.m. on November 19 and 20, 1997.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda includes a review and discussion of GIPSA's financial status, strategic plan, and moisture meter implementation plan.

The meeting will be open to the public. Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 3601, Washington, D.C. 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

Dated: October 20, 1997.

James R. Baker,

Administrator.

[FR Doc. 97–28232 Filed 10–23–97; 8:45 am]

BILLING CODE 3410–EN–P

ARMS CONTROL AND DISARMAMENT AGENCY

Determination to Close Meetings of the Director's Advisory Committee

The Director's Advisory Committee (DirAC) will hold meetings in Albuquerque, New Mexico on October 27 and 28, 1997, and in Washington, DC, on December 11 and 12, 1997.

The entire agenda of these meetings will be devoted to specific national security policy and arms control issues. In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, 86 Stat 770 (1972) (codified at 5 U.S.C. App 2 510(a)(1) (1996)), it has been determined that discussions during the meetings are likely to disclose matters covered under 5 U.S.C. 552b(c)(1). Materials to be discussed at the meetings have been properly classified and are specifically authorized under criteria established by Executive Order 12958, 60 FR 19,825 (1995), to be kept secret in the interests of national defense and foreign policy.

Therefore, in accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, 86 Stat 770 (1972) (codified at 5 U.S.C. App 2 510(a)(1) (1996)), I have determined that, because of the need to protect the secrecy of such national security matters, the meetings should be closed to the public.

This notice is being published less than 15 days before the first meeting day, in order to enable more Committee members to attend.

John D. Holum,

Director.

[FR Doc. 97–28190 Filed 10–23–97; 8:45 am]

BILLING CODE 6820–32–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 24, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Pen, Metal Barrel & Refills

7520–01–445–7221
7520–01–445–7226
7520–01–445–7230
7520–01–445–7237
7510–01–446–4835
7510–01–446–4845
7510–01–446–4846
7510–01–446–4850
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

Pad, Floor Polishing

7910–01–363–6975
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas

Services

Janitorial/Custodial

USARC
Middletown, Connecticut
NPA: Greater Enfield Allied Rehabilitation Centers, Inc., Enfield, Connecticut

Janitorial/Custodial

Paul J. Sutcovoy, USARC
Waterbury, Connecticut
NPA: Greater Enfield Allied Rehabilitation Centers, Inc., Enfield, Connecticut

Janitorial/Custodial

Libby USARC
New Haven, Connecticut
NPA: Greater Enfield Allied Rehabilitation Centers, Inc., Enfield, Connecticut

Janitorial/Custodial

USARC
Springfield, Massachusetts
NPA: Greater Enfield Allied Rehabilitation Centers, Inc., Enfield, Connecticut

Janitorial/Custodial

USARC
Westover, Massachusetts
NPA: Greater Enfield Allied Rehabilitation Centers, Inc., Enfield, Connecticut

Janitorial/Custodial

U.S. Marine Corps Base
Buildings 2042, 2048, 2082, 3078, 3092, 3093 & 3094
Quantico, Virginia
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia

Janitorial/Custodial

U.S. Forest Service Building
Elkins, West Virginia
NPA: Buckhannon-Upshur Work Adjustment Center
Buckhannon, West Virginia

Janitorial/Custodial

Federal Building and Courthouse
300 Virginia Street
Charleston, West Virginia
NPA: Shawnee Hills Community Mental Health/Mental Retardation Center, Inc., Charleston, West Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–28283 Filed 10–23–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 24, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial

Federal Building 1301 Clay Street
Oakland, California
NPA: Calidad Industries, Inc., Oakland, California

Mailroom Operation

Department of the Interior
Washington, DC
NPA: Anchor Mental Health Association, Washington, DC.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–28284 Filed 10–23–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 24, 1997

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 29, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (62 F.R. 45792) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies (Requirements for Luke Air Force Base, Arizona)

Office and Miscellaneous Supplies (Requirements for the White Sands Missile Range, White Sands, New Mexico)

Office and Miscellaneous Supplies (Requirements for Randolph Air Force Base, Texas)

Magnetic Shopping List
M.R. 822

Service

Grounds Maintenance, U.S. Post Office, Rancho Bernardo Station, 16960 Bernardo Center Drive, San Diego, California.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–28285 Filed 10–23–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of President's Export Council Subcommittee on Export Administration (PECSEA) will be held October 29, 1997, 2:00 p.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 16, 1997, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

William V. Skidmore,

Acting Assistant Secretary for Export Administration.

[FR Doc. 97–28226 Filed 10–23–97; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–841]

Notice of Antidumping Duty Order in the Antidumping Investigation of Vector Supercomputers From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Edward Easton at (202) 482–1777 or Sunkyu Kim at (202) 482–2613, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act (URAA).

Scope of Order

The scope of this order consists of all vector supercomputers, whether new or used, and whether in assembled or unassembled form, as well as vector supercomputer spare parts, repair parts, upgrades, and system software, shipped to fulfill the requirements of a contract entered into on or after October 16, 1997, for the sale and, if included, maintenance of a vector supercomputer. A vector supercomputer is any computer with a vector hardware unit as an integral part of its central processing unit boards.

In general, the vector supercomputers imported from Japan, whether assembled or unassembled, covered by this order are classifiable under heading 8471 of the Harmonized Tariff Schedules of the United States (''HTS''). Merchandise properly classified under HTS numbers 8471.10 and 8471.30, however, is excluded from the scope of this order. Although, these references to the HTS are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

On October 15, 1997, Fujitsu Limited and Fujitsu America, Inc., respondents in the antidumping proceeding, requested that the Department adjust the scope of this order to provide that it applied to entries pursuant to a contract entered into on or after the publication of the final affirmative determination of the U.S. International Trade Commission in the **Federal Register**. On October 16, 1997, Cray Research, Inc., the petitioner in the proceeding, wrote the Department to acquiesce in Fujitsu's request. Therefore, the Department has amended the scope language to clarify that merchandise imported pursuant to contracts for vector supercomputer systems entered into prior to October 16, 1997, are outside the scope of this order. Petitioner also requested clarification as to whether the exercise of an option in a contract entered into prior to October 16, 1997, constitutes a new contract entered into on the day the option is exercised. Should the petitioner bring the exercise of such an option to the Department's attention in the form of a request for a ruling on the scope of this order pursuant to 19 CFR 351.225(c), the Department will either issue a final ruling under paragraph (d) of that section or will initiate a scope inquiry under paragraph (e).

Antidumping Duty Order

On October 7, 1997, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of vector supercomputers from Japan threaten material injury to the U.S. industry. The ITC did not determine that but for the suspension of liquidation of entries of vector supercomputers from Japan, the domestic industry would have been materially injured. Accordingly, the

Department will direct United States Customs officers to terminate suspension of liquidation and release any cash deposit, bond or other security for vector supercomputers from Japan on shipments entered, or withdrawn from warehouse, for consumption prior to October 16, 1997, the date of the publication of the ITC's final determination in the **Federal Register**. Effective on the publication date of this notice in the **Federal Register**, the U.S. Customs Service must require the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Margin percentage rate
Fujitsu Ltd.	173.08
NEC Corp.	454.00
All Others	313.54

This notice constitutes the antidumping duty order with respect to vector supercomputers from Japan, pursuant to section 736 (a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to section 736 (a) of the Act (19 USC 1673e (a)) and 19 CFR 353.21.

Dated: October 20, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–28308 Filed 10–23–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Meeting to Discuss an Opportunity to Join a Cooperative Research and Development Consortium on Flammability of Polymer Nanocomposites

AGENCY: National Institute of Standards and Technology; Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on November 21, 1997 to discuss the possibility of setting up a cooperative research consortium on Polymer Nanocomposite Flammability technology. The Consortium is dedicated to further research on the basic science of the technology as applied to specific applications.

DATES: The meeting will be held on Friday November 21, 1997 from 10:00 a.m. to 2:00 p.m., Room B245, Building 224, at NIST in Gaithersburg, MD. Interested parties should contact NIST to confirm their attendance at the address, telephone number or FAX number shown below no later than November 14, 1997.

ADDRESSES: The meeting will be held at 10:00 a.m., Room B245, Building 224, National Institute of Standards and Technology, Gaithersburg, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Gilman, Building 224, Room B256, National Institute of Standards and Technology, Gaithersburg, MD. 20899. Telephone: 301–975–6573; FAX: 301–975–4052; e-mail: jeffrey.gilman@nist.gov.

SUPPLEMENTARY INFORMATION: Any program undertaken will be within the scope and confines of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may provide ''personnel, service, facilities, equipment or other resources with or without reimbursement (but not funds to non-federal parties)''—to the cooperative research program.

The meeting will be held on Friday November 21, 1997 from 10:00 a.m. to 2:00 p.m., Room B245, Building 224, at NIST in Gaithersburg, MD, for interested parties. The meeting will discuss the possible formation of a research consortium including NIST and manufacturing industry to conduct research in this area.

Members will be expected to make a contribution to the consortium's efforts in the form of personnel, data, and/or funds. This is not a grant program.

Dated: October 16, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–28230 Filed 10–23–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101597B]

International Whaling Commission: Final Environmental Assessment

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

ACTION: Notice of availability of the Final Environmental Assessment (EA) on Makah Whaling.

SUMMARY: The Makah Tribe (Tribe) has indicated that it wishes to harvest up to five gray whales per year for subsistence and ceremonial purposes. NOAA prepared a draft EA that weighed the impacts of supporting the Makah interest in whaling and considered alternatives to concurrence. Comments were solicited from the public. NOAA, having first considered the public's comments, has concluded that there will be no significant effect on the human environment.

ADDRESSES: Copies of the final EA may be obtained from the Office of Protected Resources, NMFS, 1315 East West Highway, Silver Spring, MD 20910; telephone: 301–713–2332.

FOR FURTHER INFORMATION CONTACT: Michael Payne, Office of Protected Resources, NMFS, 1315 East West Highway, Silver Spring, MD 20910. Phone: (301) 713–2322.

SUPPLEMENTARY INFORMATION: The Tribe has indicated that it wishes to harvest up to five gray whales per year for subsistence and ceremonial purposes. Within the U.S. Government, whaling is managed by the Department of Commerce, which must therefore consider whether to support the Makah interest in continuing its tradition of whaling. This EA weighs the impacts of supporting the Makah interest in whaling and considers alternatives to concurrence. The EA analyzes alternatives, including the proposed action. The alternatives are (1) support the Tribe's decision to whale after receiving approval from the International Whaling Commission (IWC) [proposed action]; (2) delay consideration of support until the 5 year monitoring program of the eastern Pacific stock of gray whales is complete; (3) persuade the Tribe to engage in alternative activities, such as ecotourism instead of whaling; and (4) take no action. NMFS published a draft EA on August 22, 1997, and solicited comments from the public. The public comment period ended on September 22, 1997. The final EA incorporates comments from the public and concludes that the proposed action will have no significant effect on the human environment.

Dated: October 20, 1997.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–28214 Filed 10–23–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100797C]

Endangered Species; Permits

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

ACTION: Receipt of an application for a scientific research permit (1095).

SUMMARY: Notice is hereby given that the U.S. Bureau of Reclamation at Denver, CO (USBR) has applied in due form for a permit that would authorize a take of a threatened species for scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before November 24, 1997.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Resources Division, F/NWO3, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Protected Resources Division, Portland.

FOR FURTHER INFORMATION CONTACT: Robert Koch, Protected Resources Division, (503–230–5400).

SUPPLEMENTARY INFORMATION: USBR requests a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

USBR (1095) requests a 1-year permit for a take of juvenile, threatened, Southern Oregon/Northern California coast coho salmon (*Oncorhynchus kisutch*) associated with research designed to collect data on seasonal fish distribution and abundance, particularly during spring and late summer, in Bear Creek and its principal tributaries, Little Butte Creek and its tributaries, and Big Butte Creek in southwest Oregon. The information is needed to support management decisions associated with a water conservation feasibility study in the Rogue River Basin, authorized by the U.S. Congress and the Oregon Water Resources Congress. The purpose of the feasibility study is to support a proposal to implement habitat enhancement activities designed in part to increase instream flows, improve the reliability and efficiency of existing water supplies, improve water quality and environmental values, and conserve water. Data to analyze the potential impacts of proposed activities on salmonid distribution and abundance are inadequate, as are the fisheries data needed to develop and compare alternatives. ESA-listed juvenile fish are proposed to be captured by electrofishing, handled (identified, measured, weighed, and scanned for injuries or diseases), allowed to recover, and released. An indirect mortality of ESA-listed juvenile fish associated with the research is also requested.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: October 9, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–28215 Filed 10–23–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100697D]

Endangered Species; Permits

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

ACTION: Receipt of request to modify scientific research permit 1051.

SUMMARY: Notice is hereby given that Jorgen Skjeveland, of the Maryland Fisheries Resource Office of the U.S. Fish and Wildlife Service has applied in due form for a modification to Permit 1051 to take listed species for the purpose of scientific research, subject to certain conditions set forth in the permit.

DATES: Written comments or requests for a public hearing on this request must be received on or before November 24, 1997.

ADDRESSES: The application, permit, 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); or

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Endangered Species Division, Office of Protected Resources, (301–713–1401).

SUPPLEMENTARY INFORMATION: On May 29, 1997, Mr. Jorgen Skjeveland was issued Permit 1051 take shortnose sturgeon (*Acipensery brevirostrumy*) for scientific research activities, subject to certain conditions set forth therein, as authorized under the Endangered Species Act of 1973 (ESA) (16 U.S.C. §§ 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The applicant has requested authorization to increase the take of shortnose sturgeon in Chesapeake Bay from 25 to 30; as well as adding the Delaware River and Bay system to his permit and to take 30 fish in the same manner described in Permit 1051. In addition, the applicant has requested the permission to determine the genetic relationship between the Chesapeake and Delaware Bay sturgeons and determine if there is migration through the Chesapeake and Delaware (D and C) Canal.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this 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 this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: October 15, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–28216 Filed 10–23–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100397A]

Endangered Species; Permits

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

ACTION: Issuance of permit 1057, permit 1058, and modification 4 to permit 823.

SUMMARY: Notice is hereby given that NMFS has issued a permit to the Umpqua National Forest of the U.S. Forest Service at Idleyld Park, OR (USFS), a permit to the Idaho Fishery Resource Office of the U.S. Fish and Wildlife Service at Ahsahka, ID (FWS), and a modification to a permit to the Idaho Department of Fish and Game at Boise, ID (IDFG) that authorize takes of Endangered Species Act-listed anadromous fish species for the purpose of scientific research, subject to certain conditions set forth therein.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

FOR FURTHER INFORMATION CONTACT: Robert Koch, Protected Resources Division, (503–230–5400).

SUPPLEMENTARY INFORMATION: The permits and the modification to a permit were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on July 3, 1997 (62 FR 36049) that an application had been filed by USFS for a scientific research permit. Permit 1057 was issued to USFS on August 22, 1997. Permit 1057 authorizes USFS an annual take of adult and juvenile, endangered, Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*) associated with research designed to determine whether the fish is present in the Fish Creek watershed of the upper North Umpqua River in southwest Oregon. The primary reason for determining the presence/absence of resident cutthroat trout in the Fish Creek Basin is to clarify the degree of impact that projected timber harvests in the basin would have on ESA-listed cutthroat trout. The research also has significance in ongoing discussions on whether fish passage facilities should be constructed at Soda Springs Dam. Permit 1057 expires on December 31, 1998.

Notice was published on July 30, 1997 (62 FR 40802) that an application had been filed by FWS for a scientific research permit. Permit 1058 was issued to FWS on September 5, 1997. Permit 1058 authorizes FWS an annual take of adult, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with research designed to monitor and evaluate adult returns of hatchery-origin fall chinook salmon released as juveniles above Lower Granite Dam on the Snake River in the Pacific Northwest. Information on ESA-listed, natural-origin fish is needed to assess the impacts of fish management actions (e.g., hatchery supplementation), as well as other human activities (e.g., regulated river flows), on wild fish populations. Permit 1058 expires on December 31, 2001.

Modification 4 to permit 823 was issued to IDFG on August 29, 1997. Permit 823 authorizes IDFG annual takes of adult and juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); adult and juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*); and adult and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with scientific research activities in Idaho. For modification 4, IDFG is authorized an increase in the annual lethal take of ESA-listed juvenile sockeye salmon associated with monitoring research at Alturas Lake. In July 1997, IDFG released approximately 22,000 juvenile sockeye salmon from their captive broodstock program into Alturas Lake, as authorized by modification 8 to permit 795 (62 FR 29331, May 30, 1997). The Alturas Lake *O. nerka* population structure must be monitored to build trend data by time, essential for the development of future release plans. The lake will be sampled by midwater trawl surveys. Trawl captures, and subsequent tissue and stomach analyses, will contribute to the understanding of population make-up (genetic origin), growth, diet, and population age structure. Modification 4 is valid for the duration of permit 823. Permit 823 expires on November 30, 1997.

Issuance of the permits and the modification to a permit, as required by the ESA, was based on a finding that such actions: (1) Were requested/proposed in good faith, (2) will not operate to the disadvantage of the ESA-listed species that are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: October 15, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–28260 Filed 10–23–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Technical Information Service

NTIS Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the ''Board'') will meet on Tuesday, November 25, 1997, from 8:30 a.m. to 12:30 p.m., and from 1:30 p.m. to 4:00 p.m. The session from 8:30 a.m. to 12:30 p.m., will be closed to the Public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was Chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include a progress report on NTIS activities, an update on the progress of FedWorld, and a discussion of NTIS' long range plans. The closed session discussion is scheduled to begin at 8:30 a.m. and end at 12:30 p.m. on November 25, 1997. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on November 25, 1997, at 8:30 a.m. and adjourn at 4:00 p.m.

ADDRESSES: The meeting will be held in Room 2029 Sills Building, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

PUBLIC PARTICIPATION: The meeting will be open to public participation from 1:30 p.m. to 4:00 p.m. on November 25, 1997. Approximately thirty minutes will be set aside on November 25, 1997, for comments or questions from the public. Seats will be available for the public and for the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes of the open session meeting will be available within thirty days of the meeting from the address given below.

FOR FURTHER INFORMATION CONTACT: Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 Telephone: (703) 487–4636; Fax (703) 487–4093.

Dated: October 20, 1997.

Donald R. Johnson,

Director.

[FR Doc. 97–28220 Filed 10–23–97; 8:45 am]

BILLING CODE 3510–04–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board of Directors of the Corporation for National and Community Service (Corporation).

DATE AND TIME: Friday, October 31, 1997, from 9:30 a.m. to 12:30 p.m.

PLACE: The meeting will be held at the Union Planter's Bank, 900 S. Gay Street, 24th floor, Knoxville, Tennessee.

STATUS: The meeting will be open.

MATTERS TO BE CONSIDERED: The Board of Directors of the Corporation will meet to review reports from Committees of the Board regarding Corporation activities, deliberate and decide on the Corporation's annual plan, and review the status of various Corporation initiatives.

FOR FURTHER INFORMATION CONTACT: Rhonda Taylor, Assoc. Dir., Special Projects and Initiatives, Corporation for National Service, 1201 New York Avenue, NW, 8th Floor, Washington, DC 20525. Telephone (202) 606–5000 ext. 282. (T.D.D. (202) 565–2799)).

Dated: October 22, 1997.

Stewart Davis,

Acting General Counsel.

[FR Doc. 97–28432 Filed 10–22–97; 3:23 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Armored Security Vehicle (ASV)

AGENCY: U.S. Army Tank-automotive and Armaments Command, Army, DOD.

ACTION: Notice of Intent.

SUMMARY: The Program Manager, Light Tactical Vehicles (PM LTV) has prepared a Life-Cycle Environmental Assessment (LCEA) which examines the potential impacts to the natural and human environment from the life cycle activities of the Armored Security Vehicle (ASV). Based on the LCEA, PM LTV has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an environmental impact statement is not required and the Army is issuing this Finding of No Significant Impact (FONSI).

ADDRESSES: Written comments should be sent to, U.S. Army Tank-automotive and Armaments Command (TACOM), ATTN: AMSTA–DSA–LT (ASV), Warren, MI 48397–5000.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of the ASV Life-Cycle Environmental Assessment contact Mr. Anthony Shaw, Weapon System Manager (810) 574–8654.

SUPPLEMENTARY INFORMATION:

a. Proposed Action

This LCEA examines the potential impacts to the natural and human environment from the procurement of the ASV to satisfy the Army's need for survivability in a Military Police (MP) mobile platform. The ASV will be used by MP three-man teams in highly exposed threat environments. Current funding is available to procure up to 195 vehicles.

b. Environmental Impacts

The ASV life-cycle includes the transport of vehicles to test sites, testing, vehicle production, deployment and operation of production vehicles and their eventual demilitarization. Potential environmental impacts of these life-cycle stages may include Air Quality, Noise, Water, Soil and Groundwater, Hazardous Materials and Hazardous Wastes, and Flora, Fauna and Threatened or Endangered Species at each of these life-cycle phases.

c. Additional Findings

Impacts from the proposed action would be minimal and not significant for the following reasons:

(1) The ASV will be used in its intended environment. This intended environment includes vehicle production and some testing at the Contractor's facility, and the remainder of life-cycle activities at Army installations and facilities.

(2) The ASV is very similar to vehicles produced commercially and vehicles already in the Army inventory. It is being produced in low to moderate quantities and will not significantly increase the vehicle population at Army installations and facilities.

(3) The overall environmental risk associated with the ASV is very low. It does not introduce any new technologies or processes. Vehicle life cycle activities do not introduce any potential environmental impacts that are not already currently mitigated by Army policy and procedures.

(4) The ASV Project Manager has ensured that the Contractor producing the vehicle is environmentally compliant, has no permit violations, and has commercial practices for Hazardous Material Management and Pollution Prevention in production of the ASV.

(5) The ASV Product Manager recognizes that Army installations and facilities have environmental plans and measures in place to address vehicle life cycle activities very similar to that of the ASV to prevent, mitigate and remediate environmental damage caused by vehicle operation. Vehicle operations at these Army installations and facilities are in conjunction with normal activities that are already addressed in their site specific environmental impact statements.

d. Determination

It is therefore concluded that this program:

(1) Is not a major federal action significantly affecting the quality of human environment.

(2) Will not have a significant impact on the environment.

(3) Is not likely to be environmentally controversial.

(4) Will not likely result in litigation based on environmental quality issues.

(5) Does not require an Environmental Impact Statement (EIS).

Gregory B. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–28281 Filed 10–23–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB)

AGENCY: Office of The Surgeon General.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB Meeting. The meeting will be held from 0800–1630, Thursday and Friday, December 11–12, 1997. The purpose of the meeting is to address pending Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, and to conduct an executive working session. The meeting location will be at the Walter Reed Army Institute Research (WRAIR), Washington, D.C. The meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: COL Vicky Fogelman, AFEB Executive Secretary, Army Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 693, Falls Church, Virginia 22041–3258, (703) 681–8012/4.

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 97–28282 Filed 10–23–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Deepening of the Brunswick Harbor Navigation Project, Glynn County, Georgia

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: A feasibility study is underway which considers alternatives of a 2, 4, or 6 foot deepening of the navigation channel from the inner harbor to the ocean.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposal may be directed to Ms. Ana Vergara, (912) 652–5837, U.S. Corps of Engineers, Savannah District, P.O. Box 889, Savannah, Georgia 31402–0889.

SUPPLEMENTARY INFORMATION:

1. Current Project Description. The Brunswick Harbor Navigation Project is located in the southeastern section of Glynn County, Georgia, adjacent to the City of Brunswick. The harbor is approximately 80 highway miles south of Savannah, Georgia, and 70 miles north of Jacksonville, Florida. The authorized project consists of approximately 30 miles of channels at various depths and widths which include the following segments: 32 feet deep and 500 feet wide across the outer bar; 30 feet deep and 400 feet wide through St. Simons Sound, Brunswick River, and East River; 30 feet deep and 300 feet wide in Turtle River to mile 12.76; 30 feet and 400 feet wide, and 7000 feet long in South Brunswick River above the Georgia Port Authority bulk terminal dock; 27 feet deep and 350 feet wide in East River from Second Avenue to the confluence with Academy Creek; 24 feet deep and 150 feet wide in Academy Creek; 20 feet deep and 150 feet wide in Back River; and 10 feet deep and 80 feet wide in Terry Creek. The project has three authorized turning basins. Annual maintenance of the project requires dredging and disposal of approximately 1.8 million cubic yards of material.

2. Proposed Action. The alternatives being considered are 2, 4, or 6 foot deepening of the navigation channel from the inner harbor (approximately from Station 12+000 at the East River Upper Range and Station 45+500 at the Turtle River Lower Range), across the bar channel to the ocean. The proposed plan would include: widening the channel from 200 feet to 400 feet at the Sidney Lanier Bridge; widening Lower Turtle Range from 350 feet to 400 feet; improving the Lower Turtle River turning basin; constructing a new turning basin in Upper East River, dike raising the Andrews Island confined disposal facility to +35 feet mlw; placing material dredged from the inner/upper harbor into the confined disposal facility; place material dredged from the Bar Channel into the existing Ocean Disposal Site and using dredged material from two ranges for the construction of a submerged berm in the nearshore area off the northern end of Jekyll Island. Overdepth and advanced maintenance requirements in the navigation channel will be analyzed as part of the feasibility study. Any proposed modification of this proposed plan will be addressed, as appropriate, during preparation of the Environmental Impact Statement.

3. Alternatives. The proposed study includes the following alternatives:

a. No Action/Maintenance of status quo.

b. Improvement of existing navigation facilities, with alternatives addressed in 2-foot increments to a maximum of 6 feet.

4. Study Description. This study will include an analysis of potential impacts on endangered species, fisheries, birds, marine mammals, water quality, historic properties, etc., resulting from the various alternatives. This study is being conducted by the U.S. Army Corps of Engineers.

5. Scoping Process: Federal, State, and local officials; conservation groups; and interested businesses, groups, and individuals are invited to comment on the proposed project. Comments received as result of this notice will be used to assist in identifying potential impacts to the quality of the environment. This study is a continuation of a harbor deepening study initiated in 1963 that considered project depths of 2, 4, 6, and 8 feet. Formal coordination with State and Federal Agencies was conducted at that time. On May 4, 1995 a Public Information Meeting was held at Brunswick to identify issues and concerns from the public about the proposed Brunswick Harbor Deepening Project.

6. Address for Comments: Written comments may be forwarded to: District Engineer, U.S. Army Corps of Engineers (Attention: Ms. Ana Vergara, PD–E), P.O. Box 889, Savannah, Georgia 31402–0889. Comments should be received within 30 days of the publication of this notice in the **Federal Register** to ensure timely consideration.

7. Availability of the DEIS. The Draft Environmental Impact Statement is expected to be available to the public in December 1997.

M.J. Yuschishin,

Chief, Planning Division.

[FR Doc. 97–28278 Filed 10–23–97; 8:45 am]

BILLING CODE 3710–HP–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Closed Meeting of the United States Naval Academy Board of Vistors

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet on October 30, 1997, at the Senate Russell Office Building, at 8:30 a.m. This meeting will be closed to the public.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, the Under Secretary of the Navy has determined in writing that the special committee meeting shall be closed to the public because the meeting will be concerned with matters as outlined in section 552(b) (2), (5), (6), (7) and (9) of Title 5, United States Code.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Lieutenant Commander Gerral K. David, U.S. Navy, Executive Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402–5000, telephone number (410) 293–1503.

Dated October 14, 1997.

Darse E. Crandall,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–28210 Filed 10–23–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–15–000]

Natural Gas Pipeline Company of America; Notice of Section 4 Filing

October 20, 1997.

Take notice that on October 15, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services which Natural provides on uncertificated and certificated gathering facilities known as the Wise County Gathering Systems in Wise, Jack, Parker, Palo Pinto and Dento Counties, Texas. Natural states that it will sell the entire gathering system to Mitchell Gas Services, Inc, a non-affiliate. Natural further states that no contracts for transportation service with Natural will be terminated.

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. Under § 154.210 of the Commission's Regulations, all such motions or protests should be filed on or before October 27, 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. 97–28228 Filed 10–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–7–000 and 001; ER96–677–000 and 001; ER96–679–000 and 001; and EL98–1–000]

Union Electric Company and Central Illinois Public Service Company; Notice of Initiation of Proceeding and Refund Effective Date

October 20, 1997.

Take notice that on October 15, 1997, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL98–1–000 under Section 206 of the Federal Power Act.

The refund effective date in Docket No. EL98–1–000 will be 60 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 97–28204 Filed 10–23–97; 8:45]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–765–000]

ANR Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for The Proposed Wisconsin Loop Expansion Project and Request for Comments on Environmental Issues

October 20, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of constructing and operating about 11.4 miles of 30-inch-diameter pipeline loop proposed in the Wisconsin Loop Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

ANR Pipeline Company (ANR) wants to expand the capacity of its facilities in Wisconsin to transport an additional 116 million cubic feet per day of natural gas to shippers in the Chicago hub markets. ANR seeks authority to:

- Construct and operate 11.4 miles of 30-inch-diameter pipeline loop on its existing Wisconsin mainline in Waukesha County, Wisconsin;
- Relocate an existing pig receiver from ANR's existing mainline station No. 10 to a parcel of land adjacent to ANR's existing mainline station No. 12 in Waukesha County, Wisconsin;
- Construct a valve station at milepost 7.70 along the proposed 30-inch-diameter pipeline loop; and
- Construct a new meter station (Somers Meter Station) at milepost 13.14 along ANR's existing Racine lateral in Kenosha County, Wisconsin.

The location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

[1] ANR Pipeline Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

ANR proposes to use a construction right-of-way width of 75 feet. ANR would construct about 1.2 miles of the loop adjacent to its existing 18-inch-diameter mainline and 20-inch-diameter loop, and the remaining 10.2 miles of pipeline would deviate from these existing facilities. Construction of the proposed pipeline loop facilities would require about 123.96 acres of land. Following construction, ANR would maintain about 54.02 acres as new aboveground facility sites. The remaining 69.94 acres of land would be restored and allowed to revert to its former use.

In addition, constructing the proposed Somers Meter Station would permanently impact 0.52 acres of land and temporarily impact 0.26 acres of land; relocating the pig receiver would permanently require 0.19 acres of land and temporarily impact 0.04 acres of land; and constructing the proposed valve station would permanently require 0.2 acres of land.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Public safety.
- Land use.
- Cultural resources.
- Endangered and threatened species.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified two issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by ANR. This preliminary list of issues may be changed based on your comments and our analysis.

- The proposed pipeline right-of-way would cross about 1.2 miles of residential areas; a total of six residences are within 50 feet of the proposed construction work area.
- The proposed project would cross about 19,680 linear feet of wetlands, and temporarily impact about 34.80 acres of wetlands.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP97–765–000; and
- Mail your comments so that they will be received in Washington, DC on or before November 18, 1997.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding is October 20, 1997. Parties seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28203 Filed 10–23–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5485–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed October 13, 1997 Through October 17, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970401, FINAL EIS, FHW, CA, US 101 Realignment Construction, near Cushing Creek from Mile Post 20.3 to 22.3 South of Crescent City, Funding and COE Permits, Del Norte County, CA, Due: November 24, 1997, Contact: John R. Schultz, (916) 551–1314.

EIS No. 970402, FINAL SUPPLEMENT, EPA, TX, Oak Hill Surface Lignite Mine (formerly known as the Martin Lake D Area Mine) Expansion Project into the DIII Area, Modification/Reissuance of a New Source NPDES Permit, Rusk County, TX, Due: November 24, 1997, Contact: Robert D. Lawrence, (214) 665–2258.

EIS No. 970403, FINAL EIS, USN, WA, Puget Sound Naval Station, Sand Point, Disposal and Reuse, Implementation, King County, WA,

Due: November 24, 1997, Contact: Chingmin Cher, (703) 604–1268.

EIS No. 970404, SECOND FINAL SUPPLE, DOE, CA, Petroleum Production at Maximum Efficient Rate, Updated Information for the Sale of Naval Petroleum Reserve No. 1 (NPR–1 also called ''Elk Hills'') Amendment for Kern County General Plan, Elk Hills, Kern County, CA, Due: November 24, 1997, Contact: Anthony J. Como, (202) 586–5935.

Dated: October 21, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–28233 Filed 10–23–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5485–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 13, 1997 Through October 17, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–AFS–L65287–OR Rating EC2, Little River (DEMO) Demonstration of Ecosystem Management Options Timber Sale, Implementation, Umpqua National Forest, North Umpqua Ranger District, Douglas County, OR.

Summary: EPA expressed environmental concerns with potential impacts of proposed harvest activities within riparian reserves.

ERP No. D–BLM–K65198–00 Rating EC2, Rangeland Health Standards and Guidelines for Livestock Grazing on Public Rangelands in California and Northwestern Nevada, CA and NV.

Summary: EPA expressed environmental concerns due to the high percentage of habitats in a functional-at-risk and non-functional condition. EPA strongly recommended the Final EIS provide an expanded and more detailed description of implementation, monitoring cumulative impacts, and adaptive management measure and tools.

ERP No. D–FHW–D40290–MD Rating EO2, US 113 Planning Study, Transportation Improvement from south of Snow Hill, Maryland to Delaware State Line, Funding and COE Section 404 Permit, Worcester County, MD.

Summary: EPA expressed environmental objections to the potential impacts to upland forest habitat; stream channels; palustrine forested wetland; and historic and cultural resources.

ERP No. D–FTA–K54021–CA Rating EC2, Caltrain San Francisco Downtown Extension Project, Fourth and Townsend Streets in San Francisco to a proposed terminal at a site of the present Transbay Terminal in Downtown San Francisco, Funding, Approvals and Permits, San Francisco, San Mateo, and Santa Clara Counties, CA.

Summary: EPA raised environmental concerns with the proposed parking development aspect of FTA's Caltrain Downtown Extension Project DEIS.

Final EISs

ERP No. F–AFS–C65002–PR, Caribbean National Forest Land and Resource Management Plan, Implementation, PR.

Summary: Based on EPA review of the Final EIS. EPA does not object to the proposed action.

ERP No. F1–FHW–K40202–CA, CA–58—Mojave Freeway Project, Construction from 0.1 mile east of the Cache Creek Bridge to 5.0 miles east of the town of Mojave, Funding, COE Section 404 Permit and Right-of-Way Acquisition, Kern County, CA.

Summary: EPA's previous objections to the DEIS was satisfactorily addressed in FEIS. EPA asked that the mitigation measures referenced for adoption in the DEIS and FEIS be noted as commitments in the Tier I Record of Decision.

Dated: October 21, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–28234 Filed 10–23–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5913–6]

Industrial Combustion Coordinated Rulemaking Federal Advisory Committee Notice of Upcoming Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Industrial Combustion Coordinated Rulemaking (ICCR) Federal Advisory Committee notice of upcoming meeting.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, section 9(c), EPA gave notice of the establishment of the ICCR Federal Advisory Committee (hereafter referred to as the ICCR Coordinating Committee) in the **Federal Register** on August 2, 1996 (61 FR 40413).

The public can follow the progress of the ICCR through attendance at meetings (which will be announced in advance) and by accessing the Technology Transfer Network (TTN), which serves as the primary means of disseminating information about the ICCR.

DATES: The next meeting of the ICCR Coordinating Committee is scheduled for November 18–19, 1997. Also, the ICCR Work Groups—which report to the Coordinating Committee—have meetings scheduled in November, 1997. The dates of these Work Group meetings are summarized below. Further information on the dates of the Coordinating Committee meeting and the Work Group meetings may be obtained by accessing the TTN or by calling EPA (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The Coordinating Committee meeting on November 18–19, 1997 will be held at the Red Lion Hotel, 2525 West Loop South, Houston, Texas, 77027. The telephone number for the Red Lion Hotel is (713) 961–3000. The Red Lion Hotel requests that reservations be made by October 27, 1997 for those staying at the hotel for the meeting. The locations of the Work Group meetings are summarized below. Further information on the locations of the Coordinating Committee meeting and the Work Group meetings may be obtained by accessing the TTN or by calling EPA (see **FOR FURTHER INFORMATION CONTACT**).

Inspection of Documents: Docket. Minutes of the meetings, as well as other relevant materials, will be available for public inspection at U.S. EPA Air and Radiation Docket and Information Center, Docket No. A–96–17. The docket is open for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in

Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Fred Porter or Sims Roy, U.S. Environmental Protection Agency, Emission Standards Division, Combustion Group, (MD–13), Research Triangle Park, North Carolina 27711, telephone numbers (919) 541–5251 and 541–5263, respectively.

SUPPLEMENTARY INFORMATION:

Technology Transfer Network (TTN)

The TTN is one of the EPA's electronic bulletin boards. The TTN can be accessed through the Internet at:

WWW: http://www.epa.gov/ttn or ttnwww.rtpnc.epa.gov
FTP: ttnftp.rtpnc.epa.gov

When accessing the WWW site, select Directory of TTN Sites, then select ICCR—Industrial Combustion Coordinated Rulemaking from the Directory of TNN Sites.

Access to the TTN through FTP is a streamlined approach for downloading files, but is only useful, if the desired filenames are known.

If more information on the TTN is needed, call the help desk at (919) 541–5384.

Meetings of the ICCR Coordinating Committee and Work Groups are open to the public. All Coordinating Committee meetings will be announced in the **Federal Register** and on the TTN. Work Group meetings will be announced on the TTN and in the **Federal Register**, when possible.

The next meeting of the Coordinating Committee will be held November 18–19, 1997 at the Red Lion Hotel, 2525 West Loop South, Houston, Texas, from about 8:00 a.m. to about 6:00 p.m. The agenda for this meeting will include reports from the Work Groups on their progress, testing needs and prioritization issues, discussion of data gathering efforts to support the ICCR, and a discussion of direction and guidance from the Coordinating Committee to the Work Groups. An opportunity will be provided for the public to offer comments and address the Coordinating Committee.

The Work Groups have currently scheduled the following meetings:

Work group	Date	Location
Incinerators	October 28, 1997	RTP, NC.
	November 20, 1997	Houston, TX.
	February 26, 1997	Greensboro, NC
IC Engines	October 30, 1997	Chicago, IL.
	November 20, 1997	Houston, TX.
	February 26, 1998	Greensboro, NC.
Boilers	October 30, 1997	RTP, NC.
	November 20, 1997	Houston, TX.
	January 13, 1998	Atlanta, GA.
	February 26, 1998	Greensboro, NC.
	March 24, 1998	New Orleans, LA.
Stationary Combustion Turbines	November 20, 1997	Houston, TX.
	February 26, 1998	Greensboro, NC.
Process Heaters	November 20, 1997	Houston, TX.
	February 26, 1998	Greensboro, NC.
Testing and Monitoring Protocol	November 21, 1997	Houston, TX.
	February 27, 1998	Greensboro, NC.

The agendas for these meetings include review and revision of the ICCR databases, data and information gathering efforts, possible emission testing, and potential subcategorization. An opportunity will be provided at each meeting for the public to offer comments and address the Work Group.

Individuals interested in Coordinated Committee meetings, Work Group meetings, or any aspect of the ICCR for that matter, should access the TTN on a regular basis for information.

Two copies of the ICCR Coordinating Committee charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request to the Docket (ask for item #I–B–1). The purpose of the ICCR Coordinating Committee is to assist EPA in the development of regulations to control emissions of air pollutants from industrial, commercial, and institutional combustion of fuels and non-hazardous solid wastes. The Coordinating Committee will attempt to develop recommendations for national emission standards for hazardous air pollutants (NESHAP) implementing section 112 and solid waste combustion regulations implementing section 129 of the Act and may review and make recommendations for revising and developing new source performance standards (NSPS) under section 111 of the Act. The recommendations will cover boilers, process heaters, industrial/commercial and other incinerators, stationary internal combustion engines, and stationary combustion turbines.

Lists of Coordinating Committee and Work Group members are available from the TTN for the purpose of giving the public the opportunity to contact members to discuss concerns or information they would like to bring forward during the ICCR process.

It is anticipated that the next meeting of the Coordinating Committee, following the meeting in November, will be February 24–25, 1998 in Greensboro, North Carolina.

Dated: October 17, 1997.

Richard D. Wilson,

Acting Assistant Administrator.

[FR Doc. 97–28275 Filed 10–23–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 9:30 a.m.—October 21, 1997.

PLACE: 800 North Capitol Street, N.W.—Room 1000, Washington, D.C.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED: 1. Docket No. 96–20—Port Restrictions and Requirements in the United States/Japan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 97–28325 Filed 10–21–97; 4:40 pm]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: 9:00 a.m.—October 22, 1997.

PLACE: 800 North Capitol Street, NW., Room 1000, Washington, DC.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED: 1. Docket No. 96–20—Port Restrictions and Requirements in the United States/Japan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 97–28431 Filed 10–22–97; 3:06 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 10, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Charles W. Ekstrum, Philip, South Dakota, and Morris W. Jones, Jerry P. Jones, Ralph D. Jones, and Thomas B. Jones, all of Midland, South Dakota, acting in concert; to acquire additional voting shares of Philip Bancorporation, Inc., Philip, South Dakota, and thereby indirectly acquire First National Bank in Philip, Philip, South Dakota.

Board of Governors of the Federal Reserve System, October 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28266 Filed 10–23–97; 8:45 am]

BILLING CODE 6210–01–P

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. The application also will 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 November 17, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. MBNA Corporation, Wilmington, Delaware; to acquire 100 percent of the voting shares of MBNA Bank America Bank (Delaware), Wilmington, Delaware.

B. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. F.N.B. Corporation, Hermitage, Pennsylvania, and Southwest Banks, Inc., Naples, Florida; to acquire 100 percent of the voting shares of West Coast Bank, Sarasota, Florida.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Verona Bancshares, Limited, Verona, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Verona, Verona, Wisconsin.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Southern Missouri Bancshares, Inc., Marshfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Southern Missouri Bank (in organization), Marshfield, Missouri.

E. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Light Bancshares Corporation, Liberal, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Community Bank, Liberal, Kansas.

Board of Governors of the Federal Reserve System, October 20, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28169 Filed 10–23–97; 8:45 am]

BILLING CODE 6210–01–P

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. The application also will 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 November 20, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Gulf Coast Bancorp, Inc., Port Charlotte, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Gulf Coast Community Bank, N.A., Port Charlotte, Florida (in organization).

2. Skylake Bankshares, Inc., North Miami Beach, Florida; to merge with Kislak Financial Corporation, Miami Lakes, Florida, and thereby indirectly acquire Kislak National Bank, North Miami, Florida.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. MNB Bancshares, Inc., Manhattan, Kansas; to acquire 100 percent of the voting shares of Freedom Bancshares, Inc., Osage City, Kansas, and thereby indirectly acquire Citizens State Bank, Osage City, Kansas.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Wills Point Financial Corporation, Wills Point, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank of Wills Point, Wills Point, Texas.

D. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Pedcor Bancorp, Indianapolis, Indiana; to become a bank holding company by acquiring 80.9 percent of the voting shares of International City Bank, N.A., Long Beach, California.

2. Zions Bancorporation, Salt Lake City, Utah; to merge with Vectra Bancorporation, Denver, Colorado, and thereby indirectly acquire Vectra Bank, Denver, Colorado.

Board of Governors of the Federal Reserve System, October 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28267 Filed 10–23–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will 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 November 17, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Central Bancshares, Inc., Lexington, Kentucky; to acquire Central Bank, F.S.B., Nicholasville, Kentucky (in formation), and thereby engage through a *de novo* federal-chartered savings bank, in permissible savings and loan association activities, pursuant to § 225.28 (b)(4) of the Board's Regulation Y.

2. Star Bank Corporation, Cincinnati, Ohio; to acquire Great Financial Corporation, Louisville, Kentucky, and thereby indirectly acquire Great Financial Bank, F.S.B, Louisville, Kentucky, and thereby engage in permissible savings and loan association activities, pursuant to § 225.28 (b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 20, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28168 Filed 10–23–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will 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 November 10, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. J.P. Morgan & Incorporated, New York, New York; to acquire American Century Companies, Inc., Kansas City, Missouri, and thereby engage in providing investment or financial advice, pursuant to § 225.28(b)(6) of the Board's Regulation Y; securities brokerage services, pursuant to 225.28(b)(7); and providing certain administrative services, *see, Bankers Trust New York Corporation*, 83 Fed. Res. Bull. 780 (1997); and *Commerzbank A.G.*, 83 Fed. Res. Bull. 678 (1997); *Commersbank AG*, June 16, 1997; *The Governor and Company of the Bank of Ireland*, 82 Fed. Res. Bull. 1129 (1996); *Dresdner Bank AG*, 82 Fed. Res. Bull. 676 (1996); *Barclays Bank PLC*, 82 Fed. Res. Bull. 158 (1996); *Mellon Bank Corporation*, 79 Fed. Res. Bull. 626 (1993). With respect to mutual fund transfer agency services, *see* 12 C.F.R. § 225.15(i).

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Union Corporation, Charlotte, North Carolina; to acquire Wheat First Butcher Singer, Inc., Richmond, Virginia, and thereby engage in underwriting and dealing in, to a limited extent, all types of debt and equity securities other than interests in open end investment companies, *see, J.P. Morgan & Co., Inc., et al.*, 75 Fed. Res. Bull. 192 (1989) (1989 Order)); underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, pursuant to § 225.28(b)(8)(i) of the Board's Regulation Y; in acting as investment or financial advisor, pursuant to § 225.28(b)(6) of the Board's Regulation Y; in providing securities brokerage services (including securities clearing and/or securities execution services on an exchange), alone and in combination with investment advisory services, and incidental activities (including related securities credit activities and custodial services), pursuant to § 225.28(b)(7)(i) of the Board's Regulation Y; in buying and selling in the secondary market all types of securities on the order of customers as a ''riskless principal'' to the extent of engaging in a transaction in which the company, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer, pursuant to § 225.28(b)(7)(ii) of the Board's Regulation Y; in acting as agent for the private placement of securities in accordance with the requirements of the Securities Act of 1933 and the rules of the Securities and Exchange Commission, pursuant to § 225.28(b)(7)(iii) of the Board's Regulation Y; in acting as a futures commission merchant for unaffiliated persons in the execution, clearance, or execution and clearance of any futures contract and option on a futures contract traded on an exchange in the United States or abroad, pursuant to § 225.28(b)(7)(iv) of the Board's Regulation Y; and in engaging as principal in foreign exchange, forward contracts, options, futures, swaps, and similar contracts, whether traded on exchanges or not, based on any rate, price, financial asset (including gold, silver, platinum, palladium, copper, or any other metal approved by the Board), nonfinancial asset, or group of assets other than bank-ineligible securities, pursuant to § 225.28(b)(8) of the Board's Regulation Y, and engaging in these activities with respect to bank-ineligible securities pursuant to the 1989 Order.

Board of Governors of the Federal Reserve System, October 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28268 Filed 10–23–97; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, October 29, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28363 Filed 10–22–97; 11:12 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091597 AND 093097

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
MMI Companies, Inc., Unionamerica Holdings plc (a British company), Unionamerica Holdings plc (a British company)	97–3208	9/15/97
CSG Systems International, Inc., Tele-Communications, Inc., TCI SUMMITrak of Texas, Inc	97–3247	9/15/97
Indianapolis Life Insurance Company, SunAmerica, Inc., John Alden Life Insurance Company of New York	97–3285	9/15/97
Siemens Aktiengesellschaft (a German company), Elektrowatt Aktiengesellschaft (a Swiss company), Elektrowatt Aktiengesellschaft (a Swiss company)	97–3349	9/15/97
Allen K. Breed and Johnnie Cordell Breed, AlliedSignal, Inc., AlliedSignal, Inc	97–3352	9/15/97
VS&A Communications Partners II, L.P., Multi-Local Media Information Group, Inc., (MLM): Multi-Local Media Corp, Yellow Book Co., Inc	97–3354	9/15/97
C.D. Smith Drug Company, Gimbel Investor Group, L.P., G.D. Holdings of Delaware, Inc	97–3361	9/15/97
Marsh & McLennan Companies, Inc., Gerald J. Sullivan, G.J. Sullivan Co., Inc	97–3381	9/15/97
Maritrans, Inc., Sun Company, Inc., Philadelphia Sun Shipping Co., Inc.; New York Sun	97–3388	9/15/97
Marathon Fund Limited Partnership III, Reilly Investors, L.P., The Reilly Corp	97–3389	9/15/97
Norton McNaughton, Inc., Miss Erika, Inc., Miss Erika, Inc	97–3415	9/15/97
Intellicell Corporation, Thomas Bommarito, Pacific Unplugged Communications, Inc	97–3416	9/15/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091597 AND 093097—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
MBNA Corporation, FMR Corporation, Fidelity Trust Company	97–3437	9/15/97
Henry Schein, Inc., Sullivan Dental Products, Inc., Sullivan Dental Products, Inc	97–3246	9/16/97
Johnson & Johnson, Gynecare, Inc., Gynecare, Inc	97–3284	9/16/97
Affiliated Mangers Group, Inc., Irwin Lieber, GeoCapital Corporation	97–3394	9/16/97
Key Energy Group, Inc., George E. Coleman, Coleman Oil & Gas Co.; Big A Well Service Co.; Sunco	97–3402	9/16/97
Household International, Inc., AAC Consumer Finance Corporation, AAC Consumer Finance Corporation	97–3410	9/16/97
Bacou SA, Biosystems, Inc., Biosystems, Inc	97–3412	9/16/97
Coltec Industries, Inc., Dana Corporation, Boston Flat Rubber Products Business	97–3288	9/17/97
Ontario Teachers' Pension Plan Board, XTRA Corporation, XTRA Corporation	97–3340	9/17/97
HealthSouth Corporation, ASC Network Corporation, ASC Network Corporation	97–3413	9/17/97
BASF Aktiengesellschaft, PPG Industries, Inc., PPG Industries, Inc	97–3372	9/18/97
CUC International Inc., John H. and Louise T. Blouin MacBain (Husband and Wife), Hebdo Mag International Inc	97–3392	9/18/97
CUC International Inc., Torstar Corporation (a Canadian corporation), Hebdo Mag International Inc	97–3396	9/18/97
US West, Inc., GTE Corporation, GTE Wireless of the Pacific Inc	97–3286	9/19/97
Merrill Lynch Capital Appreciation Partnership [*] con't, JP Foodservice, Inc., JP Foodservice, Inc	97–3306	9/19/97
Merrill Lynch & Co., Inc., JP Foodservice, Inc., JP Foodservice, Inc	97–3307	9/19/97
Merrill Lynch Capital Appreciation Partnership [*] con't, JP Foodservice, Inc., JP Foodservice, Inc	97–3308	9/19/97
Sid R. Bass, Human Genome Sciences, Inc., Human Genome Sciences, Inc	97–3319	9/19/97
Longhorn Partners Pipeline, L.P., Exxon Corporation, Exxon Pipeline Company	97–3327	9/19/97
UPM-Kymmene Oy, Daubert Industries, Inc., Daubert Industries, Inc	97–3358	9/19/97
Harleysville Mutual Insurance Company, Minnesota Mutual Life Insurance Company, Minnesota Fire & Casualty Company	97–3373	9/19/97
Robert and Alicia Kunisch, CUC International Inc., CUC International Inc	97–3400	9/19/97
Christel DeHaan, CUC International, Inc., CUC International, Inc	97–3401	09/19/97
O. Bruton Smith, Ken Marks, Jr., Ken Marks Ford, Inc	97–3405	09/19/97
O. Bruton Smith, Nelson E. Bowers, II, European Motors of Nashville, LLC; Cleveland Village	97–3414	09/19/97
VS&A Communications Partners II, L.P., T/SF Communications Corporation, T/SF Communications Corporation	97–3418	09/19/97
O. Bruton Smith, John T. Lupton Trust, European Motors of Nashville, LLC; Cleveland Village	97–3419	09/19/97
Talton Holdings, Inc., Communications Central, Inc., InVision Telecommunications, Inc	97–3420	09/19/97
Anheuser-Busch Companies, Inc., Leonard E. Williams, Way-Nan, Inc	97–3421	09/19/97
Alternative Living Services, Inc., Sterling House Corporation, Sterling House Corporation	97–3446	09/19/97
ING Groep N.V., Furman Selz Gamma Corp., Furman Selz Holdings LLC, Furman Selz Proprietary, Inc	97–3449	09/19/97
FS Equity Partners III, L.P., FIPAR S.A., Lil' Champ Food Stores, Inc	97–3450	09/19/97
Genuine Parts Company, Mr. William D. Pardoe, Utah Bearing & Fabrication, Inc.; Colorado Bearings and	97–3452	09/19/97
SAFECO Corporation, Washington Mutual, Inc., WM Life Insurance Company	97–3459	09/19/97
Allstate Corporation (The), Ze'ev Drori, Clifford Electronics, Inc.; Avital Technologies, Inc	97–3460	09/19/97
J. R. Simplot Company, Jacklin Seed Company, Jacklin Seed Company	97–3461	09/19/97
American Mutual Holding Company, Delta Life Corporation, Delta Life Corporation	97–3463	09/19/97
ING Groep, N.V., Equitable of Iowa Companies, Equitable of Iowa Companies	97–3465	09/19/97
Budget Group, Inc., Budget Rent A Car of St. Louis, Inc., Budget Rent A Car of St. Louis, Inc	97–3466	09/19/97
USFreightways Corporation, Seko Worldwide, Inc., Seko Worldwide, Inc	97–3470	09/19/97
United Auto Group, Inc., R. Lynn Alexander, Lynn Alexander, Inc., Jo-Vena Automative, Inc., and	97–3473	09/19/97
True North Communications Inc., Bozell, Jacobs, Kenyon & Eckhardt, Inc., Bozell, Jacobs, Kenyon & Eckhardt, Inc	97–3479	09/19/97
Charles D. Peebler, Jr., True North Communications Inc., True North Communications Inc	97–3480	09/19/97
Hicks, Muse, Tate & Furst Equity Fund III, L.P., LIN Television Corporation, LIN Television Corporation	97–3482	09/19/97
A.H. Belo Corporation, The Edward W. Scripps Trust, The E.W. Scripps Company	97–3487	09/19/97
Fleet Financial Group, Inc., Aerobics, Inc., Aerobics, Inc	97–3491	09/19/97
Fleet Financial Group, Inc., Arnold Sheikowitz, Legacy International of New York, Inc	97–3493	09/19/97
Fleet Financial Group, Inc., Jeffrey Sheikowitz, Legacy International of New York, Inc	97–3494	09/19/97
MicroAge, Inc., Clark I. Buch, Cass Marketing Services, Inc	97–3495	09/19/97
Coltec Industries, Inc., Equilease Holding Corp., Marine & Petroleum Mfg. Co., Inc	97–3502	09/19/97
Metals USA, Inc., Jeffreys Steel Company, Inc., Jeffreys Steel Company, Inc	97–3518	09/19/97
Metals USA, Inc., William J. Targett, Meier Metal Servicecenters, Inc	97–3519	09/19/97
Metals USA, Inc., Barry Harvey, Harvey Titanium, Ltd	97–3520	09/19/97
Barry Harvey, Metals USA, Inc., Metals USA, Inc	97–3521	09/19/97
Manufacturers' Services Limited, Lockheed Martin Corporation, Lockheed Commercial Electronics Company	97–3356	09/22/97
Emco Limited, Yehuda Mendelson, Pro-Fit Piping Components, Inc	97–3368	09/22/97
Gary W. Rust, TCW Special Placements Fund II, USMedia Group, Inc	97–3375	09/22/97
Promodes S.A., Casino Guichard Perrachon, Casino Guichard Perrachon	97–3439	09/22/97
Sisters of the Sorrowful Mother Generalate, Inc., Rhinelander Medical Center, S.C., Rhinelander Medical Center, S.C	97–3445	09/22/97
James R. Leininger, Thomas R. Reilly, Sea Rich Seafoods, Inc	97–3498	09/22/97
Automatic Data Processing, Inc., Marsh & McLennan Companies, Inc., William M. Mercer, Incorporated and William M. Mercer	97–3506	09/22/97
Mr. Thomas J. Holt, Sr., Bankers Trust New York Corporation, NPR Holding Corporation	97–3508	09/22/97
Equity Corporation International, Service Corporation International, SCI Alabama Funeral Services, Inc., SCI Louisiana	97–3513	09/22/97
Beckman Instruments, Inc., Coulter Family Limited Partnership, Coulter Corporation	97–3464	09/23/97
George Soros, R&B Falcon Corporation, R&B Falcon Corporation	97–3514	09/23/97
IBP, Inc., Winchester Food Processing, Inc., Winchester Food Processing, Inc	97–3338	09/24/97
Maytag Corporation, Metropolitan Life Insurance Company, Blodgett Holdings, Inc	97–3483	09/24/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091597 AND 093097—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
NovaCare, Inc., Liberty Mutual Insurance Company, Atlantic Health Group, Inc	97–3524	09/24/97
Capstone Pharmacy Services, Inc., Harry Tractman, Med-Tec Pharmaceutical Services, Inc	97–3293	09/25/97
Republic Industries, Inc., Roger Dean, Dennis Fronrath Chev., Inc. & Fronrath Dean Fronrath	97–3377	09/25/97
Republic Industries, Inc., Bradley W. Kenyon, Kenyon Dodge, Inc	97–3378	09/25/97
K N Energy, Inc., Interenergy Corporation, Interenergy Corporation	97–3504	09/25/97
AmeriKing, Inc., James E. Green, B&J Restaurants, Inc	97–3316	09/26/97
The Finova Group Inc., R.J. Brandes, Belgravia Capital Corporation	97–3428	09/26/97
R.J. Brandes, The Finova Group Inc., The Finova Group Inc	97–3429	09/26/97
ISE Labs, Inc., Alphatec Electronics Public Co., Ltd., a Thai company, Alphatec USA, Inc. & Digital Testing Services, Inc	97–3438	09/26/97
Source Media, Inc., Brite Voice Systems, Inc., Brite Voice Systems, Inc	97–3441	09/26/97
ADC Telecommunications, Inc., NewNet, Inc., NewNet, Inc	97–3467	09/26/97
General Electric Company, Trans Leasing International, Inc., Trans Leasing International, Inc	97–3478	09/26/97
Newcourt Credit Group Inc., James M. Oberman, Lease Finance Group	97–3496	09/26/97
Newcourt Credit Group, Inc., James R. Brandt, Lease Finance Group	97–3497	09/26/97
Calpine Corporation, Brooklyn Union Gas Company (The), Gas Energy Inc. and Gas Energy Cogeneration Inc	97–3499	09/26/97
Thomas H. Lee Equity Fund III, L.P., The Learning Company, Inc., The Learning Company, Inc	97–3500	09/26/97
Steven A. and Linda Webster (Husband and Wife), R&B Falcon Corporation, R&B Falcon Corporation	97–3515	09/26/97
The News Corporation Limited, The Los Angeles Dodgers, Inc., The Los Angeles Dodgers, Inc	97–3522	09/26/97
O. Bruton Smith, Richard Dyer, Dyer & Dyer, Inc	97–3525	09/26/97
Richard Colburn, Daniel R. Boling, Daley Corporation	97–3528	09/26/97
The United Company, The Roof Center, Inc., The Roof Center, Inc	97–3531	09/26/97
Lehman Brothers Capital Partners I, SunSource, Inc., SunSource, Inc	97–3537	09/26/97
Heating Oil Partners, L.P., Petroleum Heat and Power Co., Inc., Ocennet Fuel Oil Corp	97–3538	09/26/97
Mellon Bank Corporation, Steven Wallace, Trustee/Steven Wallace Living Trust, Pacific Brokerage Services	97–3540	09/26/97
J. Kirk Hvide, Kinsman Lines, Inc., Kinsman Lines, Inc	97–3541	09/26/97
Performance Food Group Company, A.F.I. Food Service Distributors, Inc., A.F.I. Food Service Distributors, Inc	97–3542	09/26/97
Airgas, Inc., Industrial Gas Products and Supply, Inc., Industrial Gas Products and Supply, Inc	97–3546	09/26/97
Robert J. Higgins, Strawberries Inc., a debtor in possession, Strawberries Inc., a debtor in possession	97–3548	09/26/97
Center Street Capital Partners, LP, M.D. Mitchella, Carrier-Bock Company	97–3551	09/26/97
Michael J. Dressell, Quality Dining, Inc., Bruegger's Corporation	97–3556	09/26/97
Ripplewood Partners, L.P., Ripplewood Interim Partners, L.P., Edwards Holding Corp	97–3557	09/26/97
Ripplewood Interim Partners, L.P., Ripplewood Partners, L.P., Heidi's Holding Corp., GCI Holdings Corp	97–3558	09/26/97
Fenway partners Capital Fund, L.P., Aldik Artificial Flower Co., Inc., Aldik Artificial Flower Co., Inc	97–3568	09/26/97
Group Maintenance America Corp., MacDonald-Miller Industries, Inc., MacDonald-Miller Industries, Inc	97–3578	09/26/97
Group Maintenance America Corp., Ronald D. Bryant, Masters, Inc	97–3579	09/26/97
Union Camp Corporation, Greater New York Box Co., Inc., Greater New York Box Co., Inc	97–3594	09/26/97
Cytec Industries Inc., Equilease Holding Corporation, Fiberite Holdings, Inc.; Fiberite, Inc	97–3309	09/29/97
Questor Partners Fund, L.P., Avnet, Inc., Channel Master Division	97–3553	09/29/97
Community Newspaper Holdings, Inc., Thomas G. Cousins, Southern Crescent Newspapers, LP	97–3567	09/29/97
CACI International Inc., Infonet Services Corporation, Government Systems, Inc.	97–3569	09/29/97
Philip E. Kamins, Allied Products Corporation, Coz Plastics division	97–3580	09/29/97
Japan Energy Corporation, Japan Energy Corporation, Encore Computer Corporation	97–3588	09/29/97
Stonington Capital Appreciation 1994 Fund, L.P., Merisel, Inc., Merisel, Inc	97–3593	09/29/97
Catholic Health Initiatives, Southern Health Care of Tennessee, Inc., Southern Health Care of Tennessee, Inc	97–3395	09/30/97
United States Fidelity and Guaranty Company, Titan Holdings, Inc., Titan Holdings, Inc	97–3397	09/30/97
Ingersoll-Rand Company, Westinghouse Electric Company, Thermo King Corporation	97–3443	09/30/97
Robert F.X. Sillerman, Sinclair Broadcast Group, Inc., Sinclair Radio of Nashville, Inc	97–3529	09/30/97
Reliance Steel & Aluminum Company, Walter C. Goldstein, Service Steel Aerospace Corporation	97–3545	09/30/97
Crown Pacific Partners, L.P., David R. and Kay E. Syre, Trillium Corporation	97–3576	09/30/97
Insignia Financial Group, Inc., Realty One, Inc., Realty One, Inc	97–3581	09/30/97
Bayard Drilling Technologies, Inc., Charles E. Davidson, Bonray Drilling Company	97–3604	09/30/97
Charles E. Davidson, Bayard Drilling Technologies, Inc., Bayard Drilling Technologies, Inc	97–3605	09/30/97

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Parcellena P. Fielding, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–28223 Filed 10–23–97; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Proposed Collection; Comment Request Entitled Preparation, Submission, and Negotiation of Subcontracting Plans

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (3090–0252).

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1995 that it is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans. This information collection will ensure that small and small disadvantaged business concerns are afforded the maximum practical opportunity to participate as subcontractors in

construction, repair, and alteration or lease contracts.

DATES: December 23, 1997.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 18th and F Streets, NW, Washington, DC 20405.

Annual Reporting Burden: Respondents: 1350; annual responses: 1; average hours per response: 12; burden hours: 16,200.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 18th and F Streets NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: October 15, 1997.

Edward C. Loeb,

Acting Deputy Association Administrator, Office of Acquisition Policy.

[FR Doc. 97–28236 Filed 10–23–97; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Occupational Exposure to Inorganic Lead: Request for Comments and Information; Republication

This notice is being republished because the µ symbol was missing throughout the original document published in the **Federal Register** on October 7, 1997 (62 FR 52343).

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Request for comments and information relevant to occupational exposure to inorganic lead.

SUMMARY: NIOSH is reviewing its recommendations contained in the document *Criteria for a Recommended Standard....Occupational Exposure to Inorganic Lead, Revised Criteria—1978* [NIOSH 1978]. The evaluation of recent literature indicates that the NIOSH recommended exposure limit (REL) of 100 µg/m^3 as an 8-hour time-weighted average (TWA) in that document does not sufficiently protect workers from the adverse effects of exposure to inorganic lead. NIOSH is requesting comments and information relevant to the evaluation of the potential health risks associated with occupational exposure to inorganic lead, as well as case reports or other data that demonstrate adverse health effects in workers exposed to inorganic lead at or below the OSHA permissible exposure limit (PEL) of 50 µg/m^3 as an 8-hour TWA and any information pertinent to evaluating the technical feasibility of establishing a more protective REL for inorganic lead. NIOSH is also soliciting information on worker blood lead levels (BLLs) including data on methodologies used in measuring BLLs in the workplace and information that can be used for comparing airborne inorganic lead concentrations to observed BLLs.

NIOSH intends to analyze the feasibility of developing preventive measures including an REL that would provide better protection for workers. In the interim, NIOSH plans to adopt the more protective current OSHA PEL as its REL.

DATES: Written comments to this notice should be submitted to Diane Manning, NIOSH Docket Office, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio 45226, on or before December 23, 1997. Comments may also be faxed to Diane Manning at (513) 533–8285 or submitted by email to dmm2@cdc.gov as WordPerfect 6.0/6.1 files.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Dr. Henryka Nagy, NIOSH, CDC, 4676 Columbia Parkway, M/S C–32, Cincinnati, Ohio 45226, telephone (513) 533–8369.

SUPPLEMENTARY INFORMATION: NIOSH has conducted a literature review of the health effects data on inorganic lead exposure and finds evidence that some adverse effects on the adult reproductive, cardiovascular, and hematologic systems, and on the development of children of exposed workers can occur at BLLs as low as 10 µg/dl with no apparent threshold. At BLLs below 40 µg/dl, many of the health effects associated with lead exposure would not necessarily be evident by routine physical examinations, but represent early stages in a continuum of disease development. The risk of developing adverse health effects appears to increase as BLLs rise above 40 µg/dl.

In the NIOSH 1978 criteria document entitled *Occupational Exposure to Inorganic Lead* [NIOSH 1978], NIOSH recommended that exposure to inorganic lead be limited to 100 µg/m^3 as an 8-hour TWA. This exposure limit was expected to maintain BLLs below 60 µg/dl and to prevent clinical health effects to the hematologic system, the central and peripheral nervous systems, the reproductive system, and the kidneys. NIOSH also expressed concern about possible health effects that may occur below 60 µg/dl: ''In adhering to the 60 µg/dl figure, NIOSH has not relinquished its concerns for possible effects that may occur below 60 µg/dl. Adherence to this 60 µg/dl figure should not be interpreted as a firm NIOSH opposition to establishing a lower blood lead standard. In fact, NIOSH endorses a lower blood lead standard as a future goal to provide greater assurance of safety.''

In 1978, the Occupational Safety and Health Administration (OSHA) promulgated an occupational inorganic lead standard for general industry that incorporates a PEL of 50 µg/m^3 which is intended to maintain worker BLLs below 40 µg/dl. OSHA also included provisions for reducing the PEL for work shifts that exceed 8 hours, medical monitoring of workers exposed to airborne inorganic lead concentrations at or above the action level of 30 µg/m^3, and medical removal of workers with BLLs greater than 50 µg/dl. Workers are permitted to return to jobs involving inorganic lead exposure only after their BLLs have declined to 40 µg/dl.

OSHA concluded in 1978 that a PEL of 50 µg/m^3 represented the lowest level for which there was evidence of feasibility in most industries. OSHA also acknowledged that, based on the scientific data, the PEL of 50 µg/m^3 did not provide protection from all adverse health effects of inorganic lead toxicity because the hematologic system, the nervous system, the kidneys, and the fetus can be adversely affected by exposures to inorganic lead resulting in BLLs below 40 µg/dl [43 FR 52952, November 14, 1978]. In May 1993, OSHA published the Interim Final Lead in Construction Standard [58 FR 26590, May 4, 1993]. This standard extended the general industry standard for inorganic lead to include workers in the construction industry. No additional analysis of the health data was performed by OSHA in adopting this standard for the construction industry.

NIOSH seeks to obtain materials, including reports and research findings, to evaluate the health risks of occupational exposure to inorganic lead. Examples of requested information include, but are not limited to, the following:

1. Occupational (environmental) exposure data.

2. Data on the effectiveness of engineering controls, work practices,

training, personal protective equipment and other activities used to limit workers' exposure.

3. Identification of industries or occupations where intermittent or low concentrations of inorganic lead may occur.

4. Descriptions of work practices and engineering controls used to reduce workplace exposure.

5. Case reports or other health data that demonstrate adverse health effects in workers exposed to inorganic lead at or below the OSHA PEL and any information pertinent to evaluating the feasibility of establishing a more protective exposure limit. Case reports and health data should be submitted without personal identifiers.

6. Information regarding methods for BLL determination that could be used routinely in the workplace (e.g., determination of BLLs using portable equipment). NIOSH is evaluating whether the routine biological monitoring of inorganic lead exposed workers (through BLLs) may be a more appropriate measure than airborne concentrations for estimating the potential for developing adverse health effects.

This information will be used by NIOSH to determine the need for developing new recommendations for lowering the occupational exposure to inorganic lead and improving strategies for monitoring inorganic lead exposure.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

References

43 FR 52952, November 14, 1978. Chapter XVII—Occupational Safety and Health Administration, Department of Labor; Part 1910—Occupational safety and health standards: occupational exposure to lead.

58 FR 26590, May 4, 1993. Occupational Safety and Health Administration: lead exposure in construction; interim final rule. (To be codified at 29 CFR 1926.)

NIOSH [1978]. Criteria for a recommended standard * * * occupational exposure to inorganic lead, revised criteria. Rockville, MD: U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, DHEW (NIOSH) Publication No. 78–158.

Dated: October 20, 1997.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–28219 Filed 10–23–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0424]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on a proposed revision of the form for the collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a revised, harmonized transmittal form, ''Transmittal of Advertisements and Promotional Labeling for Drugs and Biologics for Human Use'' (Form FDA 2253). This revised and harmonized form will be used for the submission of advertisements and promotional labeling for prescription drugs, antibiotics, and biological products that are regulated by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER).

DATES: Submit written comments on the collection of information by December 23, 1997.

ADDRESSES:

CDER Information: Submit written requests for single copies of the revised, harmonized transmittal form, Form FDA 2253, to the Drug Information Branch (HFD–210), Division of Communications Management, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–1012. Send one self-addressed adhesive label to assist that office in processing your requests. The form may also be obtained by calling the CDER Fax–on–Demand System at 1–800–342–2722 or 1–301–827–0577.

CBER Information: Submit written requests for single copies of the revised, harmonized transmittal form, Form FDA 2253, to the Office of Communications, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The form may also be obtained by calling the CBER Voice Information System at 1–800–835–4709.

Submit written comments on the revised, harmonized transmittal form, Form FDA 2253, and its proposed use in collection of information, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the revised, harmonized transmittal form, Form FDA 2253, and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Transmittal of Advertisements and Promotional Labeling for Drugs and Biologics for Human Use (Form FDA 2253)

Under § 314.81(b)(3)(i) (21 CFR 314.81(b)(3)(i)), sponsors of approved applications for marketed prescription drugs and antibiotic drugs for human use are required to submit specimens of promotional labeling and advertisements at the time of initial dissemination of the labeling and at the time of initial publication of the advertisement. Each submission is required to be accompanied by a completed transmittal Form FDA 2253 (Transmittal of Advertisements and Promotional Labeling for Drugs for Human Use). Statutory authority for the collection of this information is provided by sections 505(a), (b), (j), and (k), 507(g), and 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a), (b), (j), and (k), 357(g), and 371(a)).

Similarly, under § 601.12(f)(4) (21 CFR 601.12(f)(4)) (62 FR 39890, July 24, 1997; effective October 7, 1997), manufacturers of licensed biological products are required to submit specimens of advertising and promotional labeling to FDA in accordance with § 314.81(b)(3)(i). Statutory authority for the collection of this information is provided by section 351 of the Public Health Service Act (42 U.S.C. 262), which gives FDA the responsibility to prescribe standards designed to ensure the safety, purity, potency, and effectiveness of biological products. In furtherance of this responsibility, FDA regulates advertising and labeling for biological products. Currently, specimens of advertising and promotional labeling are submitted to FDA with Form FDA 2567, a two-part transmittal form that is also used to transmit other forms of labeling (e.g., circulars, package labels, and container labels) for FDA review when a firm is requesting premarket approval of a product or proposing changes to product carton or container labeling.

FDA is revising Form FDA 2253 to enable it to be used to transmit specimens of promotional labeling and advertisements for biological products as well as for prescription drugs and antibiotics. The proposed revised form has the following major changes:

1. The revised, harmonized form will be used by sponsors of approved applications for marketed prescription drugs and antibiotic drugs regulated by CDER who must submit specimens of advertisements and promotional labeling to the agency, and may be used by manufacturers of licensed biological products regulated by CBER who submit draft and/or final copies of promotional labeling and advertisements to the agency. Revising and harmonizing Form FDA 2253 will eliminate the need for sponsors to use two different forms to transmit similar materials for submission to the agency; however, manufacturers of biological products may continue to use Form FDA 2567 to transmit advertisements and promotional labeling if they wish. The other uses of Form FDA 2567 will remain unchanged.

2. The revised, harmonized form updates the information about the types of promotional materials and the codes that are used to clarify the type of advertisement or labeling submitted; clarifies the intended audience for the advertisements or promotional labeling (e.g., consumers, professionals, news services); and helps ensure that the submission is complete.

3. Currently, when more than one prescription drug product is promoted in the promotional labeling or in an advertisement, sponsors submit specimens of the promotional labeling or advertisement to the approved application for each product promoted in the promotional labeling or advertisement. The revised form provides for sponsors to submit specimens of multi-product promotional labeling and advertisements to only two files; to the approved product application most frequently promoted, and to a company name file. This multi-product submission should cross-reference the other approved applications. The agency anticipates that the proposed revised form and revised submission procedures will save sponsors time and money by eliminating the need for making multiple submissions and for maintaining dual inventories of both forms and multiple processing capabilities.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

Form	No. of Respondents	Total Annual Responses	Hours per Response	Total Estimated Hours
FDA 2253	612	12,379	2	24,758

There are no capital costs or operating and maintenance costs associated with this collection of information.

In FY 95, CDER received 10,879 submissions of advertising and promotional labeling under Form FDA 2253 from an estimated 512 manufacturers. In the same period of time, CBER received 1,034 submissions from 57 manufacturers that could have made use of revised Form FDA 2253. Prior to October 7, 1997, the submission of advertising and promotional labeling to CBER using Form FDA 2567 was a voluntary procedure. Under § 601.12(f)(4) (62 FR 39890), manufacturers of licensed biological products are required to submit specimens of advertising and promotional labeling to FDA in accordance with § 314.81(b)(3)(i). FDA estimates that under the new regulation, CBER will receive over 1,500 submissions from approximately 100 manufacturers that may use the revised Form FDA 2253. Thus, FDA estimates that there may be 12,379 submissions of advertising and promotional labeling to FDA under revised Form FDA 2253. Based on contacts with industry representatives, FDA estimates that 2 hours would be required for an industry regulatory affairs specialist to fill out the proposed form, collate the documentation, and send the submission to CDER or CBER. Manufacturers of biological products may use the revised Form FDA 2253 or may continue to use Form FDA 2567 for the submission of advertisements and promotional labeling to CBER.

Dated: October 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–28225 Filed 10–23–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Grassroots Regulatory Partnership Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) (Office of Regulatory Affairs, Nashville District Office and New Orleans District Office), in conjunction with the Health Industry Manufacturers Association (HIMA) is announcing the following workshop: Grassroots Regulatory Partnership Workshop. The topic to be discussed is FDA regulatory requirements for the medical device industry. The purpose of the workshop is to promote open dialogue between FDA and the medical device industry on quality system regulations and medical device reporting requirements.

Date and Time: The workshop will be held on Tuesday, December 16, 1997, from 8:30 a.m. to 5 p.m, and on Wednesday, December 17, 1997, from 8 a.m. to 3 p.m.

Location: The meeting will be held at the Holiday Inn Select–Vanderbilt, 2613 West End Ave., Nashville, TN 37203, 1–800–633–4427.

Contact: Rebecca K. Keenan, Food and Drug Administration (HFR–SE–350), Nashville District Office, 297 Plus Park Blvd., Nashville, TN 37217, 615–781–5380, ext. 145, FAX 615–781–5391.

Registration: Fax registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by November 20, 1997. There is no registration fee for this workshop. Space is limited, therefore interested parties are encouraged to register early.

If you need special accommodations due to a disability, please contact Rebecca K. Keenan at least 7 days in advance.

SUPPLEMENTARY INFORMATION: In 1995 President Clinton directed the heads of all Federal regulatory agencies to carry out a four step regulatory reinvention initiative. The basic idea of the President's initiative was to replace adversarial approaches with a partnership approach based on clear goals and cooperation. The President specifically directed top management from regulatory agencies to hold ''grassroots'' workshops with regulated industry, and this workshop is designed to meet that requirement.

Priority will be given to those businesses located in the Nashville and New Orleans Districts, which include the States of: Alabama, Louisiana, Mississippi, and Tennessee. Companies located outside of these States may register to attend the workshop and will be accepted if space is available.

Dated: October 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–28170 Filed 10–23–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1513]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare/Medicaid Disclosure of Ownership and Control Interest Statement and Supporting Regulations in 42 CFR 420.200–.206, 455.100–.106; *Form No.:* HCFA–1513 (OMB# 0938–0086); *Use:* The Medicare/Medicaid Disclosure of Ownership and Control Interest Statement must be used by State agencies and HCFA regional offices to determine whether providers meet the eligibility requirements for Titles 18 and 19 (Medicare and Medicaid) and for grants under Titles V and XX. Review of ownership and control is particularly necessary to prohibit ownership and control for individuals excluded under Federal fraud statutes; *Frequency:* Other (every 1 to 3 years); *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 92,000; *Total Annual Responses:* 92,000; *Total Annual Hours:* 46,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 17, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–28208 Filed 10–23–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Criteria for Implementing Permissive Exclusion Authority Under Section 1128(b)(7) of the Social Security Act

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth a proposed policy statement, in the form of non-binding guidelines, to be used by the OIG in assessing whether to impose a permissive exclusion in accordance with section 1128(b)(7) of the Social Security Act. These guidelines identify specific factors with regard to whether an individual's or entity's continued participation in the Medicare and other Federal and State health care programs will pose a risk to the programs or program beneficiaries, and explain how these factors would be used by the OIG to assess a permissive exclusion decision.

COMMENT PERIOD: Parties interested in commenting on these guidelines may submit their written comments to the

address provided below by no later than 5 p.m. on November 24, 1997. Comments will be available for public inspection beginning on [14 days after date of publication in the **Federal Register**] in Room 5518 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m., (202) 619–0089.

ADDRESSES: Please mail or deliver any written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–821–N, Room 5246, Cohen Building 330 Independence Avenue, S.W., Washington, D.C. 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–821–N.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Counsel to the Inspector General (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

Purpose and Rationale

Internal guidelines have been developed by the OIG to provide specific criteria on which it will base its decision as to whether to seek the imposition of a permissive exclusion against a health care provider in accordance with section 1128(b)(7) of the Social Security Act (the Act).

Section 1128(b)(7) of the Act authorizes the Secretary, and by delegation the Inspector General, to exclude a provider from Medicare and the other Federal and State health care programs for engaging in conduct described in sections 1128A and 1128B of the Act. These provisions establish administrative and criminal sanctions, respectively, against individuals and entities that (1) submit, or cause to be submitted, false or fraudulent claims to Medicare and the Federal and State health care programs; or (2) offer, pay, solicit or receive remuneration in return for the referral of business reimbursed by Medicare or Medicaid, a violation of the Medicare and Medicaid anti-kickback statute. Exclusions in accordance with section 1128(b)(7) of the Act, based on such conduct, are permissive in nature. Respondents in these administrative exclusion proceedings have the right to a hearing before a Department of Health and Human Services administrative law judge prior to the imposition of an exclusion.

We believe these criteria will serve a number of useful purposes by (1) allowing for the more effective development of OIG investigations and investigative plans; (2) establishing an objective basis for the OIG's permissive exclusion decisions, and evaluating a provider's trustworthiness to continue to conduct business with the Medicare and other Federal and State health care programs; and (3) positively influencing providers' future behavior through the development of corporate integrity programs and other conduct contemplated by the exclusion criteria.

Structure of Permissive Exclusion Criteria

The exclusion criteria are organized into four general categories of factors bearing on the trustworthiness of a provider that has allegedly engaged in health care fraud and abuse—

- The first category addresses the circumstances and seriousness of the underlying misconduct. The factors to be considered are historical in nature and rely on past misconduct as an indicator of the defendant's propensity for future abuse of the programs.
- The second category considers the defendant's response to the allegations or determination of wrongdoing. These factors indicate whether the defendant is willing to affirmatively modify his or her conduct, make injured parties whole, and otherwise acknowledge and remedy past wrongdoing.
- The third category identifies various other factors relevant to assessing the likelihood of a future violation of the law. The implementation of an adequate corporate integrity program is a key consideration.
- The fourth category relates to the defendant's financial ability to provide quality health care services.

These exclusion criteria will merely serve as internal agency guidelines that may be subject to further modification at any time. They are not intended to limit the OIG's discretionary authority to exclude individuals or entities that pose a risk to Medicare and other Federal and State health care programs or program beneficiaries, nor do they create any rights or privileges in favor of any party. Further, these criteria do not supplant or modify in any way the OIG regulations, codified at 42 CFR part 1001, governing program exclusions.

The factors listed in the guidelines are derived from two principle sources—the regulations governing exclusions under sections 1128(b)(7) and 1128A of the Act (42 CFR parts 1001 and 1003), and the decisions of the Departmental Appeals Board (DAB) in exclusion matters. The factors derived from DAB decisions reflect the analysis of the remedial purpose of program exclusion.

II. Proposed Criteria To Implement the OIG'S Permissive Exclusion Authority Under Section 1128(b)(7)

The following criteria may be used to determine whether or not it is appropriate to impose a permissive exclusion in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a-7(b)(7)). These criteria are informal and non-binding, and may be used as a guide to assist the OIG in determining in which cases an exclusion should be imposed. The presence or absence of any or all of the factors that appear below does not constitute the sole grounds for determining whether exclusion is appropriate. There is a favorable presumption that a period of exclusion should be imposed against an individual or entity that has defrauded Medicare or other Federal and State health care programs.

A. The Circumstances of the Misconduct and Seriousness of the Offense

1. Was a criminal sanction imposed? The amount of any criminal fine or penalty imposed, and the length of any period of incarceration that is ordered, is evidence of the seriousness of the statutory misconduct, and may have an impact on the exclusion determination.

2. Was there evidence of (i) physical or mental harm to patients or (ii) financial harm to the Medicare or any of the other Federal and State health care programs? If financial loss to the programs occurred, what was the extent of such loss? Exclusion may be appropriate not only in cases where actual harm is present, but potential harm as well.

3. Is the misconduct an isolated incident or a continuous pattern of wrongdoing over a significant period of time? Is there evidence that the defendant knew his or her conduct was prohibited? Has the defendant had the same or previous problems with the OIG, the Health Care Financing Administration (HCFA), the carrier or intermediary, or the State? What was the nature of these problems?

4. Was the defendant's involvement in the misconduct active or passive? Was the defendant aware of the misconduct when it was occurring? Did the defendant play a role in the misconduct?

B. Defendant's Response to Allegations/ Determination of Unlawful Conduct

1. What was the defendant's response to any actual or potential legal violations or harm to the programs or

their beneficiaries? Was the response appropriate and credible?

2. Did the defendant cooperate with investigators and prosecutors, and timely respond to lawful requests for documents and the provision of evidence regarding the involvement of other individuals in a particular scheme, thereby demonstrating trustworthiness?

3. Has the defendant made or agreed to make full restitution to the Federal and/or state health care programs, thereby demonstrating present responsibility and willingness to conform to applicable laws, regulations and program requirements?

4. Has the defendant paid or agreed to pay all criminal, civil, and administrative fines, penalties, and assessments resulting from the improper activity?

5. Has the defendant taken steps to undo the questionable conduct or mitigate the ill effects of the misconduct, e.g., appropriate disciplinary action against the individuals responsible for the activity that constitutes cause for exclusion, or other corrective action?

6. Has the defendant acknowledged its wrongdoing and change its behavior, thereby demonstrating future trustworthiness?

C. Likelihood that Offense or Some Similar Abuse Will Occur Again

1. Was the misconduct the result of a unique circumstance not likely to recur? Is there minimal risk of repeat conduct?

2. Have prior and subsequent conduct been exemplary or improper?

3. What prior measures had been taken to ensure compliance with the law? Can the defendant demonstrate that it had an effective compliance plan in place when the activities that constitute cause for exclusion occurred?

A. Did the defendant make any efforts to contact the OIG, HCFA, or its contractors to determine whether its conduct complied with the law and applicable program requirements? Were any contacts documented?

B. Did the defendant bring the activity in question to the attention of the appropriate Government officials prior to any Government action, e.g., was there any voluntary disclosure regarding the alleged wrongful conduct?

C. Did the defendant have effective standards of conduct and internal control systems in place at the time of the wrongful activity, e.g., was there a corporate compliance program in place? If there was an existing corporate compliance plan:

(i) How long had the compliance plan been in effect?

(ii) What problems had been identified as a result of the compliance plan?

(iii) Were any overpayments or systemic changes made if problems were identified?

(iv) Were appropriate staff sufficiently trained in applicable policies and procedures pertaining to Medicare and other Federal and State health care programs?

(v) Was there a corporate compliance officer and an effective corporate compliance committee in place (if appropriate to the size of the company)?

(vi) Were regular audits undertaken at the time of the unlawful activity?

4. What measures have been taken, or will be taken, to ensure compliance with the law? Has the defendant agreed to implement adequate compliance measures, including institution of a corporate integrity plan?

D. Financial Responsibility

If permitted to continue program participation, is the defendant able to operate without a real threat of bankruptcy and without a real threat to its ability to provide quality health care items or services?

Dated: October 14, 1997.

June Gibbs Brown,

Inspector General.

[FR Doc. 97–28202 Filed 10–23–97; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel (SEP) meeting.

Name of SEP: Community Clinical Oncology Program.

Date: November 17–18, 1997.

Time: 8:30 a.m. to Adjournment.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Ray Bramhall, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 636B, 6130 Executive Boulevard, MSC 74, Bethesda, MD 20892–7407; Telephone: 301/496–3428.

Purpose/Agenda: To review, discuss and evaluate 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. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(**Catalog of Federal Domestic Assistance Program Numbers:** 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28183 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.

Committee Name: Subcommittee G—Education.

Date: November 18–19, 1997.

Time: 8 a.m. to Adjournment.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Susan B. Spring, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., EPN, Room 643C, Bethesda, Md 20892–7403; Telephone: 301–402–0996.

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. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(**Catalog of Federal Domestic Assistance Program Numbers:** 93,393, Cancer Cause and Prevention Research, 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated October 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28185 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Subcommittee F—Manpower and Training.

Date: November 12–14, 1997.

Time: November 12—6:30 p.m. to Recess; November 13 and 14—8 a.m. to Adjournment.

Place: The Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Mary Bell, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., EPN, Room 611A, Bethesda, MD 20892–7403, Telephone: 301–496–7978.

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. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(**Catalog of Federal Domestic Assistance Program Numbers:** 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28186 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: AIDS—Oncology Clinical Sciences Development Program.

Date: November 6, 1997.

Time: 8:30 a.m. to 5 p.m.

Place: Executive Plaza North, Room 640, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Lalita Palekar, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Boulevard, EPN, Room 622B, Bethesda, MD 20892–7405; Telephone: 301/496–7575.

Purpose/Agenda: To review and evaluate responses to a Request for Application.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

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. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(**Catalog of Federal Domestic Assistance Program Numbers:** 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 16, 1997.

LaVerne Y. Springfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28187 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.

Name of Subcommittee: Subcommittee H–Clinical Groups.

Date: December 9–10, 1997.

Time: 8 a.m. to Adjournment.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: John L. Meyer, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., North, Room 611C, Bethesda, MD 20892–7403; Telephone: 301/496–7721.

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. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(**Catalog of Federal Domestic Assistance Program Numbers:** 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28188 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of 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 meetings of the Board of Scientific Counselors, National Cancer Institute.

The meetings will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Linda Quick-Cameron, Committee Management Officer, at (301) 496–5708 in advance of the meeting.

A portion of the meetings will be closed to the public in accordance with the provision set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual programs and projects. These discussions will include consideration of personnel

qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 609, 6130 Executive Boulevard, MSC 7410, Rockville, Maryland 20892–7410, (301) 496–5708 will provide summaries of the meetings and rosters of the committee members, upon request.

Committee Name: Board of Scientific Counselors, National Cancer Institute Subcommittee B—Basic Sciences.

Date: November 3–4, 1997.

Place: November 3, Double Tree Hotel, Parklawn Room, 1750 Rockville Pike, Rockville, MD 20852; November 4, National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Open: November 3—7:30 p.m. to 8:00 p.m.

Agenda: Presentation regarding the Intramural Review Office.

Closed: November 3—8:00 p.m. to 9:30 p.m.; November 4—8:30 a.m. to Adjournment.

Agenda: To discuss administrative confidential matters and site visit reports pertaining to laboratories in the Division of Basic Sciences.

Contact Person: Florence E. Farber, Ph. D., Executive Secretary, Executive Plaza North, Rm. 601, 6130 Executive Blvd., MSC 7410, Bethesda, MD 20892–7410, Telephone: 301–496–2378.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural review cycle.

Committee Name: Board of Scientific Counselors, National Cancer Institute Subcommittee A—Clinical Sciences and Epidemiology.

Date: November 18, 1997.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Open: 4:00 p.m. to 4:30 p.m.

Agenda: Presentation regarding the Intramural Review Office.

Closed: 8:30 a.m. to 4:00 p.m.; 4:30 to Adjournment.

Agenda: To discuss administrative confidential matters pertaining to the Division of Clinical Sciences and the Division of Cancer Epidemiology and Genetics.

Contact Person: Judy Mietz, Ph.D., Executive Secretary, Executive Plaza North, Rm. 601, 6130 Executive Blvd., MSC 7410 Bethesda, MD 20892–7410, Telephone: 301–496–2378.

(**Catalog of Federal Domestic Assistance Program Numbers:** 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28194 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Initial Review Group (IRG) meeting:

Name of IRG: Heart, Lung, and Blood Program Project Review Committee.

Date: December 4, 1997.

Time: 8 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Dr. Jeffrey H. Hurst, Scientific Review Administrator, NHLBI/Review Branch, 6701 Rockledge Drive, Rm. 7208, Bethesda, Maryland 20892, (301) 435–0303.

Purpose/Agenda: To review and evaluate program project 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. 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 Programs Nos.** 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: October 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28192 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1–GRB–4 (J1).

Date: November 25, 1997.

Time: 3 PM.

Place: Room 6as–37A, Natcher Building, NIH (Telephone Conference Call).

Contact Person: William Elzinga, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–37A, National Institutes of Health, Bethesda, Maryland 20892–6600; Phone: (301) 594–8895.

Purpose/Agenda: To review and evaluate grant applications.

This 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. 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 No.** 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrion; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: October 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28182 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke, Division of Extramural Activities; 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:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: December 1, 1997.

Time: 8 a.m.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Dr. Paul Sheehy, Scientific Review Administrator, Scientific Review Branch, NINDS, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.
Purpose/Agenda: To review and evaluate two grant applications.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.
Date: December 8, 1997.
Time: 9 a.m.
Place: Georgetown Inn, 1310 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Dr. Paul Sheehy, Scientific Review Administrator, Scientific Review Branch, NINDS, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.
Purpose/Agenda: To review and evaluate one grant application.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(**Catalog of Federal Domestic Assistance Program No.** 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: October 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28189 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Centers for AIDS Research (CFAR).
Date: November 12–14, 1997.
Time: 8:30 a.m. to Adjournment.
Place: Bethesda Ramada Hotel and Conference Center, Ambassador II, 8400 Wisconsin Avenue, Bethesda, MD 20814, (301) 654–1000.
Contact Person: Dr. Stanley Oaks, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C06, Bethesda, MD 20892, (301) 496–7042.
Purpose/Agenda: To evaluate grant proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(**Catalog of Federal Domestic Assistance Programs** Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 92.856, Microbiology and Infections Diseases Research, National Institutes of Health)

Dated: October 15, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28193 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB–5 (C2 B).
Date: October 28, 1997.
Time: 2 p.m.
Place: Room 6as–37E, Natcher Building, NIH (Telephone Conference Call).
Contact Person: Dr. Francisco O. Calvo, Ph.D., Scientific Review Administrator, Review Branch, NIDDK, Natcher Building, Room 6as–37E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8897.
Purpose/Agenda: To review and evaluate grant applications.

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 review and funding cycle.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(**Catalog of Federal Domestic Assistance Program No.** 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: October 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28195 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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 Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Microbiological and Immunological Sciences.
Date: November 5, 1997.
Time: 7:30 p.m.
Place: Hyatt Regency, Bethesda, Maryland.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, Maryland 20892, (301) 435–2116.

Name of SEP: Microbiological and Immunological Sciences.
Date: November 6–7, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Bethesda, Maryland.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Microbiological and Immunological Sciences.
Date: November 10, 1997.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Microbiological and Immunological Sciences.
Date: November 13, 1997.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Multidisciplinary Sciences.
Date: November 20, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Dr. Nadarajen A. Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

Name of SEP: Microbiological and Immunological Sciences.
Date: November 21, 1997.
Time: 9 a.m.
Place: American Inn, Bethesda, Maryland.
Contact Person: Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, Maryland 20892, (301) 435–1216.

Name of SEP: Multidisciplinary Sciences.
Date: November 23–25, 1997.
Time: 7 p.m.
Place: Hyatt Newporter, Newport Beach, CA.
Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

Name of SEP: Clinical Sciences.
Date: February 9–11, 1998.
Time: 8 a.m.
Place: Ana Hotel, Washington, DC.
Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

Name of SEP: Clinical Sciences.
Date: February 23–25, 1998.
Time: 8 a.m.
Place: Ana Hotel, Washington, DC.
Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Clinical Sciences.
Date: November 7, 1997.
Time: 9 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: Behavioral and Neurosciences.
Date: November 21, 1997.
Time: 8:30 a.m.
Place: Marriott Hotel, Bethesda, Maryland.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Chemistry and Related Sciences.
Date: November 21, 1997.
Time: 12:30 p.m.
Place: NIH, Rockledge 2, Room 4172, Telephone Conference.
Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, Maryland 20892, (301) 435–1727.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(**Catalog of Federal Domestic Assistance Program Nos.** 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: October 16, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–28184 Filed 10–23–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4299–N–01]

Announcement of Funding Award—Fiscal Year 1997, Lead-Based Paint Hazard Control, Tides Foundation

AGENCY: Office of the Secretary—Office of Lead Hazard Control.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102 (a) (4) (C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the Tides Foundation. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Dolline Hatchett, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–1785, ext. 114. Hearing-or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

The Lead-Based Paint Hazard Control grant for the Tides Foundation was issued pursuant to Pub. L. 102–550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992.

This notice announces the award of $334,950 to the Tides Foundation which will be used to provide financial support and technical assistance to support education and outreach efforts by parent groups and other community-based organizations to protect children from being lead poisoned.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows: Tides Foundation, P. O. Box 29907, San Francisco, CA 94129–0907. Amount of Grant: $334,950.

Dated: October 17, 1997.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 97–28227 Filed 10–23–97; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–26]

Federal Property Suitable as Facilities To Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 16, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–27930 Filed 10–23–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Application for Approval of Tungsten-Polymer Shot as Nontoxic for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that Federal Cartridge Company (Federal) of Anoka, Minnesota, has applied for approval of tungsten-polymer shot as nontoxic for waterfowl hunting in the United States.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, or Carol Anderson, Wildlife Biologist, Office of Migratory Bird Management (MBMO), (703) 358–1714.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, the Service has sought to identify shot that, when spent, does not pose a significant toxic hazard to migratory birds and other wildlife. Currently, only bismuth-tin and steel shot are approved by the Service as nontoxic. Tungsten-iron shot has received temporary conditional approval for the 1997–98 hunting season. The Service believes approval for other suitable candidate shot materials as nontoxic is feasible.

Federal submits their application for approval of tungsten-polymer shot as nontoxic pursuant to 50 CFR 20.134, Migratory Bird Hunting: Nontoxic Shot. The Service believes the candidate material shows promise and will consider the application.

Federal's candidate shot is made by physically mixing tungsten and polymer (Nylon 6), then melting the nylon. Cooling causes the nylon to cross-link and bind the mixture into a permanent shape. Shot made from this material has a density of approximately 11.2 gm/cc or approximately 100 percent the density of lead. The shot will contain nominally 95.5 percent by weight of tungsten and 4.5 percent by weight of polymer. An electronic device designed to distinguish between shotshells containing different shot materials will register tungsten-polymer shells as a nontoxic shotshell similar to bismuth shells.

Federal's application includes a description of the new shot, a toxicological report on the tungsten-polymer shot, and a 30-day test to assess the toxicity of this shot in game-farm mallards (Tier 1). The toxicological report incorporates toxicity information - a synopsis of acute and chronic toxicity data for mammals and birds, acute effects, potential for environmental concern, toxicity to aquatic and terrestrial invertebrates, amphibians, and reptiles; and information on environmental fate and transport - shot and/or shot coating alteration, environmental half-life, and environmental concentration. The toxicity study revealed no adverse effects when mallards were dosed with 8 BB size tungsten-polymer shot and monitored over a 30-day period.

The Service has requested the applicant submit the Tier 2 test plan for review. Once the Service approves the plan the applicant will conduct testing and submit an analysis of the results. After reviewing the results, the Service will either approve the shot as nontoxic or request further testing. The applicant plans to concurrently test this candidate shot with the temporarily approved tungsten-iron shot.

References

Barr Engineering Company. 1997. Toxicology Report on New Shot. 24 pp.

Bursien, S.J., M.E. Kelly, D.C. Powell, and R.J. Aulerich. 1996. Thirty-Day Dosing Test to Assess the Toxicity of Tungsten-Polymer Shot in Game-Farm Mallards. 1996. Report to Federal Cartridge Co. 78 pp.

Authorship

The primary author of this notice of application is Carol Anderson, Office of Migratory Bird Management.

Dated: October 16, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–28199 Filed 10–23–97; 8:45 am]

Billing Code 4310–55–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–08–1320–01; MTM 83859]

Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Offering by Sealed Bid MTM 83859—Spring Creek Coal Company.

SUMMARY: Notice is hereby given that the coal resources in the lands described below in Big Horn County, Montana, will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by Spring Creek Coal Company, in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437; 30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 11:00 a.m., November 13, 1997, in the Conference Room, Side A, on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59101. Sealed bids clearly marked ''Sealed Bid for MTM 83859 Coal Sale—Not to be opened before 11:00 a.m., Thursday, November 13, 1997'', must be submitted on or before 10:00 a.m., November 13, 1997, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107–6800.

SUPPLEMENTARY INFORMATION: An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement and hearings have been completed in accordance with 43 CFR 3425. The results of these activities were a finding of no significant environmental impact.

The coal resource to be offered consists of all recoverable reserves in the following-described lands:

T. 8 S., R. 39 E., P.M.M.,
Sec. 22: E½SW¼SW¼;
Sec. 25: SW¼SW¼;
Sec. 26: S½NE¼NE¼SW¼, NW¼NE¼SW¼, N½SW¼NE¼SW¼, SE¼NE¼SW¼, N½N½NW¼SW¼, S½NE¼NW¼SW¼, SE¼NW¼NW¼SW¼, NE¼SE¼NW¼SW¼, S½NW¼SE¼, N½S½SW¼SE¼, SE¼NE¼SW¼SE¼, N½SE¼SE¼, NE¼SW¼SE¼SE¼, N½SE¼SE¼SE¼;
Sec. 27: N½SW¼NE¼, N½S½SW¼NE¼, SE¼SE¼SW¼NE¼, S½NW¼SE¼NE¼, S½SE¼NE¼, E½NW¼NW¼, N½NE¼SE¼NW¼, SE¼NE¼SE¼NW¼, NE¼NW¼SE¼NW¼, NE¼NE¼NE¼SE¼.
T. 8 S., R. 40 E., P.M.M.,
Sec. 30: S½NW¼NE¼SW¼, S½NE¼SW¼, SW¼NW¼SE¼, W½SW¼SE¼, W½SE¼SW¼SE¼.

Containing 320.00 acres, Big Horn County, Montana.

The tract in this lease offering contains split estate lands. The surface is not held by a qualified surface owner as defined in the regulations, 43 CFR 3400.0–5.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be 3 hand-

delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after 10:00 a.m., Thursday, November 13, 1997, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

If identical high bids are received, the tieing high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof; and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile MTM 83859 is also available for public inspection at the Montana State Office.

FOR FURTHER INFORMATION CONTACT: Bettie Schaff, Land Law Examiner or Edward Hughes, Coal Coordinator at (406) 255–2832 or 255–2830, respectively.

Dated: October 14, 1997.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 97–28209 Filed 10–23–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–08–1220–00: GP8–0019]

Call for Nominations for Oregon State Agency Representative on the Southeast Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public nominations for an employee of an Oregon State agency which deals with natural resources for the Southeast Oregon Resource Advisory Council, established and authorized in 1995 by the Secretary of the Interior to provide advice and recommendations to the BLM and Forest Service on management of public lands. Public nominations will be received through November 28, 1997.

The Council, which was established in August, 1995, is made up of 15 members. The State Agency employee has resigned from the Council, and we are seeking nominees to replace this position for the balance of the term through August of 1999.

The Council, which covers southeastern Oregon, has identified a broad spectrum of resource-related issues that they will work on with the BLM and the Forest Service. In addition, the Council will continue to advise the BLM and Forest Service regarding standards for rangeland health and guidelines for grazing management, the Southeastern Oregon Resource Management Plan, and the Interior Columbia Basin Ecosystem Management Project.

This council is authorized under the Federal Land Policy and Management Act (FLPMA), which directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council membership must be balanced and representative of the various interests concerned with the management of public lands.

These include three categories: Category One: holders of federal grazing permits, representatives of energy and mining development, timber industry, transportation or rights-of-way, off-road vehicle use and developed recreation.

Category Two: Representatives of environmental and resource conservation organizations, dispersed recreation, archeological and historic interests, and wild horse and burro groups.

Category Three: Representatives of State and local government, Native American tribes, academicians involved in natural sciences, employees of State agencies responsible for the management of natural resources, land, or water, and the public at large.

Individuals may nominate themselves or others. Nominees must be residents of the State of Oregon. The Southeast Oregon Council covers southeastern Oregon. A nomination form may be obtained from the Vale District, Bureau of Land Management, 100 Oregon Street, Vale, Oregon 97918 or by calling (541) 473–3144. Nominations must be received by November 28, 1997.

Nominees will be evaluated based on their experience in working for the state of Oregon in a natural resource capacity and their knowledge of the geographic area covered by the Council. Nominees must also have demonstrated a commitment to collaborative resource decision making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications. The BLM Oregon/Washington State Director, the Forest Service Regional Forester, and the Oregon Governor's Office will forward the nominations to the Secretary of the Interior, who will make the appointment to the Council. This nomination period will also be announced through press releases issued by the BLM Oregon/Washington State Office. Nominations for Resource Advisory Councils should be sent to: Ed Singleton, Bureau of Land Management, Vale District Manager, 100 Oregon Street, Vale, OR, 97918.

DATES: All nominations must be received by the BLM Vale District on or before November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918, (Telephone 541–473–6218).

Edwin J. Singleton,

District Manager.

[FR Doc. 97–28201 Filed 10–23–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–08–1430–01; AZA 30069, AZA 30123, AZA 22763]

Arizona: Notice of Realty Action: Noncompetitive Sales of Public Lands in Yuma County, Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** of July 8, 1997, concerning lands found suitable for noncompetitive sale to three separate parties. The document did not contain a Bureau of Land Management case file number and the holder's name for one of the proposed sale parties.

FOR FURTHER INFORMATION CONTACT: Realty Specialist Lucas Lucero at (520) 317–3215.

Correction

In the **Federal Register** issue of July 8, 1997, in FR Doc. 97–17681, on page 36571, in the second column, after the first paragraph, insert the following: AZA 22763—Timothy Conovaloff.

Dated: October 14, 1997.

Gail Acheson,

Field Manager.

[FR Doc. 97–28200 Filed 10–23–97; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Emergency extension of existing collection; Petition to remove the conditions on residence.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 to provide for the required final 30 days for public review/comment and ample time for OMB's review and final action. To ensure that the review process is conducted in accordance with the procedures specified in 5 CFR 1320.10, the INS is also requesting an extension of the current OMB approval period until January 31, 1998.

This information collection was previously published in the **Federal Register** on July 17, 1997 at 62 FR 38323, allowing for an emergency extension with a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. Comments are encouraged and will be accepted for an additional ''thirty days'' until November 24, 1997.

Written comments and/or suggestions regarding the item(s) contained in this notice especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–6974.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 5307, Washington, DC 20536.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Petition to Remove the Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–751. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Aliens granted conditional residence through marriage to a United States citizen or permanent resident use this information collection to petition for the removal of those conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 128,889 respondents at 80 minutes or (1.33) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 171,422 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: October 21, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–28293 Filed 10–23–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval; Petition for Amerasians, widow or special immigrant.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 to provide for the required final 30 days for public review/comment and ample time for OMB's review and final action. To ensure that the review process is conducted in accordance with the procedures specified in 5 CFR 1320.10, the INS is also requesting an extension of the current OMB approval period until January 31, 1998.

This proposed information collection was previously published in the **Federal Register** on July 30, 1997 at 62 FR 40841, allowing for an emergency extension with a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. Comments are encouraged and will be accepted for an additional ''thirty days'' until November 24, 1997.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice

Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–6974.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments may be submitted via facsimile to 202–305–0143.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for Amerasians, Widow or Special Immigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–360. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to determine eligibility or to classify an alien as an Amerasian, widow or widower, battered or abused spouse or child and special immigrant, including religious worker, juvenile court dependent and armed forces member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,397 respondents at two (2) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,794 annual burden hours.

If additional information is required during the first 60 days of this same regular review period 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: October 21, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–28294 Filed 10–23–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Emergency extension of existing collection; Application for replacement naturalization/citizenship document.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 to provide for the required final 30 days for public review/comment and ample time for OMB's review and final action. To ensure that the review process is conducted in accordance with the procedures specified in 5 CFR 1320.10, the INS is also requesting an extension of the current OMB approval period until January 31, 1998.

This proposed information collection was previously published in the **Federal Register** on July 17, 1997 at 62 FR 38325, allowing for an emergency extension with a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. Comments are encouraged and will be accepted for an additional ''thirty days'' until November 24, 1997.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–6974.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 5307, Washington, DC 20536.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–565. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to apply

for a replacement of a Declaration of Intention, Naturalization Certificate, Certificate of Citizenship or Repatriation Certificate, or to apply for a special certificate of naturalization recognized by a foreign country.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 18,000 respondents at 55 minutes (.916) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,488 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: October 21, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–28295 Filed 10–23–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a United States Penitentiary Near Scranton, Pennsylvania

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The U.S. Department of Justice, Federal Bureau of Prisons has determined that, in order to meet increasing demands for additional inmate capacity, a new United States Penitentiary (USP) is needed in its system.

The Bureau of Prisons proposes to construct and operate a high security United States Penitentiary, with an adjacent minimum security satellite camp, in the greater Lackawanna County, Pennsylvania area. The main high security facility would be designed to have a rated capacity of approximately 1,000 inmates, and the minimum security component approximately 150–300. The Bureau of Prisons is proposing to build the facility near Scranton, Pennsylvania. Several sites are currently under consideration. The potential site also would be used for road access, administration, programs and services, parking, and support facilities.

In the process of evaluating potential sites, several aspects will receive a detailed examination including utilities, traffic patterns, noise levels, visual intrusions, threatened and endangered species, cultural resources, and socio-economic impacts.

Alternatives: In developing the DEIS, the options of ''no action'' and ''alternative sites'' for the proposed facilities will be fully and thoroughly examined.

Scoping Process: Several informal public meetings have already been held on the proposed project, and during the preparation of the DEIS, there will be numerous other opportunities for public involvement. The public scoping meeting will begin at 7:00 p.m. on Monday, October 27, 1997, at Valley View High School, Columbus Drive, Archbald, Pennsylvania. The meeting will be well publicized and is scheduled at a time that will make the meeting possible for the public and interested agencies or organizations to attend.

DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS can be answered by: David J. Dorworth, Chief, Site Selection & Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. Telephone: (202) 514–6470, Telefacsimile: (202) 616–6024, ddorworth@BOP.gov.

Dated: October 8, 1997.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 97–27507 Filed 10–23–97; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

October 20, 1997.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506]. OMB approval has been requested by October 27, 1997. A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Theresa M. O'Malley, at (202) 219–5095 ext. 143.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, ATTN: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, D.C. 20503, (202) 395–7316. The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Indian and Native American Welfare-to-Work Programs.

Frequency: Semi-annual (report submission).

Affected Public: State, Local or Tribal Government.

Number of Respondents: 130 (estimated).

Total Responses: 520.

Estimated Time Per Respondent: 15 hours.

Total Burden Hours: 7,800.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $3,000,000.00 per year (program administrative costs).

Description: This ICR is associated with the issuance of program regulations to implement the Indian and Native American Welfare-to-Work (INA W2W) program. The ICR associated with these regulations concerns the submission of program and financial reports by Federally-recognized tribes and Alaska Native entities (or consortia thereof) awarded grants under the INA

W2W program. These reports will document employment activity conducted by INA W2W grantees who provide employment services to adult recipients of benefits under the Temporary Assistance for Needy Families (TANF) program, established by Pub. L. 104–193 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly called the ''Welfare Reform Act''). Information submitted on these reports will be utilized by the Department to evaluate the success of individual INA W2W programs and to provide data for reports to Congress and the White House on the success of the overall INA W2W program. These regulations are being published in Interim Final form to comply with the requirements of section 412(a)(3)(C)(iii) of the Social Security Act, as amended by section 5001(c) of Pub. L. 105–33 (the Balanced Budget Act of 1997). This emergency clearance is necessary to enable the Department to implement the INA W2W program as close to the legislatively-mandated beginning date of October 1, 1997 (Fiscal year 1998) as possible. Also, quick implementation of the INA W2W program is desirable because many TANF recipients are reaching the exhaustion of their benefits, due to the time limits for receiving those benefits imposed by Pub. L. 104–193 (the ''Welfare Reform Act'').

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–28240 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 20, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143) or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for deaf (TTY/TDD) may call (202) 219–4720 between 1 p.m. and 4 p.m. Eastern time, Monday—Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Worker Profiling and Re-Employment Service Reports.

OMB Number: 102–0353 (extension).

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 53.

Estimated Time Per Respondent: 15 minutes (each form).

Total Burden Hours: 105.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Worker Profiling and Re-Employment Services Reports provide information about unemployment compensation claimants who are identified as likely to exhaust their benefits. Reports identify the services provided to those individuals and check for subsequent earnings.

Agency: Employment and Training Administration.

Title: Domestic Agricultural In-Season Wage Report.

OMB Number: 1205–0017 (extension).

Frequency: One-time.

Affected Public: Individuals or households; Business or other for-profit; Farms; Federal Government.

Form	Respondents	Average time per response
ETA 232	6	11 hours.
ETA 232A	38,775	15 minutes.

Total Burden Hours: 8,528.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: State employment agencies need prevailing wage rates in order to process employers' applications for intrastate and interstate workers. The rates cover agricultural and logging jobs. Migrant and local seasonal farmworkers are hired for these jobs.

Agency: Employment and Training Administration.

Title: Unemployment Insurance Customer Satisfaction Survey.

OMB Number: 1205–0000 (new).

Frequency: One-time.

Affected Public: Individuals or households; State, Local or Tribal Government.

Activity	Respondents	Average time per response
Data Collection	16	80 hours.
Interview	3,000	15 minutes.

Total Burden Hours: 2,030.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The survey will attempt to gauge the level of satisfaction by claimants with the Unemployment Insurance Service. Through a telephone survey of a nationally representative sample of claimants, satisfaction will be measured in such areas as: initial claims processing, weeks claimed, processing, appeals, and referrals.

Agency: Employment and Training Administration.

Title: State Job Training Plans Under Title II and Title II of the Job Training Partnership Act (JTPA) and Wagner Peyser ''Governor's Coordination and Special Services Plan'' (GCSSP).

OMB Number: 1205–0336 (reinstatement).

Frequency: Biennially.

Affected Public: State, Local and Tribal governments.

Number of Respondents: 59.

Estimated Time Per Respondent: 50.

Total Burden Hours: 2,950.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The GCSSP, as required by section 121(a) of JTPA, will provide the Department a general description of each State's plans for the operation of the JTPA program and its utilization of its JTPA resources. The Title III Biennial Plan is required by section 311.

Agency: Employment and Training Administration.

Title: State Job Training.

OMB Number: 1205–0329 (reinstatement).

Frequency: Biennially.

Affected Public: State, Local and Tribal Government.

Number of Respondents: 15.

Estimated Time Per Respondent: 10 hours.

Total Burden Hours: 150.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The State Job Training Plan, required by JTPA for those States with one statewide JTPA program, will provide information on the activities to be conducted and participants to be served by the State under JTPA.

Agency: Bureau of Labor Statistics.

Title: February 1998 CPS Displaced Worker and Job Tenure Supplement.

OMB Number: 1220–0104 (reinstatement).

Frequency: One-time.

Affected Public: Individuals or households.

Number of Respondents: 48,000.

Estimated Time per Respondent: 8 minutes.

Total Burden Hours: 6,400.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The information collected will evaluate the size and characteristics of the population affected by job displacement and hence, the needs and scope of job training programs serving adult displaced workers. These data also will measure the severity of the displacement problem, and assess employment stability.

Agency: Bureau of Labor Statistics.

Title: Research on the Feasibility of Collecting Occupational Wage Data by Union Status.

OMB Number: 1220–0000 (new).

Activity	Total number of respondents	Affected public	Frequency	Annual respondents	Average time per response	Total burden hours
Case Study	2,500	Business and other for profit.	Once FY98	1,725	10 minutes	288
Survey Form Test BLS–2877 000–US; BLS–2877 715 Test1 BLS–2877 715 Test 2.	9,000	Business and other for profit; Not-for profit institution.	Once FY98/FY99	7,000	1 hour	7,000
RAS BLS–2877 715–RAS	2,500	.....do	Once FY98/FY99	2,250	30 minutes	1,125
Totals	14,000			10,975		8,413
Two Year Average	7,000			5,488		4,207

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: BLS intends to conduct research into the availability and collect ability of information on union/nonunion status of employees of establishments in the construction industries. BLS also plans to conduct a Response Analysis Survey to determine the impact of collecting this information on the OES survey.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–28255 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 3, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Officer of Trade Adjustment Assistance, at the address shown below, not later than November 3, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX
[Petitions Instituted on 10/06/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,863	Batesville Casket (Wrks)	Campbellsville, KY	09/22/97	Caskets.
33,864	Sweetheart Cup (IBEW)	Springfield, MO	09/22/97	Paper Cups.
33,865	Dlubak Corp (Wrks)	Freeport, PA	09/21/97	Aluminum Frames & Window Glass.
33,866	Faribault Woolen Mill Co (Wrks)	Faribault, MN	09/16/97	Wool & Acrylic Blankets, Throws, Scarfs.
33,867	Reliable Battery, LLC (Wrks)	San Antonio, TX	09/19/97	Automobile Batteries.
33,868	About Sportswear (Wrks)	New York, NY	09/18/97	Ladies' Pants, Jackets, Shirts, Blouses.
33,869	Ace Metal Fabricators (IBT)	Bronx, NY	09/22/97	Alarm Boxes, Door Covers, Brackets.
33,870	Solvay Animal Health, Inc (Wrks)	Mendota Heights, MN	08/28/97	Research for Animal Health Products.
33,871	Philips Lighting (IBEW)	Little Rock, AR	09/22/97	Incandescent Lighting.
33,872	Franklin Furniture Corp (Wrks)	Greeneville, TN	09/22/97	Wooden Chairs, Tables, Buffet & Hutches.
33,873	F.W. Woolworth (Wrks)	Berwyn, IL	09/23/97	Retail Store.
33,874	Altec Lansing Technologie (Wrks)	Milford, PA	09/22/97	CD-Rom, Assembling operations.
33,875	Visy Paper Co (Wrks)	Menominee, MI	09/21/97	Recycled Brown Paper.
33,876	JanSport (Wrks)	Burlington, WA	09/22/97	Daypacks/Backpacks, Duffle Bags.
33,877	Electrohome, Inc (Comp)	Carthage, MO	09/30/97	Monitors & PC Boards.
33,878	Cabot Oil and Gas Corp (Comp)	Carlton, PA	09/23/97	Gas.
33,879	Cygne Design (Comp)	New York, NY	09/23/97	Ladies' & Men's Apparel—Design, Samples.

[FR Doc. 97–28253 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,742]

Dana Corporation, Spicer Trailer Products, Berwick, Pennsylvania; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 7, 1997, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–33,742. The denial notice was signed on September 4, 1997 and published in the **Federal Register** on September 30, 1997 (62 FR 51151).

The petitioner presents new evidence regarding customer imports of leaf springs.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 10th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28248 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,670]

Kimberly-Clark Corporation, Winslow Plant, Winslow, Maine; Including Leased Workers of Northeast Laboratories, Winslow, Maine; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 27, 1997, applicable to all workers of Kimberly-Clark Corporation, Winslow Plant located in Winslow, Maine. The notice was published in the **Federal Register** on September 30, 1997 (62 FR 51152).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of Northeast Laboratories, Winslow, Maine were engaged in employment related to performing environmental testing for the production of bath tissue produced by the Winslow Plant of Kimberly-Clark Corporation located in Winslow, Maine. Worker separations occurred at Northeast Laboratories as a result of worker separations at Kimberly-Clark Corporation.

Based on these findings, the Department is amending the certification to include workers of Northeast Laboratories, Winslow, Maine leased to Kimberly-Clark Corporation, Winslow, Maine.

The intent of the Department's certification is to include all workers of Kimberly-Clark Corporation adversely affected by imports.

The amended notice applicable to TA–W–33,670 is hereby issued as follows:

All workers of the Winslow Plant of Kimberly-Clark Corporation, located in Winslow, Maine, and leased workers of Northeast Laboratories, Winslow, Maine engaged in employment related to environmental testing for the production of bath tissue produced at the Winslow Plant of Kimberly-Clark Corporation located in Winslow, Maine who became totally or partially separated from employment on or after June 23, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28244 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,732]

Paragon Electric Company, Two Rivers, Wisconsin; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 18, 1997 in response to a worker petition which was filed on July 30, 1997 on behalf of workers at Paragon Electric Company of Two Rivers, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 7th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28249 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,867]

Reliable Battery, LLC, San Antonio, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 6, 1997, in response to be worker petition which was filed on October 6, 1997, on behalf of workers at Reliable Battery, LLC, San Antonio, Texas.

A certification applicable to the petitioning group of workers, employed at Standard Industries, Inc., San Antonio, Texas, was issued on June 26, 1997, and is currently in effect (TA–W–33,524). That certification is being amended to take account of a change in the name of the firm to Reliable Battery, LLC, and to include workers employed in the Distribution Center/Warehouse. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 6th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28247 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than November 3, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 3, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 09/29/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,847	Simpson Industries (Co.)	Gladwin, MI	09/16/97	Isolators & Dampers for Chrysler.
33,848	CPC International, Inc (Co.)	Jersey City, NJ	07/29/97	Dried Pasta.
33,849	California Curves, Inc (Wkrs)	Temecula, CA	09/11/97	Wooden Projection Screen TV Cabinets.
33,850	Todd Uniform, Inc (Wkrs)	Bernice, LA	09/19/97	Knit Shirts, T–Shirts.
33,851	Fidelity Tire Mfg Co (USWA)	Natchez, MS	09/17/97	Tires—Passenger & Truck.
33,852	Kirsch, Inc. (Wkrs)	Sturgis, MI	09/08/97	Drapery Hardware.
33,853	Ponderosa Manufacturing (Co.)	Chattanooga, TN	09/04/97	Men's & Boys' Boxer Shorts.
33,854	CAE ScreenPlates (Co.)	Glens Falls, NY	09/16/97	Stainless Steel Plate, Cylinders, Basket.
33,855	Nukote International (Wkrs)	Franklin, TN	09/15/97	Printing & Film Cartridges.
33,856	Echo Bay Mines (Wkrs)	Englewood, CO	09/16/97	Gold Ore Mining.
33,857	Hopeland Mfg Co., Inc (Co.)	Hopeland, PA	09/12/97	Ladies' & Girls' Sportswear.
33,858	Reed Manufacturing Co (Wkrs)	Walnut, MS	09/11/97	Denim Jeans Shorts and Casual Pants.
33,859	This and That, Inc (Wkrs)	Elizabethville, PA	09/08/97	Children's Sportswear.
33,860	Pride Manufacturing (Wkrs)	Guilford, ME	09/15/97	Wood Products: Dowels, Cigar Tips.
33,861	Posey Manufacturing (Wkrs)	Hoquiam, WA	09/02/97	Piano Parts.
33,862	Great American Products (Wkrs)	Broadview, IL	09/11/97	Belt Buckles.

[FR Doc. 97–28252 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,722]

The Solid Surface Craftsman, Schenectady, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 11, 1997 in response to a worker petition which was filed on July 25, 1997 on behalf of workers at The Solid Surface Craftsman, Schenectady, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 10th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28243 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,524]

Standard Industries, Inc. (Currently Known as Reliable Battery, LLC), San Antonio, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Labor issued a certification of eligibility to apply for worker adjustment assistance on July 26, 1997, applicable to workers of Standaard Industries, Inc., San Antonio, Texas. Workers at this facility are engaged in employment related to the production of automotive batteries.

The certification notice was published in the **Federal Register** on July 18, 1997 (62 FR 38,584).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that the subject firm has changed its name to Reliable Battery, LLC. The Department is amending the certification to reflect this matter and is including workers of the Distribution Center and Warehouse at the same site.

The intent of the Department's certification is to include all workers of Standard Industries, Inc., San Antonio, Texas, who were adversely affected by imports.

The amended notice applicable to TA–W–33,524 is hereby issued as follows:

All workers of Standard Industries, Inc., currently known as Reliable Battery, LLC, San Antonio, Texas, and including the Distribution Center/Warehouse, who became totally or partially separated from employment on or after May 12, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. the 3rd day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28250 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed reinstatement of the Job Training Partnership Act (JTPA) Title III Biennial State Plan. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 23, 1997. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Zenowia Choma, Office of Worker Retraining and Adjustment Programs, Office of Work-Based Learning, Employment and Training Administration, U.S. Department of Labor, Room N–5426, 200 Constitution Avenue NW, Washington, DC 20210, 202–219–5577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The collection of the information in the JTPA Title III Biennial State Plan is necessary in order to satisfy the requirements of the provisions of the Job Training Partnership Act (JTPA), as amended. The provisions require that States must submit a biennial plan in order to receive Title III funds.

II. Current Actions

This is a request for OMB approval of the reinstatement of a collection of information previously approved by OMB. The reinstatement will allow the Department to receive a general description of each State's plans for the operation of the Title III program and its utilization of JTPA funds for the next two years.

Type of Review: Reinstatement.

Agency: Employment and Training Administration.

Title: JTPA Title III Biennial State Plan.

OMB Number: 1205–0273.

Affected Public: States, the District of Columbia and the Commonwealth of Puerto Rico.

Total Respondents: 52.

Frequency: Biennial.

Average Time per Response: 20 hours.

Estimated Total Burden Hours: 1040.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 20, 1997.

Peter E. Rell,

Acting Administrator, Office of Work-Based Learning, Employment and Training Administration.

[FR Doc. 97–28256 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01809]

Berg Electronics, Inc., Lee's Summit, Missouri; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on July 9, 1997, in response to a petition filed on behalf of workers at Berg Electronics, Inc., Lee's Summit, Missouri.

The petitioning group of workers are covered under an existing NAFTA–TAA certification (NAFTA–01092). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 8th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28254 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01866]

Dana Corporation, Spicer Trailer Products, Berwick, Pennsylvania; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 7, 1997, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance, applicable to petition number NAFTA–01866. The denial notice was signed on September 4, 1997 and published in the **Federal Register** on September 30, 1997 (62 FR 51152).

The petitioner presents new evidence regarding customer imports of leaf springs.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 10th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28246 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01801]

Kimberly-Clark Corporation, Winslow Plant, Winslow, Maine; Including Leased Workers of Northeast Laboratories, Winslow, Maine; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 27, 1997, applicable to all workers of the Winslow Plant of Kimberly-Clark Corporation, located in Winslow, Maine.

The notice was published in the **Federal Register** on September 30, 1997 (62 FR 32376).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some employees of Northeast Laboratories, Winslow, Maine were engaged in employment related to performing environmental testing for the production of bath tissue produced by the Winslow Plant of Kimberly-Clark Corporation located in Winslow, Maine. Worker separations occurred at Northeast Laboratories as a result of worker separations at Kimberly-Clark Corporation.

Based on these findings, the Department is amending the certification to include workers of Northeast Laboratories, Winslow, Maine leased to Kimberly-Clark Corporation, Winslow, Maine.

The intent of the Department's certification is to include all workers of Kimberly-Clark adversely affected by imports.

The amended notice applicable to NAFTA–01801 is hereby issued as follows:

All workers of the Winslow Plant of Kimberly-Clark Corporation, located in Winslow, Maine, and leased workers of Northeast Laboratories, Winslow, Maine engaged in employment related to environmental testing for the production of bath tissue produced by the Winslow Plant of Kimberly-Clark Corporation located in Winslow, Maine who became totally or partially separated from employment on of after July 7, 1996 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28245 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01405]

McDonnell Douglas, Long Beach, California; Notice of Negative Determination on Reconsideration

On May 22, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner, United Automobile, Aerospace & Agricultural Implement Workers of America, Local 148, presented evidence that the Department's investigation was incomplete. The notice was published in the **Federal Register** on June 10, 1997 (62 FR 31629).

The petitioner asserts that McDonnell Douglas used contract workers from Mexico and Canada to produce certain components of both commercial and military aircraft, which adversely affected employment for at least two bargaining unit classifications.

The Department initially denied NAFTA–TAA to the McDonnell Douglas

worker group because criterion (1) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, was not met. The level of employment at the subject firm increased during the time period relevant to the investigation.

Findings on reconsideration show that since the NAFTA petition was filed on behalf of workers producing commercial aircraft, the Department's investigation was not limited to individual worker groups within the Long Beach production facility, but instead, covered all workers at McDonnell Douglas producing commercial aircraft.

Other findings on reconsideration reveal that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, were not met for the McDonnell Douglas workers. There were no company or customer imports of commercial aircraft, nor was there a shift in the production of commercial aircraft from Long Beach to Mexico or Canada.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibilily to apply for adjustment assistance and NAFTA–TAA for workers and former workers of McDonnell Douglas, Long Beach, California.

Signed at Washington, D.C., this 10th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28242 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01849]

Paragon Electric Company, Two Rivers, Wisconsin; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on August 1, 1997 in response to a petition filed on behalf of workers at Paragon Electric Company in Two Rivers, Wisconsin.

The petitioning organization requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 7th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–28251 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the following information collections: (1) Application for a Farm Labor Contractor or a Farm Labor Contractor Employee Certificate of Registration, Form WH–530. Copies of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 23, 1997. The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Contact Ms. Margaret Sherrill at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–7601. The Fax number is (202) 219–6592. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 101(a) of the Migrant and Seasonal Agricultural Protection Act (MSPA) provides that no person shall engage in farm labor contracting activity unless such person has a certificate of registration from the Secretary of Labor specifying which farm labor contracting activities (i.e., recruiting, soliciting, hiring, employing, furnishing transportation, or transporting any migrant or seasonal agricultural worker, with respect to migrant agricultural workers, providing housing) such worker is authorized to perform. Sections 101(b) of the MSPA provides that a farm labor contractor shall not hire, employ, or use any individual to perform farm labor contracting activities (i.e., recruiting, soliciting, hiring, employing, furnishing transportation, or transporting any migrant or seasonal agricultural worker) unless such individual has a certificate of registration or a certificate of registration as an employee of a farm labor contractor employer, which authorizes the activity for which such individual is hired, employed, or used. Form WH–530 is used by the Farm Labor Contractor applicants to obtain authorization to engage in farm labor contracting activities under MSPA and by Farm Labor Contractor Employee applicants to be hired, employed, or used by a farm labor contractor to perform farm labor contracting activities under MSPA. The completed form must be subscribed and sworn to before a person authorized to administer oaths.

Current Actions: The Department of Labor (DOL) seeks extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements of MSPA to file

a written application with the Secretary containing certain specified information concerning farm labor activities. This information is essential to enable the Administrator, Wage and Hour Division to carry out the statutory obligation under MSPA to determine that an applicant has met all requirements of the Act to be hired, employed, used by a specific farm labor contractor to recruit, solicit, hire, employ, furnish transportation or transport any migrant or seasonal agricultural worker.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration.

OMB Number: 15–0037 and 1215–0038.

Agency Numbers: WH–530.

Affected Public: Individuals of households; business or other for-profit; farms.

Total Respondents: 7,500.

Frequency: Biennially.

Total Responses: 7,500.

Average Time Per Response for Reporting: 30 minutes.

Estimated Total Burden Hours: 3,750.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $1,560.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request Seasonal; they will also become a matter of public record.

Dated: October 2, 1997.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 97–28258 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determinations Decisions

the number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania
PA970025 (Feb. 14, 1997)
PA970030 (Feb. 14, 1997)
PA970052 (Feb. 14, 1997)
PA970060 (Feb. 14, 1997)
PA970063 (Feb. 14, 1997)

Volume III

None

Volume IV

Illinois
IL970001 (Feb. 14, 1997)
IL970002 (Feb. 14, 1997)
IL970007 (Feb. 14, 1997)
IL970010 (Feb. 14, 1997)
IL970011 (Feb. 14, 1997)
IL970015 (Feb. 14, 1997)
IL970016 (Feb. 14, 1997)
IL970017 (Feb. 14, 1997)
IL970038 (Feb. 14, 1997)
IL970049 (Feb. 14, 1997)
IL970053 (Feb. 14, 1997)
IL970055 (Feb. 14, 1997)
IL970065 (Feb. 14, 1997)
IL970070 (Feb. 14, 1997)

Michigan
MI970001 (Feb. 14, 1997)
MI970002 (Feb. 14, 1997)
MI970003 (Feb. 14, 1997)
MI970005 (Feb. 14, 1997)
MI970007 (Feb. 14, 1997)
MI970012 (Feb. 14, 1997)
MI970030 (Feb. 14, 1997)
MI970031 (Feb. 14, 1997)
MI970034 (Feb. 14, 1997)
MI970046 (Feb. 14, 1997)
MI970047 (Feb. 14, 1997)
MI970049 (Feb. 14, 1997)
MI970062 (Feb. 14, 1997)
MI970066 (Feb. 14, 1997)
MI970067 (Feb. 14, 1997)

MI970068 (Feb. 14, 1997)
MI970069 (Feb. 14, 1997)
MI970070 (Feb. 14, 1997)
MI970071 (Feb. 14, 1997)
MI970072 (Feb. 14, 1997)
MI970073 (Feb. 14, 1997)
MI970074 (Feb. 14, 1997)
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MI970076 (Feb. 14, 1997)
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MI970078 (Feb. 14, 1997)
MI970079 (Feb. 14, 1997)
MI970080 (Feb. 14, 1997)
MI970082 (Feb. 14, 1997)
MI970083 (Feb. 14, 1997)
MI970084 (Feb. 14, 1997)
MI970085 (Feb. 14, 1997)
MI970086 (Feb. 14, 1997)

Volume V

Texas
TX970006 (Feb. 14, 1997)

Volume VI

None

Volume VII

California
CA970049 (Feb. 14, 1997)
CA970052 (Feb. 14, 1997)
CA970054 (Feb. 14, 1997)
CA970061 (Feb. 14, 1997)
CA970064 (Feb. 14, 1997)
CA970065 (Feb. 14, 1997)
CA970066 (Feb. 14, 1997)
CA970067 (Feb. 14, 1997)
CA970069 (Feb. 14, 1997)
CA970070 (Feb. 14, 1997)
CA970075 (Feb. 14, 1997)
CA970076 (Feb. 14, 1997)
CA970077 (Feb. 14, 1997)
CA970078 (Feb. 14, 1997)
CA970079 (Feb. 14, 1997)
CA970080 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 17th day of October 1997.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–27952 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Government Performance and Results Act of 1993

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of availability.

SUMMARY: The Federal Mine Safety and Health Review Commission is notifying interested parties that its strategic plan for the fiscal years 1997–2002 is available to the public. The plan, prepared in accordance with the Government Performance and Results Act of 1993, defines the Commission's goals, specific objectives, time frames and methods for achieving goals at both the trial and appellate level.

The Federal Mine Safety and Health Review Commission is an independent adjudicatory agency concerned solely with the adjudication of disputes and the determination of appropriate penalty amounts under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. Section 801 *et seq.*

ADDRESSES: Copies of the plan may be obtained upon request to the Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, N.W., Suite 6000, Washington, D.C. 20006, fax: (202) 653–5030, E-mail: Info@FMSHRC.gov., phone: (202) 653–5625, or (202) 708–9300 for TDD Relay.

Dated: October 15, 1997.

Mary Lu Jordan,

Chairman.

[FR Doc. 97–28205 Filed 10–23–97; 8:45 am]

BILLING CODE 6735–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that propose the destruction of records not previously authorized for disposal, or reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 8, 1997. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Records Management Programs, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301)713–7110.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one

of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Food Safety and Inspection Service (N1–462–97–1). Blueprints and other records relating to meat and poultry facilities.
2. Department of Labor, Employee Standards Administration (N1–448–97–1). Complaint review files relating to agency operations and practices.
3. Department of Transportation, Federal Railroad Administration (N1–399–97–1). National Freight Assistance grant and loan case files.
4. Board of Governors of the Federal Reserve System (N1–82–97–1). Records recording employee leave information.
5. Central Intelligence Agency (N1–263–97–3). Cover files.

Dated: October 15, 1997.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 97–28272 Filed 10–23–97; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business requires the addition of one item to the previously announced closed meeting (**Federal Register**, 62 FR 54481, October 20, 1997) scheduled for Wednesday, October 22, 1997.

3. Two (2) Personnel Actions. Closed pursuant to exemptions (6) and (9)(B).

The Board voted unanimously that agency business requires that this item be added to the closed agenda and that no earlier announcement of this change was possible.

The previously announced items were:

1. Two (2) Administrative Actions under Sections 125, 205, and 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).
2. Three (3) Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8) and (10).
3. One (1) Personnel Action. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–28322 Filed 10–21–97; 4:40 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers (#173).

Date and Time: November 12–14, 1997, 8:00 am–5:00 pm.

Place: National Science Foundation, Room 340, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Ms. Lynn Preston, Deputy Division Director Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning preproposals submitted to NSF for financial support.

Agenda: To review and evaluate Engineering Research Centers Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (4) and (6) of the Government in the Sunshine Act.

Dated: October 21, 1997

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28292 Filed 10–23–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the National Skill Standards Act, Title V, Pub. L. 103–227. The 27–member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups.

TIME AND PLACE: The meeting will be held from 8:30 a.m. to approximately 3:30 p.m. on Friday, November 14, 1997 in Hall B (first floor) at the INFOMART located at 1950 Stemmons Freeway, Dallas, Texas 75207.

AGENDA: The agenda for the Board Meeting will include: an update from the Board's committees; reports from national and state representatives from industry, government, and the education community; and a progress report from the Convening Body Representatives.

PUBLIC PARTICIPATION: The meeting, from 8:30 a.m. to 3:30 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact Pat Warfield at (202) 254–8628, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Tracy Marshall, Manager of Program Operations at (202) 254–8628.

Signed at Washington, D.C., this 17th day of October, 1997.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 97–28241 Filed 10–23–97; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Gulf States and Cajun Electric Power Cooperative; Notice of Consideration of Approval of Transfer of License and Issuance of Conforming License Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an order approving, under 10 CFR 50.80, the transfer of Facility Operating License No. NPF–47 to the extent now held by Cajun Electric Power Cooperative, Inc. (Cajun) to Entergy Gulf States, Inc. (EGSI, the licensee) with respect to River Bend Station, Unit 1 (RBS), located in West Feliciana Parish, Louisiana, and issuance of conforming amendments under 10 CFR 50.90.

RBS presently is jointly owned by EGSI (70%) and Cajun (30%) with EGSI authorized to act as agent for Cajun. Entergy Operations, Inc. (EOI), a non-owner of the facility, is licensed to have exclusive responsibility and control over the operation and maintenance of the facility. Cajun is proposing to transfer its 30% minority ownership interest to EGSI, resulting in EGSI becoming the sole owner of RBS. The license would be amended to reflect the transfer of ownership.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of a license, or any right thereunder, after notice to interested persons. Such approval is contingent upon the Commission's determination that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission. If the Commission determines that approval should be given, it will issue an order setting forth its consent to the transfer.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), Cajun, with the consent and endorsement of EGSI, has provided their analysis of the issue of no significant hazards consideration, which is presented below:

Applying the three standards set forth in 10 CFR [Section] 50.92, the proposed change to the Operating License involves no significant hazards consideration:

1. The proposed change will not involve an increase in the probability or consequences of any accident previously evaluated. As a result of the proposed license amendment, there will be no physical change to the River Bend facility, and all Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications will remain unchanged. Also, the River Bend Quality Assurance Program, Emergency Plan, Security Plan, and Operator Training and Requalification Program will be unaffected. The employees of EOI presently engaged in operation of River Bend and organization structure of EOI and EGSI will be unaffected by the proposed amendment. Therefore, personnel qualifications will remain unchanged.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment will have no effect on the physical configuration of River Bend or the manner in which it will operate. The plant design and design basis will remain the same. The current plant safety analyses will therefore remain complete and accurate in addressing the design basis events and in analyzing plant response and consequences.

The Limiting Conditions for Operations, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications for River Bend are not affected by the proposed license amendment. As such, the plant conditions for which the design basis accident analyses have been performed will remain valid. Therefore, the proposed license amendment cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety. Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these margins. Thus, the proposed license amendment will not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the foregoing analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 24, 1997, Cajun may file a request for a hearing with respect to issuance of an order regarding the proposed transfer of the license to the extent now held by Cajun to EGSI and issuance of the conforming amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the

Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mary A. Murphy, LeBoeuf, Lamb, Green, & MacRae, L.L.P., 1875 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20009, attorney for Cajun.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 15, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland, this 21st, day of October 1997.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28264 Filed 10–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Energy Company Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. DPR–20, issued to Consumers Energy Company, (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt Consumers Energy from the requirements of 10 CFR 70.24(a), which requires a monitoring system that will energize clear audible alarms if accidental criticality occurs in each area in which special nuclear material is handled, used, or stored. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate

responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated July 2, 1997.

The Need for the Proposed Action

The purpose of 10 CFR 70.24(a) is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant the inadvertent criticality with which 10 CFR 70.24(a) is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site in any given location is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and design features that prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24(a), therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the Palisades Technical Specifications (TS), the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. TS requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

Appendix A of 10 CFR Part 50, ''General Design Criteria for Nuclear Power Plants,'' Criterion 62, requires that criticality in the fuel storage and handling system shall be prevented by physical systems or processes, preferably by use of geometrically safe configurations. This is met at Palisades, as identified in the TS and the Final Safety Analysis Report (FSAR). Palisades TS section 5.4.1, ''New Fuel Storage,'' states that the center-to-center spacing in the new fuel storage array is sufficient so that K_{eff} will not exceed 0.95 where fuel rods of the maximum allowable enrichment are in place and optimum moderation is assumed.

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological plant effluents nor cause any significant occupational exposures since the TS, design controls (including geometric spacing of fuel assembly storage spaces), and administrative controls preclude inadvertent criticality. The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement Related to the Operation of Palisades Nuclear Generating Plant'' dated June 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on September 18, 1997, the staff consulted with the Michigan State official, Dennis Hahn, of the Michigan Department of Environmental Quality, Drinking Water and Radiological Protection Division, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 2, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Van Wylen Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this day of October 1997.

For the Nuclear Regulatory Commission.

Robert G. Schaaf,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28263 Filed 10–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Integrated Review of the NRC Assessment Processes for Operating Commercial Nuclear Reactors; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission staff is holding a meeting to provide brief overviews of their planned Integrated Review of the NRC Assessment Process for Operating Commercial Nuclear Reactors, planned improvements to the current Senior Management Meeting (SMM) process, and to provide members of the public, including Nuclear Energy Institute (NEI) and Union of Concerned Scientists (UCS) representatives, an opportunity to provide early input and comments on these efforts. The meeting is open to the public and all interested parties may attend and provide comments.

DATES: November 6, 1997, from 9:30 a.m. to 12:00 p.m.

ADDRESSES: Nuclear Regulatory Commission, One White Flint North, Room 6–B11, 11555 Rockville Pike, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: David Louis Gamberoni, Mail Stop O–12–E4, U.S. Nuclear Regulatory

Commission, Washington, DC 20555–0001. Telephone: (301) 415–1144; Internet: DLG2@NRC.GOV.

SUPPLEMENTARY INFORMATION: The NRC has initiated a comprehensive review of its processes for assessing the safety performance of operating commercial nuclear power plants. These processes include plant performance reviews, Systematic Assessments of Licensee Performance (SALP), and Senior Management Meetings. The review is described in SECY–97–122, ''Integrated Review of the NRC Assessment Process for Operating Commercial Nuclear Reactors.'' In addition, the NRC has initiated improvement actions for the current Senior Management Meeting process. A meeting is being held with members of the public (including NEI and UCS) to seek comments on these efforts. A preliminary agenda for the meeting is as follows:

1. Integrated Review of Assessment Process, presented by NRC
2. SMM Improvements Actions, presented by NRC
3. Comment period

Attendees are requested to notify David Louis Gamberoni at (301) 415–1144 of their planned attendance if special services are necessary.

The NRC is accessible to the White Flint Metro Station. Visitor parking near the NRC buildings is limited.

Dated at Rockville, Maryland, this 20th day of October, 1997.

For the Nuclear Regulatory Commission.

Richard W. Borchardt,

Chief, Inspection Program Branch, Division of Inspection and Support Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28261 Filed 10–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on November 13–14, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, November 13, 1997—8:30 a.m. until the conclusion of business

Friday, November 14, 1997—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the proposed final Standard Review Plan (SRP) sections and associated Regulatory Guides for risk-informed, performance-based regulation. If needed, the Subcommittee may also continue its review of the matter included in the Staff Requirements Memorandum dated May 27, 1997, regarding the use of uncertainty versus point values in the PRA-related regulatory decisionmaking process. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 20, 1997.

Sam Duraiswamy,

Chief Nuclear Reactors Branch.

[FR Doc. 97–28265 Filed 10–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Consumers Energy Company, Big Rock Point Nuclear Plant; Notice of Public Meeting

The NRC will conduct a public meeting in the Charlevoix Township Hall (Stroud Hall), 12491 Waller Road, Charlevoix, Michigan, on November 13, 1997, to discuss Consumers Energy plans to immediately dismantle and decontaminate the Big Rock Point (BRP) nuclear plant, Charlevoix, Michigan. The meeting will begin at 6:30 p.m and be chaired by Mr. Philip Johnson, Chairman, Charlevoix County Board of Commissioners. This meeting will include a short presentation by the NRC staff on the decommissioning process, and a presentation by Consumers Energy on changes to their planned decommissioning activities. There will be an opportunity for members of the public to make comments and question the NRC staff and/or Consumers Energy representatives. This public meeting will be transcribed.

On September 19, 1997, Consumers Energy provided revision 1 to their Post-Shutdown Decommissioning Activities Report (PSDAR) to the NRC staff. This revision (NUDOCS microfiche accession number 9709240373) describes the licensee's plans to forego the 27-year long-term storage (SAFSTOR) decommissioning option (as described in BRP decommissioning Plan/PSDAR, NUDOCS microfiche accession number 9506210181) in lieu of plans to immediately dismantle and decontaminate (DECON) BRP. The previous public meetings, held on May 11, 1995, and March 4, 1997, discussed Consumer Energy plans to place the power plant in SAFSTOR following permanent plant shutdown and described, in brief, the possibility that they may elect DECON, if a low-level radioactive waste depository were available. However, the NRC staff believes that neither meeting provided specific information or opportunity for the public to ask questions or make comments on the Consumers Energy decision to immediately dismantle and decontaminate the BRP plant.

The BRP PSDAR is available for public inspection at the BRP local public document room (LPDR), located at the North Central Michigan College, 1515 Howard Street, Petosky, Michigan 49770, and at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW., Washington, DC, 20037.

For more information, contact Mr. Paul W. Harris, Project Manger, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC, 20555–0001, telephone number at (301) 415–1169.

Dated at Rockville, Maryland, this 17th day of October 1997.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Acting Director Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management Office of Nuclear Reactor Regulation.

[FR Doc. 97–28262 Filed 10–23–97; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, November 3, 1997; 8:30 a.m., Tuesday, November 4, 1997.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: November 3 (Closed); November 4 (Open).

MATTERS TO BE CONSIDERED:

Monday, November 3–1:00 p.m. (Closed)

1. FY 1997 EVA Performance Awards.
2. Compensation issues.

Tuesday, November 4–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, October 6–7, 1997.
2. Remarks of the Postmaster General/ Chief Executive Officer.
3. Quarterly Report on Service Performance.
4. Fiscal Year 1998 Financing Plan.
5. Capital Investments.
   a. Associate Office Infrastructure, Phase 2.
   b. Church Street Station, New York, Renovation Project, Phase 2.
6. Tentative Agenda for the December 8–9, 1997, meeting in Costa Mesa, California.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–28433 Filed 10–22–97, 3:29 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22861; 812–10656]

Emerald Funds; Notice of Application

October 20, 1997.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicant Emerald Funds (the ''Trust'') seeks an order to permit an in-kind redemption of Trust shares held by an affiliated person of the Trust.

FILING DATES: The application was filed on May 12, 1997. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 14, 1997 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 3435 Stelzer Road, Columbus, Ohio 43219–3035.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. The Trust, an open-end management investment company organized as a Massachusetts business trust, currently offers fourteen portfolios, including the Equity Fund and the Small Capitalization Fund (collectively, the ''Funds''). The board of trustees of the Trust (the ''Board'') is comprised of six trustees, three of whom are not ''interested persons'' (as defined in section 2(a)(19) of the Act) (the ''Independent Trustees'') of the Trust. Barnett Capital Advisors, Inc. (''Barnett'') is the Trust's investment adviser. Each of the Funds seeks long-term capital appreciation by investing primarily in common stocks.

2. The Retirement Plan and Trust of Barnett Banks, Inc., and Its Affiliates (the ''Affiliated Shareholder'') is a qualified retirement plan and trust maintained by Barnett Banks, Inc. and its affiliates. Barnett Bank N.A., a wholly-owned subsidiary of Barnett Banks, Inc., serves as trustee of the Affiliated Shareholder. Assets of the Affiliated Shareholder are held in several investment accounts, each with a separate investment objective. As of April 1, 1997, two of the accounts of the Affiliated Shareholder (the ''Accounts'') owned beneficially 12.9% of the outstanding shares of the Equity Fund and 32.4% of the outstanding shares of the Small Capitalization Fund.

3. Barnett Bank N.A., acting pursuant to its fiduciary obligations under the Employee Retirement Income Security Act of 1974, as amended, has concluded that the shares of the Funds owned by the Affiliated Shareholder should be redeemed and the proceeds placed in the Accounts, which thereafter will be separately managed by Barnett. Consequently, the Affiliated Shareholder, on behalf of the Accounts, has advised the Trust that it expects to redeem all of its shares of the Funds and reinvest the proceeds in the Accounts.

4. The Funds' prospectus and statement of additional information provide that shares may be redeemed at the net asset value per share next determined after receipt of a proper redemption request. If, however, the Board determines that conditions exist which make payment of redemption proceeds wholly in cash unwise or undesirable, the Funds may satisfy all or part of a redemption request by delivering readily marketable portfolio securities to a redeeming shareholder. The Board, including all of the Independent Trustees, has determined that it would be in the best interests of the Funds and their shareholders to

redeem the shares of the Affiliated Shareholder in-kind as described below.

5. Applicant proposes to redeem the shares of the Affiliated Shareholder in the form of a *pro rata* distribution of each portfolio security held by the Funds after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; and (b) certain portfolio assets (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership.

6. Securities to be distributed to the Affiliated Shareholder through the in-kind redemption will be further limited to securities which are traded on a public securities market or for which quoted bid prices are available. Cash will be paid for that portion of the Fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Funds will distribute cash in lieu of securities held in their portfolios not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares and accruals on such securities.

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act prohibits affiliated persons of a registered investment company from knowingly purchasing any security from the company. Section 2(a)(3)(A) of the Act defines ''affiliated person'' of another person to include any person owning 5% or more of the outstanding voting securities of the other person. The Affiliated Shareholder is an affiliated person of each Fund under section 2(a)(3)(A) of the Act because it owns beneficially in excess of 5% of each Fund's shares. In addition, the Affiliated Shareholder may be deemed to be an affiliated person of each Fund under section 2(a)(3)(C) of the Act because the Affiliated Shareholder and the Funds may be deemed to be under the common control of Barnett Bank, N.A., which serves as trustee of the Affiliated Shareholder and whose wholly-owned subsidiary serves as investment adviser of the Funds. Finally, the Affiliated Shareholder may be deemed to be an affiliated person of the Small Capitalization Fund under section 2(a)(3)(C) of the Act because it owns beneficially in excess of 25% of the outstanding shares of that Fund. To the extent that the proposed in-kind redemptions would be considered to involve the ''purchase'' of portfolio securities (of which the Funds are not the issuer) by the Affiliated Shareholder, the proposed in-kind redemptions would be prohibited by section 17(a)(2) of the Act.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicant submits that the terms of the proposed in-kind redemption by the Affiliated Shareholder meet the standards set forth in section 17(b). Applicant believes that the terms of the proposed in-kind redemption do not involve overreaching on the part of any person and are reasonable and fair to the Funds, their shareholders and the Affiliated Shareholder. The Affiliated Shareholder will have no choice as to the type of consideration to be received in connection with its redemption request, and neither the Adviser nor the Affiliated Shareholder will have any opportunity to select the specific portfolio securities to be distributed. In addition, the Funds will use an objective, verifiable standard to value any security to be distributed pursuant to the proposed in-kind redemption. In addition, the proposed in-kind redemption is consistent with the investment policies of the Funds, as set forth in their prospectus, which expressly discloses the Funds' ability to redeem shares in-kind. Finally, applicant believes that the proposed in-kind redemption is consistent with the general purposes of the Act to protect shareholders of the investment companies from self-dealing on the part of investment company affiliates to the detriment of other shareholders because the Affiliated Shareholder would not receive any advantage not available to other shareholders if the proposed in-kind redemption is permitted.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The portfolio securities of the Funds distributed to the Affiliated Shareholder pursuant to the redemption in-kind (the ''In-Kind Securities'') will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed by the Funds on a *pro rata* basis after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; and (b) certain portfolio assets (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Funds' assets represented by cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Funds will distribute cash in lieu of securities held in their portfolios not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares, and accruals on such securities.

3. The In-Kind Securities distributed to an Affiliated Shareholder will be valued in the same manner as they would be valued for purposes of computing the Funds' net asset values, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market or if there is no such reported price, the average of the most recent bid and asked prices (or, if no asked price is available, the last quoted bid price).

4. The Funds will maintain and preserve for a period of not less than six years from the end of the fiscal year in which a proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of each such redemption setting forth a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28237 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22859; File No. 812–10738]

Integrity Life Insurance Company, et al.; Notice of Application

October 17, 1997.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the ''1940 Act'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(b) of the 1940 Act, approving the substitution of shares of certain registered management investment companies (''Current Portfolios'') with shares of other registered management investment companies (''Substitute Portfolios''). Applicants also seek an order pursuant to Section 17(b) of the 1940 Act to permit Applicants to carry out the above-referenced substitution (the ''Substitution'') by redeeming shares of the Current Portfolios in-kind, and using the redemption proceeds to purchase shares of the Substitute Portfolios, and to permit Applicants to combine certain subaccounts holding shares of the same Substitute Portfolio after the Substitution.

APPLICANTS: Integrity Life Insurance Company (''Integrity''), Integrity Life Insurance Company Separate Account II (''Integrity Separate Account''), National Integrity Life Insurance Company (''National Integrity,'' together with Integrity, the ''Companies'') and National Integrity Life Insurance Company Separate Account II (''National Integrity Separate Account,'' together with Integrity Separate Account, the ''Separate Accounts'').

FILING DATE: The application was filed on July 23, 1997, and amended and restated on October 9, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 12, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 515 West Market Street, Louisville, Kentucky 40202–3319.

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Attorney, or Mark Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Integrity, a stock life insurance company, is authorized to sell life insurance and annuities in 45 states and the District of Columbia. Integrity is the sponsor and depositor of the Integrity Separate Account.

2. National Integrity, a stock life insurance company, is authorized to sell life insurance and annuities in 8 states and the District of Columbia. National Integrity is the sponsor and depositor of the National Integrity Separate Account.

3. Both Integrity and National Integrity are wholly owned subsidiaries of ARM Financial Group, Inc. (''ARM''). Approximately 53% of the outstanding shares of ARM's common stock is owned by private equity funds sponsored by Morgan Stanley, Dean Witter, Discover & Co.

4. The Integrity Separate Account was established by Integrity Life Insurance Company pursuant to the insurance laws of Arizona, and was redomesticated under the insurance laws of Ohio, to fund variable unity contracts. Integrity Separate Account is registered under the 1940 Act as a unit investment trust.

5. The National Integrity Separate Account was established by National Integrity Life Insurance Company pursuant to the insurance laws of New York, to fund variable annuity contracts (collectively with the variable annuity contracts referred to above, the ''Contracts''). National Integrity Separate Account is registered under the 1940 Act as a unit investment trust.

6. Each Separate Account consists of ten investment divisions, each of which invests its assets in the shares of one of ten designated investment portfolios (each a ''Portfolio'' and collectively, the ''Portfolios'') of The Legends Fund, Inc. (''Legends Fund''), a registered open-end management investment company. There are currently ten different Portfolios offered as investment options under the Contracts. The investment adviser for each Portfolios is ARM Capital Advisors, Inc.

7. Due to higher relative expenses and/or the poor performance of the Current Portfolios, Applicants are proposing the following substitutions:

Current portfolio	Substitute portfolio
1. Morgan Stanley Asian Growth (Asian Growth'')	Morgan Stanley Asian Equity (''Asian Equity'').
2. Morgan Stanley Worldwide High Income (''Worldwide High Income'')	Morgan Stanley Emerging Markets Debt (''Emerging Markets'').
3. Renaissance Balanced	Janus Aspen Series Balanced (''Janus Balanced'').
4. Nicholas-Applegate Balanced	Janus Aspen Series Balanced (''Janus Balanced'').
5. Pinnacle Fixed Income (''Fixed Income'')	JPM Bond.
6. ARM Capital Advisors Money Market (''ARM Money Market'')	Janus Aspen Series Money Market (''Janus Money Market'').

8. For each substitution, the Applicants have concluded that the investment objectives of the Substitute Portfolios are the same as or substantially similar to those of the Current Portfolios, and, therefore, sufficiently consistent so as to ensure that the investment objectives and expectations of the contractowners will be met.

9. Applicants state that the Contracts give the Companies the right to add to or remove investment divisions, combine two or more divisions, or substitute one or more underlying mutual funds or portfolios for others in which one or more investment divisions are invested. These contractual provisions have also been disclosed in the prospectuses or statement of additional information relating to the Contracts.

10. Applicants represent that the proposed Substitution will be effected by redeeming shares of the Current Portfolios on an in-kind basis at net

asset value and using the proceeds to purchase shares of the Substitute Portfolios at net asset value on the same date. Net asset value will be calculated in accordance with Section 22(c) of the Act and Rule 22c–1 thereunder. All contract values will remain unchanged and fully invested and the Substitution will not result in any change in the dollar value of any contractowner's investment in his or her contract.

11. Applicants represent that each Substitute Portfolio's investment adviser will review the in-kind redemption to assure that the assets are suitable for the Substitute Portfolio. The assets will be valued based on the normal valuation procedures of the redeeming and purchasing Portfolios.

12. Applicants state that after the Substitution is completed, there will be two investment divisions holding shares of the same Substitute Portfolio. Applicants intend to combine those two investment divisions into a single investment division by transferring shares from one investment division to the other. The transfer will be done at net asset value on the same date as the Substitution so that there is no financial impact to any contractowner.

13. Applicants represent that a preliminary notice advising affected contractowners of the proposed Substitution was mailed on September 19, 1997. The notice described the reasons for engaging in the Substitution and referred contractowners to the prospectus supplement adding the Substitute Portfolios to the investment options underlying the Separate Accounts.

14. Prospectus supplements for each of the Companies were filed with the Commission on September 12, 1997 and amended on September 22 and 26, 1997. The prospectus supplements provide complete information on each new Portfolio including its investment objectives and policies, its investment adviser and applicable fees and expenses. The supplement states that contractowners can reallocate contract values from the Portfolios to be replaced and the proposed Substitute Portfolios to other Portfolios available under the Contract, without imposition of any transfer charge or limitation. No. such transfers from the date of initial notice, through a date thirty days following the Substitution will count against the number of free transfers permitted in a year. The supplement was mailed to contractowners of Integrity on October 1–2, 1997, and is expected to be mailed to contractowners of National Integrity on October 31, 1997.

15. Amendments to the prospectuses for the Contracts reflecting the proposed Substitution were filed with the Commission on September 5, 1997. The Applicants represent that within five days after the Substitution, the companies will send to affected contractowners written confirmation that the Substitution has occurred, identifying the Portfolios that were substituted and disclosing the Substitute Portfolios.

16. Applicants represent that the Companies will pay all expenses and transaction costs of the Substitution. Affected contractowners will not incur any fees or charges as a result of the Substitution, nor will the rights or obligations of the Companies under the Contracts be altered in any way. The proposed Substitution will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the proposed Substitution than before the proposed Substitution.

17. Applicants state that their request satisfies the requirements of Section 26(b) of the 1940 Act because: (i) The proposed Substitutions involve Portfolios with the same or substantially similar investment objectives; and (ii) after the Substitution, contractowners will be invested in Portfolios whose performance has been better on an historical basis or whose performance should be identical because the new Portfolios will have the same investment adviser and investment objectives, but whose net performance should be better as a result of lower Portfolio expenses due to lower management fees, lower total expenses, greater combined assets, and, therefore, greater economies of scale.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitutions. Section 26(b) of the 1940 Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the Substitution. Section 26(b) of the 1940 Act also provides that the Commission will approve such Substitution if the evidence establishes that the Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert that the purposes, terms, and conditions of the proposed Substitutions are consistent with the protection of investors and the purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent Applicants represent that a substitution is an appropriate solution to the unfavorable performance, on a relative basis, and/or higher relative expenses of the Portfolios to be eliminated. Applicants anticipate that the Substitute Portfolios will better serve contractowners interests because their performance has been significantly better than the performance of the Portfolios to be eliminated and/or their expenses have been or can be expected to be significantly lower, as applicable.

3. Applicants represent that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act:

1. The Substitute Portfolios have objectives, policies and restrictions the same as or substantially similar to the objectives, policies and restrictions the Portfolios being replaced so as to continue fulfilling contractowners' objectives and expectations.

2. The costs of the Substitution will be borne by Integrity and National Integrity and will not be borne by contractowners. No charges will be assessed to effect the Substitution.

3. The Substitution will, in all cases, be at net asset values of the respective shares, without the imposition of any transfer or similar charge and with no change in the amount of any contractowner's account value.

4. The proposed Substitution will not cause the contract fees and charges currently being paid by existing contractowners to be greater after the proposed Substitution than before the proposed Substitution.

5. The contractowners have been given notice of the Substitution and will have the opportunity to reallocate contract values among the available Portfolios without the imposition of any transfer charge or limitation, nor will any such transfers from the date of the initial notice, through a date 30 days following the Substitution count against the number of free transfers permitted in a year.

6. Within five days after the Substitution, the Companies will send to contractowners written notice that the Substitution has occurred, identifying the Portfolios that were substituted and disclosing the Substitute Portfolios.

7. The Substitution will in no way alter the insurance benefits to contractowners or the contractual obligations of the Companies.

8. The Substitution will in no way alter the tax benefits to contractowners. Counsel for the Companies has advised that the Substitution will not give rise to any tax consequences to the contractowners.

4. Section 17(a) (1) and (2) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to or purchasing any security

or other property from such registered investment company.

5. Applicants state that the redemptions and purchases in-kin involve the purchase of property from the Current Portfolios by the Separate Accounts, affiliated persons of those Portfolios, and the sale of property to the Substitute Portfolios by the Separate Accounts, which may be considered affiliates of the Substitute Portfolios. Similarly, by combining two investment divisions holding shares of the same Substitute Portfolios into a single investment division, the Companies, each being the depositor for and therefore each an affiliated person of the respective Separate Account, could be said to be transferring property of one investment division to another investment division. This transfer of property could be said to involve purchase and sale transactions between the investment divisions such that an affiliated person (the ''first investment division'') of an investment division (the ''second investment division'') could be said to be selling its shares of a Portfolio to the second investment division in return for units of the second investment division, which are immediately credited to the accounts of the contractowners participating in the first investment division. Conversely, the second investment division could be said to be purchasing from the first investment division shares of a Portfolio owned by the first investment division.

6. Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting the in-kind redemptions and purchases and the merger of investment divisions from the provisions of Section 17(a). Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a proposed transaction from Section 17(a) if evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

7. Applicants assert that the terms of the in-kind redemptions and purchases are reasonable and fair and do not involve overreaching on the part of any person concerned and that the interests of contractowners will not be diluted. The in-kind redemptions and purchases will be done at values consistent with the policies of both the Current Portfolios and Substitute Portfolios. The investment advisers will review the asset transfers to assure that the assets meet the objectives and policies of the Substitute Portfolios and that they are valued under the appropriate valuation procedures of the Current and Substitute Portfolios.

8. Applicants represent that the merger of investment divisions is intended to reduce administrative costs and thereby benefit contractowners with assets in those investment divisions. The purchase and sale transactions described in the application will be effected based on the net asset value of the shares held in the investment divisions and the value of the units of the investment division involved. Therefore, there will be no change in the value to any contractowner.

Conclusion

Applicants assert that, for the reasons summarized above, the requested orders approving the Substitution and related transactions involving in-kind redemptions and the merger of certain investment divisions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28176 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22860; International Series Rel No. 1105; 812–10552]

Old Mutual South Africa Equity Trust, et al.; Notice of Application

October 17, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Order requested to permit a non-registered investment company to sell certain securities to a registered investment company.

APPLICANTS: Old Mutual South Africa Equity Trust (the ''Trust'') and Old Mutual Global Assets Fund Limited (the ''Global Fund'').

FILING DATES: The application was filed on March 7, 1997, and amended on August 28, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 12, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 61 Front Street, Hamilton, Bermuda, Attention: Melanie Saunders.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 fifth Street, NW., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company organized as a trust under Massachusetts law and registered under the Act. The investment objective of the Trust is long-term total return in excess of that of the Johannesburg Stock Exchange (the ''JSE'') Actuaries All Share Index through investment in equity securities of South African issuers that are listed on a securities exchange. Beneficial interests in the Trust are issued solely in a private placement transactions to investment companies, common or commingled trust funds, or similar entities that are ''accredited investors'' within the meaning of Regulation D under the Securities Act of 1933, as well as to certain investment funds organized outside the United States. As of August 12, 1997, 91.96% of the voting securities of the Trust was owned by Old Mutual Fund Holdings (Bermuda) Limited (''Old Mutual Fund Holdings''), a wholly-owned subsidiary of the South African Mutual Life Assurance Society (''Old Mutual'').

2. The Global Fund is a fund organized under the laws of Bermuda that invests in a portfolio of South African and international securities. Old Mutual Fund Holdings is the sole shareholder of the Global Fund. The Trust and the Global Fund are managed by Old Mutual Asset Managers (Bermuda) Limited, a wholly-owned subsidiary of Old Mutual.

3. Persetel Holdings Limited (''Persetel'') is a South African corporation. Its ordinary shares are listed on the JSE. In December of 1996 Persetel conducted a private placement of 70.5 million of its ordinary shares for the purpose of financing an acquisition. On January 15, 1997 (the ''Trade Date''), the Global Fund subscribed for a total of 2,000,000 ordinary shares of Persetel (the ''Persetel Shares'') at U.S. $6.23 per share, which represented a 10% discount from the Persetel Shares' market price on the Trade Date. On February 3, 1997 (the ''Settlement Date''), the Global Fund purchased the Persetel Shares at U.S. $6.40, which represented a 14.67% discount from the market price (the ''February Price''). Applicants have stated that it is common practice in the South African equity markets for shares to be offered to large institutional investors at a discount to the market price.

4. Applicants propose that the Global Fund sell the Persetel Shares to the Trust. The purchase price to be paid by the Trust will be the February Price plus carrying costs relating to the investment (the ''Purchase Price''). These carrying costs will reimburse the Global Fund for its estimated cost of funds (the overnight LIBOR plus 0.5%) from the Settlement Date through the date on which the Trust purchases the Persetel Shares (the ''Trust Purchase Date'').

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, acting as principal, knowingly to sell or purchase securities to or from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person directly or indirectly controlling, controlled by, or under common control with the other person, or (c) if the other person is an investment company, any investment adviser of that person.

2. The Trust and the Global Fund are controlled by Old Mutual. The Trust and the Global Fund also share a common investment adviser. Thus, the Trust and the Global Fund are ''affiliated persons'' within the meaning of section 2(a)(3) of the Act. As a result, a sale of securities by the Global Fund to the Trust is prohibited by section 17(a) of the Act.

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

4. Applicants submit that the requested relief meets the standards set forth in section 17(b). Applicants state that the trustees of the Trust and the Adviser have reviewed the proposed investment in detail, taking into consideration and nature of the investment, the fairness of the Purchase Price, and each of the factors set forth in Section 17(b) of the Act. On February 14, 1997, the board of trustees of the Trust, including a majority of the independent trustees of the Trust, including a majority of the independent trustees, approved the Trust's purchase of the Persetel Shares.

5. In evaluating the terms of the proposed transaction, the trustees of the Trust also considered the fact that the Purchase Price will include reimbursement of an affiliated person (*i.e.*, the Global Fund) for its carrying costs from the Settlement Date through the Trust Purchase Date. Applicants state that the trustees of the Trust believe that it is fair for the Trust to reimburse the Global Fund for these amounts if it proceeds with the proposed transaction because the Trust will receive the benefit of the discounted price paid by the Global Fund for the Persetel Shares and any appreciation in the value of the Persetel Shares from the Settlement Date through the Trust Purchase Date. Applicants represent that, if the Purchase Price exceeds the current market price of the Persetel Shares on the Trust Purchase Date, the Trust will cancel the proposed transaction and not purchase the Persetel Shares from the Global Fund.

6. Applicants state that the proposed transaction would comply with the requirements of rule 17a–7,[1] except that the Purchase Price will be below market price and the Trust and the Global Fund are not affiliated persons solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28177 Filed 11–23–97; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 17a–7 permits certain purchase and sale transactions between an investment company and certain of its affiliated persons provided that certain conditions are met, including that the transaction be effected at the current market price of the security.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26765]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 17, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 10, 1997, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

West Texas Utilities Company

[70–8057]

West Texas Utilities Company (''WTU''), 301 Cypress Street, Abilene, Texas 79601–5820, a wholly owned electric public-utility subsidiary company of Central and South West

Corporation, a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act and rule 54 thereunder.

By order dated October 7, 1992 (HCAR No. 25649) (''Order''), WTU was authorized, among other things, to issue and sell up to an aggregate principal amount of $150 million of First Mortgage Bonds (''Bonds''), in one or more series, from time to time through December 31, 1994. WTU was authorized to use the proceeds from the sale of Bonds (1) to redeem all or a portion of its then outstanding $75 million, 8⅞% First Mortgage Bonds, Series N, due May 1, 2016 (''Series N Bonds''), (2) to purchase, through a tender offer, all or a portion of its then outstanding $65 million, 9¼% first mortgage bonds, Series O, due December 1, 2019 (''Series O Bonds''), and (3) to repay outstanding short-term borrowings or for other general corporate purposes. In October 1992, WTU issued $75 million of Bonds pursuant to the Order. The net proceeds from the sale of the Bonds were used to redeem the Series N Bonds.

By order dated December 19, 1994 (HCAR No. 26194) (''First Supplemental Order''), the Commission extended from December 31, 1994 to December 31, 1996, the authorization to issue and sell the remaining $75 million of Bonds.

In March 1995, WTU issued $40 million of Bonds pursuant to the Order and the First Supplemental Order. The newt proceeds were used to repay a portion of WTU's short-term debt and to reimburse WTU's treasury for reacquiring approximately $10 million of its Series O Bonds.

By order dated July 26, 1995 (HCAR No. 26340) (''Second Supplemental Order''), the Commission granted WTU authority to issue and sell, through December 31, 1997, up to an additional $95 million of first mortgage bonds which, together with the remaining $35 million authorized to be issued and sold pursuant to the Order and the First Supplemental Order, would authorize WTU to issue and sell up to an additional aggregate principal amount of $130 million of first mortgage bonds (collectively, ''New Bonds''), which may have maturities not less than two nor more than 40 years.

As stated in the Second Supplemental Order, the proceeds from the sale of the New Bonds will be used to (1) redeem all or a portion of WTU's outstanding $55.203 million, Series O Bonds and/or (2) to repay a portion of WTU's short-term debt, to provide working capital and for other general corporate purposes.

WTU now proposes that the Commission extend its authority to issue the New Bonds, pursuant to the terms and conditions set forth in the Order, the First Supplemental Order and the Second Supplemental Order, through December 31, 2002.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28175 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39253; File No. SR–Amex–97–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to Amendments to Rule 120 (Units of Trading)

October 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on October 1, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 120 to provide for a unit of trading in bonds other than $1,000 in par value. The text of the proposed rule change is available at the Office of the Secretary, the Amex and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Amex Rule 120 provides for a unit of trading in bonds of $1,000 in par value, except for U.S. Government issues, for which the unit of trading is the minimum denomination in which such securities are issued. Rule 120 also provides that a unit of trading in stocks is 100 shares, unless the Exchange fixes a lesser amount.

There are instances where bond issuers and broker-dealers underwriting bond issuances desire an exchange-listing of bonds with a unit of trading greater than $1,000 in par value. For example, an issuer or underwriter may prefer a unit of trading of $100,000 or $250,000 in par value per trading unit in specific cases. Such issuances, which currently trade on the New York Stock Exchange, can be expected to appeal primarily to institutional investors and to trade infrequently.

The Amex believes it is appropriate and competitively desirable to clarify its authority to allow listing and trading of such issues. Rule 120, therefore, is proposed to be amended in a manner similar to NYSE Rule 55 to specifically provide that a unit of trading of other than $1,000 in par value may be designated by the Exchange for specific issues of bonds denominated in U.S. dollars for foreign currencies.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[2] in particular in that it is designed to remove impediments to and perfect the mechanism of a free and open market, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has asserted that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. For the foregoing reasons and because the Exchange provided at least five business days notice to the Commission of its intent to file this proposed rule change, the rule filing will become operative as a ''non-controversial'' rule change pursuant to Rule 19b–4(e)(6) under the Act.[3]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principlal office of the Amex. All submission should refer to the file number in the caption above and should be submitted by November 14, 1997.

[3] 17 CFR 240.19b–4(e)(6).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28181 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39249; File No. SR–CHX–97–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Exchange's BEST Rule

October 16, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 12, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 37(a) of Article XX of the Exchange's Rules to clarify that the Exchange's BEST Rule guarantee is limited to both the size and price associated with the best bid and offer.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's BEST Rule (Article XX, Rule 37) to clarify an ambiguity concerning the application of the BEST Rule. Currently, the Exchange's BEST Rule states that, subject to certain exceptions, all agency market orders are guaranteed an execution on the basis of the ITS BBO[2] for Dual Trading System issues and the NBBO[3] for Nasdaq/NM issues.

Each best bid and offer, including the ITS BBO and NBBO, contains two components—price and size. Because the BEST Rule requires a specialist to guarantee an execution on the basis of the best bid or offer, the Exchange has consistently interpreted this guarantee as applying to both the size and price associated with that best bid or offer. In this rule change, the Exchange proposes to add the words ''size and price associated with'' to the beginning of the BEST Rule to clarify that the BEST Rule guarantee is limited to both the size and price associated with the best bid and offer.

This change is consistent with the Exchange's existing MAX Rule (Article XX, Rule 37(b)(11)) which states that ''notwithstanding anything in this Rule to the contrary, no market order or limit order that is marketable when entered into the MAX System will be automatically executed if the size associated with the ITS BBO or NBBO, as the case may be, is of a size less than such market order or limit order.''

2. Statutory Basis

The Exchange represents that proposed rule change is consistent with Section 6(b)(5)[4] of the Act 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 does not believe that the proposed rule change will impose

[2] The ITS BBO is the best bid/offer quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, Philadelphia exchanges or the Intermarket Trading System/Computer Assisted Execution System, as appropriate.

[3] The NBBO is the best bid or offer disseminated pursuant to SEC Rule 11Ac1–1.

[4] 15 U.S.C. § 78f(b)(5).

any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 an any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 522, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–20 and should be submitted by November 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28178 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39252; File No. SR–CHX–97–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Adoption of Rules Governing Market-at-the-Close Orders

October 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 12, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Article XX, Rule 44 to the Exchange's Rules relating to market-at-the-close orders.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

Currently, the Exchange has no rules regarding market-at-the-close (''MOC'') orders. The Exchange therefore wishes to add specific rules governing MOC orders to formalize the procedures for such orders and to delineate the rights and obligations of Exchange members and customers with regard to such orders.

The Exchange proposes to adopt procedures that are essentially identical to those used by the New York Stock Exchange (''NYSE''). The proposed r4ule is intended to ensure that orders sent to the Exchange will receive treatment similar to orders sent to the NYSE.

The proposed rule change provides definitions for all relevant terms. ''Market-at-the-Close Order'' or ''MOC order'' means a market order which is to be executed in its entirety at the closing price on the primary market of the stock named in the order, and if not so executed, is to be treated as canceled. ''Expiration Day'' means the last trading day before the one day a month that standardized contracts in derivative products (such as stock index futures, stock index options, and options on stock index futures) expire. ''Quarterly Index Expiration Day'' means the last trading day of each calendar quarter when quarterly index expiration (''QIX'') options expire. ''Pilot Stocks'' means those stocks contained on the list published from time to time by the primary market for such stocks.

Certain limitations will apply to MOC orders on Expiration Fridays and Quarterly Index Expiration Days. In general, no such MOC order may be entered after 2:40 p.m., Central Time, in any stock. Floor brokers representing such orders must indicate their MOC interest to the specialist by 2:40 p.m. After 2:40 p.m., MOC orders may generally be entered to offset published imbalances. However, the liquidation of positions relating to a strategy involving any stock index options, using MOC orders entered after 2:40 p.m., is not permitted, even if such orders might offset published imbalances. No MOC order in any stock may be canceled or reduced in size after 2:40 p.m. Cancellations to correct a legitimate error, however, will continue to be permitted after 2:40 p.m.

For MOC orders on Expiration Fridays and Quarterly Index Expiration Days, as soon as practicable after 2:40 p.m., notice will be published by the Exchange of any MOC order imbalance of 50,000 shares or more in the Pilot Stocks,[2] stocks being added to or dropped from an index, and, upon the

[1] 15 U.S.C. § 78s(b)(1).

[2] The Exchange will publish notice only of those MOC order imbalances that occur on the facilities of the Exchange. Telephone conversation between David T. Rusoff, Attorney, Foley and Lardner, and Michael L. Loftus, Attorney, Division of Market Regulation, SEC (October 16, 1997).

request of a specialist, any other stock with the approval of a floor official.

Other proposed rules apply to MOC orders on Non-Expiration Days. No such MOC order may be entered after 2:50 p.m., Central Time, in any stock, except to offset a published order imbalance. Floor brokers representing such orders must indicate their MOC interest to the specialist by 2:50 p.m. No MOC order in any stock may be canceled or reduced in size after 2:50 p.m. Cancellations to correct a legitimate error, however, will continue to be permitted after 2:50 p.m.

For MOC orders on Non-Expiration Days, as soon as practicable after 2:50 p.m., notice will be published by the Exchange of any MOC order imbalance of 50,000 shares or more in the Pilot Stocks,[3] stocks being added to or dropped from an index, and, upon the request of a specialist, any other stock with the approval of a floor official.

A specialist will only be obligated to accept and guarantee execution of those MOC orders that are of a size and type that a specialist would otherwise be required to accept and guarantee execution of, if the orders did not have a market-at-the-close designation.

The proposed rule change provides that a specialist shall execute MOC orders in a stock in a specified manner. Where there is an imbalance between the buy and sell MOC orders, the specialist shall, at the close of the Primary Trading Session on that day, execute the imbalance for its own account at the closing price on the primary market of the stock. The specialist shall then stop the remaining buy and sell orders against each other and pair them off at the closing price on the primary market of the stock. The ''pair off'' transaction shall be reported to the consolidated last sale reporting system as ''stopped stock.'' Where the aggregate size of the buy MOC orders equals the aggregate size of the sell MOC orders, the buy orders and sell orders shall be stopped against each other and paired off at the closing price on the primary market of the stock. The transaction shall be reported to the consolidated last sale reporting system as ''stopped stock.''

Proprietary orders represented pursuant to Section 11(a)(1)(G)[4] of the Act (i.e., ''G'' orders) must be announced as such and yield priority, parity and precedence to any order which is for the account of a person who is not a member, member organization or associated person thereof. Market orders to sell short at-the-close represented as ''G'' orders must yield priority, parity and precedence to limit orders not represented pursuant to Section 11(a)(1)(G) of the Act. For example, in executing paired-off MOC orders, a ''G'' order to sell short at-the-market would yield to sell orders limited at the closing price that are not represented as ''G'' orders. This will be the policy even if the ''G'' order to sell short at-the-market theoretically could have been executed at a better price (and still satisfy the ''short sale'' rule in terms of a ''plus'' or ''zero plus'' tick) had there not been a pair-off on the transaction. This would not be applicable if the order was a market order to sell ''long'' or a market order to buy.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5)[5] of the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, 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 does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 522, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–19 and should be submitted by November 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28179 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39257; File No. SR–CHX–97–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Execution of Stopped Orders Under the Enhanced SuperMAX Program

October 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The

[3] *Id.*

[4] 15 U.S.C. § 78k(a)(1)(G).

[5] 15 U.S.C. § 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rule 37(e) of Article XX relating to the execution of stopped orders under the CHX's Enhanced SuperMAX program. The text of the proposed rule change is available at the Office of the Secretary, the CHX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 22, 1995, the Commission approved a proposed rule change that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[3] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under the rule.[4]

On September 16, 1997, the CHX proposed changes to the Enhanced SuperMAX program.[5] For technological reasons, the CHX has decided not to implement those changes at this time. Instead, the CHX will continue to operate the Enhanced SuperMAX program, as that program existed prior to the September 1997 proposed changes.

As a result, as is currently the case, under the Enhanced SuperMAX program, certain orders will be ''stopped'' at the ITS BBO (as that term is defined in Article XX, Rule 37 of the CHX rules) and will be executed with reference to the next primary market sale. The Enhanced SuperMAX program will continue to include a time-out feature whereby if there are no executions in the primary market after the order has been stopped for a designated time period, the order will be executed at the stopped price at the end of such period. Such period, known as a time-out period, will continue to: (1) Be pre-selected by a specialist on a stock-by-stock basis based on the size of the order; (2) be able to be changed by a specialist no more frequently than once a month; and (3) last no less than 30 seconds.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade, to remove impediments and to 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 does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(e)(6)[8] thereunder because it: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) was provided by the Exchange to the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. A proposed rule change filed under Rule 19b–4(e) does not become operative prior to thirty days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission finds good cause to accelerate the thirty day period for the proposed rule change to become operative prior to the thirtieth day after the date of the filing, October 15, 1997. The Commission notes that due to technological obstacles, the Exchange currently is unable to implement the changes to its Enhanced SuperMAX program envisioned in its September filing, which became effective upon filing. The Commission further notes that acceleration will allow the Exchange to continue to enforce its rules relating to the treatment of stopped orders under the Enhanced SuperMAX program, as such rules existed prior to the September filing. For the foregoing reasons, the proposed rule change will become operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, 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 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–97–27 and should be submitted by November 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[3] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (order approving File No. SR–CHX–95–08).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 39162 (September 30, 1997), 62 FR 52367 (October 7, 1997) (File No. SR–CHX–97–23).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(30)(A).

[8] 17 CFR 240.19b–4(e)(6).

[9] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 97–28180 Filed 10–23–97; 8:45 am]
BILLING CODE 8010–10–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39259; File No. SR–CHX–22]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Exchange's Automated Execution System

October 20, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 12, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposed to amend Rule 37(b)(6) of Article XX of the Exchange's Rules, relating to the Exchange's automated execution system, the ''MAX System.'' The modification provides for a fifteen second delay before a MAX execution except where the spread between the ITS Best Bid and ITS Best Offer is equal to the minimum price variation in the relevant issue.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

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 Exchange 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 Exchange 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 37(b)(6) currently provides that, when using the Exchange's MAX System in the execution of Dual Trading System issues, there will generally be a fifteen second delay between the time a market order is entered into MAX and the time it is automatically executed. This delay allows opportunity for price improvement. However, Rule 37(b)(6) also currently provides that where the spread between the ITS Best Bid and ITS Best Offer is ⅛ point, on order will immediately be executed (because of the lack of opportunity for price improvement).

Certain Dual Trading System issues have recently begun trading in minimum variations less than ⅛ point (e.g., 1/16 point). In recognition of this change, the proposed rule change provides for a fifteen second delay before a MAX execution except where the spread between the ITS Best Bid and ITS Best Offer is equal to the minimum variation in the relevant issue. The Exchange believes this modification will allow customers the maximum opportunity for price improvement.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5)[2] of the Act 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 does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 522, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–22 and should be submitted by November 21, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the Exchange's proposed rule change and believes, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act[3] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(5)[4] of the Act because it will facilitate transactions in securities by providing investors with the opportunity for price improvement, promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market.

The proposed rule change modifies the Exchange's rule relating to its MAX System so that automatic execution is delayed to provide the opportunity for price improvement in stocks trading in minimum increments of less than ⅛. This modification comports with the movement towards smaller trading and quotation increments for equity securities traded on securities exchanges.[5] Furthermore, it establishes

[1] 15 U.S.C. § 78s(b)(1).

[2] 15 U.S.C. § 78f(b)(5).

[3] 15 U.S.C. § 78f.

[4] 15 U.S.C. § 78f(b)(5).

[5] Securities Exchange Act Release Nos. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (approving an AMEX proposal to reduce the minimum trading variation from ⅛ to 1/16); 38744

Continued

equal price improvement opportunities for all investors and removes the mechanism that currently deprives those investors who trade securities priced in less than ⅛ increments from potentially obtaining a better price. In addition, the language of the modification obviates the need for similar technical rule adjustments in the future as the minimum trading and quoting increments are further reduced.

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**. The Commission notes that the AMEX and NYSE recently reduced the minimum trading and quotation variations for securities traded through their facilities. As a result, equity securities that previously traded in minimum variations of ⅛ now trade in minimum variations of 1⁄16. It is important, therefore, that the Rules of the MAX system be conformed to allow customers the maximum opportunity for price improvement in the MAX System as soon as possible.

It is therefore ordered, pursuant to Section 19(b)(2)[6] of the Act, that the proposed rule change, SR–CHX–97–22, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28238 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

(June 18, 1997), 62 FR 34334 (June 25, 1997) (approving a NYSE proposal to reduce the minimum trading variation from ⅛ to 1⁄16).

[6] 15 U.S.C. § 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39254; File No. SR–Phlx–97–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Proposing to Amend its Foreign Currency Option Trading Hours Respecting Customized Foreign Currency Options

October 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on October 7, 1997, the Philadelphia Stock Exchange Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (''Phlx'' or the ''Exchange'') pursuant to Rule 19b–4 of the Securities Exchange Act of 1934 (''Act'')[2] proposes to cease trading for expiring customized currency options at 8:10 a.m. eastern time on business days in which the Foreign Currency Floor of the Exchange opens for trading at 8:00 a.m. eastern time. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Foreign Currency floor is open from 2:30 a.m. eastern time to 2:30 p.m. eastern time every business day. However, the Exchange may open the foreign currency floor at 8:00 a.m. on some business days, usually on business days following a holiday.[3] The Exchange modified the trading hours for all customized options such that an all expiring customized option contract cease trading at 8:00 a.m. and expires at 10:15 a.m. eastern time.[4] However, this practice prevents the holder of an expiring customized currency option to offset an expiring position on days in which trading begins at 8:00 a.m. on the Foreign Currency floor. Therefore, the Exchange proposes to cease trading in expiring customized contracts at 8:10 a.m. on business days in which the Exchange opens at 8:00 a.m. and thereby provides a 10 minute window for a participant to offset an expiring option. The Phlx will provide notification of the change in trading hours for these expiring options by means of memoranda to the membership.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to remove impediments to and perfect the mechanism of a free and open market by providing the participants with the ability to offset their position prior to expiration on those business days in which the Foreign Currency floor opens at 8:00 a.m. eastern time.

B. Self-Regulatory Organization's Statement on the Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received at the time of the filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has asserted that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. For the foregoing reasons and because the Exchange provided at least five business days notice to the Commission of its intent to file this proposed rule change, the rule filing will become operative as a ''non-controversial'' rule change pursuant to Rule 19b–4(e)(6) under the Act.[5]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

[2] 17 CFR 240.19b–4.

[3] On the day following an Exchange holiday such as the Friday following Thanksgiving or the day after Christmas day, trading commences at 8:00 a.m. rather than 2:30 a.m.

[4] *See* Securities Exchange Act Release No. 37732 (September 26, 1996). The proposed rule change adjusted the trading hours for all customized options such that all customized options would cease trading on expiration day at 8:00 a.m. eastern time and would expire at 10:15 a.m. eastern time.

[5] 17 CFR 240.19b–4(e)(6).

Commission that such action is necessary or appropriate in the public interest for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office at the PHLX. All submissions should refer to File No. SR–PHLX–97–47, and should be submitted by November 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28174 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39258; File No. SR–PHLX–97–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Amendment of Exchange Rules to Comply With Recent Modifications to the By-Laws of the Exchange

October 20, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 24, 1997, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange Rules 500 and 960.9 to comply with recent modifications made to the By-Laws of the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange and the Commission.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

The Exchange recently received regulatory approval to revise the governance structure of the Exchange.[2] As part of the restructuring, revisions were made to the By-Laws and Articles of Incorporation of the Exchange. In its proposed rule change, the Exchange seeks to make corresponding revisions to two of its rules, Rule 500 and Rule 960.9, to conform to the new By-Laws where necessary. The proposed amendments would modify rules that concern the structure and procedures of two of the Exchange's standing committees, the Allocation, Evaluation and Securities Committee (''AES Committee'') and the Business Conduct Committee (''BC Committee'').

Rule 500 (Allocation, Evaluation and Securities Committee)

The Exchange proposes to revise Rule 500 to specify the revised composition of the AES Committee. Under the prior version of By-Law Article X, Section 10–7, the AES Committee was composed of five core members and twenty members of an allocation panel. Under revised By-Law Article X, Section 10–7, there may only be nine members on the Committee. Of those nine members, some will be core members who serve three year terms while others will be annual members who may serve up to three consecutive one year terms. Revised By-Law Article X, Section 10–7 refers to Exchange Rule 500 for the number and categories of persons eligible to serve as core members and annual members. Because Rule 500 currently provides that there will be five core members and twenty panel members, it must be modified to comply with the terms of revised By-Law Article X, Section 10–7 which provides for a total of nine members on the AES Committee. The Exchange proposes to maintain the same number of core members, five, and the same selection categories for core members: (i) three persons who conduct a public securities business; (ii) one person who is active on the equity trading floor as a specialist or floor broker; and (iii) one person who is active on the options trading floor as a specialist, registered options trader or floor broker. Rule 500 would be amended to require that of the four annual members: (i) one be active on the equity trading floor as a specialist or floor broker; (ii) one be active on the equity options trading floor as a registered options trader; (iii) one be a public Governor; and (iv) one be a non-industry Governor.

Rule 960.9 (Business Conduct Committee)

The Exchange proposes to amend Rule 960.9 by revising the provisions that set forth the appeal procedure for decisions rendered by the Business Conduct Committee. Under revised By-Law Article X, Section 10–11, appeals from the Business Conduct Committee will now go directly to the Board of Governors rather than the Disciplinary Review Committee.[3] Accordingly, Rule 960.9 is being amended to provide that a Respondent who wishes to appeal a decision of the Business Conduct Committee must now comply with the appeal procedures set forth in By-Law Article XI, Section 11–1 which governs appeals from all committees of the Board.

[1] 15 U.S.C. § 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 38960 (Aug. 22, 1997), 62 FR 45904 (Aug. 29, 1997).

[3] As part of its revised governance structure, the Exchange eliminated the Disciplinary Review Committee. *Id.*

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6[4] of the Act, in general, and furthers the objectives of Section 6(b)(1)[5] of the Act, in particular, in that the streamlining of the Exchange's committee structure will enable the Exchange to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the Exchange and constitutes a stated policy and practice of the Exchange with respect to the administration of the Exchange's By-Laws and, therefore, has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (e) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PHLX–97–40 and should be submitted by November 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28239 Filed 10–23–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Pub.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. Application for a Social Security Card—0960–0066. The information collected on Form SS–5 by the Social Security Administration (SSA) is used to assign a Social Security Number and issue a card. The Social Security Number is used by SSA to keep an accurate record of each individual's earnings for the payment of benefits and for administrative purposes as an identifier for health-maintenance and income-maintenance programs, such as the Retirement, Survivors and Disability Insurance Programs, the Supplemental Security Income (SSI) Program and other programs administered by the Federal government including Black Lung, Medicare and veterans compensation and pension programs. The Social Security Number is also used by the Internal Revenue Service as a taxpayer identification number for those individuals who are eligible to be assigned a Social Security Number. The respondents are applicants for a Social Security Card.

Number of Respondents: 16 million.

Frequency of Response: 1.

Average Burden Per Response: 8½ minutes—9 minutes.

Estimated Annual Burden: 2,275,000 hours.

2. Request to Resolve Questionable Quarters of Coverage (SSA–512); Request for Quarters of Coverage History Based on Relationship (SSA–513)—0960–0575. The Personal Responsibility and Work Opportunity Reconciliation Act states that aliens admitted for lawful residence who have worked and earned 40 qualifying quarters of coverage (QCs) for Social Security purposes can generally receive State benefits. QCs can also be allocated to a spouse and/or to a child under age 18, if needed to obtain 40 qualifying QCs for the alien. Form SSA–512 is used by the States to request clarification from SSA on questionable QCs. Form SSA–513 is used by States to request QC information for an alien's spouse or parent in cases where the spouse or parent does not sign a consent form giving permission to access his/her social security records. The respondents are State agencies which require QC information in order to determine eligibility for benefits.

	SSA–512	SSA–513
Number of Responses	200,000	350,000.
Frequency of Response	1	1.
Average Burden Per Response	2 minutes	2 minutes.
Estimated Annual Burden	6,667 hours	11,667 hours.

[4] 15 U.S.C. § 78f.

[5] 15 U.S.C. § 78f(b)(1).

[6] 15 U.S.C. § 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e).

[8] 17 CFR 200.30–3(a)(12).

3. Questionnaire for Children Claiming SSI Benefits—0960–0499. The information collected on form SSA–3881 is used by SSA to evaluate disability in children who apply for SSI payments. The respondents are individuals who apply for SSI benefits for a disabled child.

Number of Respondents: 978,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 489,000 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address:

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the Agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Beneficiary Recontact Report—0960–0536. SSA uses Form SSA–1587–OCR–-SM to ensure that eligibility for benefits continues after entitlement is established for children ages 15 thru 17. Studies show that children who marry fail to report the marriage (which is a terminating event). SSA asks children ages 15, 16 and 17 information about marital status to detect overpayments and to avoid continuing payments to those no longer entitled. The respondents are applicants for Old Age, Survivors and Disability Insurance benefits, who are ages 15 thru 17.

Number of Respondents: 835,492.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 41,775 hours.

2. Waiver of Right to Appear, Disability Hearing—0960–0534. Form SSA–773–U4 is used by claimants to request waiver of their right to appear at a disability hearing. The information collected will be used to document that claimants understand their right to appear and the effects of their decision to waive that right. The respondents are claimants who (under Title II & XVI of the Social Security Act) wish to waive their right to appear at a disability hearing.

Number of Respondents: 194.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 48 hours.

3. Railroad Employment Questionnaire—0960–0078. Form SSA–671 is used to secure sufficient information for required coordination with the Railroad Retirement Board for Social Security claims processing. The form is completed whenever claimants indicate that they have been employed in the railroad industry. The respondents are retired employees of the railroad industry or their dependents.

Number of Respondents: 125,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes..

Estimated Annual Burden: 10,417 hours.

4. Employment Relationship Questionnaire—0960–0040. Form SSA–7160 covers all possible employment situations, and is used by SSA to determine an individual's work status. The information is required to maintain accurate earnings records for workers under the Social Security system. The respondents are applicants for Social Security benefits.

Number of Respondents: 47,500.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 19,792 hours.

5. Questionnaire About Employment or Self-Employment Outside the United States—0960–0050. The information on Form SSA–7163 is needed to determine whether work performed outside the United States by beneficiaries is cause for deductions from their monthly benefits; to determine whether the foreign work test or the regular work test is applicable; and to determine the months, if any, for which deductions should be imposed. The respondents are beneficiaries who live and work outside the United States.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 4,000 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA)

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: October 16, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–28099 Filed 10–23–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD01–97–079]

Captain of the Port Boston; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Captain of the Port Boston (COTP Boston) will hold a meeting to discuss various issues relating to anchored barges carrying oil or hazardous materials in bulk without an attending tug. This meeting is open to the public.

DATES: The meeting will be held on December 4, 1997 from 9:00 a.m. to 12:00 p.m. Written materials and requests to make oral presentations should reach the COTP Boston on or before November 20, 2997.

ADDRESSES: The meeting will be held in the Function Room on the first floor of Building 1, at the Coast Guard Integrated Support Command, 427 Commercial St., Boston, MA. Written material and requests to make oral presentations should be sent to Captain of the Port Boston, Coast Guard Marine Safety Office, 455 Commercial Street, Boston, MA 02109–1045. Comments may also be hand-delivered to the above address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Michael H. Day, Coast Guard Marine Safety Office Boston, MA; telephone (617) 223–3000.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Request for comments

The Coast Guard encourages interested persons to participate by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this specific Notice of Meeting (CGD01–97–079) and the specific issue to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″×11″ unbound format suitable for copying and electronic filing. If this is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard has scheduled a public meeting on December 4, 1997, at 9 a.m., to receive oral presentations. The public meeting will be held in the Function Room on the first floor of Building 1, at the Coast Guard Integrated Support Command, 427 Commercial St., Boston, MA.

Background

Barges carrying oil or hazardous materials in bulk are periodically anchored in the waters of the COTP Boston zone without an attending tugboat. Depending on the weather and anchor holding conditions, a tank barge is vulnerable to grounding in the event that its anchor begins to drag or the anchor chain breaks. Early detection of a failed or dragging anchor and the quick response of a tugboat are essential in preventing barges from grounding.

This Notice of Meeting is intended to address these concerns about public safety and the environment associated with this practice of leaving anchored barges unattended.

Agenda of Meeting

Currently, there is no federal regulation that requires barges carrying oil or hazardous materials in bulk to be manned while left unattended at anchor. The Coast Guard seeks comments on methods and practices currently used for determining the position of a barge and providing tug assistance. Additionally, the Coast Guard seeks comments on means of improving current safety practices including the use of new technologies, manning requirements, and tug assistance.

Procedural

All sessions are open to the public. At the Chairperson's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations at the meeting should notify LT Michael H. Day no later than November 20, 1997. Written material for distribution at the meeting should reach the COTP Boston no later than November 20, 1997. If a person submitting material would like copies distributed in advance of the meeting, that person should submit 25 copies to the COTP Boston no later than November 20, 1997.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meeting, contact COTP Boston as soon as possible.

Dated: September 30, 1997.

J.L. Grenier,

Captain of the Port, Boston.

[FR Doc. 97–28288 Filed 10–23–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Nos. 97–048; Notice 2 97–051; Notice 2 97–052; Notice 2 97–053; Notice 2]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This notice announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: These decisions are effective October 24, 1997.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all

applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 20, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex—A—Nonconforming Motor Vehicles Decided To Be Eligible For Importation

1. Docket No. 97–048
   Nonconforming Vehicles: 1990–1994, 1996, and 1997 Saab 900 SE
   Substantially similar U.S.-certified vehicles: 1990–1994, 1996, and 1997 Saab 900 SE
   Notice of Petition published at: 62 FR 42157 (August 5, 1997)
   Vehicle Eligibility Number: VSP–219
2. Docket No. 97–051
   Nonconforming Vehicles: 1987–1997 Kawasaki ZX400 Motorcycles
   Substantially similar U.S.-certified vehicles: 1987–1997 Kawasaki ZX600 Motorcycles
   Notice of Petition published at: 62 FR 43425 (August 13, 1997)
   Vehicle Eligibility Number: VSP–222
3. Docket No. 97–052
   Nonconforming Vehicles: 1996–1997 Ducati 748 Biposto Motorcycles
   Substantially similar U.S.-certified vehicles: 1996–1997 Ducati 916 Biposto Motorcycles
   Notice of Petition published at: 62 FR 43770 (August 15, 1997)
   Vehicle Eligibility Number: VSP–220
4. Docket No. 97–053
   Nonconforming Vehicles: 1992, 1994–1997 BMW 750iL
   Substantially similar U.S.-certified vehicles: 1992, 1994–1997 BMW 750iL
   Notice of Petition published at: 62 FR 43771 (August 15, 1997)
   Vehicle Eligibility Number: VSP–221.

[FR Doc. 97–28279 Filed 10–23–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Modification of a Previously Approved Antitheft Device; Saab

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for modification of a previously approved antitheft device.

SUMMARY: On June 20, 1997, Saab Cars, USA, Inc. (Saab) filed a petition with the National Highway Traffic Safety Administration (NHTSA) asking for a second modification to an agency-approved exemption from the vehicle theft prevention standard for its 900 car line. NHTSA is granting Saab's petition for modification of its exemption from the parts-marking requirements of the vehicle theft prevention standard for its model year (MY) 1999 900 car line because it has determined, based on substantial evidence, that the antitheft device described in Saab's petition to be placed on the car line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective at the beginning of the 1999 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: On July 26, 1993, NHTSA published in the **Federal Register** a notice granting a petition from Saab for an exemption from the parts marking requirements of the vehicle theft prevention standard for the Saab 900 car line beginning with MY 1994 (See 58 FR 39853). By letters dated September 8 and 12, 1994, Saab petitioned for the first modification to its device. The agency determined that the proposed changes made on Saab 900's antitheft device for MY 1995 were de minimis changes and did not require it to submit a petition to modify its exemption pursuant to 49 CFR Part 543.9(c)(2).

On June 20, 1997, Saab submitted a second petition for modification of its previously approved antitheft system for MY 1999. According to the petition, Saab will begin MY 1999 production of the 900 car line in February 1998. This notice responds to that petition.

Saab's submission is a complete petition, as required by 49 CFR Part 543.9(d), in that it meets the general requirements contained in 49 CFR Part 543.5 and the specific content requirements of 49 CFR Part 543.6. Saab's petition also provided a detailed description of the identity, design and location of the components of the antitheft system, including diagrams of the components and their location in the vehicle beginning with the 1999 model year. On August 20, 1997, the agency contacted Saab by telephone and obtained additional information which clarified the nature of the changes to its antitheft system for the 900 car line for MY 1999.

In its MY 1999 petition, Saab stated that for its MY 1999 car line, the driver/operator will be able to arm the system, activate the central-locking feature and monitor the protected areas of the vehicle from unauthorized tampering either by using the remote transmitter or locking the driver's or passenger's door with the correct ignition key. This is a change from the previously approved system, in which only the remote transmitter had the capability to arm and disarm the system and only the ignition key could activate the central-locking feature.

In addition, Saab stated that for MY 1999, the remote transmitter will not arm or disarm the starter immobilization feature of the system. The only way to activate and deactivate that feature will be by using the correct ignition key containing a radio signal transponder. In the previously approved system, the starter immobilization feature as well as the ignition and fuel immobilization features could be armed and disarmed by using the remote transmitter.

The petition also states that the MY 1999 Saab 900 car line will incorporate a battery backup for the alarm siren, ''free wheeling'' door lock cylinders, a tilt sensor which will detect possible theft of the vehicle by means of a flatbed or tow truck removal, and a panic function feature.

Saab also stated that for MY 1999, the electronic components in the 900 car line will use more advanced technology between various vehicle systems, including but not limited to the engine management system and the on-board diagnostic requirements. Beginning with MY 1999, the 900 car line will incorporate a new advanced communications architecture, ''CAN–BUS''. The ''CAN–BUS'' architecture will improve the speed and reliability of the electronic communications between vehicle systems, and allow improvements in the standard antitheft system.

However, Saab noted that the use of the ''CAN-BUS'' architecture means that it will not be able to use the fuel and ignition immobilization features of its antitheft system in all of the vehicles for the 900 car line in the 1999 model year. These features will be present only in those vehicles that are equipped with a turbo-charged engine; they will not be present in the vehicles with the 2.3 liter

engine. Saab stated that those vehicles that are equipped with a 2.3 liter engine will not incorporate the fuel and ignition immobilizer feature until MY 2000.

In order to ensure the reliability and durability of the device, Saab stated that it conducted tests of the antitheft device which far exceeds the previous testing program that was used to validate the reliability and durability of the 1995 through 1998 vehicles.

Saab believes that the antitheft system proposed for installation on its 900 line is likely to be as effective in reducing thefts as compliance with the parts-marking requirements of Part 541. It believes that the antitheft system for model years 1999 and later will provide essentially the same functions and features as found on today's 1995 through 1998 system. Therefore, Saab believes that the modified system will provide at least the same level of theft prevention over parts marking. Saab supports its belief that its proposed system will be no less effective than the MY 1995 through 1998's system by comparing its MY 1995 preliminary theft rate of 1.3973 for the 900 line with the median theft rate of 3.5826 indicating that the agency's theft data supports its belief.

Saab also submitted information from the Highway Loss Data Institute (HLDI), which reported a comparison of the number of claims per thousand insured vehicles per year. HLDI's September 1996 insurance theft report indicated a theft index of 15 for the 1994 through 1995 Saab 900 line. This was the second lowest figure for all large, midsize, and small cars listed. The HLDI theft report published in September 1997 indicated a theft index of 13, a reduction from the previous year's index. HLDI reported that the antitheft device installed on the Saab 9^5 car line and sold in Sweden, has been awarded the highest-ever security ratings (96.7 % security rating) given by Thatcham, the motor vehicle insurance industry's research centre.

The agency has evaluated Saab's MY 1999 petition for modification of the exemption for the 900 car line from the parts-marking requirements of 49 CFR Part 541, and has decided to grant it. It has determined that the system is likely to be as effective as parts marking in preventing and deterring theft of these vehicles, and therefore qualifies for an exemption under 49 CFR Part 543. The ability to arm the system using either the ignition key or a remote transmitter means that arming the system does not require any additional action by the driver, which means that the system is more likely to be armed. The ability to use the key or the remote to activate and deactivate the starter immobilizer improves the level of convenience for the driver/operator to arm and disarm the modified system over the present system. Other improvements include the addition of a battery backup for the alarm siren, ''free wheeling'' door lock cylinders, a tilt sensor that will detect attempts to steal the vehicle by means of flatbed or tow truck, and a panic function feature.

In its petition, Saab also states that for MY 1999, not all of the vehicles in the 900 car line will have the fuel and ignition immobilizer features as part of the antitheft system. One prerequisite to qualifying for an exemption under Part 543 is that the antitheft device must be installed as standard equipment on all vehicles on a model line. 49 U.S.C. Section 33106(b). Therefore, in evaluating whether a system qualifies for an exemption, the agency may consider only those features that are standard across the car line; and may not consider features that are only present on some vehicles in the line.

Accordingly, for the purpose of evaluating whether the system installed on the Saab 900 line for MY 1999 qualifies for an exemption under Part 543, the agency cannot consider the fuel and ignition interrupt features to be part of the system. Since these features are present on the current system on the Saab 900, this means that the agency must treat the MY 1999 system as though these features are no longer included.

The absence of these features diminishes the level of theft protection somewhat from that provided by the MY 1995 system because the fuel and ignition immobilizer will not be standard equipment on the car line. The agency believes, however, that the decrease is not substantial and that even without this feature, the system as described in Saab's petition for modification will provide a level of theft protection equivalent to parts marking.

The agency notes that Saab has stated in its petition that it plans to install the fuel and ignition immobilizer features in all vehicles in the 900 car line beginning with MY 2000. If Saab does in fact decide to add these features as standard equipment on the 900 line, it must file either a new petition for modification of the exemption or a request for de minimis treatment for the system that incorporates these features.

NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: October 21, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–28291 Filed 10–23–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Section 5a Application No. 34 (Amendment No. 9)]

Middlewest Motor Freight Bureau, Inc.

AGENCY: Surface Transportation Board; DOT.

ACTION: Request for comments.

SUMMARY: The Surface Transportation Board is seeking comments from interested persons on the application filed by the Middlewest Motor Freight Bureau, Inc. (MWB) for approval of amendments to its by-laws. The proposed amendments are described below.

DATES: Comments are due by November 24, 1997.

ADDRESSES: Send an original and 10 copies of pleadings to Section 5a Application No. 34 (Amendment No. 9) to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, D.C. 20423–0001. Also send one copy to MWB's representative: Bryce Rea, Jr., 1920 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: MWB is seeking Surface Transportation Board approval of several minor amendments to its by-laws. MWB states that the amendments would reduce the number of directors and quorum requirements for meetings of the board of directors (the Board) of MWB, reduce the size of the nominating committee for the Board, revise titles of officers, authorize the Board to fill vacancies on the Board, allow for greater flexibility in scheduling and holding Board meetings, and eliminate territorial classifications for the Board or for directors.

MWB proposes to change the titles of Board members as follows: ''Executive Vice President'' would be changed to ''President'', ''President'' would be changed to ''Chairman of the Board'', and ''Vice President'' would be changed to ''Vice Chairman of the Board.''

MWB also proposes to delete from §§ 6.4, 6.5 and 6.6 provisions which were added to implement a merger with the Central States Motor Freight Bureau, Inc. (CSB) that was authorized in *Middlewest Freight Bureau, Inc., and Central States Motor Freight Bureau, Inc—Merger Agreement,* Section 5a Application No. 34 (ICC served July 9, 1993).

Section 6.3 would be amended to reduce the membership of the Board from 27 directors to 18 directors and to eliminate territorial classifications which apportioned seats on the Board and certain Board committees according to the territories comprising the expanded MWB territory, viz., Southwestern Territory, Middlewest Territory, and Central States Territory. MWB states that these classifications are no longer necessary. Language would also be eliminated which governed the election of the first Board after the merger with CSB.

A new Section 6.4 would be added which would stagger the terms of directors so that one-third are elected each year. Section 6.5 would be amended to reduce the nominating committee from 9 directors to 4 directors. A provision would be added to Section 6.6 authorizing the Board to fill vacancies if an insufficient number of directors are elected. Section 6.9 would be amended to authorize the Board to fill vacancies resulting from death, resignation, inability to serve, or expulsion.

Section 8.1 would be amended to delete the requirement for quarterly Board meetings. MWB states that regularly scheduled Board meetings are no longer necessary. Section 12.1 would be amended to authorize the Board to call and hold meetings when needed. Section 12.3 would be amended to authorize Board meetings by telephone conference call and to permit fax or telephone notices of emergency Board meetings. Section 12.4 would be amended to reduce the quorum requirement for Board meetings from 10 to 7.

MWB states that the amendments do not relate to and are not affected by territorial expansion and do not involve or affect MWB's collective ratemaking activities.[1] MWB states that the Board has no ratemaking authority, as that authority remains vested in the General Rate Committee. MWB states that these proposed amendments do not change the composition of the General Rate Committee or any of its functions.

We seek comment on whether these proposed amendments meet the criteria of 49 U.S.C. 13703(a)(2). Comments on these proposed amendments should be filed in this docket.

Copies of the application and the amendments are available for inspection and copying at the Office of the Secretary, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423 and from applicant's counsel.

Decided: October 16, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–28149 Filed 10–23–97; 8:45 am]

BILLING CODE 4915–00–P

[1] MWB has other amendments to its Agreement pending before the Board in Section 5a Application No. 34 (Amendment No. 8), *Middlewest Motor Freight Bureau, Inc.,* which seeks territorial expansion of its collective ratemaking agreement. This request is being considered in Section 5a Application No. 118 (Amendment No. 1), *et al., EC-MAC Motor Carriers Service Association, Inc., et al.*

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33485]

St. Lawrence & Atlantic Railroad Co.—Lease and Operation Exemption—Berlin Mills Railway, Inc.

St. Lawrence & Atlantic Railroad Company (SL&A), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate rail lines owned by Berlin Mills Railway, Inc., in Coos County, NH, as follows: (1) Approximately 5.5 route miles between milepost 154.6 at Berlin and milepost 149.1 at Gorham; and (2) approximately 0.5 route miles of rail line (which does not have salient milepost designations) in the vicinity of Berlin. The total distance of the rail lines to be leased by SL&A is approximately 6.0 route miles. The transaction was expected to be consummated soon after October 9, 1997, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33485, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001 and served on: Kevin M. Sheys and Edward J. Fishman, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW, Suite 400, Washington, DC 20036.

Decided: October 16, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

[FR Doc. 97–28150 Filed 10–23–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33484]

St. Lawrence & Atlantic Railroad Co.—Acquisition and Operation Exemption—New Hampshire & Vermont Railroad Co.

St. Lawrence & Atlantic Railroad Company (SL&A), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 1 route mile of rail line owned by New Hampshire & Vermont Railroad Co., in the vicinity of Groveton, in Coos County, NH. The transaction was expected to be consummated soon after October 9, 1997, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33484, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001 and served on: Kevin M. Sheys and Edward J. Fishman, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW, Suite 400, Washington, DC 20036.

Decided: October 16, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–28151 Filed 10–23–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 553X)]

CSX Transportation, Inc.—Abandonment Exemption—in Harlan County, KY

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 2.14-mile portion of its Lick Branch between milepost MP–250.9 and milepost MP–251.18 at Cato, and its Crummies Creek Branch between milepost MQ–251.18 at Cato and milepost MQ–253.04, at Crummies, in Harlan County, KY. The line traverses United States Postal Service Zip Codes 40815 and 40821.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 23, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 3, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 13, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CXS Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 29, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by October 24, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: October 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–28152 Filed 10–23–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation, Board of Directors.

TIME AND DATE: 8:00 a.m., Wednesday, October 29, 1997.

PLACES: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial, operational and financial issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold 301–564–3354.

Dated: October 22, 1997.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 97–28426 Filed 10–22–97; 2:25 pm]

BILLING CODE 8720–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 24, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0098.''

SUPPLEMENTARY INFORMATION:

Title and Form Number: Application for Survivors' and Dependents' Educational Assistance (Under Chapter 35, Title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–5490 is used as a procedural requirement for applicant's to apply to the VA for benefits. VA uses the information collected on the application to determine a veteran's or serviceperson's son, daughter, spouse or surviving spouse entitlement to Dependents' Educational Assistance, (DEA) under Chapter 35, Title 38, U.S.C. The information is only collected when claimant requests DEA benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 30, 1996 at page 68819–68820.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,700 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Once, initial application.

Estimated Number of Respondents: 17,400.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0098'' in any correspondence.

Dated: October 7, 1997.

By direction of the Secretary.

Barbara Epps,

Management Analyst, Information Management Service.

[FR Doc. 97–28197 Filed 10–23–97; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 62, No. 206

Friday, October 24, 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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1427-93]

RIN 1115-AC51

Nonimmigrant Classes; Treaty Aliens; E Classification

Correction

In rule document 97–22314 beginning on page 48138, in the issue of Friday, September 12, 1997, make the following corrections:

1. On page 48138, in the 2nd column, in the 11th line from the bottom; in the 3rd column, in the 4th line; in the 7th line; in the 10th line; in the 1st full paragraph, in the 16th line; and in the 1st full paragraph, in the 2nd line from the bottom, ''nonimmigrnat'' should read ''nonimmigrant''.

2. On page 48138, in the 3rd column, in the 2nd full paragraph, in the 6th line; and in the 12th line from the bottom, ''congress'' should read ''Congress''.

3. On page 48139, in the first column, in the fifth line from the bottom, after ''become'' insert ''so''.

4. On the same page, in the third column, in the eighth line from the bottom, after ''at'' insert ''§ 214.2(e)(4).''and in the lines three through seven from the bottom, the heading and note are corrected to read:

Nonimmigrant intent, 8 CFR 214.2(e)(5)

Note: This does not correspond with 22 CFR 41.51(e), Representative of Foreign Information Media.

5. On page 48140, in the 3rd column, in the 1st full paragraph, in the 11th line, ''the'' should read ''this''.

6. On page 41843, in the 2nd column, in the 12th line from the bottom at the end of that line, insert a period.

7. On page 48145, in the first column, in the first full paragraph, in the seventh line; and in the sixth line from the bottom, ''Untied'' should read ''United''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97-ACE-11]

Amendment to Class E Airspace, Lee's Summit, MO

Correction

§ 71.1 [Corrected]

In rule document 97-27366 beginning on page 53740, in the issue of Thursday, October 16, 1997, make the following correction:

Appearing on page 53741, in the second column, under the heading **ACE MO E5 Lee's Summit, MO [Revised]**, in the second line, ''(lat. 38°37′35″ N., long. 94°22′18″ W.)'' should read ''(lat. 38°57′35″ N.,long. 94°22′18°″ W.)''

BILLING CODE 1505-01-D

federal register

Friday
October 24, 1997

Part II

Environmental Protection Agency

40 CFR Part 9, et al.

Acid Rain Program: Revisions to Permits, Allowance System, Sulfur Dioxide Opt-Ins, Continuous Emission Monitoring, Excess Emissions, and Appeal Procedures; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 72, 73, 74, 75, 77, and 78

[FRL–5908–5]

RIN 2060–AF43

Acid Rain Program: Revisions to Permits, Allowance System, Sulfur Dioxide Opt-Ins, Continuous Emission Monitoring, Excess Emissions, and Appeal Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Title IV of the Clean Air Act (the Act) authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The purpose of the Acid Rain Program is to significantly reduce emissions of sulfur dioxide and nitrogen oxides from utility electric generating plants in order to reduce the adverse health and ecological impacts of acidic deposition (or acid rain) resulting from such emissions. On January 11 and March 23, 1993, the Agency promulgated final rules governing permitting, the allowance system, continuous emissions monitoring, excess emissions, and appeal procedures. On December 27, 1996, the Agency published proposed revisions to those rules, most of which revisions are addressed in today's final rule.

After considering its experience in applying the Acid Rain Program rules since 1993, the Agency believes that the permitting, excess emissions, and appeal procedures rules (as well as minor aspects of the monitoring rule) can be streamlined and improved in order to reduce the burden on utilities, State and local permitting authorities, and EPA. Today's final rule revisions streamline the Acid Rain Program while still ensuring achievement of its statutory goals of reducing sulfur dioxide and nitrogen oxides emissions.

In addition, EPA is revising the sulfur dioxide allowances for one unit. Each allowance authorizes the emission of one ton of sulfur dioxide. Under the Acid Rain Program, utility units (i.e., fossil fuel-fired boilers or turbines) are allocated annual allowances and must not emit sulfur dioxide in excess of the amount authorized by the allowances that they hold. Today's final rule revises one unit's allowances pursuant to a settlement agreement. In a future final action, EPA will act on the other allowance revisions that were set forth in the December 27, 1996 proposed rule.

EFFECTIVE DATE: November 24, 1997.

ADDRESSES: Docket No. A–95–56, containing the information used to develop the final rule, is available for public inspection and copying from 8:30 a.m. to 12 p.m. and 1 p.m. to 3:30 p.m., Monday through Friday, excluding federal holidays, at EPA's Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington, DC 20460. Additional information concerning the original rules and today's final revisions is found in Docket Nos. A–90–38 (permits), A–91–43 and A–92–06 (allowances), A–90–51 (continuous emissions monitoring), A–91–68 (excess emissions), A–91–69 (general), and A–93–15 (appeals). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Attorney-advisor, at (202) 233–9151 (U.S. Environmental Protection Agency, 401 M Street, SW, Acid Rain Division (6204J), Washington, DC 20460); or the Acid Rain Hotline at (202) 233–9620.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are fossil-fuel fired boilers or turbines that serve generators producing electricity for sale. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Electric service providers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 72.6 and the exemptions in §§ 72.7, 72.8, and 72.14 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Organization. The information in this preamble is organized as follows:

I. General
II. Part 72: Applicability of and Exemptions From Acid Rain Program
A. Applicability
B. Exemptions
1. New Units Exemption
2. Retired Units Exemption
3. Industrial Utility-Units Exemption
III. Part 72: Interaction of Acid Rain Permitting and Title V
A. Relationship Between Acid Rain Rules and Parts 70 and 71
B. State Authority to Administer and Enforce Acid Rain Permits
C. Required Elements for State Acid Rain Program
IV. Part 72: Miscellaneous Permitting Matters
A. Definitions
B. Designated Representative
C. Compliance Plans
D. Federal Permit Issuance
E. Permit Revision
F. Reduced Utilization Accounting
V. Part 73: Allowances
A. Allowance Tables
B. Small Diesel Refinery Provisions
VI. Part 75: Monitoring of Units Burning Digester or Landfill Gas
VII. Part 77: Excess Emissions
VIII. Part 78: Administrative Appeals
IX. Administrative Requirements
A. Executive Order 12866
B. Unfunded Mandates Act
C. Paperwork Reduction Act
D. Regulatory Flexibility
E. Submission to Congress and the General Accounting Office
F. Miscellaneous

I. General

A significant number of the revisions in the December 27, 1996 proposal did not receive any comment. Most of the proposed revisions, including all on which comment was received, are discussed in this preamble. Unless otherwise stated below, revisions are adopted in today's final rule for the reasons discussed in the proposal.

II. Part 72: Applicability of and Exemptions From Acid Rain Program

A. Applicability

The proposal included two types of revisions of the existing rule. First, the definition of ''power purchase commitment'' was revised to extend to three years the period by which a letter of intent must have resulted in execution of a power sales agreement. Second, minor revisions were made to the procedure for petitioning for a determination by the Administrator on the applicability of the Acid Rain Program to a unit. Supportive comment was received on the first revisions, and no comment was received on the second. The revisions are therefore adopted in today's rule.

B. Exemptions

1. New Units Exemption

Section 72.7 of the existing rule provides an exemption from most Acid Rain Program requirements for new units that serve generators with a total capacity of 25 MWe or less and that combust clean fuels. The proposal made

several types of revisions in order to streamline the new units exemption. With the changes discussed below,[1] revisions are adopted in today's rule for the reasons discussed here and in the proposal.

First, the requirement for the combustion of clean fuels at the unit was revised in the proposal. While the existing rule requires that only fuel with a sulfur content 0.05 percent or less by weight be combusted, the proposal stated that the unit must burn gaseous fuel with an annual average sulfur content of 0.05 percent or less by weight and nongaseous fuel with an annual average sulfur content of 0.05 percent or less by weight. Commenters supported the revisions and explained that the existing rule was unduly restrictive. These revisions are adopted in today's rule.

The proposal also set forth revised procedures for determining annual average sulfur content by weight for gaseous and nongaseous fuel. The proposal eliminated provisions mandating the use of listed methods for measuring sulfur content but included provisions concerning the required frequency of sampling. The proposal provided explicitly that the owners and operators of the unit bear the burden of proving compliance with the sulfur content requirement. Commenters supported these revisions but suggested that EPA state that any ''recognized industry standard such as an ASTM method would be acceptable.'' Commenters also urged that the rule state that a unit that burns only diesel fuel meeting the requirements of diesel fuel for motor vehicles be assumed to meet the limits on sulfur content of fuel.

The proposed revisions are adopted in today's rule. Under the final rule, since methods for measuring sulfur content are not specified, the Agency will evaluate on a case-by-case basis the information provided by the owners and operators of a unit on sulfur content. In order to ensure that owners and operators understand that they must use a reasonable method to determine sulfur content, the final rule adopts language from section 412 concerning emission monitoring and states that the method of determining sulfur content must provide information that is reasonably precise, reliable, accessible, and timely. EPA anticipates that owners and operators will meet their burden of proof by using a method that is generally recognized in the industry (such as the applicable ASTM method set forth in the existing rule), is applicable to the unit, and is consistent with the other provisions (e.g., sampling frequency requirements) of today's rule.

Further, EPA recognizes that diesel fuel for motor vehicles is required under § 80.29 to have a sulfur content of 0.05% by weight. Commenters have suggested that such diesel fuel should be assumed to meet the sulfur content limit without any testing. One commenter stated that the testing by the unit owner was burdensome and duplicative of testing by the fuel supplier.

However, not all diesel fuel is required to meet the sulfur content limit; only diesel fuel for use in motor vehicles must meet the limit under § 80.29. 40 CFR 80.29(a)(1)(i). A significant amount of diesel fuel is produced for other uses (e.g., as fuel for electric generation by utilities) has a higher sulfur content than mandated for diesel fuel for motor vehicles. *Petroleum Supply Annual 1996*, Vol. 1 at 51, Table 17 (Energy Information Administration, June 1997) (indicating that about 37% of 1996 U.S. distillate production (which is primarily diesel fuel as defined in § 72.2) had a sulfur content above 0.05% by weight).[2] Moreover, the higher-sulfur diesel fuel is used by many utility units that combust diesel fuel. For example, during 1996 and the first half of 1997, diesel fuel with a sulfur content of 0.05% or less by weight accounted for only about 13% of the total heat input for affected units that used diesel fuel and were required to report the sulfur content of their fuel to EPA. Most of the diesel fuel used had a much higher sulfur content; diesel fuel with more than twice the sulfur content (i.e., over 0.10% sulfur by weight) accounted for about 81% of such total heat input.[3]

In contrast, virtually all commercially available natural gas in the U.S. has sulfur content at or below 0.05% by weight. Because of the toxic effects of hydrogen sulfide and its corrosive effect on pipeline and customer equipment, pipelines generally provide pipeline transportation or distribution service only for natural gas with a very low hydrogen sulfide content (e.g., 0.25 to 0.30 grain per 100 standard cubic feet), which results in total sulfur content far below 0.05% by weight. *See, e.g.,* H. Dale Beggs, *Gas Production Operations* at 204–5, 209–11, and 227 (1984); and 49 CFR 192.475(c) (provision, in U.S. Department of Transportation minimum safety standards for natural gas pipelines, limiting the hydrogen sulfide content of gas ''stored in pipe-type or bottle-type holders'' to 0.25 grain per 100 standard cubic feet).

Since diesel fuel is widely available that does not meet the sulfur content limit, diesel fuel must be treated like any other fuel that is combusted at an exempt new unit and that could potentially exceed the limit. The owners and operators of the unit combusting the fuel must demonstrate that the limit is being met using the results of reliable testing methods consistent with the sampling and other requirements of today's rule. Of course, under today's rule, the owners and operators are not required to conduct the testing themselves. EPA will consider testing by fuel suppliers in determining whether the owners and operators have met their burden of proof.

Second, the proposal streamlined the procedure for obtaining a new units exemption and reduced the burden imposed by the procedure on owners and operators and permitting authorities. The existing rule required owners and operators of a unit to submit an application and for permitting authorities to provide notice and opportunity for comment before issuing an exemption. The proposal made the obtaining of an exemption largely automatic so long as the capacity, annual fuel use, and recordkeeping requirements are met. Under the proposal, owners and operators of a unit meeting these requirements must submit a statement to the permitting authority (and, if EPA is not the permitting authority, to EPA) that the unit meets, and will continue to meet, the requirements for the exemption. The proposal states that a new units exemption is effective on January 1 of the first full calendar year for which the unit meets the exemption requirements and that the statement must be submitted by December 31 of such year. In short, where the end-of-year submission deadline and other requirements for an exemption are met, the exemption will cover the entire year in which the submission was made. The

[1] In addition, today's rule adds language clarifying that the requirement that a unit serve one or more generators with total nameplate capacity of 25 MWe or less during the period of the exemption does not apply to the time before the unit commenced commercial operation. Today's rule also adds language, under ''Special Provisions'', to reiterate the fact (reflected in § 72.7(a)) that an exempt unit must continue to meet the requirements (e.g., the sulfur content limits for its fuels) throughout the duration of the exemption. Another addition in today's rule is language clarifying that when the exemption is lost, the unit must comply with Acid Rain permitting and monitoring requirements, starting after the loss of the exemption (e.g., starting on the first date on which the unit is no longer exempt). Similar language is added to the retired units and industrial utility-units exemption provisions.

[2] Relatively little distillate fuel oil is imported into the U.S., and most of it has a sulfur content exceeding 0.05%. *Id.* at 55, Table 20.

[3] *Report to Docket: Diesel Fuel Use of Units Required to Use Fuel Sampling Under part 75, appendix D* (September 16, 1997).

proposed revisions are adopted in today's rule.

The proposal established some additional procedures for the relatively few new units that were allocated allowances.[4] The owners and operators of such units must submit a statement (similar to the one for units without allocations) stating that the owners and operators are surrendering the allowances, and proceeds from the auction of allowances, starting with the first year for which the unit is exempt. Under the proposal, the exemption for a unit allocated allowances is effective on January 1 of the first year for which the Administrator actually deducts the full allowance allocation and actually receives the full amount of auction proceeds. Commenters contended that this ''unfairly'' makes the exemption contingent on an event (i.e., the deduction of allowances) beyond the control of the owners and operators. Allegedly, the exemption should be contingent only on submission of the statement surrendering allowances and proceeds.

EPA notes that the only issue is the date on which the exemption becomes final. Once the Administrator actually makes the necessary allowance deductions and receives the proceeds, the exemption runs starting from January 1 of the year for which the unit meets the requirements (e.g., fuel sulfur limits and allowance and proceeds surrender) for this exemption. The difficulty with making the exemption effective when the surrender statement is submitted is that there is no guarantee that the unit's allowance account actually has sufficient allowances to deduct or that the proceeds are actually available to and received by the Administrator.

In order to ensure that the actual deduction of allowances in the unit's Allowance Tracking System account is not unduly delayed, the final rule requires that, within 5 business days of receiving the owners' and operators' surrender statement, the Administrator either makes the allowance deductions or notifies the owners and operators that there are insufficient allowances for the deductions. This is the same period of time in which, under §§ 73.52 and 73.53, the Administrator must act on an allowance transfer request. The approach adopted in today's rule accommodates both the concern that the necessary number of allowances actually be available for deduction before the exemption is effective and the concern that the effectiveness of the exemption not be unnecessarily delayed.

Finally, the proposal provided that a unit with a new units exemption is not an ''affected unit'' and so does not need an operating permit under part 70 or 71 unless such a permit is required because non-title IV, federal requirements applicable to the unit. *See* 61 FR 68343. However, for the case where, because of non-title IV requirements, the source at which the unit is located has or must have an operating permit, the proposal did not exclude the new units exemption from the general requirement to incorporate applicable federal requirements in the operating permit. *See* 42 U.S.C. 7661a(b)(5)(A) and 7661c(a). The final rule adopts the proposed provision and makes it clear that if, because of non-title IV requirements, an operating permit is issued to the source, the new units exemption must be reflected in that operating permit. In particular, after the actions necessary for the new units exemption to take effect have been completed (e.g., the receipt by the permitting authority of a statement of exemption by the owners and operators of the unit and the notification by the Administrator that he or she has deducted any allowances, and received any allowance proceeds, required to be surrendered), the permitting authority must add the provisions and ongoing requirements of the exemption to any operating permit that covers the source at which the unit is located. Consistent with the elimination of the requirement for notice and comment on a new unit's exemption, the addition of the exemption to the permit is an administrative amendment. A written new units exemption issued under the existing rule prior to revision by today's rule must similarly be added to any operating permit.

Under this approach, the exemption alone will not result in issuance of an operating permit, but, if an operating permit would be issued for the source in any event, that operating permit will include the ongoing requirements imposed on the unit under the exemption. This approach reasonably implements the concept that an operating permit should include the applicable federal requirements for a source. For the same reasons, analogous provisions are included in today's rule with regard to the retired units exemption and the industrial-utility units exemption.

2. Retired Units Exemption

Section 72.8 of the existing rule provides an exemption from Acid Rain Program requirements for retired units. The proposal made several types of revisions in order to streamline this retired units exemption. First, while the existing rule required owners and operators of a unit to submit an application for the exemption and for permitting authorities to provide public notice and opportunity for comment before issuing a final exemption, the proposal made the obtaining of an exemption largely automatic so long as the unit is permanently retired. Second, the proposal clarified that the exemption applies to most Acid Rain Program requirements.

No comments were received on these proposed revisions. In order to make it clear that only Phase I or Phase II units, and not opt-in units under part 74, are eligible for the retired units exemption, today's rule states that the exemption applies to ''any affected unit (except for an opt-in source)''. This exclusion of opt-in sources is consistent with the existing provisions of part 74 that impose separate requirements with regard to permanent shutdown of opt-in sources. *See, e.g.*, 40 CFR 74.46. In addition, to provide flexibility where a retired unit has no allowance allocations and has not selected a designated representative, the final rule allows a certifying official to submit notice of the exemption to the permitting authority. For the reasons discussed here and in the proposal, the revisions, as modified, are adopted in today's rule.

3. Industrial Utility-Units Exemption

Scope of Exemption. In the proposal EPA established a new exemption for certain industrial units that generate only incidental amounts of electricity for sale. As explained in detail in the preamble of the proposal, ''utility units'' (the entities subject to the Acid Rain SO_2 emission limitation and other requirements of the Acid Rain Program) include, with certain exceptions, any unit serving a generator that produced electricity for sale any time starting in 1985. With certain exceptions (e.g., for cogenerators), an industrial unit serving a generator that produced any amount of electricity for sale (referred to hereinafter as simply an ''industrial utility-unit'')[5] is an affected unit under

[4] While the proposal referred to allowances allocated under Table 2 or 3 of subpart B of part 73, today's rule simply refers to allowances allocated under that subpart. Under part 73 as currently organized, all allocations to new units are included in the tables. Since in the future EPA may reorganize the allowance allocation information that is currently presented in two separate tables, today's rule adopts a more general reference to new-unit allowance allocations.

[5] The proposal referred to these units as simply ''industrial units''. In order to minimize confusion between these units and industrial boilers not used

the Acid Rain Program regardless of the amount of the sale relative to the total generation by the generator and whether or not the sale is to the general public or to a public utility for resale to the public. Moreover, the requirement to hold allowances to cover SO_2 emissions and to meet any applicable NO_X emission limitation under the Acid Rain Program applies to all emissions from the unit, not simply the portion that might be attributed to generation of the electricity sold.

Despite the applicability of the requirement to hold allowances, EPA has not allocated allowances to industrial utility-units that might have qualified for allowance allocations under section 405 of the Act, including some units whose owners submitted timely comments relating to allowance allocations. On March 23, 1993, EPA issued notices stating that such industrial utility-units would not be included in the National Allowance Database, on which allowance allocations are based, because EPA ''believe[d]'' that the units were not affected units. 58 FR 15720, 15727 (1993). On the same date, EPA also issued a final allowance allocation list that allocated allowances only to units then ''believed'' to be affected units. 58 FR 15634, 15641 (1993). EPA stated that no allowances would be allocated to units that were subsequently determined to be, or that subsequently became, affected units. *Id*.

In light of these circumstances, EPA proposed a limited exemption from the Acid Rain Program for industrial utility-units that served, any time starting in 1985, a generator that produced electricity for sale. First, the industrial utility-unit must have no owner or operator of which the principal business is electricity sale, transmission, or distribution or that is a public utility subject to State or local utility regulation.[6] Such unit must not be a cogeneration unit since cogeneration units already are covered by an express exemption in the title IV. Further, on or before March 23, 1993, the owners or operators of the unit must have entered into an interconnection agreement (and any related power purchase agreement) with a public utility requiring that the generator served by the unit produce electricity for sale only for incidental sales of electricity to that public utility. Moreover, in 1985 and any year thereafter, the generator served by the unit must have actually produced only incidental electricity sales for the utility, as required under the interconnection agreement and any related power purchase agreement. Incidental sales were defined as sales not exceeding the lesser of 10 percent of the generating output capacity of the generator or 10 percent of the actual annual electric output of the generator.

The proposal established a petition and notice-and-comment procedure for owners or operators to apply for the exemption and for the Agency to review and approve or disapprove the exemption. If, after approval of the exemption, any of the conditions for obtaining the exemption are no longer met, the exemption terminates automatically. The proposal, as changed below, is adopted for the reasons discussed here and in the proposal.[7]

All parties commenting on the new industrial utility-units exemption supported the concept of such an exemption. However, these commenters objected to various, specific provisions. First, commenters claimed that EPA should ''totally'' exempt industrial utility-units without regard to the amount of electricity sold by an industrial utility-unit and/or without regard to whether the unit was contractually obligated to sell electricity on or before March 23, 1993. Allegedly, industrial utility-units not qualifying for the exemption will incur significant costs ''not related'' to the objectives of title IV. It was argued that if industrial utility-units that cannot meet the criteria of the rule are not exempt, ''agreements'' providing for sales by industrial utility-units to utilities may be ''discontinued'', forcing utilities to ''look elsewhere for their emergency and backup power needs.'' It was also argued that the costs of complying with the Acid Rain Program ''will exceed the benefits of the limited reductions to be achieved by the regulations'' since the estimated amount of SO_2 emissions is small relative to the annual 8.95 million ton cap for utility units. Since industrial utility-units are allegedly subject to the nationwide cap of 5.60 million tons on total annual SO_2 emissions by ''industrial sources'', regulation of industrial utility-units under the existing Acid Rain regulations was claimed to be unnecessary.

However, EPA begins with the fact, undisputed by any commenter, that Congress included non-cogeneration industrial utility-units in the Acid Rain Program and thus under the annual 8.95 million ton cap for SO_2 emissions and under applicable NO_X emission limitations. *See* 61 FR 68344. Further, although the preamble of the proposal stated that industrial utility-units are also under the 5.60 million ton cap for ''industrial sources'' under section 406(b) of the Clean Air Act Amendments of 1990, EPA now believes, on further consideration, that industrial utility-units (which served, any time starting in 1985, a generator that produced electricity for sale) are not covered by the latter cap.

Section 406(b) of the Clean Air Act Amendments of 1990 states that if SO_2 emissions from ''industrial sources * * * may reasonably be expected to reach levels greater than 5.60 million tons per year,'' the Administrator may take actions ''to ensure that such emission do not exceed'' the cap. 42 U.S.C. 7651 note. From section 406(a), it is clear that the definition of ''industrial source'' in section 402 of the Clean Air Act applies. Under section 402, an ''industrial source'' is:

> a unit that does not serve a generator that produces electricity, a ''nonutility unit'' as defined in this section, or a process source as defined in section 410(e). 42 U.S.C. 7651a(24)

As discussed above, an industrial utility-unit is a unit that is not owned or operated by a utility but that served, anytime starting in 1985, a generator that produced electricity for sale and therefore is a utility unit under section 402(17). Such a unit does not fall within any of the three groups of units that are defined as ''industrial sources''.[8] Consequently, the units that are under consideration in this rulemaking for

in generation of electricity for sale, and because generation of electricity for sale makes industrial units ''utility units'' under title IV, the final rule refers to the units as ''industrial utility-units''.

[6] In order to prevent the requirement from being circumvented through the position of the owner or operator in the corporate structure, the proposal stated that no owner or operator, subsidiary or affiliate or parent company of the owner or operator, or combination thereof could have such a principal business. Consistent with this approach, the final rule also applies this to any division of the owner or operator.

[7] In the proposal, EPA relied on the *Report For Docket: Industrial Units* (October 31, 1996). In the report, EPA estimated the number of industrial utility-units in the U.S. that may quality for an industrial utility-units exemption under § 72.14 and their total annual SO_2 and NO_X emissions. One commenter asserted that the report overestimated the emissions for two units owned by the commenter. Assuming the accuracy of the commenter's emission estimates, the total annual SO_2 and NO_X emissions estimates for industrial utility-units are reduced by about 10%, i.e., to about 41,000 tons of SO_2 and 17,000 tons of NO_X. This is not a significant change and does not affect EPA's determinations concerning the industrial utility-units exemption.

[8] Section 406(a) also states that ''industrial sources'' include units subject to section 405(g)(6), i.e., certain qualifying facilities and independent power production facilities that are exempt from title IV. The reference in section 406(b) to units ''subject to section 405(g)(5)'' is an inadvertent error that should be read as citing section 405(g)(6). *See National Annual Industrial Sulfur Dioxide Emission Trends 1995–2015*, EPA–454–R–95–001, at ES–2 (EPA 1995). Industrial utility-units are not exempt under section 405(g)(6).

inclusion in the industrial utility-units exemption are not covered by the 5.60 million ton cap. Contrary to commenters, the Clean Air Act Amendments of 1990 do not give EPA the ''option'' of regulating industrial utility-units under section 406. In contrast, Congress exempted certain cogeneration facilities from the Acid Rain Program (e.g., the 8.95-million-ton cap) and included them in the 5.60-million-ton cap. Under section 402(17)(C) and (25), exempt cogeneration facilities are excluded from the definition of ''utility unit'' and so are ''nonutility'' units covered by the ''industrial source'' cap.

This reinforces the conclusion that industrial utility-units are intended to be covered by the Acid Rain Program and leads to the conclusion that a blanket exemption for all industrial utility-units is inconsistent with the overall regulatory scheme under title IV.[9] Exempting all industrial utility-units, without regard to the amount of their electricity sales or to when the sales became contractually obligated, would result in a potentially increasing group of existing and future units that would generate electricity for sale but would be outside both the utility unit and the ''industrial source'' caps. Particularly since the ongoing changes in the structure of the electric industry make it difficult to predict how many industrial utility-units there may be in the future and how they may be used, EPA rejects such an open-ended exemption from both caps.[10] Moreover, commenters supporting a blanket exemption ignore the fact that the Acid Rain Program is aimed at reducing both SO_2 emissions and NO_X emissions. To the extent that existing coal-fired industrial utility-units are Group 1 (i.e., dry bottom wall-fired or tangentially fired) or Group 2 (i.e., cell burner, cyclone, wet bottom, or vertically fired) boilers, exempting them removes the applicability of the Group 1 or Group 2 NO_X emission limits, which in some cases may be the only NO_X limits for these boilers under the Act.

EPA also rejects, as unsupported and speculative, the claim that subjecting industrial utility-units to Acid Rain Program requirements will make interconnection agreements and related power sales agreements between such units and utilities economically prohibitive. EPA agrees that industrial companies may have more difficulty than utilities (at least under the current scheme of utility rate regulation) in passing through the costs of the Acid Rain Program. However, that is a far cry from concluding that electricity sales by existing industrial utility-units would cease or that no new industrial utility-units would contract to make such sales.

EPA therefore maintains that, if there is to be any exemption for industrial utility-units, the exemption must be strictly limited in order to resolve the specific problem set forth in the preamble of the proposal. That problem is that some industrial utility-units have only incidental activities (i.e., electricity sales) bringing the entire operation of the unit under the Acid Rain Program and that these units likely qualified for, but were not allocated, allowances. Strictly limiting the exemption to address this problem will minimize the potential environmental impact of this resolution on SO_2 and NO_X emissions and will better harmonize the exemption with the basic regulatory scheme under title IV. In fact, without the specific limits on the exemption set forth in today's rule based on the magnitude of electricity sales and the time period when electricity sales first became contractually required, EPA would reconsider whether any exemption for industrial utility-units should be established.

As an alternative to a blanket exemption for industrial utility-units, one commenter suggested modifying the definition of ''incidental sales of electricity'' so that units selling up to one-third (rather than up to 10 percent, as under the proposal) of their electric generation to utilities could qualify as exempt industrial utility-units. Allegedly, limiting sales to up to one-third of annual electric generation would be consistent with the statutory exemption for cogeneration facilities. Under section 402(17)(C) and § 72.6(b)(4), a cogeneration facility that supplies to a utility, on an annual basis, an amount of electricity not exceeding one-third of its potential electrical output capacity or 219,000 MWe-hrs is an unaffected unit and is not subject to the Acid Rain Program. The commenter supported limiting industrial utility-units to annual electricity sales equal to the lesser of one-third of capacity or one-third of actual generation.

Reflecting that the rationales for the industrial utility-units exemption and the statutory cogeneration facility exemption are not identical, today's rule does not make the requirements for the two types of exemptions identical. On one hand, the cogeneration facility exemption reflects Congressional intent, manifest in section 402(17)(C) of the Act, that certain cogeneration facilities be entirely exempt from the Acid Rain Program whether or not they had contracted before enactment of title IV to provide electricity at a fixed price. Presumably, this is because, by using the same steam both for electric generation and industrial purposes, cogeneration facilities are inherently more efficient than other units that generate electricity. *See* 40 CFR 72.2 (defining ''cogeneration unit'' as unit producing electricity and useful thermal energy ''through sequential use of energy''). On the other hand, the industrial utility-units exemption addresses the category of industrial utility-units, which were intended by Congress to be subject to the Acid Rain Program but, with regard to certain individual units, were not allocated allowances for which they likely qualified. They lack the sequential use of energy that makes cogeneration facilities inherently more efficient. As discussed above, EPA maintains that the industrial utility-units exemption should, under these circumstances, be more narrowly drawn than the provisions for exempting cogeneration facilities. Consequently, EPA disagrees with the approach of using the limit on electricity sales by exempt cogeneration facilities in setting the limit on electricity sales by exempt industrial utility-units.

In the proposal, the industrial utility-units exemption is limited to units that were contractually obligated as of March 23, 1993 to make only incidental sales of electricity to utilities. The proposal defines ''incidental sales'' as sales not exceeding 10 percent of either nameplate capacity or total actual generation because that level seemed to be consistent with the general level of historical electricity sales by the type of unit intended to be covered by the exemption. This approach limits the exemption by restricting both the number of units covered by the exemption and the amount of electricity sales to historical levels and does not allow expansion beyond those levels. None of the commenting owners of units potentially qualifying for the industrial utility-units exemption claimed that they had actually made, in any past year, electricity sales in excess

[9] EPA rejects as speculative and irrelevant the commenter's suggestion that title IV may be amended in a way that would require non-exempt industrial utility-units to make additional, ''prohibitively expensive'' reductions.

[10] Even if the ''total'' exemption were limited to the specific possible industrial utility-units identified thus far by EPA (*see Report to Docket: Industrial Units* (October 31, 1996)), the amount of generation and emissions covered by a ''total'' exemption could increase in the future. Moreover, the commenters suggested no basis for limiting a ''total'' exemption to those tentatively identified industrial utility-units if other units are subsequently found to meet the ''total''-exemption criteria.

of the 10 percent limit or that the 10 percent limit is unrepresentative of historical levels. EPA maintains that it is appropriate to impose on the industrial utility-units exemption a limit reflecting historical levels and that, on their face, electricity sales as high as one-third of total generation cannot be regarded as simply incidental to the operation of the unit involved. For these reasons, while choosing a 10-percent level as the cutoff point for ''incidental sales''—like choosing any specific cutoff point—is to some extent arbitrary, EPA maintains that the chosen level is reasonable. Today's rule, like the proposal, defines ''incidental electricity sales'' as an amount of electricity sales that does not exceed the smaller of 10 percent of the nameplate capacity of the generator served by the unit times 8,760 hours per year or 10 percent of the actual annual electric output of that generator.

Today's rule also continues to impose the incidental-electricity-sales limit on sales starting in 1985 and continues to require that the contractual obligation to make such sales must have been in place on March 23, 1993. One commenter objected to having ''two different deadlines'' and argued that only sales starting in 1993 should have to meet the incidental-electricity-sales limit. EPA rejects this approach.

Under the industrial utility-units exemption, EPA considers the electricity sales of the unit starting in 1985 because that is analogous to the approach taken by Congress in section 402(17) in determining what units are utility units that are subject to the Acid Rain Program. With certain exceptions, any unit that at any time starting in 1985 or thereafter serves a generator that produces electricity for sale is a ''utility unit'' subject to the Acid Rain Program. 42 U.S.C. 7651a(17)(A). In crafting the industrial utility-units exemption, EPA reasonably takes a parallel approach of considering actual sales starting in 1985. Actual sales before 1985 will not be considered. EPA sees no basis for the commenter's suggestion of ignoring any non-incidental electricity sales from 1985 to 1993. In essence, EPA is requiring that, in order to be exempt, a unit must have maintained its character as an industrial utility-unit making only incidental sales throughout the period generally used to determine applicability of the Acid Rain Program.

The rationale for the ''second deadline'' in the industrial utility-units exemption—i.e., the requirement that there be, as of March 23, 1993, a contractual obligation to make incidental electricity sales—is set forth in detail in the proposal and is adopted here. 61 FR 68346. This requirement also makes it likely that the unit was either (i) in commercial operation as of November 15, 1990 or (ii) was under construction by December 31, 1990 and therefore qualified for, but was not allocated, allowances in Phase II. *See* 42 U.S.C. 7651d(a)–(f) and (h)–(i) (allowances for existing units) and (g) (allowances for units under construction and operating by specified deadlines).

Termination of exemption. Under the proposal, a unit's industrial utility-units exemption terminates automatically once any of the original requirements for granting the exemption are no longer met. Commenters raised concern that the proposal terminates the exemption if the contractual agreement that requires incidental electricity sales by the unit, and on which the granting of the exemption was originally based, expires or is amended. A particular agreement may have a termination date even though the parties intend for the relationship to continue. Further, an agreement may be modified directly or through replacement by a new agreement, e.g., in order to change the names of the parties or the electricity prices. According to commenters, the exemption should not be terminated so long as there is not an obligation to sell more than an incidental amount of electricity.

EPA understands the concern that replacement of the interconnection agreement on which an exemption is based (or of the power purchase agreement related to the interconnection agreement) by a follow-on agreement that continues to require the same amount of electricity sales should not result in termination of the exemption. EPA also recognizes a similar concern with regard to amendment of the interconnection agreement or power purchase agreement. On one hand, the rule should provide for some flexibility allowing agreements to be modified or replaced so long as the underlying electricity sales obligation of the industrial utility-unit is not altered in a way that undermines the original basis for the unit's exemption. On the other hand, EPA is concerned that this flexibility should not have the effect of allowing expansion of the unit's exemption beyond its original scope. For example, just as a unit that as of March 23, 1993 did not serve a generator required to produce electricity for sale and that begins after that date to be involved in electricity sales is not exempt, an exempt unit should not be able to expand its involvement in electricity sales after March 23, 1993 and retain the exemption. Finally, EPA believes it must consider that future modifications or replacements of agreements will be taking place in the context of restructuring of the electric industry, where utilities may be restructured and renamed.

In order to meet all of these concerns, today's rule provides that, in applying the automatic-termination provisions of the exemption, the interconnection agreement (and related power purchase agreement) and any successor agreement will be considered. For example, the proposal stated that if the interconnection agreement on which the exemption is based expires or terminates and the generator served by the unit continues to produce electricity for sale, the exemption for the unit terminates. Under today's rule, if that interconnection agreement is replaced or supplemented by a ''successor agreement'', the expiration or termination of the original agreement will not cause termination of the exemption. Today's rule defines ''successor agreement'' in a way that is aimed, on one hand, at requiring the unit to continue to meet the basic requirements for the exemption and taking account of future electric industry restructuring and, on the other hand, at preventing this flexibility from being used to expand beyond the original scope of the exemption when it was approved.

A ''successor agreement'' is defined as an agreement that modifies, replaces, or supersedes the interconnection agreement or related power purchase agreement on which the exemption was originally based. Further, a ''successor agreement'' must be between owners and operators of the unit and another party (which may be the same party as in the original agreement) that (i) is principally in the electric utility business or is a public utility subject to State or local jurisdiction and (ii) is obligated to sell electricity to the owners and operators of the unit. In addition, the ''successor agreement'' must require the generator served by the unit to produce electricity for sale only for incidental electricity sales to that party. Finally, the total amount of electricity that the generator served by the unit is required to produce for sale under all such contracts that are in effect (i.e., the interconnection agreement, related power purchase agreement, and any successor agreement) must not exceed the amount that such generator was required to produce for sale under the original interconnection agreement and related power purchase agreement on which the exemption was initially based.

Procedural and other issues. Under the proposal, a unit seeking an

industrial utility-units exemption must submit a petition to the local permitting authority. The processing of the petition is similar to that for an Acid Rain permit. However, once an exemption is approved, it has no uniform, fixed term and continues in effect unless and until it is automatically terminated. Commenters claimed that the process of petitioning for the exemption would be burdensome. They noted that the proposal removed the requirements to apply for the new units or retired units exemption and argued that the industrial utility-units exemption should similarly be made ''self-executing''.

When the new units and retired units exemptions were first adopted by rule, the regulations required submission of petitions for the exemptions, processing by the permitting authority using the permit notice-and-comment procedures, and renewal every five years. The December 27, 1996 proposal and today's rule make those exemptions self-executing for the most part. With some exceptions, owners and operators of units meeting the fairly straightforward requirements of the new units or retired units exemptions need only notify the permitting authority and EPA of their qualification for the exemption.

In the case of the industrial utility-units exemption, EPA has decided that it is necessary to require the submission of a petition and processing by the permitting authority. This is a newly established exemption, with which the Agency has had no experience. Moreover, in determining whether to establish the exemption, EPA has found it difficult to obtain information on which units might qualify. *See Report to Docket: Industrial Units* (October 31, 1996). In addition, determination of whether a unit qualifies for the exemption is not as straightforward as the determination of qualification for the new units or retired units exemption. Qualification for an industrial utility-units exemption depends, in part, on interpretation of interconnection and power purchase agreements. Further, particularly in light of other provisions of today's rule that streamline the permit processing procedures and thus also apply to processing of a petition for industrial utility-units exemption, EPA maintains that the petition and review requirements for the exemption are not unduly burdensome on either the unit owners and operators or the permitting authorities. Today's rule requires a one-time review process in that once approved, the exemption continues in effect without the need for renewal.

One final issue raised by a commenter (Zinc Corporation of America) is whether industrial utility-units that do not qualify for an industrial utility-units exemption should be allocated allowances. Allegedly, such units qualify for allowances but were not allocated any due to EPA's ''oversight in allowance allocation''.

The difficulty with this argument is that it ignores the fact that EPA has previously specified deadlines by which parties claiming that an erroneous failure to allocate allowances to a unit were required to submit such claims and necessary supporting information to EPA. As explained in the proposal (61 FR 68345), EPA issued in July 1992 the Adjunct Data File listing units of ''nontraditional utilities''. 57 FR 30034, 30040 (July 7, 1992). EPA indicated that the units might or might not be affected units and that, in any event, it lacked sufficient information on which to base any allowance allocation. *Id*. Further, EPA gave notice that if the data necessary for allowance allocation was not provided by September 8, 1992 for ''a unit that may be affected now or in the future'', the unit would not be allocated allowances. *Id*. Moreover, believing that it had corrected all timely identified errors in the data and resulting allocations, EPA stated in the March 23, 1993 notice on final allowance allocations that no allowances will be allocated to any affected unit that was not allocated allowances in that notice. 58 FR 15634, 15641 (March 23, 1993).

Neither Zinc Corporation of America nor the predecessor-owner (St. Joe Minerals Corporation) of the units now owned by Zinc Corporation of America submitted any data or any objection to the lack of allowance allocations for the units. The only companies that have units identified by EPA as potentially industrial utility-units and that submitted any comments concerning allowance allocations were LTV Steel Mining Company and Ford Motor Company. Both companies claimed that their units were not affected units, and neither has ever objected to the lack of allowance allocations.

Thus, there is no basis for allocating allowances now or in the future to industrial utility-units, as suggested by the commenter, if EPA ultimately determines that any such units do not qualify for the industrial utility-units exemption.[11] Such units are treated like any other unit that has not been allocated allowances and becomes an affected unit after that date: No allowances will be allocated. EPA's approach of declining to allocate allowances when the deadline for submission of information for allowance allocation is missed has been upheld by the courts. *Texas Municipal Power Agency* v. *EPA*, 89 F.3d 858. 872–73 (1996).

III. Part 72: Interaction of Acid Rain Permitting and Title V

A. Relationship Between Acid Rain Rules and Parts 70 and 71

The proposal attempted to clarify the extent to which the Acid Rain rules apply in lieu of provisions of parts 70 and 71, which address permitting by State permitting authorities and by the Administrator under title V of the Act. No comments were received on these revisions. The revisions are adopted in today's rule with some changes. The language in several sections of the proposal stating that the Acid Rain rules ''supersede'' provisions of parts 70 or 71 is removed from the final rule because of concern that such language might cause confusion as to whether parts 70 and 71 remain in effect at all.

Instead, today's § 72.60 clarifies that part 72 governs, notwithstanding the requirements of part 71, and the list of specific procedural matters that part 72 governs is clarified and augmented so that the list includes all matters covered by subparts C, D, E, F, and H of part 72.[12] The list of specific matters to which part 71 still applies is also clarified. Further, today's § 72.70 retains the language in the existing rule stating that subpart G governs to the extent that the subpart is ''inconsistent'' with part 70. Upon reconsideration of the language, EPA concludes that this existing language is reasonably clear, particularly with the revisions in § 72.72 reducing the number of differences between subpart G and part 70. EPA also notes that the existing language avoids any potential confusion about the overall effectiveness of part 70.

B. State Authority to Administer and Enforce Acid Rain Permits

Under the proposal, a State becomes responsible for administering and enforcing Acid Rain permits for affected sources if the State has an operating permits program approved under part

[11] EPA stresses that it has made no determination at this time on the qualification of these companies' units for the industrial utility-units exemption and will await submission of the necessary applications before making any determination. None of the companies that commented stated that it could not meet the proposed exemption requirements.

[12] For similar reasons, the same general approach is used in § 72.80, which states that subpart H, rather than part 70 or 71, governs revisions of Acid Rain permit provisions.

70 and to the extent the State Acid Rain regulations are accepted by the Administrator. The proposal also established a procedure for withdrawal of the Acid Rain Program from a State where the Administrator determines that the State is not adequately administering or enforcing the program.

Today's rule adopts the revisions, with several changes. Under the proposal, the Administrator accepts all or a portion of State Acid Rain regulations through issuance of a notice in the **Federal Register**. Particularly since the State regulations will then become part of the State title V operating permits program, EPA believes that notice and opportunity for public comment should be provided before the Administrator issues a final acceptance or rejection of all or a portion of the State regulations. This approach is consistent with the requirement in part 70 that notice and opportunity for public comment be provided on the Administrator's approval or disapproval of a State operating permits program under title V. *See* 40 CFR 70.4(e). Today's rule includes language that imposes a notice-and-comment requirement but is flexible enough to allow use of a direct final procedure under which, for example, the proposed and final acceptance of State regulations are issued in simultaneous notices and the acceptance becomes automatically final if no significant, adverse comments are timely submitted.

Further, the proposal revised the provision concerning the date by which a State permitting authority must reopen Phase II Acid rain permits to add Acid Rain NO_X requirements. The existing provision requires the permits to be reopened by January 1, 1999 but is unclear as to whether this is the deadline for completion, or simply commencement, of the reopening procedure. In order to clarify the provision and ensure that State permitting authorities have sufficient time to process the permits, the proposal stated that the reopening must be completed by July 1, 1999.

Commenters objected to the July 1, 1999 completion deadline on the ground that utilities need more than 6 months to plan for compliance with the NO_X terms of their Acid Rain permits. No comment was received supporting the Agency's concern that State permitting authorities might need additional time beyond January 1, 1999 to complete the reopening of the permit. Further, as discussed elsewhere in this preamble, today's rule includes provisions that enable State permitting authorities to expedite permit processing, e.g., the provisions for elimination of newspaper notice and for use of direct proposed procedures. By further example, today's rule provides that any EPA-approved early election plan that has not been terminated must be added to the Phase II permit through an administrative amendment, rather than through a notice-and-comment procedure. This reflects the fact that § 76.8, governing early election plans, requires a State permitting authority to approve, as part of the Phase II permit, any ongoing early election plans previously approved by EPA. These streamlining provisions will reduce the administrative burden on the State permitting authorities.

Consequently, today's rule retains the January 1, 1999 deadline and makes it clear that the reopening of the permit to add NO_X requirements must be completed by that deadline. By its terms, the January 1, 1999 deadline for adding the NO_X provisions only applies to the extent that the provisions were included in a timely, complete permit application concerning NO_X emissions. EPA notes that, under § 76.9(b)(2), such permit application must be submitted by January 1, 1998 and that, where the State permitting authority with jurisdiction over the unit has responsibility for issuing Acid Rain permits covering NO_X, the submission should be made to that State permitting authority.

Finally, language is added (e.g., to § 72.73(b)(1) and § 72.74(a)) to make it clear that the State permitting authority issues Acid Rain permits to the extent that it has State Acid Rain regulations, accepted by EPA, that apply to the sources involved and to the Acid Rain requirements involved. For example, if accepted State Acid Rain regulations include the Acid Rain emissions limitation for SO_2 but not the emissions limitations for NO_X by the applicable deadline under § 72.73, EPA has the flexibility to determine whether the State permitting authority will be responsible for issuing Acid Rain permits covering both SO_2 requirements under part 72 and NO_X requirements under part 76.

C. Required Elements for State Acid Rain Program

The existing rule set forth the criteria for approval of a State operating permit program under title V and acceptance of the State Acid Rain regulations. The proposal eliminated or modified several of the criteria in the existing rule because EPA believed that they were unnecessary or redundant. Comments were received on only three of these revisions. With the changes discussed below, all the revisions are adopted in today's rule for the reasons discussed here and in the proposal.

First, the existing rule required State permitting authorities to give written notice of draft permits to specified persons and also to provide notice in a newspaper or State publication. The proposal gave State permitting authorities the option of foregoing newspaper or State publication notice of draft permits that require only that a unit meet the standard SO_2 or NO_X emission limitations, a NO_X averaging plan, or a NO_X early election plan. Commenters supported this revision, which is adopted in today's rule.

Second, the proposal gave State permitting authorities the option of using what was referred to as a ''direct final'' procedure for issuing Acid Rain permits. Under the procedure, a State permitting authority issues simultaneously a draft permit and a proposed permit. If no significant, adverse comments are received, the proposed permit is deemed to be issued and, after the period for review by the Administrator, the State permitting authority issues the final permit. Commenters supported this option and urged that EPA clarify that it applies to permit revisions as well as permit issuance. EPA notes that the procedure is misnamed in the proposal in that the permit that is issued in the absence of significant, adverse comment is a ''proposed permit'' that is still subject to the Administrator's review. Consequently, today's rule refers to this option as the ''direct proposed'' procedure and adopts the provision.[13]

With regard to the use of the direct proposed procedure for permit revisions, EPA notes that § 72.81(c)(2) in the proposal and in today's rule states that, with certain exceptions not relevant here, permit modifications must be treated as permit applications. Consistent with § 72.81(c)(2), the procedures for permit issuance (including, e.g., the direct proposed procedure) apply to permit modifications. Similarly, permit issuance procedures apply to permit reopenings. Because the other types of permit revisions, i.e., fast-track

[13] Today's rule also removes language in § 72.72(b)(1)(iv) stating that after the comment period on a draft permit, the State permitting authority will issue or deny a proposed permit. Some State permitting authorities have provided, with EPA's concurrence, that the comment period on the draft permit and EPA's review of the permit run concurrently so long as no adverse comment is received and no change is made in the draft permit. The language in § 72.72 is removed in order to allow State permitting authorities to take this approach, which reduces the length of the permitting process, for Acid Rain permits.

modifications and administrative permit amendments, have their own procedures set forth in the proposal and today's rule, the direct proposed procedure does not apply to such revisions.

Third, the proposal eliminated a provision in the existing rule limiting the filing of State administrative or judicial appeals of an Acid Rain permit to no more than 90 days from the issuance of the permit. As a result, part 70, which imposes no limit on State administrative appeals and limits judicial appeals to no more than 90 days from permit issuance, would govern appeals of Acid Rain permits. 40 CFR 70.4(b)(3)(xii); *see also* 59 FR 44460, 44516 (August 29, 1994) (proposing to allow States to provide up to 125 days for judicial appeals).

Commenters objected to the removal of any limit on the periods for State administrative appeals, and for judicial appeals, under part 72. The commenters contended that, in the absence of a limit in part 72 (or in part 70) on administrative appeals, owners and operators ''would never be able to know whether their permits would be subject to challenge''. However, the commenters ignored the fact that, in imposing no federally mandated limit on State administrative appeals, part 72 leaves the matter to the States, which are highly likely to impose such limits in the interests of finality and administrative efficiency. EPA is not aware of any State operating permit programs that, to the extent they provided for administrative appeal, failed to set a time limit on the filing of administrative appeals. In short, the question here is not whether to have any limit but rather whether to leave the matter for the States or impose a federally mandated limit. EPA maintains that it is preferable to allow each State flexibility to craft time limits for Acid Rain appeals. Under this approach, each State can set a single time limit appropriate for and applicable to all administrative appeals—and also one for all judicial appeals—of the entire title V operating permit, rather than having one set of time limits for an Acid Rain permit and another set of time limits for the remaining portions of the operating permit.

The commenters contended that the Acid Rain permits are a ''stand-alone portion'' of the operating permit and so it would not be confusing to have a different deadline for appealing the Acid Rain portion and appealing the rest of the operating permit. EPA disagrees. Although the Acid Rain permit is a separate portion of the operating permit, State permitting authorities are likely, as a matter of efficiency, to conduct notice and comment and other permitting procedures for the rest of the operating permit at one time and to issue a single, all inclusive operating permit, particularly since the Acid Rain permit is likely to comprise a relatively small part of the entire title V operating permit. In fact, in response to State concern over how to coordinate the processing of the Acid Rain permit and the operating permit, EPA has issued guidance on alternative approaches for achieving coordination. *See Guidance on Coordinating Title IV/Title V Permitting Schedules* (March 15, 1994). EPA believes that having a single administrative appeal deadline and a single judicial appeal deadline for the entire operating permit is simpler and less likely to result in inadvertent failure to meet the applicable filing deadline.

The commenters also alleged that the Acid Rain portion incorporates new compliance obligations while the remainder of the operating permit merely restates existing obligations. This, of course, depends on the timing of the issuance of the operating permit. State permitting authorities are allowed to phase in the issuance of operating permits and new obligations may arise before issuance of, and therefore may be included in, a given operating permit. Moreover, to the extent this distinction applies, it is likely to apply only for the initial Phase II Acid Rain permit; in most cases, a subsequent Acid Rain permit will restate the obligations (e.g., the requirement to hold sufficient allowances to cover SO_2 emissions) already in the initial Acid Rain permit.

EPA concludes that, with regard to the question of limiting State administrative and judicial appeals, the Acid Rain portions of operating permits should not be treated any differently than the remaining portions of operating permits. The provision in the proposal is adopted in today's rule.

In the proposal EPA noted that many States have already adopted Acid Rain rules based on the existing rule. EPA stated that it expected that, if rule revisions are adopted in final, States will incorporate the revisions within 2 years after the promulgation of the final rule. No comment was received on this approach, and EPA continues to believe that this is a reasonable time frame. To the extent a State permitting authority fails to incorporate the revisions in a timely manner, EPA will consider whether the State is adequately administering and enforcing the Acid Rain Program and may take action under § 72.74 of today's rule to administer all or a part of the Acid Rain Program for sources located in the State.

IV. Part 72: Miscellaneous Permitting Matters

A. Definitions

The proposal modified or eliminated several definitions. Only one of the changes (i.e., the revised definition of ''submit or serve'' to eliminate the requirement for use of certified mail) received comment and that comment was supportive. The definition revisions, as modified below, are adopted in today's rule.[14]

B. Designated Representative

The proposal included two types of revisions concerning designated representatives. First, the procedures for selecting or changing the designated representative or an alternate were simplified and made less burdensome. Commenters supported the revisions, which are adopted in today's final rule.

Second, the proposal provided the option of selecting two alternate designated representatives for an affected source in certain limited circumstances. The proposal was aimed at providing flexibility for sources with units located in more than one State that are in a NO_X averaging plan under § 76.11 and that are subject to two levels of management, one at the subsidiary operating company and one at the parent company. In particular, as requested by a commenter, the proposal allowed a multi-state utility holding company with a NO_X averaging plan covering units in two or more States to designate for sources with units in the plan a single designated representative at the holding company level and two alternates, one at the management level and one at the operations level of the operating company. Commenters supported the additional flexibility but suggested certain changes to the proposal.[15]

[14] One of the proposed definitions, ''State'', is modified in today's rule. The proposed definition removed language, stating that ''State'' has its conventional meaning where it is clear ''from the context'', and listed one specific instance where the conventional meeting would apply. Because there are several contexts in which the conventional meaning applies, today's rule retains the formulation in the existing rule. Thus, for example, in § 72.40(b)(2) the term ''State'' has its broader meaning (which includes the jurisdiction of any non-federal permitting authority) while in § 72.22(e)(1)(i) ''State'' has its conventional meaning.

[15] One commenter suggested that there is no basis for the requirement in § 76.11 that units in a NO_X averaging plan have the same designated representative. This suggestion is outside the scope of the rulemaking. While it is unclear whether the commenter intended to raise that issue here, EPA

The commenter that originally requested this type of provision in the proposal expressed concern that the references in the proposal to a holding company with multiple subsidiaries may become obsolete in light of future restructuring of the electric industry. For example, a holding company with subsidiaries operating generation facilities may be restructured to include all generation facilities in a single subsidiary. This commenter also was concerned that the proposal limited the option of having two alternates to cases where the NO_X averaging plan covered all units operated by the subsidiaries. If any units are covered by early election plans or have alternative emission limitations and so are outside the NO_X averaging plan, the proposal would not apply. Other commenters echoed these concerns but suggested that EPA allow any source to have two alternates, regardless of whether the source has units that are in a NO_X averaging plan or are subject to management at both the subsidiary and parent company levels.

While retaining the general rule that a source must have one designated representative and may have one alternate, EPA proposed allowing two alternates in limited circumstances where it was shown that such flexibility might be needed. The proposed provision, as modified in today's rule, covers the only specific circumstance for which a need for multiple alternates has been explained by commenters, i.e., where units are in different States but in the same NO_X averaging plan and are subject to both subsidiary and parent company management. While commenters make a general suggestion that having two alternates gives greater assurance that a ''point of contact'' for a source will be available ''at all times'', the commenters do not claim that having one alternate has generally been insufficient or point to any other specific circumstances where two alternates are needed. EPA therefore declines to expand the provision any further.

For the reasons discussed here and in the proposal, today's rule adopts the proposed provision, with changes to meet other concerns stated by commenters. First, the provision expressly covers a unit whose utility system is the subsidiary of a company (not necessarily a ''holding company''). Second, the provision will cover cases where the units in the NO_X averaging plan are operated by a single subsidiary or by two or more subsidiaries. Each unit must be in a utility-system subsidiary of a company, but they may be in the same such subsidiary. Third, the NO_X averaging plan need not include all units operated by subsidiaries of the company; instead the plan must simply cover two or more units in more than one State.

C. Compliance Plans

The proposal revised the provisions concerning the submission of substitution plans and reduced utilization plans in order to clarify the deadlines and the procedures to be used. No comments were received, and the revisions are adopted in today's rule.

The proposal also revised the procedures for review of failed repowering projects. No comments were received on the revisions, which are adopted in today's rule.

Finally, the proposal revised the deadline for activating conditional repowering extension plans from December 31, 1997 to July 1, 1997. No comments were received. However, today's rule is being published after July 1, 1997, and EPA has decided not to revise the activation deadline retroactively.

D. Federal Permit Issuance

The proposal made several revisions to the federal permit issuance procedures. For example, the period after which an Acid Rain permit application received by EPA is deemed to be complete was lengthened from 30 days to 60 days. This was done in order to be consistent with part 71, under which the period applicable to operating permit applications is 60 days. Commenters objected that this prolongs the ''period of uncertainty'' over the completeness of the Acid Rain application and stated that Acid Rain permitting ''generally proceeds along a separate track'' from other title V permitting. However, the commenters' assumption that the Acid Rain portion of the operating permit is processed separately from the rest of the operating permit is not necessarily correct. If the State permitting authority is generally responsible for issuing title V operating permits but, because its Acid Rain rules are not fully approved, EPA issues the Acid Rain permits, then the Acid Rain permits may be processed separately. In cases where EPA is responsible for issuing entire title V operating permits (including the title IV portion), the title IV and title V procedures may be coordinated as a matter of efficiency, particularly if EPA delegates the title IV and title V permitting to the State. *See* 40 CFR 71.10 (delegation of permitting under title I); and 72.74(a)(2) of today's rule (delegation of permitting under title IV). A single completeness review (as well as a single notice and comment procedure) may be conducted for the entire operating permit. EPA maintains that the ability to coordinate Acid Rain permitting and title V permitting and to realize potential efficiencies is enhanced by minimizing the differences between Acid Rain permitting and title V permitting.

Moreover, the Acid Rain portion of the operating permit is generally relatively small compared to the entire title V permit application. It is therefore logical to make the completeness review period for the title IV permit conform to the 60-day period for title V permits, rather than to shorten the title V completeness review period to 30 days. While the period during which owners and operators are uncertain about the completeness of Acid Rain permit applications will be lengthened for 30 days, EPA maintains that the advantage of a consistent completeness review period outweighs the relatively minor, additional uncertainty.

Further, the proposed rule altered the provision concerning the time period within which a designated representative must respond to a request for supplemental information by the Administrator. While the existing rule set an automatic 30-day period for responding and allowed the Administrator to lengthen the response period, the proposal stated that a reasonable period would be set on a case-by-case basis by the Administrator. A commenter objected on the ground that it is unlikely that a period less than 30 days would be reasonable and that it would generally be in the interest of a designated representative to respond expeditiously. However, the commenter ignores the fact that there can be significant, but readily remedied gaps or errors in the information submitted to EPA in a permit application. Setting a minimum response period of 30 days is likely to lengthen unnecessarily the permitting process. In addition, while the Agency could treat applications with such errors as incomplete and avoid the minimum 30-day response period, EPA maintains that it is preferable to have the flexibility to set a reasonable, short response period. This flexible approach both promotes orderly and expeditious processing of permits and protects the designated representative from unreasonable requests. This is also preferable to the commenter's approach of assuming that designated representatives will necessarily respond expeditiously and in a time frame that meets the Agency's schedule for permit processing.

did not propose, and is not considering here, such a change in § 76.11.

E. Permit Revision

The proposal made several changes to the permit revision procedures. Changes concerning permit reopenings received no comment and are adopted in the final rule; changes concerning fast-track amendments and administrative amendments are adopted as discussed below.

With regard to fast-track modifications, the proposal lengthened the period within which a State permitting authority must act on a fast-track modification of a permit from 30 to 60 days after the end of the public comment period. Commenters objected claiming that there is no evidence that State permitting authorities need more time and that the revisions entitled to fast-track modification required little exercise of administrative discretion and are unlikely to receive public comment.

EPA notes that, while a NO_X averaging plan or plan change may require little administrative discretion and elicit little comment, the processing of other types of revisions (e.g., changes to repowering plans or thermal energy plans) is more likely to involve discretion or public comment. Further, the processing of Acid Rain permits and permit revisions represents a very small portion of the operating permit processing required of State permitting authorities under title V. Reflecting the significant burden of operating permit processing, part 70 allows State permitting authorities to take up to 18 months from receipt of a complete permit application to issue an operating permit and a similar period to make significant modifications to an existing operating permit. 40 CFR 70.7(a)(2) and (e)(4)(ii). By comparison, a 90-day period (i.e., the 30-day comment period and 60 days after the end of the period) for completing a fast-track modification is certainly expedited. EPA maintains that, in light of the permitting burden faced by State permitting authorities, it is preferable to set a more realistic, and yet still expedited, deadline for action by State permitting authorities.

With regard to administrative amendments, the proposal set forth the amendment procedures in detail, rather than citing the procedures in part 70. Further, the period for action on one administrative amendment, an alternative emission limitation (AEL) demonstration period, was lengthened from 30 days to 60 days after receipt of an AEL demonstration period petition determined by the permitting authority to meet all the requirements of § 76.10. No comments were made on these revisions, which are adopted in today's rule.

In addition, the administrative amendment procedures were changed to allow a permitting authority to correct minor errors in a permit on its own motion. Noting that the proposed provision was not explicitly limited to ''minor'' errors, commenters argued that notice should be given to the designated representative before even minor changes are made to the permit. In response to these concerns, today's rule explicitly limits administrative permit amendments on the motion of the permitting authority to corrections of typographical errors or similarly noncontroversial changes (e.g., adding a new units or retired units exemption for which the requirements were previously met). Moreover, the rule requires that a permitting authority provide at least 30 days' notice to the designated representative of the source involved before making, on its own motion, any administrative permit amendments. This approach will enable the permitting authority to correct minor errors with minimal delay while providing the designated representative the opportunity to commment.

In order to make the reopening provision consistent with the provision allowing a permitting authority to make administrative amendments on its own motion, language is added to § 72.85. This language makes it clear that administrative amendment procedures, rather than reopening procedures, may be used for typographical or similar errors.

F. Reduced Utilization Accounting

The proposal made several changes in the reduced utilization accounting provisions. Most of the changes received no comment or only favorable comment and are adopted in today's rule. Commenters objected to one change: The provision that, in accounting for the effect of heat rate improvements on a Phase I unit's utilization, credit for such improvements must be limited to the net effect of the improvements on the unit's heat rate. According to the commenters, if a unit's heat rate (i.e., Btu/Kwh) since the 1985–1987 base period deteriorates (i.e., increases) and measures are taken that offset that deterioration, the entire effect of the heat rate improvements should be included in accounting for reduced utilization. The commenters alleged that the statutory reduced utilization provision in section 408(c)(1)(B) of the Act establishes a ''baseline'' heat input, not a ''baseline'' heat rate.

In asserting that there is no connection between utilization in the base period and heat input in the base period, the commenters ignore the basic purpose of accounting for reduced utilization and heat rate improvements. The purpose of the reduced utilization provisions is to ensure that any increased emissions resulting from reducing utilization of, and shifting generation from, Phase I units to units compensating for the reduced utilization ''are accounted for in the allowance system.'' 56 FR 63002, 63019 (December 3, 1991). Reduced utilization ''as a result of * * * improved unit efficiency programs'' need not be accounted for through allowance surrender because these programs ''cause decreases in utilization without any shifts of generation to unaffected units.'' 56 FR 63021. To the extent utilization (i.e., total annual heat input in mmBtus) at a Phase I unit is reduced below the baseline level because that unit has improved its heat rate after 1987 *over the level reflected in the baseline utilization,* there is no increase in SO_2 emissions and allowances need not be surrendered. In this case, the Phase I unit is using less fuel because it can produce a kilowatthour of electricity with less fuel and thus less SO_2 emissions.

However, if the Phase I unit's heat rate deteriorates from the level reflected in the unit's baseline utilization and heat rate improvement measures are instituted after 1987 that bring heat rate back to the level reflected in the baseline utilization, then the unit is using the same amount of fuel to produce a kilowatthour of electricity. In the latter case, the heat rate improvements made after 1987 do not account for the use of less fuel at the Phase I unit. Just as heat rate improvements made before 1987 and reflected in baseline utilization cannot account for utilization below baseline, heat rate improvements made after 1987 that simply restore the heat rate to the level reflected in the baseline cannot account for reduced utilization. *See* 61 FR 68354. The same logic applies if a Phase I unit is attempting to account for its reduced utilization through heat rate improvements at another unit that simply restore the latter unit's heat rate to the 1987 level.

Thus, contrary to the commenters' assertions, EPA did not simply ''assume'' that limiting heat rate improvement to net improvement since 1987 is warranted. On the contrary, EPA explained, albeit in less detail than in today's rule, the basis for the limitation. *Id.* Moreover, the limitation is consistent with long-standing explanations of the purpose of reduced utilization accounting, as discussed

above, and with other, regulatory provisions governing such accounting. In particular, limiting heat rate improvement to net improvement since 1987 is analogous to the approach taken in the existing rule concerning sulfur-free generation, which is not at issue here. Only the net increase in current generation at a sulfur-free generator (i.e., the increase in current generation over the sulfur-free generator's average 1985–1987 annual generation), not the increase from one year to the next, is used to account for reduced utilization. *See* 40 CFR 72.91(a)(3)(iii); and 58 FR 3590, 3606–7 (January 11, 1993).[16] The commenters' approach is therefore rejected as inconsistent with the entire thrust of reduced utilization accounting, and the proposed provision is adopted in today's rule.

V. Part 73: Allowances

A. Allowance Tables

In the proposal, EPA proposed a number of changes in unadjusted allowances and in the units and allowance figures listed in Tables 2 and 3 of § 73.10, reflecting those allowance changes. For purposes of the proposal, EPA was able to list the changes in the rule without reprinting Tables 2 and 3. However, consistent with the requirements of the **Federal Register** concerning finalization of multiple changes to regulatory tables and in the interest of facilitating public understanding of the final changes, EPA concludes that the changes should be finalized through republication of information in the tables. Further, section 403(a) of the Act requires the Administrator to issue prior to June 1, 1998 a revision of the final allowance allocations primarily to account for allocations for repowered units under section 409. That revision will necessitate recalculation of all units' allowance allocations and so must also be implemented through republication of information in Tables 2 and 3. In order to avoid the confusion likely to result from, and the large expense associated with, multiple republications of information in the tables, EPA has decided not to finalize at this time the allowance revisions in the December 27, 1996 rule. Instead, EPA intends to propose in the near future the revisions associated with the June 1, 1998 allocations and to coordinate finalization of both the allowance revisions in the December 27, 1996 proposal and that future proposal.

The only exception to this approach is the allowance changes for Central Louisiana Electric Company's Rodemacher unit 2. In the December 27, 1996 proposal, the allowances for Rodemacher unit 2 were changed to 20,774 unadjusted allowances. Under a settlement of litigation concerning Rodemacher unit 2's allowance allocation, the Administrator agreed to sign a final rule adopting the revision to the unit's allowances by October 1997. Consistent with that settlement, the proposed unadjusted allowances for Rodemacher unit 2 are adopted in today's rule. This single change can be made without republishing the allowance tables.

B. Small Diesel Refinery Provisions

The proposal made certain revisions to the provisions to small refinery allowance allocations. No comment was received, and the revisions are adopted in today's rule.

VI. Part 75: Monitoring of Units Burning Digester or Landfill Gas

In the proposal, EPA requested comment on monitoring requirements for units burning digester or landfill gas. No comments were received. EPA intends to consider this matter in future proceedings.

VII. Part 77: Excess Emissions

The proposal made changes to part 77 concerning immediate deduction of allowances to offset excess emissions, the deadline for paying excess emissions penalties, and excess NO_X emissions under a NO_X averaging plan. The changes received no comment or only favorable comment and are adopted in the final rule.

VIII. Part 78: Administrative Appeals

The proposal made changes to part 78 to clarify that an administrative appeal is a prerequisite for judicial review of decisions of the Administrator under the Acid Rain Program and to ensure that the requirement for exhaustion of administrative remedies is consistent with the Supreme Court's decision in *Darby* v. *Cisneros*, 509 U.S. 137 (1993). On September 24, 1993, the Agency originally proposed to add language stating explicitly that administrative appeal is a prerequisite for judicial review. 58 FR 50088, 50104 (1993). Certain commenters stated, in response to the September 24, 1993 proposal, that, in light of the alleged potential for ''disruptive effects'' resulting from an administrative exhaustion requirement, the Agency should solicit additional comment on the effect of *Darby* on part 78. EPA therefore did not finalize the September 24, 1993 proposal. Instead, EPA provided further opportunity for comment by publishing the December 27, 1996 proposal, which included both the changes explicitly requiring exhaustion of administrative remedies and some additional changes to conform with *Darby*. In its comments on the December 27, 1996 proposed rule, the same commenters submitted further comments. In their second set of comments, the commenters failed to go beyond their generalized claim of ''disruptive effects''. Rather than providing any specific claims or examples of when administrative appeal of a particular type of Administrator's decision would be ''disruptive'' to the Acid Rain Program or to affected sources' compliance efforts, the commenters simply expressed general concern that EPA ''failed to consider'' unspecified ''disruptive'' effects.

In the September 24, 1993 and December 27, 1996 proposals, EPA set forth both the basis for requiring exhaustion of administrative remedies and provisions addressing concerns over delay pending completion of administrative review. Requiring exhaustion of administrative remedies promotes efficient use of administrative and judicial resources in that it ''allows the Agency to review * * * decisions for correctness before having to defend (them) * * * in Federal court.'' 58 FR 50104 (quoting the original proposed appeals procedures at 56 FR 63002, 63033 (December 3, 1991)). Decisions that a petitioner shows are erroneous can be reversed or corrected without resource-intensive litigation before the federal courts and decisions that a petitioner shows are insufficiently explained can be reexamined and either reversed or better explained. The overall effect is to increase the likelihood of sound decision-making and reduce the need for recourse to the courts.[17]

[16] While EPA uses 1985–1987 average sulfur-free generation as the bench mark for limiting the use of sulfur-free generation in reduced utilization accounting, the proposal and today's rule use 1987 heat rate as the bench mark for limiting the use of unit efficiency improvements. This is because annual generation was more likely to vary during 1985–1987 than was a unit's annual heat rate and the use of the 1987 heat rate, which captures any efficiency improvement measures instituted before 1988, is less burdensome for utilities and EPA to determine than the average 1985–1987 heat rate.

[17] EPA maintains that, contrary to commenters' assertion, the provision in section 307(b)(1) of the Clean Air Act on motions for reconsideration is irrelevant to the question of administrative appeals and is not properly interpreted as evidencing ''hostility'' to the exhaustion requirement involved here. Section 307(b)(1) involves judicial appeals and the effect of agency reconsideration of a final action on such appeals. To the extent section 307(b)(1) addresses reconsideration of a final rule, the section is irrelevant to this case, which concerns administrative appeals of individual, adjudicative decisions. To the extent the section addresses reconsideration of an adjudicative decision, the section is still irrelevant here. Reconsideration

Continued

Further, while nothing in the record indicates that delay pending administrative appeal of Acid Rain Program decisions (during which appeal the decisions will not be operative) will likely have ''significant, adverse consequences'', the December 27, 1993 proposal took reasonable account of the general possibility of such consequences pending appeal.[18] 61 FR 68365. Despite two opportunities to provide information on the alleged, potential, adverse effect of the exhaustion requirement, the commenters originally objecting to the requirement were apparently unable to identify any specific circumstances in the Acid Rain Program under which significant, adverse consequences would result from the requirement, much less provide any information on the likelihood of such circumstances arising. No such circumstances have been identified to EPA, and EPA is not aware of any, particularly in light of the ability of the Agency, under the proposal and today's rule, to expedite administrative appeals. EPA therefore rejects the commenters' claim concerning ''disruptive effects'' of the exhaustion requirement as speculative and unsupported.

Moreover, the Agency's general approach under the regulatory statutes that it administers is to require exhaustion of administrative remedies prior to judicial review. *See, e.g.,* 40 CFR 71.11(l)(4) (administrative appeal of final permit decision under title V of Clean Air Act); 40 CFR 124.19(f)(1) (administrative appeal of final permit decision under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (RCRA), Prevention of Significant Deterioration (PSD) program in the Clean Air Act, or Underground Injection Control (UCI) program in the Safe Drinking Water Act); and 40 CFR 124.60(g) (administrative appeal of final permit decision under National Pollutant Discharge Elimination System (NPDES)). Today's rule is consistent with that general approach.

Nevertheless, the Agency crafted the proposed rule for Acid Rain Program appeals to provide for flexibility to minimize delay, particularly if future cases arise where delay will have a significant, adverse effect. Specifically, the proposal revised the existing rule to allow the Administrator, the Environmental Appeals Board, or the Presiding Officer (as appropriate) to set different, reasonable time periods (which could be shorter or longer than in the existing rule) for administrative-appeal-related filing by parties. For example, the 30-day period within which motions to intervene in part 78 appeals may be filed was changed to allow a different period to be set. As explained in the proposal, this approach gives the Agency ''the ability to accelerate the appeals proceeding where delay due to the pending appeal will have significant, adverse consequences.'' 61 FR 68365. The commenters argued that the Agency might not always ''share an affected source's interest in avoiding'' such adverse consequences. However, the Agency's approach of allowing adjustment of the time periods gives the Agency the authority to accommodate the need for expeditious administrative appeal and gives the affected source the opportunity to show that expedition is necessary. Particularly in cases where such a showing is made, the Agency intends to make reasonable efforts to minimize the delay caused by the appeal. The Agency maintains that this approach reasonably balances, on one hand, the important role of the exhaustion requirement and, on the other, the commenter's generalized concern that appeals not cause undue delay.

The commenters failed to recommend any other approach but merely stated that the Agency had not considered limiting the applicability of the exhaustion requirement, foregoing the exhaustion requirement, or setting tighter time limits on procedural steps. However, in explaining the need for the exhaustion requirement (*see* 56 FR 63033, 58 FR 50104, and 61 FR 68365), the Agency rejected the notion of limiting or foregoing the requirement. Further, recognizing that the major purpose of providing flexibility in the time periods for filings is to expedite administrative appeals, EPA is modifying the proposal to provide that, with a few exceptions discussed below, the time periods involved may be shortened, but not lengthened.

One of the more important exceptions to that approach is the period for filing of administrative appeals.[19] Commenters raised concern that an Administrator's decision under the Acid Rain Program would remain ''in limbo'' during a period of uncertain duration for the filing of an administrative appeal. Today's rule reduces the standard period for appeal to 30 days from issuance of the Administrator's decision and establishes that as a fixed period that cannot be changed on a case-by-case basis. The Agency is concerned that a period shorter than 30 days would not provide enough time for preparation of a petition that fully addresses the issues on appeal, as required under § 78.3(c). *See, e.g.,* 40 CFR 78.3(c)(1) and (3) (requiring a list of material issues and a clear and concise brief supporting the petition). This standard appeal period is consistent with the 30-day time period for administrative appeal of other actions of the Administrator under the Clean Air Act and other statutes administered by EPA. *See, e.g.,* 40 CFR 71.11(l)(1) (administrative appeal of final permit decision under title V); 40 CFR 124.19(a) (administrative appeal of final permit decision under RCRA, PSD program, or UIC program); and 40 CFR 124.91(a)(1) (administrative appeal of final permit decision under NPDES). The reduced time period for filing appeals reduces the period of uncertainty on the status of the decision while still providing a reasonable opportunity for administrative appeal.[20]

From the time a decision is issued until the expiration of the appeal period, there is necessarily some uncertainty about the status of the decision: the parties will not know for certain whether the decision will be final until the expiration of the appeal period. However, this uncertainty is tempered by the fact, admitted by the commenters, that the vast majority of decisions under the Acid Rain Program have not been, and probably will not be, appealed. Further, the limitations on the presenting of new evidence and on the raising of new issues during an administrative appeal of a decision for which there was an opportunity to comment will encourage parties interested in a decision to submit comments. As a result, parties' positions will probably be known when the decision is issued and the likelihood of appeal can then be evaluated.

provides a second opportunity for agency review of an adjudicative decision, for which an opportunity for administrative review was already provided. In contrast, the issue here is whether there should be an *initial* opportunity for EPA to review its decisions on Acid Rain matters before the decisions may be appealed to the courts.

[18] EPA did not ''acknowledge'' that there would be cases of ''significant, adverse consequences'' due to delay pending appeal or that any such cases would be likely to occur. Instead, EPA provided procedures that could address such cases (regardless of their likelihood) *if* they arose.

[19] A minor exception under today's rule is the period for curing defects in filings, which remains as 7 days subject to shortening or lengthening at the discretion of the Environmental Appeals Board or the Presiding Officer. This will minimize the likelihood of a filing being permanently excluded for purely technical reasons. The Agency is confident that flexibility concerning this limited type of procedural deadline can be implemented in a way that will not result in unnecessary delay of proceedings.

[20] For similar reasons, the period for appealing a proposed decision of a Presiding Officer to the Environmental Appeals Board is fixed at 30 days under § 78.20(a).

The commenters also suggested that a decision should be considered operative during the period between the date the decision is issued and the expiration of the appeal period (i.e., 30 days under today's rule) unless and until a petition for administrative appeal is filed with the Environmental Appeals Board. Prior to today's rule revisions, part 78 provided that a decision was operative from the date of issuance and throughout the administrative appeal period, except to the extent the decision was stayed by the Environmental Appeals Board or the Presiding Officer designated by the Board. 40 CFR 78.7(a). While today's rule makes a decision inoperative once a timely petition for administrative appeal is filed, the status of the decision prior to appeal or the running of the period for filing an appeal is unchanged. The decision itself (e.g., the approval or denial of an Acid Rain permit or permit revision or of a petition under part 75) may specify the date on which the decision is effective. Unless the decision itself specifies an effective date that is different than the date on which the decision is actually issued, the decision is operative on the issuance date unless and until the filing of a timely petition for administrative appeal in accordance with part 78. For example, with regard to a decision concerning the transfer of allowances to or from an Allowance Tracking System Account, the requirement in the existing rule that the Administrator implement, within 5 business days of receipt, an allowance transfer request that he or she determines to be properly submitted (40 CFR 73.52 and 73.53) is unchanged in the December 27, 1996 proposal and today's rule. In principle, if the transfer were appealed under part 78, the Administrator could take action to render the transfer inoperative pending appeal. However, appeal in such circumstances is highly unlikely since an allowance transfer must be authorized by the designated representative of the party transferring the allowances. *See* 42 U.S.C. 7651b(b).

For the reasons discussed here and in the September 24, 1993 and December 27, 1996 proposals, the December 27, 1996 revisions are adopted as modified above.

IX. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Administrator must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, 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 final rule is a ''significant regulatory action'' because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

B. Unfunded Mandates Act

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

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

For the reasons discussed in detail here and in the proposal (61 FR 68340), the final rule has the net effect of reducing the burden of parts 72, 77, and 78 of the Acid Rain regulations on regulated entities (including both investor-owned and municipal utilities) and on State permitting authorities (which may include State, local, and tribal governments). For example, the final rule reduces the burden of obtaining or providing new units and retired units exemptions from the Acid Rain Program and of issuing Acid Rain permits.

The final revisions to part 73 also do not have a significant, adverse effect on regulated entities (including small entities) and have no effect on State permitting authorities. The final rule increases the annual unadjusted basic allowances for one unit by 2,312 allowances. In a future action, the Agency will act on the other allowance revisions in the proposal. Sections 403(a) and 405(a)(3) of the Act set a nationwide cap on annual allowance allocations. Because of the requirement to adhere to the cap, the increase of allowances under this final rule (if not offset by the other allowance revisions when they are finalized) would eventually necessitate an equal decrease in the total annual allocations of all other units. The small decrease (i.e., 2,312 allowances out of an annual

nationwide cap of about 8.95 million allowances or about 0.026 percent) would be spread among all other units, and so the effect on any one unit would be insignificant. Moreover, EPA is not, in today's rule, adjusting the allocations of the other units to account for this small allowance increase.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0258.

The only additional information required by this collection of information is data concerning industrial utility-units that exercise the option of applying for the industrial utility-units exemption established by today's rule. If granted, the industrial utility-units exemption exempts the unit from most requirements of the Acid Rain Program, e.g., allowance, monitoring, and annual compliance requirements. The requirements from which qualified industrial utility-units will be exempt are significantly more burdensome than the information collection requirements for obtaining the exemption.[21] An industrial utility-unit seeking the exemption must meet the information collection requirements, which involve submission of information that is necessary, and will be used, for determining whether the unit qualifies and will continue to qualify for the exemption.

The additional information collection increases the estimated burden, as compared to the burden under the existing rule, by an average of 24 hours per response for an estimated 15 one-time responses. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

D. Regulatory Flexibility

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires federal agencies to consider potential impacts of its regulations on small entities. Under 5 U.S.C. 604(a), an agency issuing a notice of final rulemaking under section 553 of the Administrative Procedure Act, must prepare and make available for public comment a final regulatory flexibility analysis. Such an analysis is not required if the head of an agency determines, under 5 U.S.C. 605(b), that the final rule will not have a significant economic impact on a substantial number of small entities.

In the preamble of the January 11, 1993 rule, the Administrator certified that the rule, including the provisions revised by today's rule, would not have a significant, adverse impact on small entities. 58 FR 3649. Today's final revisions are not significant enough to change the overall economic impact addressed in the January 11, 1993 preamble. Moreover, as discussed in this preamble, today's rule has the net effect of reducing the burden of the Acid Rain regulations on regulated entities, including small entities. For example, the rule makes it less burdensome to obtain new units and retired units exemptions from the Acid Rain Program. Further, the rule increases the allowances for one unit, which increase will have an insignificant effect on other units' allowance allocations.

For the reasons discussed above, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has determined that this rule will not have a significant, economic impact on a substantial number of small entities.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

F. Miscellaneous

In accordance with section 117 of the Act, issuance of this final rule was preceded by consultation with any appropriate advisory committees, independent experts, and federal departments and agencies.

List of Subjects in 40 CFR Parts 9, 72, 73, 74, 75, 77, and 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Compliance plans, Continuous emissions monitors, Electric utilities, Intergovernmental relations, Nitrogen oxides, Penalties, Permits, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: October 6, 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 9—[AMENDED]

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

Authority: 7 U.S.C. 135, *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251, *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857, *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

2. Section 9.1 is amended by adding to the table under Permits Regulation in the column ''40 CFR Citation'', after the entry for ''72.7–72.10'', the entry ''72.14'' and adding to the table, as the corresponding entry in the column ''OMB Control No.'', the entry ''2060–0258''.

[21] Because the information collection burden on industrial utility-units in the absence of this new exemption was not included in the ICR for the existing rule, the effect of removing such burden through the new exemption is not included in the ICR for today's rule. Consequently, the ICR for today's rule shows an increase in burden even though exempt industrial utility-units will actually experience a significant net reduction in the burden imposed on them by the Acid Rain Program. In addition, as discussed in this preamble, today's rule includes other revisions that will reduce somewhat the burden of the program on units that are not exempt. Because the burden reduction for non-exempt units is small relative to the total burden of the program, the reduction is not reflected in the ICR for today's rule.

PART 72—[AMENDED]

3. The authority citation for part 72 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 72.1 [Amended]

4. Section 72.1 is amended by removing from paragraph (b) the words ''part 70'' and adding, in their place, the words ''parts 70 and 71''.

5. Section 72.2 is amended by: removing the definition for ''Dispatch system''; adding in alphabetical order the definitions for ''Affected States'' and ''Eligible Indian tribe''; and revising paragraphs (1)(i) and (2) of the definition for ''Acid Rain emissions limitation'', the definition for ''Acid Rain permit or permit'', paragraph (2) of the definition of ''Coal-fired'', the definitions for ''Customer'' and ''Permitting authority'' and ''Phase I unit'', paragraph (3) of the definition of ''Power purchase commitment'', and the definitions for ''Submit or serve'' and ''State'' and ''State operating permits program'' to read as follows:

§ 72.2 Definitions.

* * * * *

Acid Rain emissions limitation means:

(1) * * *

(i) The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under section 404(a)(1), (a)(3), and (h) of the Act, or the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year, or the allowances authorized to be allocated to an opt-in source under section 410 of the Act for use in a calendar year;

* * * * *

(2) For purposes of nitrogen oxides emissions, the applicable limitation under part 76 of this chapter.

* * * * *

Acid Rain permit or permit means the legally binding written document or portion of such document, including any permit revisions, that is issued by a permitting authority under this part and specifies the Acid Rain Program requirements applicable to an affected source and to the owners and operators and the designated representative of the affected source or the affected unit.

* * * * *

Affected States means any affected States as defined in part 71 of this chapter.

* * * * *

Coal-fired means * * *

(2) For all other purposes under the Acid Rain Program, except for purposes of applying part 76 of this chapter, a unit is ''coal-fired'' if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); *provided* that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field ''PRIMEFUEL''.

* * * * *

Customer means a purchaser of electricity not for the purposes of retransmission or resale. For generating rural electrical cooperatives, the customers of the distribution cooperatives served by the generating cooperative will be considered customers of the generating cooperative.

* * * * *

Eligible Indian tribe means any eligible Indian tribe as defined in part 71 of this chapter.

* * * * *

Permitting authority means either:

(1) When the Administrator is responsible for administering Acid Rain permits under subpart G of this part, the Administrator or a delegatee agency authorized by the Administrator; or

(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to administer Acid Rain permits under subpart G of this part and part 70 of this chapter.

* * * * *

Phase I unit means any affected unit, except an affected unit under part 74 of this chapter, that is subject to an Acid Rain emissions reduction requirement or Acid Rain emissions limitation beginning in Phase I; or any unit exempt under § 72.8 that, but for such exemption, would be subject to an Acid Rain emissions reduction requirement or Acid Rain emissions limitation beginning in Phase I.

* * * * *

Power purchase commitment means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

* * * * *

(3) A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source is executed within the time frame established by the terms of the letter of intent but no later than November 15, 1993 or, where the letter of intent does not specify a time frame, a power sale agreement applicable to the source is executed on or before November 15, 1993; or

* * * * *

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other equivalent means of dispatch, or transmission, and delivery. Compliance with any ''submission'', ''service'', or ''mailing'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

* * * * *

State means one of the 48 contiguous States and the District of Columbia, any non-federal authorities in or including such States or the District of Columbia (including local agencies, interstate associations, and State-wide agencies), and any eligible Indian tribe in an area in such State or the District of Columbia. The term ''State'' shall have its conventional meaning where such meaning is clear from the context.

State operating permit program means an operating permit program that the Administrator has approved under part 70 of this chapter.

* * * * *

6. Section 72.6 is amended by adding paragraph (b)(9) and revising paragraphs (c)(1) and (2) to read as follows:

§ 72.6 Applicability.

* * * * *

(b) * * *

(9) A unit for which an exemption under § 72.7, § 72.8, or § 72.14 is in effect. Although such a unit is not an affected unit, the unit shall be subject to the requirements of § 72.7, § 72.8, or § 72.14, as applicable to the exemption.

(c) A certifying official of an owner or operator of any unit may petition the Administrator for a determination of applicability under this section.

(1) *Petition Content.* The petition shall be in writing and include identification of the unit and relevant facts about the unit. In the petition, the certifying official shall certify, by his or her signature, the statement set forth at § 72.21(b)(2). Within 10 business days of receipt of any written determination by the Administrator covering the unit, the certifying official shall provide each owner or operator of the unit, facility, or source with a copy of the petition and a copy of the Administrator's response.

(2) *Timing.* The petition may be submitted to the Administrator at any time but, if possible, should be submitted prior to the issuance (including renewal) of a Phase II Acid Rain permit for the unit.

* * * * *

7. Section 72.7 is revised to read as follows:

§ 72.7 New units exemption.

(a) *Applicability.* This section applies to any new utility unit that has not previously lost an exemption under paragraph (f)(4) of this section and that, in each year starting with the first year for which the unit is to be exempt under this section:

(1) Serves during the entire year (except for any period before the unit commenced commercial operation) one or more generators with total nameplate capacity of 25 MWe or less;

(2) Burns fuel that does not include any coal or coal-derived fuel (except coal-derived gaseous fuel with a total sulfur content no greater than natural gas); and

(3) Burns gaseous fuel with an annual average sulfur content of 0.05 percent or less by weight (as determined under paragraph (d) of this section) and nongaseous fuel with an annual average sulfur content of 0.05 percent or less by weight (as determined under paragraph (d) of this section).

(b)(1) Any new utility unit that meets the requirements of paragraph (a) of this section and that is not allocated any allowances under subpart B of part 73 of this chapter shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13.

(2) The exemption under paragraph (b)(1) of this section shall be effective on January 1 of the first full calendar year for which the unit meets the requirements of paragraph (a) of this section. By December 31 of the first year for which the unit is to be exempt under this section, a statement signed by the designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit shall be submitted to permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator. The statement, which shall be in a format prescribed by the Administrator, shall identify the unit, state the nameplate capacity of each generator served by the unit and the fuels currently burned or expected to be burned by the unit and their sulfur content by weight, and state that the owners and operators of the unit will comply with paragraph (f) of this section.

(3) After receipt of the statement under paragraph (b)(2) of this section, the permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (a), (b)(1), (d), and (f) of this section.

(c)(1) Any new utility unit that meets the requirements of paragraph (a) of this section and that is allocated one or more allowances under subpart B of part 73 of this chapter shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13, if each of the following requirements are met:

(i) The designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit submits to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit a statement (in a format prescribed by the Administrator) that:

(A) Identifies the unit and states the nameplate capacity of each generator served by the unit and the fuels currently burned or expected to be burned by the unit and their sulfur content by weight;

(B) States that the owners and operators of the unit will comply with paragraph (f) of this section;

(C) Surrenders allowances equal in number to, and with the same or earlier compliance use date as, all of those allocated to the unit under subpart B of part 73 of this chapter for the first year that the unit is to be exempt under this section and for each subsequent year; and

(D) Surrenders any proceeds for allowances under paragraph (c)(1)(i)(C) or this section withheld from the unit under § 73.10 of this chapter. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator.

(ii) The Administrator deducts from the unit's Allowance Tracking System account allowances under paragraph (c)(1)(i)(C) of this section and receives proceeds under paragraph (c)(1)(i)(D) of this section. Within 5 business days of receiving a statement in accordance with paragraph (c)(1)(i) of this section, the Administrator shall either deduct the allowances under paragraph (c)(1)(i)(C) of this section or notify the owners and operators that there are insufficient allowances to make such deductions. Upon completion of such deductions and receipt of such proceeds, the Administrator will close the unit's Allowance Tracking System account and notify the designated representative (or certifying official) and, if the Administrator is not the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit, the permitting authority.

(2) The exemption under paragraph (c)(1) of this section shall be effective on January 1 of the first full calendar year for which the requirements of paragraphs (a) and (c)(1) of this section are met. After notification by the Administrator under the third sentence of paragraph (c)(1)(ii) of this section, the permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (a), (c)(1), (d), and (f) of this section.

(d) Compliance with the requirement that fuel burned during the year have an annual average sulfur content of 0.05 percent by weight or less shall be determined as follows using a method of determining sulfur content that provides information with reasonable precision, reliability, accessibility, and timeliness:

(1) For gaseous fuel burned during the year, if natural gas is the only gaseous fuel burned, the requirement is assumed to be met;

(2) For gaseous fuel burned during the year where other gas in addition to or besides natural gas is burned, the requirement is met if the annual average sulfur content is equal to or less than 0.05 percent by weight. The annual average sulfur content, as a percentage by weight, for the gaseous fuel burned shall be calculated as follows:

$$\%S_{annual} = \frac{\sum_{n=1}^{last} \%S_n V_n d_n}{\sum_{n=1}^{last} V_n d_n}$$

Where:

$\%S_{annual}$=annual average sulfur content of the fuel burned during the year by the unit, as a percentage by weight;

$\%S_n$=sulfur content of the nth sample of the fuel delivered during the year to the unit, as a percentage by weight;

V_n=volume of the fuel in a delivery during the year to the unit of which the nth sample is taken, in standard cubic feet; or, for fuel delivered during the year to the unit continuously by pipeline, volume of the fuel delivered starting from when the nth sample of such fuel is taken until the next sample of such fuel is taken, in standard cubic feet;

d_n=density of the nth sample of the fuel delivered during the year to the

unit, in lb per standard cubic foot; and n=each sample taken of the fuel delivered during the year to the unit, taken at least once for each delivery; or, for fuel that is delivered during the year to the unit continuously by pipeline, at least once each quarter during which the fuel is delivered.

(3) For nongaseous fuel burned during the year, the requirement is met if the annual average sulfur content is equal to or less than 0.05 percent by weight. The annual average sulfur content, as a percentage by weight, shall be calculated using the equation in paragraph (d)(2) of this section. In lieu of the factor, volume times density (V_n d_n), in the equation, the factor, mass (M_n), may be used, where M_n is: mass of the nongaseous fuel in a delivery during the year to the unit of which the nth sample is taken, in lb; or, for fuel delivered during the year to the unit continuously by pipeline, mass of the nongaseous fuel delivered starting from when the nth sample of such fuel is taken until the next sample of such fuel is taken, in lb.

(e)(1) A utility unit that was issued a written exemption under this section and that meets the requirements of paragraph (a) of this section shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13 and shall be subject to the requirements of paragraphs (a), (d), (e)(2), and (f) of this section in lieu of the requirements set forth in the written exemption. The permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this paragraph (e)(1) and paragraphs (a), (d), (e)(2), and (f) of this section.

(2) If a utility unit under paragraph (e)(1) of this section is allocated one or more allowances under subpart B of part 73 of this chapter, the designated representative (authorized in accordance with subpart B of this part) or, if no designated representative has been authorized, a certifying official of each owner of the unit shall submit to the permitting authority that issued the written exemption a statement (in a format prescribed by the Administrator) meeting the requirements of paragraph (c)(1)(i)(C) and (D) of this section. The statement shall be submitted by June 31, 1998 and, if the Administrator is not the permitting authority, a copy shall be submitted to the Administrator.

(f) Special Provisions. (1) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall:

(i) Comply with the requirements of paragraph (a) of this section for all periods for which the unit is exempt under this section; and

(ii) Comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(2) For any period for which a unit is exempt under this section, the unit is not an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the requirements of paragraph (a) of this section are met. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority.

(i) Such records shall include, for each delivery of fuel to the unit or for fuel delivered to the unit continuously by pipeline, the type of fuel, the sulfur content, and the sulfur content of each sample taken.

(ii) The owners and operators bear the burden of proof that the requirements of paragraph (a) of this section are met.

(4) Loss of exemption. (i) On the earliest of the following dates, a unit exempt under paragraphs (b), (c), or (e) of this section shall lose its exemption and become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter:

(A) The date on which the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe;

(B) The date on which the unit burns any coal or coal-derived fuel except for coal-derived gaseous fuel with a total sulfur content no greater than natural gas; or

(C) January 1 of the year following the year in which the annual average sulfur content for gaseous fuel burned at the unit exceeds 0.05 percent by weight (as determined under paragraph (d) of this section) or for nongaseous fuel burned at the unit exceeds 0.05 percent by weight (as determined under paragraph (d) of this section).

(ii) Notwithstanding § 72.30(b) and (c), the designated representative for a unit that loses its exemption under this section shall submit a complete Acid Rain permit application on the later of January 1, 1998 or 60 days after the first date on which the unit is no longer exempt.

(iii) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit is no longer exempt.

8. Section 72.8 is revised to read as follows:

§ 72.8 Retired units exemption.

(a) This section applies to any affected unit (except for an opt-in source) that is permanently retired.

(b)(1) Any affected unit (except for an opt-in source) that is permanently retired shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, §§ 72.10 through 72.13, and subpart B of part 73 of this chapter.

(2) The exemption under paragraph (b)(1) of this section shall become effective on January 1 of the first full calendar year during which that the unit is permanently retired. By December 31 of the first year that the unit is to be exempt under this section, the designated representative (authorized in accordance with subpart B of this part), or, if no designated representative has been authorized, a certifying official of each owner of the unit shall submit a statement to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit. If the Administrator is not the permitting authority, a copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the Administrator) that the unit is permanently retired and will comply with the requirements of paragraph (d) of this section.

(3) After receipt of the notice under paragraph (b)(2) of this section, the permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (b)(1) and (d) of this section.

(c) A unit that was issued a written exemption under this section and that is permanently retired shall be exempt from the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, §§ 72.10 through 72.13, and subpart B of part 73 of this chapter,

and shall be subject to the requirements of paragraph (d) of this section in lieu of the requirements set forth in the written exemption. The permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this paragraph (c) and paragraph (d) of this section.

(d) Special Provisions. (1) A unit exempt under this section shall not emit any sulfur dioxide and nitrogen oxides starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart B of part 73 of this chapter. If the unit is a Phase I unit, for each calendar year in Phase I, the designated representative of the unit shall submit a Phase I permit application in accordance with subparts C and D of this part 72 and an annual certification report in accordance with §§ 72.90 through 72.92 and is subject to §§ 72.95 and 72.96.

(2) A unit exempt under this section shall not resume operation unless the designated representative of the source that includes the unit submits a complete Acid Rain permit application under § 72.31 for the unit not less than 24 months prior to the later of January 1, 2000 or the date on which the unit is first to resume operation.

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) For any period for which a unit is exempt under this section, the unit is not an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(5) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority. The owners and operators bear the burden of proof that the unit is permanently retired.

(6) Loss of exemption. (i) On the earlier of the following dates, a unit exempt under paragraph (b) or (c) of this section shall lose its exemption and become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter:

(A) The date on which the designated representative submits an Acid Rain permit application under paragraph (d)(2) of this section; or

(B) The date on which the designated representative is required under paragraph (d)(2) of this section to submit an Acid Rain permit application.

(ii) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit resumes operation.

§ 72.9 [Amended]

9. Section 72.9 is amended by:

a. Removing from paragraphs (b)(1) and (2) the words ''and section 407 of the Act and regulations implementing section 407 of the Act'';

b. Removing from paragraph (b)(3) the words ''and regulations implementing section 407 of the Act'';

c. Removing from paragraph (c)(6) the words ''the written exemption under §§ 72.7 and 72.8'' and adding in their place, the words ''an exemption under §§ 72.7, 72.8, or 72.14'';

d. Removing from paragraph (f)(1)(ii) the punctuation ''.'' and adding in its place the words ''; *provided* that to the extent that part 75 provides for a 3-year period for recordkeeping, the 3-year period shall apply.'';

e. Removing from paragraph (g)(1) the words ''a written exemption under § 72.7 or § 72.8'' and adding, in their place, the words ''an exemption under §§ 72.7, 72.8, or 72.14'';

f. Removing from paragraph (g)(6) the words ''part 76 of this chapter'' and adding, in their place, the words ''§ 76.11 of this chapter; and

g. Removing from paragraph (h) introductory text the words ''a written exemption under §§ 72.7 or 72.8'' and adding, in their place, the words ''an exemption under §§ 72.7, 72.8, or 72.14''.

§ 72.13 [Amended]

10. Section 72.13 is amended by:

a. Removing paragraphs (a)(1), (a)(5), (a)(6), (a)(7), (a)(9), and (a)(10);

b. Redesignating paragraph (a)(2) as paragraph (a)(1);

c. Redesignating paragraph (a)(3) as paragraph (a)(2);

d. Redesignating paragraph (a)(4) as paragraph (a)(3), and

e. Redesignating paragraph (a)(8) as paragraph (a)(4).

11. Section 72.14 is added to read as follows:

§ 72.14 Industrial utility-units exemption.

(a) *Applicability.* This section applies to any non-cogeneration, utility unit that has not previously lost an exemption under paragraph (d)(4) of this section and that meets the following criteria:

(1) Starting on the date of the signing of the interconnection agreement under paragraph (a)(2) of this section and thereafter, there has been no owner or operator of the unit, division or subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority;

(2) On or before March 23, 1993, the owners or operators of the unit entered into an interconnection agreement and any related power purchase agreement with a person whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority, requiring the generator or generators served by the unit to produce electricity for sale only for incidental electricity sales to such person;

(3) The unit served or serves one or more generators that, in 1985 or any year thereafter, actually produced electricity for sale only for incidental electricity sales required under the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section; and

(4) Incidental electricity sales, under this section, are total annual sales of electricity produced by a generator that do not exceed 10 percent of the nameplate capacity of that generator times 8,760 hours per year and do not exceed 10 percent of the actual annual electric output of that generator.

(b) *Petition for exemption.* The designated representative (authorized in accordance with subpart B of this part) of a unit under paragraph (a) of this section may submit to the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit a complete petition for an exemption for the unit from the requirements of the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6, and §§ 72.10 through 72.13. If the Administrator is

not the permitting authority, a copy of the petition shall be submitted to the Administrator. A complete petition shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the unit;

(2) A statement that the unit is not a cogeneration unit;

(3) A list of the current owners and operators of the unit and any other owners and operators of the unit, starting on the date of the signing of the interconnection agreement under paragraph (a)(2) of this section, and a statement that, starting on that date, there has been no owner or operator of the unit, division or subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority;

(4) A summary of the terms of the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section and any successor agreement under paragraph (d)(4)(ii) of this section, including the date on which the agreement was signed, the amount of electricity that may be required to be produced for sale by each generator served by the unit, and the provisions for expiration or termination of the agreement;

(5) A copy of the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section and any successor agreement under paragraph (d)(4)(ii) of this section;

(6) The nameplate capacity of each generator served by the unit;

(7) For each year starting in 1985, the actual annual electrical output of each generator served by the unit, the total amount of electricity produced for sales to any customer by each generator, and the total amount of electricity produced and sold as required by the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section or any successor agreement under paragraph (d)(4)(ii) of this section;

(8) A statement that each generator served by the unit actually produced electricity for sale only for incidental electricity sales (in accordance with paragraph (a)(4) of this section) required under the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section or any successor agreement under paragraph (d)(4)(ii) of this section; and

(9) The special provisions of paragraph (d) of this section.

(c) *Permitting Authority's Action*. (1) (i) For any unit meeting the requirements of paragraphs (a) and (b) of this section, the permitting authority shall issue an exemption from the requirements of the Acid Rain Program, except for the provisions of this section, §§ 72.2 through 72.6 and §§ 72.10 through 72.13.

(ii) If a petition for exemption is submitted for a unit but the designated representative fails to demonstrate that the requirements of paragraph (a) of this section are met, the permitting authority shall deny an exemption under this section.

(2) In issuing or denying an exemption under paragraph (c)(1) of this section, the permitting authority shall treat the petition for exemption as a permit application and apply the procedures used for issuing or denying draft, proposed (if the Administrator is not the permitting authority otherwise responsible for administering a Phase II Acid Rain permit for the unit), and final Acid Rain permits.

(3) An exemption issued under paragraph (c)(1)(i) of this section shall become effective on January 1 of the first full year the unit meets the requirements of paragraph (a) of this section.

(4) An exemption issued under paragraph (c)(1)(i) of this section shall be effective until the date on which the unit loses the exemption under paragraph (d)(4) of this section.

(5) After issuance of the exemption under paragraphs (c)(1) and (2) of this section, the permitting authority shall amend under § 72.83 the operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under paragraphs (c)(1)(i) and (d) of this section.

(d) *Special Provisions*. (1) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the Acid Rain Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(2) For any period for which a unit is exempt under this section, the unit is not an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter and is not eligible to be an opt-in source under part 74 of this chapter. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under parts 70 and 71 of this chapter.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the requirements of paragraph (a) of this section are met. The owners and operators bear the burden of proof that the requirements of this section are met. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Administrator or the permitting authority. Such records shall include the following information:

(i) A copy of the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section and any successor agreement under paragraph (d)(4)(ii) of this section;

(ii) The nameplate capacity of each generator served by the unit; and

(iii) For each year starting in 1985, the actual annual electrical output of each generator served by the unit, the total amount of electricity produced for sales to any customer by each generator, and the total amount of electricity produced and sold as required by the interconnection agreement and any related power purchase agreement under paragraph (a)(2) of this section or any successor agreement under paragraph (d)(4)(ii) of this section.

(4) Loss of exemption. (i) On the earliest of the following dates, a unit exempt under this section shall lose its exemption and become an affected unit under the Acid Rain Program and parts 70 and 71 of this chapter:

(A) The first date on which there is an owner or operator of the unit, division or subsidiary or affiliate or parent company of an owner or operator of the unit, or combination thereof, whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority.

(B) If any generator served by the unit actually produces any electricity for sale other than for sale to the person specified as the purchaser in the interconnection agreement or any related power purchase agreement under paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section, then the day after the date on which such electricity is sold.

(C) If any generator served by the unit actually produces any electricity for sale to the person specified as the purchaser in the interconnection agreement or any

related power purchase agreement under paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section where such sale is not required under that interconnection agreement or related power purchase agreement or successor agreement or where such sale will result in total sales for a calendar year exceeding 10 percent of the nameplate capacity of that generator times 8,769 hours per year, then the day after the date on which such sale is made.

(D) If any generator served by the unit actually produces any electricity for sale to the person specified as the purchaser in the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section or a successor agreement under paragraph (d)(4)(ii) of this section where such sale results in total sales for a calendar year exceeding 10 percent of the actual electric output of the generator for that year, then January 1 of the year after such year.

(E) If the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section expires or is terminated, no successor agreement under paragraph (d)(4)(ii) of this section is in effect, and any generator served by the unit actually produces any electricity for sale, then the day after the date on which such electricity is sold.

(ii) A ''successor agreement'' is an agreement that:

(A) Modifies, replaces or supersedes the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section;

(B) Is between the owners and operators of the unit and a person that is contractually obligated to sell electricity to the owners and operators of the unit and either whose principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory authority; and

(C) Requires the generator served by the unit to produce electricity for sale to the person under paragraph (d)(4)(ii)(B) of this section and only for incidental electricity sales, such that the total amount of electricity that such generator is required to produce for sale under the interconnection agreement or related power purchase agreement (to the extent they are still in effect) and the successor agreement shall not exceed the total amount of electricity that such generator was required to produce for sale under the interconnection agreement or related power purchase agreement under paragraph (a)(2) of this section.

(iii) Notwithstanding § 72.30(b) and (c), the designated representative for a unit that loses its exemption under this section shall submit a complete Acid Rain permit application on the later of January 1, 1998 or 60 days after the first date on which the unit is no longer exempt.

(iv) For the purpose of applying monitoring requirements under part 75 of this chapter, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit is no longer exempt.

12. Section 72.22 is amended by adding paragraph (e) to read as follows:

§ 72.22 Alternate designated representative.

* * * * *

(e)(1) Notwithstanding paragraph (a) of this section, the certification of representation may designate two alternate designated representatives for a unit if:

(i) The unit and at least one other unit, which are located in two or more of the contiguous 48 States or the District of Columbia, each have a utility system that is a subsidiary of the same company; and

(ii) The designated representative for the units under paragraph (e)(1)(i) of this section submits a NO_X averaging plan under § 76.11 of this chapter that covers such units and is approved by the permitting authority, *provided* that the approved plan remains in effect.

(2) Except in this paragraph (e), whenever the term ''alternate designated representative'' is used under the Acid Rain Program, the term shall be construed to include either of the alternate designated representatives authorized under this paragraph (e). Except in this section, § 72.23, and § 72.24, whenever the term ''designated representative'' is used under the Acid Rain Program, the term shall be construed to include either of the alternate designated representatives authorized under this paragraph (e).

13. Section 72.24 is amended by revising paragraphs (a)(3), (5), (10), and (11) to read as follows:

§ 72.24 Certificate of representation.

(a) * * *

(3) A list of the owners and operators of the affected source and of each affected unit at the source.

* * * * *

(5) The following statement: ''I certify that I have given notice of the agreement, selecting me as the 'designated representative' for the affected source and each affected unit at the source identified in this certificate of representation, in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice.''

* * * * *

(10) If an alternate designated representative is authorized in the certificate of representation, the following statement: ''The agreement by which I was selected as the alternate designated representative includes a procedure for the owners and operators of the source and affected units at the source to authorize the alternate designated representative to act in lieu of the designated representative.''

(11) The signature of the designated representative and any alternate designated representative who is authorized in the certificate of representation and the date signed.

* * * * *

§ 72.25 [Amended]

14. Section 72.25 is amended by removing from paragraph (a) the words ''submitted to'' and adding, in their place, the words ''received by''.

15. Section 72.30 is amended by removing paragraph (b)(3) and adding paragraph (e) to read as follows:

§ 72.30 Requirement to apply.

* * * * *

(e) Where two or more affected units are located at a source, the permitting authority may, in its sole discretion, allow the designated representative of the source to submit, under paragraph (a) or (c) of this section, two or more Acid Rain permit applications covering the units at the source, *provided* that each affected unit is covered by one and only one such application.

§ 72.31 [Amended]

16. Section 72.31 is amended by removing from paragraph (b) the words ''Phase II unit'' and adding in their place the words ''affected unit (except for an opt-in source)''.

17. Section 72.32 is amended by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 72.32 Permit application shield and binding effect of permit application.

* * * * *

(b) Prior to the date on which an Acid Rain permit is issued or denied, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete Acid Rain permit application shall be deemed to be operating in compliance with the Acid Rain Program.

(c) A complete Acid Rain permit application shall be binding on the

owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an Acid Rain permit from the date of submission of the permit application until the issuance or denial of an Acid Rain permit covering the units.

(d) If agency action concerning a permit is appealed under part 78 of this chapter, issuance or denial of the permit shall occur when the Administrator takes final agency action subject to judicial review.

18. Section 72.33 is amended by adding a sentence to the end of paragraph (b)(3) to read as follows:

§ 72.33 Identification of dispatch system.

* * * * *

(b) * * *

(3) * * * A designated representative may request, and the Administrator may grant at his or her discretion, an exemption allowing the submission of an identification of dispatch system after the otherwise applicable deadline for such submission.

* * * * *

§ 72.40 [Amended]

19. Section 72.40 is amended by:

a. Removing from paragraph (a)(2) the words ''applicable limitation established by regulations implementing section 407 of the Act'' and adding, in their place, the words ''applicable emission limitation under §§ 76.5, 76.6, or 76.7 of this chapter'';

b. Removing from paragraph (a)(2) the words ''section 407 of the Act and the regulations implementing section 407'' and adding, in their place, the words ''part 76 of this chapter'';

c. removing from paragraph (b)(1) the words ''an NO_X averaging plan contained in part 76 of this chapter'' and adding, in their place, the words ''a NO_X averaging plan under § 76.11 of this chapter''; and

d. Removing from paragraphs (c) introductory text, (c)(1), and (d)(1) the words ''regulations implementing section 407 of the Act'' and adding, in their place, the words ''part 76 of this chapter''.

§ 72.41 [Amended]

20. Section 72.41 is amended by: removing from paragraph (b)(3) the words ''90 days'' and adding, in their place, the words ''6 months (or 90 days if submitted in accordance with § 72.82)''; and removing from paragraph (e)(1)(ii) the words ''section 407 of the Act and regulations implementing section 407 of the Act'' and adding, in their place, the words ''part 76 of this chapter''.

§ 72.43 [Amended]

21. Section 72.43 is amended by: removing from paragraph (b)(2)(iii)(B) the words ''under § 72.92'' and adding, in their place, the words ''under § 72.91(b)''; removing from paragraph (b)(4) the words ''90 days'' and adding, in their place, the words ''6 months (or 90 days if submitted in accordance with § 72.82 or § 72.83)''; and removing from paragraph (f)(1)(i) the words ''section 407 of the Act and regulations implementing section 407 of the Act'' and adding, in their place, the words ''part 76 of this chapter''.

§ 72.44 [Amended]

22. Section 72.44 is amended by:

a. Removing from paragraphs (g)(1)(i) and (2) the words ''proposed permit revision'' and adding, in their place, the words ''requested permit modification'';

b. Adding between the first and second sentences of paragraphs (g)(1)(i) and (2) the words ''If the Administrator is not the permitting authority, a copy of the requested permit modification shall be submitted to the Administrator.'';

c. Removing from paragraph (g)(2)(iii) the words ''December 21'' and adding, in their place, the words ''December 31''; and

d. Removing from paragraph (h)(1)(ii) the words ''section 407 of the Act and regulations implementing section 407 of the Act'' and adding, in their place, the words ''part 76 of this chapter''.

§ 72.51 [Amended]

23. Section 72.51 is amended by: removing the words ''parts 73, 75, 77, and 78 of this chapter, and regulations implementing section 407 of the Act'' and adding, in their place, the words ''parts 73, 74, 75, 76, 77, and 78 of this chapter''; and removing the words ''of this part''.

24. Section 72.60 is revised to read as follows:

§ 72.60 General.

(a) *Scope.* This subpart and parts 74, 76, and 78 of this chapter contain the procedures for federal issuance of Acid Rain permits for Phase I of the Acid Rain Program and Phase II for sources for which the Administrator is the permitting authority under § 72.74.

(1) Notwithstanding the provisions of part 71 of this chapter, the provisions of subparts C, D, E, F, and H of this part and of parts 74, 76, and 78 of this chapter shall govern the following requirements for Acid Rain permit applications and permits: submission, content, and effect of permit applications; content and requirements of compliance plans and compliance options; content of permits and permit shield; procedures for determining completeness of permit applications; issuance of draft permits; administrative record; public notice and comment and public hearings on draft permits; response to comments on draft permits; issuance and effectiveness of permits; permit revisions; and administrative appeal procedures. The provisions of part 71 of this chapter concerning Indian tribes, delegation of a part 71 program, affected State review of draft permits, and public petitions to reopen a permit for cause shall apply to Acid Rain permit applications and permits.

(2) The procedures in this subpart do not apply to the issuance of Acid Rain permits by State permitting authorities with operating permit programs approved under part 70 of this chapter, except as expressly provided in subpart G of this part.

(b) *Permit Decision Deadlines.* Except as provided in § 72.74(c)(1)(i), the Administrator will issue or deny an Acid Rain permit under § 72.69(a) within 6 months of receipt of a complete Acid Rain permit application submitted for a unit, in accordance with § 72.21, at the U.S. EPA Regional Office for the Region in which the source is located.

(c) *Use of Direct Final Procedures.* The Administrator may, in his or her discretion, issue, as single document, a draft Acid Rain permit in accordance with § 72.62 and an Acid Rain permit in final form and may provide public notice of the opportunity for public comment on the draft Acid Rain permit in accordance with § 72.65. The Administrator may provide that, if no significant, adverse comment on the draft Acid Rain permit is timely submitted, the Acid Rain permit will be deemed to be issued on a specified date without further notice and, if such significant, adverse comment is timely submitted, an Acid Rain permit or denial of an Acid Rain permit will be issued in accordance with § 72.69. Any notice provided under this paragraph (c) will include a description of the procedure in the prior sentence.

25. Section 72.61 is amended by revising paragraphs (a) and (b)(2)(i) and adding paragraph (b)(3) to read as follows:

§ 72.61 Completeness.

(a) *Determination of Completeness.* The Administrator will determine whether the Acid Rain permit application is complete within 60 days of receipt by the U.S. EPA Regional Office for the Region in which the source is located. The permit application shall be deemed to be complete if the Administrator fails to

notify the designated representative to the contrary within 60 days of receipt.

(b) * * *

(2)(i) Within a reasonable period determined by the Administrator, the designated representative shall submit the information required under paragraph (b)(1) of this section.

* * * * *

(3) Any designated representative who fails to submit any relevant information or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary information or corrected information to the Administrator.

26. Section 72.65 is amended by revising paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(2) and by removing paragraph (b)(1)(iv) to read as follows:

§ 72.65 Public notice of opportunities of public comment.

* * * * *

(b) * * *

(1) * * *

(ii) The air pollution control agencies of affected States; and

(iii) Any interested person.

(2) Giving notice by publication in the **Federal Register** and in a newspaper of general circulation in the area where the source covered by the Acid Rain permit application is located or in a State publication designed to give general public notice. Notwithstanding the prior sentence, if a draft permit requires the affected units at a source to comply with § 72.9(c)(1) and to meet any applicable emission limitation for NO_X under §§ 76.5, 76.6, 76.7, 76.8, or 76.11 of this chapter and does not include for any unit a compliance option under § 72.44, part 74 of this chapter, or § 76.10 of this chapter, the Administrator may, in his or her discretion, provide notice of the draft permit by **Federal Register** publication and may omit notice by newspaper or State publication.

* * * * *

27. Section 72.69 is amending by revising paragraph (a) to read as follows:

§ 72.69 Issuance and effective date of Acid Rain permits.

(a) After the close of the public comment period, the Administrator will issue or deny an Acid Rain permit. The Administrator will serve a copy of any Acid Rain permit and the response to comments on the designated representative for the source covered by the issuance or denial and serve written notice of the issuance or denial on the air pollution control agencies of affected States and any interested person. The Administrator will also give notice in the **Federal Register**.

* * * * *

28. Section 72.70 is revised to read as follows:

§ 72.70 Relationship to title V operating permit program.

(a) *Scope.* This subpart sets forth criteria for approval of State operating permit programs and acceptance of State Acid Rain programs, the procedure for including State Acid Rain programs in a title V operating permit program, and the requirements with which State permitting authorities with accepted programs shall comply, and with which the Administrator will comply in the absence of an accepted State program, to issue Phase II Acid Rain permits.

(b) *Relationship to operating permit program.* Each State permitting authority with an affected source shall act in accordance with this part and parts 70, 74, 76, and 78 of this chapter for the purpose of incorporating Acid Rain Program requirements into each affected source's operating permit or for issuing exemptions under § 72.14. To the extent that this part or part 74, 76, or 78 of this chapter is inconsistent with the requirements of part 70 of this chapter, this part and parts 74, 76, and 78 of this chapter shall take precedence and shall govern the issuance, denial, revision, reopening, renewal, and appeal of the Acid Rain portion of an operating permit.

29. Section 72.71 is revised to read as follows:

§ 72.71 Acceptance of State Acid Rain programs—general.

(a) Each State shall submit, to the Administrator for review and acceptance, a State Acid Rain program meeting the requirements of §§ 72.72 and 72.73.

(b) The Administrator will review each State Acid Rain program or portion of a State Acid Rain program and accept, by notice in the **Federal Register**, all or a portion of such program to the extent that it meets the requirements of §§ 72.72 and 72.73. At his or her discretion, the Administrator may accept, with conditions and by notice in the **Federal Register**, all or a portion of such program despite the failure to meet requirements of §§ 72.72 and 72.73. On the later of the date of publication of such notice in the **Federal Register** or the date on which the State operating permit program is approved under part 70 of this chapter, the State Acid Rain program accepted by the Administrator will become a portion of the approved State operating permit program. Before accepting or rejecting all or a portion of a State Acid Rain Program, the Administrator will provide notice and opportunity for public comment on such acceptance or rejection.

(c)(1) Except as provided in paragraph (c)(2) of this section, the Administrator will issue all Acid Rain permits for Phase I. The Administrator reserves the right to delegate the remaining administration and enforcement of Acid Rain permits for Phase I to approved State operating permit programs.

(2) The State permitting authority will issue an opt-in permit for a combustion or process source subject to its jurisdiction if, on the date on which the combustion or process source submits an opt-in permit application, the State permitting authority has opt-in regulations accepted under paragraph (b) of this section and an approved operating permits program under part 70 of this chapter.

30. Section 72.72 is amended by:

a. Removing paragraphs (b)(1)(i)(C), (b)(1)(vii), (b)(1)(viii), (b)(1)(xi), (b)(1)(xiii), (b)(5)(vii), (b)(7), and (b)(8);

b. Removing the last sentence of paragraph (b)(5)(v);

c. Redesignating paragraphs (b)(1)(ix) and (x) as paragraphs (b)(1)(vii) and (viii) respectively;

d. Redesignating paragraph (b)(1)(xii) as paragraph (b)(1)(ix);

e. Redesignating paragraph (b)(1)(xiv) as paragraph (b)(1)(x);

f. Removing and reserving paragraph (b)(5)(ii); and

g. Revising the heading, the introductory text, and paragraphs (b) introductory text, (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), (b)(1)(v), (b)(1)(vi), the first sentence of (b)(5)(i), (b)(5)(vi), and (b)(6) to read as follows:

§ 72.72 Criteria for State operating permit program.

A State operating permit program (including a State Acid Rain program) shall meet the following criteria. Any aspect of a State operating permits program or any implementation of a State operating permit program that fails to meet these criteria shall be grounds for nonacceptance or withdrawal of all or part of the Acid Rain portion of an approved State operating permit program by the Administrator or for disapproval or withdrawal of approval of the State operating permit program by the Administrator.

* * * * *

(b) The State operating permit program shall require the following provisions, which are adopted to the extent that this paragraph (b) is incorporated by reference or is

otherwise included in the State operating permit program.

(1) * * *

(ii) *Draft Permit.* (A) The State permitting authority shall prepare the draft Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter, or deny a draft Acid Rain permit.

(B) Prior to issuance of a draft permit for a combustion or process source, the State permitting authority shall provide the designated representative of a combustion or process source an opportunity to confirm its intention to opt-in, in accordance with § 74.14 of this chapter.

(iii) *Public Notice and Comment Period.* Public notice of the issuance or denial of the draft Acid Rain permit and the opportunity to comment and request a public hearing shall be given by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice. Notwithstanding the prior sentence, if a draft permit requires the affected units at a source to comply with § 72.9(c)(1) and to meet any applicable emission limitation for NO_X under §§ 76.5, 76.6, 76.7, 76.8, or 76.11 of this chapter and does not include for any unit a compliance option under § 72.44, part 74 of this chapter, or § 76.10 of this chapter, the State permitting authority may, in its discretion, provide notice by serving notice on persons entitled to receive a written notice and may omit notice by newspaper or State publication.

(iv) *Proposed permit.* The State permitting authority shall incorporate all changes necessary and issue a proposed Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter, or deny a proposed Acid Rain permit.

(v) *Direct proposed procedures.* The State permitting authority may, in its discretion, issue, as a single document, a draft Acid Rain permit in accordance with paragraph (b)(1)(ii) of this section and a proposed Acid Rain permit and may provide public notice of the opportunity for public comment on the draft Acid Rain permit in accordance with paragraph (b)(1)(iii) of this section. The State permitting authority may provide that, if no significant, adverse comment on the draft Acid Rain permit is timely submitted, the proposed Acid Rain permit will be deemed to be issued on a specified date without further notice and, if such significant, adverse comment is timely submitted, a proposed Acid Rain permit or denial of a proposed Acid Rain permit will be issued in accordance with paragraph (b)(1)(iv) of this section. Any notice provided under this paragraph (b)(1)(v) shall include a description of the procedure in the prior sentence.

(vi) *Acid Rain Permit Issuance.* Following the Administrator's review of the proposed Acid Rain permit, the State permitting authority shall or, under part 70 of this chapter, the Administrator will, incorporate any required changes and issue or deny the Acid Rain permit in accordance with subpart E of this part and part 76 of this chapter or, for a combustion or process source, with subpart B of part 74 of this chapter.

* * * * *

(5) * * * (i) Appeals of the Acid Rain portion of an operating permit issued by the State permitting authority that do not challenge or involve decisions or actions of the Administrator under this part or part 73, 74, 75, 76, 77, or 78 of this chapter shall be conducted according to procedures established by the State in accordance with part 70 of this chapter. * * *

* * * * *

(vi) A failure of the State permitting authority to issue an Acid Rain permit in accordance with § 72.73(b)(1) or, with regard to combustion or process sources, § 74.14(b)(6) of this chapter shall be ground for filing an appeal.

(6) *Industrial Utility-Units Exemption.* The State permitting authority shall act in accordance with § 72.14 on any petition for exemption from requirements of the Acid Rain Program.

31. Section 72.73 is revised to read as follows:

§ 72.73 State issuance of Phase II permits.

(a) *State Permit Issuance.* (1) A State that is authorized to administer and enforce an operating permit program under part 70 of this chapter and that has a State Acid Rain program accepted by the Administrator under § 72.71 shall be responsible for administering and enforcing Acid Rain permits effective in Phase II for all affected sources:

(i) That are located in the geographic area covered by the operating permits program; and

(ii) To the extent that the accepted State Acid Rain program is applicable.

(2) In administering and enforcing Acid Rain permits, the State permitting authority shall comply with the procedures for issuance, revision, renewal, and appeal of Acid Rain permits under this subpart.

(b) *Permit Issuance Deadline.* (1) A State, to the extent that it is responsible under paragraph (a) of this section as of December 31, 1997 (or such later date as the Administrator may establish) for administering and enforcing Acid Rain permits, shall:

(i) On or before December 31, 1997, issue an Acid Rain permit for Phase II covering the affected units (other than opt-in sources) at each source in the geographic area for which the program is approved; *provided* that the designated representative of the source submitted a timely and complete Acid Rain permit application in accordance with § 72.21.

(ii) On or before January 1, 1999, for each unit subject to an Acid Rain NO_X emissions limitation, amend the Acid Rain permit under § 72.83 and add any NO_X early election plan that was approved by the Administrator under § 76.8 of this chapter and has not been terminated and reopen the Acid Rain permit and add any other Acid Rain Program nitrogen oxides requirements; *provided* that the designated representative of the affected source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with § 72.21.

(2) Each Acid Rain permit issued in accordance with this section shall have a term of 5 years commencing on its effective date; *provided* that, at the discretion of the permitting authority, the first Acid Rain permit for Phase II issued to a source may have a term of less than 5 years where necessary to coordinate the term of such permit with the term of an operating permit to be issued to the source under a State operating permit program. Each Acid Rain permit issued in accordance with paragraph (b)(1) of this section shall take effect by the later of January 1, 2000, or, where the permit governs a unit under § 72.6(a)(3) of this part, the deadline for monitor certification under part 75 of this chapter.

32. Section 72.74 is revised to read as follows:

§ 72.74 Federal issuance of Phase II permits.

(a)(1) The Administrator will be responsible for administering and enforcing Acid Rain permits for Phase II for any affected sources to the extent that a State permitting authority is not responsible, as of January 1, 1997 or such later date as the Administrator may establish, for administering and enforcing Acid Rain permits for such sources under § 72.73(a).

(2) After and to the extent the State permitting authority becomes responsible for administering and enforcing Acid Rain permits under § 72.73(a), the Administrator will

suspend federal administration of Acid Rain permits for Phase II for sources and units to the extent that they are subject to the accepted State Acid Rain program, except as provided in paragraph (b)(4) of this section.

(b)(1) The Administrator will administer and enforce Acid Rain permits effective in Phase II for sources and units during any period that the Administrator is administering and enforcing an operating permit program under part 71 of this chapter for the geographic area in which the sources and units are located.

(2) The Administrator will administer and enforce Acid Rain permits effective in Phase II for sources and units otherwise subject to a State Acid Rain program under § 72.73(a) if:

(i) The Administrator determines that the State permitting authority is not adequately administering or enforcing all or a portion of the State Acid Rain program, notifies the State permitting authority of such determination and the reasons therefore, and publishes such notice in the **Federal Register**;

(ii) The State permitting authority fails either to correct the deficiencies within a reasonable period (established by the Administrator in the notice under paragraph (b)(2)(i) of this section) after issuance of the notice or to take significant action to assure adequate administration and enforcement of the program within a reasonable period (established by the Administrator in the notice) after issuance of the notice; and

(iii) The Administrator publishes in the **Federal Register** a notice that he or she will administer and enforce Acid Rain permits effective in Phase II for sources and units subject to the State Acid Rain program or a portion of the program. The effective date of such notice shall be a reasonable period (established by the Administrator in the notice) after the issuance of the notice.

(3) When the Administrator administers and enforces Acid Rain permits under paragraph (b)(1) or (b)(2) of this section, the Administrator will administer and enforce each Acid Rain permit issued under the State Acid Rain program or portion of the program until, and except to the extent that, the permit is replaced by a permit issued under this section. After the later of the date for publication of a notice in the **Federal Register** that the State operating permit program is currently approved by the Administrator or that the State Acid Rain program or portion of the program is currently accepted by the Administrator, the Administrator will suspend federal administration of Acid Rain permits effective in Phase II for sources and units to the extent that they are subject to the State Acid Rain program or portion of the program, except as provided in paragraph (b)(4) of this section.

(4) After the State permitting authority becomes responsible for administering and enforcing Acid Rain permits effective in Phase II under § 72.73(a), the Administrator will continue to administer and enforce each Acid Rain permit issued under paragraph (a)(1), (b)(1), or (b)(2) of this section until, and except to the extent that, the permit is replaced by a permit issued under the State Acid Rain program. The State permitting authority may replace an Acid Rain permit issued under paragraph (a)(1), (b)(1), or (b)(2) of this section by issuing a permit under the State Acid Rain program by the expiration of the permit under paragraph (a)(1), (b)(1), or (b)(2) of this section. The Administrator may retain jurisdiction over the Acid Rain permits issued under paragraph (a)(1), (b)(1), or (b)(2) of this section for which the administrative or judicial review process is not complete and will address such retention of jurisdiction in a notice in the **Federal Register**.

(c) *Permit Issuance Deadline.* (1)(i) On or before January 1, 1998, the Administrator will issue an Acid Rain permit for Phase II setting forth the Acid Rain Program sulfur dioxide requirements for each affected unit (other than opt-in sources) at a source not under the jurisdiction of a State permitting authority that is responsible, as of January 1, 1997 (or such later date as the Administrator may establish), under § 72.73(a) of this section for administering and enforcing Acid Rain permits with such requirements; *provided* that the designated representative for the source submitted a timely and complete Acid Rain permit application in accordance with § 72.21. The failure by the Administrator to issue a permit in accordance with this paragraph shall be grounds for the filing of an appeal under part 78 of this chapter.

(ii) Each Acid Rain permit issued in accordance with this section shall have a term of 5 years commencing on its effective date. Each Acid Rain permit issued in accordance with paragraph (c)(1)(i) of this section shall take effect by the later of January 1, 2000 or, where a permit governs a unit under § 72.6(a)(3), the deadline for monitor certification under part 75 of this chapter.

(2) *Nitrogen Oxides.* Not later than 6 months following submission by the designated representative of an Acid Rain permit application for nitrogen oxides, the Administrator will amend under § 72.83 the Acid Rain permit and add any NO_X early election plan that was approved under § 76.8 of this chapter and has not been terminated and reopen the Acid Rain permit for Phase II and add any other Acid Rain Program nitrogen oxides requirements for each affected source not under the jurisdiction of a State permitting authority that is responsible, as of January 1, 1997 (or such later date as the Administrator may establish), under § 72.73(a) for issuing Acid Rain permits with such requirements; *provided* that the designated representative for the source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with § 72.21.

(d) *Permit Issuance.* (1) The Administrator may utilize any or all of the provisions of subparts E and F of this part to administer Acid Rain permits as authorized under this section or may adopt by rulemaking portions of a State Acid Rain program in substitution of or in addition to provisions of subparts E and F of this part to administer such permits. The provisions of Acid Rain permits for Phase I or Phase II issued by the Administrator shall not be applicable requirements under part 70 of this chapter.

(2) The Administrator may delegate all or part of his or her responsibility, under this section, for administering and enforcing Phase II Acid Rain permits or opt-in permits to a State. Such delegation will be made consistent with the requirements of this part and the provisions governing delegation of a part 71 program under part 71 of this chapter.

33. Section 72.80 is amended by revising paragraphs (a), (b), (d), (e), (f), and (g) to read as follows:

§ 72.80 General.

(a) This subpart shall govern revisions to any Acid Rain permit issued by the Administrator and to the Acid Rain portion of any operating permit issued by a State permitting authority.

(b) Notwithstanding the operating permit revision procedures specified in parts 70 and 71 of this chapter, the provisions of this subpart shall govern revision of any Acid Rain Program permit provision.

* * * * *

(d) The terms of the Acid Rain permit shall apply while the permit revision is pending, except as provided in § 72.83 for administrative permit amendments.

(e) The standard requirements of § 72.9 shall not be modified or voided by a permit revision.

(f) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under subpart D of this part and parts 74 and 76 of this chapter.

(g) Any designated representative who fails to submit any relevant information or who has submitted incorrect information in a permit revision shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary information or corrected information to the permitting authority.

* * * * *

34. Section 72.81 is amended by: removing from paragraph (c)(1)(ii) the words ''and § 70.7(e)(4)(ii) of this chapter''; and revising paragraph (c)(2) to read as follows:

§ 72.81 Permit modifications.

* * * * *

(c) * * *

(2) For purposes of applying paragraph (c)(1) of this section, a requested permit modification shall be treated as a permit application, to the extent consistent with § 72.80(c) and (d).

35. Section 72.82 is amended by revising paragraphs (a) and (d) to read as follows:

§ 72.82 Fast-track modifications.

* * * * *

(a) If the Administrator is the permitting authority, the designated representative shall serve a copy of the fast-track modification on the Administrator and any person entitled to a written notice under § 72.65(b)(1)(ii) and (iii). If a State is the permitting authority, the designated representative shall serve such a copy on the Administrator, the permitting authority, and any person entitled to receive a written notice of a draft permit under the approved State operating permit program. Within 5 business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the sources are located or in a State publication designed to give general public notice.

* * * * *

(d) Within 30 days of the close of the public comment period if the Administrator is the permitting authority or within 90 days of the close of the public comment period if a State is the permitting authority, the permitting authority shall consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. A fast-track modification shall be subject to the same provisions for review by the Administrator and affected States as are applicable to a permit modification under § 72.81.

36. Section 72.83 is amended by: removing from paragraph (a)(10) the words ''regulations implementing section 407 of the Act'' and adding, in their place, the words ''part 76 of this chapter''; and revising paragraphs (a)(12) and (b) and adding paragraphs (a)(13), (a)(14), (c), and (d) to read as follows:

§ 72.83 Administrative permit amendment.

(a) * * *

(12) The addition of a NO_X early election plan that was approved by the Administrator under § 76.8 of this chapter;

(13) The addition of an exemption for which the requirements have been met under § 72.7 or § 72.8 or which was approved by the permitting authority under § 72.14; and

(14) Incorporation of changes that the Administrator has determined to be similar to those in paragraphs (a)(1) through (13) of this section.

(b)(1) The permitting authority will take final action on an administrative permit amendment within 60 days, or, for the addition of an alternative emissions limitation demonstration period, within 90 days, of receipt of the requested amendment and may take such action without providing prior public notice. The source may implement any changes in the administrative permit amendment immediately upon submission of the requested amendment, *provided* that the requirements of paragraph (a) of this section are met.

(2) The permitting authority may, on its own motion, make an administrative permit amendment under paragraph (a)(3), (a)(4), (a)(12), or (a)(13) of this section at least 30 days after providing notice to the designated representative of the amendment and without providing any other prior public notice.

(c) The permitting authority will designate the permit revision under paragraph (b) of this section as having been made as an administrative permit amendment. Where a State is the permitting authority, the permitting authority shall submit the revised portion of the permit to the Administrator.

(d) An administrative amendment shall not be subject to the provisions for review by the Administrator and affected States applicable to a permit modification under § 72.81.

37. Section 72.85 is amended by revising paragraphs (a) and (c) to read as follows:

§ 72.85 Permit reopenings.

(a) The permitting authority shall reopen an Acid Rain permit for cause whenever:

(1) Any additional requirement under the Acid Rain Program becomes applicable to any affected unit governed by the permit;

(2) The permitting authority determines that the permit contains a material mistake or that an inaccurate statement was made in establishing the emissions standards or other terms or conditions of the permit, unless the mistake or statement is corrected in accordance with § 72.83; or

(3) The permitting authority determines that the permit must be revised or revoked to assure compliance with Acid Rain Program requirements.

* * * * *

(c) As provided in §§ 72.73(b)(1) and 72.74(c)(2), the permitting authority shall reopen an Acid Rain permit to incorporate nitrogen oxides requirements, consistent with part 76 of this chapter.

* * * * *

38. Section 72.91 is amended by:

a. Removing from paragraph (b)(1)(i) the words ''improved unit measures'' and adding, in their place, the words ''improved unit efficiency measures'';

b. Removing from paragraph (b)(1)(iii) introductory text, the words ''all figures'' and adding, in their place, the words ''each figure'';

c. Removing from paragraph (b)(1)(iii)(B) the words ''measures, and'' and adding, in their place, the words ''measures, or'';

d. Removing from paragraph (b)(1)(iii)(C) the words ''measures.'' and adding, in their place, the words ''measures, except measures relating to generation efficiency.'';

e. Removing from paragraph (b)(3) the words ''unit efficiency measures'' and adding, in their place, the words ''improved unit efficiency measures'';

f. Removing from paragraph (b)(4) introductory text, the word ''units's'' and adding, in its place, the word ''unit's'';

g. Removing from the formula in paragraph (b)(4) introductory text, the word ''hear'' and adding, in its place, the word ''heat'';

h. Removing from paragraph (b)(4)(i) the word ''units' '' and adding, in its place, the word ''unit's''; revising paragraphs (b)(5), (b)(6), and (b)(7); and

i. Adding paragraphs (b)(1)(iv) and (b)(4)(iv) to read as follows:

§ 72.91 Phase I unit adjusted utilization.

* * * * *

(b) * * *

(1) * * *

(iv) The sum of the verified reductions in a unit's heat input from all measures implemented at the unit to reduce the unit's heat rate (whether the measures are treated as supply-side measures or improved unit efficiency measures) shall not exceed the generation (in kwh) attributed to the unit for the calendar year times the difference between the unit's heat rate for 1987 and the unit's heat rate for the calendar year.

* * * * *

(4) * * *

(iv) The allowances credited shall not exceed the total number of allowances deducted from the unit's compliance subaccount for the calendar year in accordance with §§ 72.92(a) and (c) and 73.35(b) of this chapter.

(5) If the total, included in the confirmation report, of the amount of verified reduction in the unit's heat input for energy conservation and improved unit efficiency measures is less than the total estimated in the unit's annual compliance certification report for such measures for the calendar year, then the designated representative shall include in the confirmation report the number of allowances to be deducted from the unit's compliance subaccount calculated in accordance with this paragraph (b)(5).

(i) If any allowances were deducted from the unit's compliance subaccount for the calendar year in accordance with §§ 72.92(a) and (c) and 73.35(b) of this chapter, then the number of allowances to be deducted under paragraph (b)(5) of this section equals the absolute value of the result of the formula for allowances credited under paragraph (b)(4) of this section (excluding paragraph (b)(4)(iv) of this section).

(ii) If no allowances were deducted from the unit's compliance subaccount for the calendar year in accordance with §§ 72.92(a) and (c) and 73.35(b) of this chapter:

(A) The designated representative shall recalculate the unit's adjusted utilization in accordance with paragraph (a) of this section, replacing the amounts for reduction from energy conservation and reduction from improved unit efficiency by the amount for verified heat input reduction. ''Verified heat input reduction'' is the total of the amounts of verified reduction in the unit's heat input (in mmBtu) from energy conservation and improved unit efficiency measures included in the confirmation report.

(B) After recalculating the adjusted utilization under paragraph (b)(5)(ii)(A) of this section for all Phase I units that are in the unit's dispatch system and to which paragraph (b)(5) of this section is applicable, the designated representative shall calculate the number of allowances to be surrendered in accordance with § 72.92(c)(2) using the recalculated adjusted utilizations of such Phase I units.

(C) The allowances to be deducted under paragraph (b)(5) of this section shall equal the amount under paragraph (b)(5)(ii)(B) of this section, *provided* that if the amount calculated under this paragraph (b)(5)(ii)(C) is equal to or less than zero, then the amount of allowances to be deducted is zero.

(6) The Administrator will determine the amount of allowances that would have been included in the unit's compliance subaccount and the amount of excess emissions of sulfur dioxide that would have resulted if the deductions made under § 73.35(b) of this chapter had been based on the verified, rather than the estimated, reduction in the unit's heat input from energy conservation and improved unit efficiency measures.

(7) The Administrator will determine whether the amount of excess emissions of sulfur dioxide under paragraph (b)(6) of this section differs from the amount of excess emissions determined under § 73.35(b) of this chapter based on the annual compliance certification report. If the amounts differ, the Administrator will determine: The number of allowances that should be deducted to offset any increase in excess emissions or returned to account for any decrease in excess emissions; and the amount of excess emissions penalty (excluding interest) that should be paid or returned to account for the change in excess emissions. The Administrator will deduct immediately from the unit's compliance subaccount the amount of allowances that he or she determines is necessary to offset any increase in excess emissions or will return immediately to the unit's compliance subaccount the amount of allowances that he or she determines is necessary to account for any decrease in excess emissions. The designated representative may identify the serial numbers of the allowances to be deducted or returned. In the absence of such identification, the deduction will be on a first-in, first-out basis under § 73.35(b)(2) of this chapter and the return will be at the Administrator's discretion.

* * * * *

39. Section 72.95 is amended by revising the formula in the introductory text and adding paragraph (d) to read as follows:

§ 72.95 Allowance deduction formula.

* * * * *

Total allowances deducted = Tons emitted + Allowances surrendered for underutilization + Allowances deducted for Phase I extensions + Allowances deducted for substitution or compensating units

Where:

* * * * *

(d) ''Allowances deducted for substitution or compensating units'' is the total number of allowances calculated in accordance with the surrender requirements specified under § 72.41(d)(3) or (e)(1)(iii)(B) or § 72.43(d)(2).

Part 73—[AMENDED]

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

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

41. Section 73.10 is amended by revising the section heading and adding paragraph (b)(3) to read as follows:

§ 73.10 Initial allocations for phase I and phase II.

* * * * *

(b) * * *

(3) Notwithstanding the amounts in Table 2 of this section, the unadjusted basic allowances for years 2000–2009 and for years 2010 and thereafter for Louisiana, Rodemacher 2 are 20,774.

* * * * *

42. Section 73.90 is amended by: removing from the formula in paragraph (c)(3) the words ''Total Allowances Requested'' and adding, in their place, the words ''35,000''; removing from the formula in paragraph (c)(3) the words ''35,000'' and adding, in their place, the words ''Total Allowances Requested''; and revising paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 73.90 Allowance allocations for small diesel refineries.

(a) * * *

(1) Photocopies of Form EIA–810 for each month of calendar years 1988 through 1990 for the refinery;

(2) Photocopies of Form EIA–810 for each month of calendar years 1988 through 1990 for each refinery owned or controlled by the refiner that owns or controls the refinery seeking certification; and

(3) A letter certified by the certifying official that the submitted photocopies are exact duplicates of those forms filed with the Department of Energy for 1988 through 1990.

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$$\text{Refinery Allowances} = \text{the lesser of} \left[\begin{array}{c} \text{Allowances Requested} \times \dfrac{35{,}000}{\text{Total Allowances Requested}} \\ \text{or} \\ 1{,}500 \end{array} \right]$$

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* * * * *

PART 74—[AMENDED]

43. The authority citation for part 74 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 74.2 [Amended]

44. Section 74.2 is amended by removing the words ''a written exemption under § 72.7 or § 72.8 of this chapter'' and adding, in their place, the words ''an exemption under § 72.7, § 72.8 or § 72.14 of this chapter''.

PART 75—[AMENDED]

45. The authority citation for part 75 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 75.67 [Amended]

46. Section 75.67 is amended by removing and reserving paragraph (a).

PART 77—[AMENDED]

47. The authority citation continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

48. Section 77.3 is amended by revising paragraphs (d)(3),(5), and (6) to read as follows:

§ 77.3 Offset plans for excess emissions of sulfur dioxide.

* * * * *

(d) * * *

(3) At the designated representative's option, the number of allowances to be deducted from the unit's Allowance Tracking System account to offset the excess emissions for the year for which the plan is submitted.

* * * * *

(5) A statement either that allowances to offset the excess emissions are to be deducted immediately from the unit's compliance subaccount or that they are to be deducted on a specified date in a subsequent year.

(6) If the proposed offset plan does not propose an immediate deduction of allowances under paragraph (d)(5) of this section, a demonstration that such a deduction will interfere with electric reliability.

49. Section 77.4 is amended by revising paragraphs (b)(1), (c)(2)(i), (f)(2)(i), (g)(2)(i)(B), (g)(2)(i)(C), the last two sentences of (k)(1), and (k)(2) to read as follows:

§ 77.4 Administrator's action on proposed offset plans.

* * * * *

(b) *Review of proposed offset plans.* (1) If the designated representative submits a complete proposed offset plan for immediate deduction, from the unit's compliance subaccount, of allowances required to offset excess emissions of sulfur dioxide, the Administrator will approve the proposed offset plan without further review and will serve written notice of any approval on the designated representative. The Administrator will also give notice of any approval in the **Federal Register**. The plans will be incorporated in the unit's Acid Rain permit in accordance with § 72.84 of this chapter (automatic permit amendment) and will not be subject to the requirements of paragraphs (d) through (k) of this section.

* * * * *

(c) * * *

(2)(i) The designated representative shall submit the information required under paragraph (c)(1) of this section within a reasonable period determined by the Administrator.

* * * * *

(f) * * *

(2) * * *

(i) The reasons, and supporting authority, for approval or disapproval of any proposed offset plan that does not require immediate deduction of allowances, including references to applicable statutory or regulatory provisions and to the administrative record; and

* * * * *

(g) * * *

(2) * * *

(i) * * *

(B) The air pollution control agencies of affected States; and

(C) Any interested person.

* * * * *

(k) * * *

(1) * * * The Administrator will serve a copy of any approved offset plan and the response to comments on the designated representative for the affected unit involved and serve written notice of the approval or disapproval of the offset plan on any persons who are entitled to written notice under paragraphs (g)(2)(i) (B) and (C) of this section or who submitted written or oral comments on the approval or disapproval of the draft offset plan. The Administrator will also give notice in the **Federal Register**.

(2) The Administrator will approve an offset plan requiring immediate deduction from the unit's compliance subaccount of all allowances necessary to offset the excess emissions except to the extent the designated representative of the unit demonstrates that such a deduction will interfere with electric reliability.

* * * * *

50. Section 77.6 is amended by revising paragraph (a) to read as follows:

§ 77.6 Penalties for excess emissions of sulfur dioxide and nitrogen oxides.

(a)(1) If excess emissions of sulfur dioxide or nitrogen oxide occur at an affected unit during any year, the owners and operators of the affected unit shall pay, without demand, an excess emissions penalty, as calculated under paragraph (b) of this section.

(2) If one or more affected units governed by an approved NO_X averaging plan under § 76.11 of this chapter fail (after applying § 76.11(d)(1)(ii)(C) of this chapter) to meet their respective alternative contemporaneous emission limitations or annual heat input limits, then excess emissions of nitrogen oxides occur during the year at each such unit. The sum of the excess emissions of nitrogen oxides of such units shall equal the amount determined under § 76.13(b)

of this chapter. The owners and operators of such units shall pay an excess emissions penalty, as calculated under paragraph (b) of this section using the sum of the excess emissions of nitrogen oxides of such units.

(3) Except as otherwise provided in this paragraph (a)(3), payment under paragraphs (a) (1) or (2) of this section shall be submitted to the Administrator by 30 days after the date on which the Administrator serves the designated representative a notice that the process of recordation set forth in § 73.34(a) of this chapter is completed or by July 1 of the year after the year in which the excess emissions occurred, whichever date is earlier. Payment under paragraph (a)(1) of this section for any increase in excess emissions of sulfur dioxide determined after adjustments made under § 72.91(b) of this chapter shall be submitted to the Administrator by 30 days after the date on which the Administrator serves the designated representative a notice that process set forth in § 72.91(b) of this chapter is completed.

* * * * *

PART 78—[AMENDED]

51. The authority citation for part 78 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

52. Section 78.1 is amended by revising paragraphs (a) and (b)(1)(v) to read as follows:

§ 78.1 Purpose and scope.

(a)(1) This part shall govern appeals of any final decision of the Administrator under parts 72, 73, 74, 75, 76, and 77 of this chapter; *provided* that matters listed § 78.3(d) and preliminary, procedural, or intermediate decisions, such as draft Acid Rain permits, may not be appealed.

(2) Filing an appeal, and exhausting administrative remedies, under this part shall be a prerequisite to seeking judicial review. For purposes of judicial review, final agency action occurs only when a decision appealable under this part is issued and the procedures under this part for appealing the decision are exhausted.

(b) * * *

(1) * * *

(v) The issuance or denial of an exemption under § 72.14 of this chapter;

* * * * *

§ 78.3 [Amended]

53. Section 78.3 is amended by:

a. Removing from paragraph (b)(1) the words ''60 days'' and adding, in their place, the words ''30 days'';

b. Removing from paragraph (b)(1) the words ''action.'' and adding, in their place, the words ''action and shall not meet the prerequisite for judicial review under § 78.1(a)(2).'';

c. Removing from paragraph (b)(3)(ii) the words ''the persons entitled to written notice under § 72.65(b)(1) (ii), (iii), and (iv) of this chapter.'' and adding, in their place, the words ''the air pollution control agencies of affected States and any interested person.'';

d. Adding at the end of paragraph (c)(6) the word ''and''; removing from paragraph (c)(7) the words ''; and'' and adding, in their place, the word ''.'';

e. Removing paragraph (c)(8);

f. Removing paragraph (d)(1); and

g. Redesignating paragraphs (d)(2), (d)(3), and (d)(4) as paragraphs (d)(1), (d)(2), and (d)(3) respectively.

§ 78.4 [Amended]

54. Section 78.4 is amended by: removing from paragraph (c)(1) the words ''7 days'' and adding, in its place, the words ''7 days (or other reasonable period established by the Environmental Appeals Board or Presiding Officer),''; and removing from paragraph (c)(1) the words ''it, unless the Environmental Appeals Board or Presiding Officer authorizes a longer time based on good cause.'' and adding, in their place, the words ''it.''.

55. Section 78.5 is amended by removing from paragraph (a) the words ''to submit a claim of error notification'' and adding, in their place, the words ''a claim of error notification was submitted''.

§ 78.5 [Amended]

§ 78.7 [Removed and reserved]

8056. Section 78.7 is removed and reserved.

§ 78.11 [Amended]

57. Section 78.11 is amended by: removing from paragraph (a) the words ''30 days'' and adding, in their place, the words ''30 days (or other shorter, reasonable period established by the Administrator when giving notice)''.

§ 78.12 [Amended]

58. Section 78.12 is amended by: removing from paragraph (a)(2) the words ''a written exemption under §§ 72.7 or 72.8'' and adding, in their place, the words ''an exemption under § 72.14''.

§ 78.14 [Amended]

59. Section 78.14 is amended by: removing from paragraph (a), introductory text, the word ''theses'' and adding, in its place, the word ''these''; removing from paragraph (a)(10) the words ''15 days'' and adding, in their place, the words ''15 days (or other shorter, reasonable period established by the Presiding Officer)''; and removing from paragraph (c)(1) the words ''Rule 408 of''.

§ 78.15 [Amended]

60. Section 78.15 is amended by: removing from paragraph (c) the words ''10 days'' and adding, in their place, the words ''10 days (or other shorter, reasonable period established by the Presiding Officer)''; and removing the last sentence from paragraph (c).

§ 78.16 [Amended]

61. Section 78.16 is amended by: removing from paragraphs (d)(1) and (d)(2) the words ''7 days'' and adding, in their place, the words ''7 days (or other shorter, reasonable period established by the Presiding Officer)''.

§ 78.17 [Amended]

62. Section 78.17 is amended by: removing the words ''45 days'' and adding, in their place, the words ''45 days (or other shorter, reasonable period established by the Presiding Officer)''; and removing the words '', for good cause shown, may shorten or extend the time for filing and''.

§ 78.18 [Amended]

63. Section 78.18 is amended by: removing from paragraph (b), introductory text, the words ''30 days after service unless within that time:'' and adding, in their place, the words ''unless:''.

§ 78.20 [Amended]

64. Section 78.20 is amended by: removing from paragraph (b) the words ''30 days'' and adding, in their place, the words ''45 days (or other shorter, reasonable period established by the Environmental Appeals Board)''.

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federal register

Friday
October 24, 1997

Part III

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 3

Federal Deposit Insurance Corporation
12 CFR Part 325

Department of the Treasury
Office of Thrift Supervision
12 CFR Part 567

Risk Based Capital Requirements; Transfers of Small Business Loan Obligations With Recourse; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 97–17]

RIN 1557–AB14

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB57

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 97–97]

RIN 1550–AB11

Risk-Based Capital Requirements; Transfers of Small Business Loan Obligations With Recourse

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint final rule.

SUMMARY: The OCC, FDIC, and OTS (agencies) are issuing final rules on the risk-based capital treatment of transfers of small business loans or leases of personal property with recourse, as required by section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994. The rules address the risk-based capital treatment of transfers of small business loans or leases of personal property with recourse, and, consistent with the statutory purpose, are designed to facilitate such transfers.

DATES: The final rule is effective January 1, 1998.

FOR FURTHER INFORMATION CONTACT:

OCC: David Thede, Senior Attorney, Securities and Corporate Practices Division (202/874-5210); or Tom Rollo, National Bank Examiner, Office of the Chief National Bank Examiner (202/874–5070), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

FDIC: For supervisory issues, Stephen G. Pfeifer, Examination Specialist, (202/898–8904), Accounting Section, Division of Supervision; for legal issues, Marc J. Goldstrom, Counsel, (202/898–8807), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

OTS: John F. Connolly, Senior Program Manager for Capital Policy (202/906–6465), Supervision; or Valerie J. Lithotomos, Counsel, Banking and Finance (202/906–6439), Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The agencies are issuing final rules on the risk-based capital treatment of transfers of small business obligations with recourse as required by section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 1835. The agencies had previously published interim rules implementing section 208 and at that time requested comment on the changes. 60 FR 47455 (OCC); 60 FR 45606 (FDIC); 60 FR 45618 (OTS). The OTS and OCC are now issuing final rules that are unchanged from their respective interim rules. The FDIC is issuing a final rule that is substantially the same as its interim rule.

Banks and thrifts typically transfer assets with recourse as part of securitization transactions. Sections 201 through 210 of the CDRI Act were intended to increase small business access to capital by removing impediments in existing law to the securitization of small business loans and leases.

Under the agencies' current risk-based capital standards, assets transferred with recourse are included in risk-weighted assets.[1] Section 208 prescribes modified risk-based capital requirements for transfers of small business loans or leases of personal property with recourse that are sales under generally accepted accounting principles (GAAP). This modified risk-based capital treatment permits a qualified insured depository institution to include in its risk-weighted assets, for the purposes of applicable capital standards and other capital measures, only the amount of the retained recourse multiplied by the appropriate risk-weight percentage. For example, if an institution sold a $1,000 pool of small business loans with recourse, but limited its recourse liability to the first $100 of loss on the pool, section 208 would limit the applicable capital charge to $8 (8 percent of the $100 of retained recourse).[2]

By contrast, the agencies' risk-based capital regulations generally require institutions to include in risk-weighted assets the full value of assets transferred with recourse multiplied by the appropriate risk-weight percentage. If that rule were applied to the foregoing example, the institution's capital charge would be 8 percent of the $1,000 pool of transferred assets resulting in an $80 capital charge, rather than the $8 capital charge under section 208.[3]

Section 208 limits the availability of the favorable treatment as follows:

(1) To apply section 208 to a transaction, an institution must be a ''qualified insured depository institution'' at the time of the sale with recourse. A qualified insured depository institution is one that is either well capitalized or, with the approval of its primary regulator, adequately capitalized (in either case, without regard to section 208). If an institution loses its ''qualified'' status, transactions completed while the institution was qualified will continue to receive the favorable capital treatment.

(2) The total outstanding amount of recourse retained by an institution with respect to transfers of small business loans and leases of personal property to which section 208 has been applied may not exceed 15 percent of the total risk-based capital of the institution, unless the institution's primary federal regulatory agency, by regulation or order, specifies a greater amount.

Comments

In response to the interim rule, the agencies received comments from one bank, three banking trade associations, one accountants' professional association, and one other trade association. All of the commenters supported the interim rule.

Section 208 requires the agencies to use the definition of ''small business'' established by the Small Business Administration (SBA) in 13 CFR part 121 pursuant to 15 U.S.C. 632 in determining which loans and leases are eligible for the special capital treatment. Two commenters observed that this definition is difficult to apply with certainty in the absence of voluminous

[1] If an institution's maximum contractual liability under a recourse obligation is less than the capital requirement for the credit risk exposure on the underlying assets, then, under the low-level recourse rule, the capital requirement for the recourse exposure is equal to the institution's maximum contractual liability.

[2] For purposes of determining the amount of risk-weighted assets for assets transferred with recourse that receive the preferential capital treatment under section 208, the recourse liability account established in accordance with GAAP would not be subtracted from the amount of the recourse obligation.

[3] Under the low-level recourse rule, if the institution had limited the recourse obligation to $60 on the loan pool, its capital charge would be $60.

information gathered from each loan applicant, and that collecting this information would be prohibitively expensive for the lender and the loan applicant. The commenters noted that, in extending small business leases, some institutions use computerized credit scoring that relies on sales and employment information available from published reports. This information does not exactly match the criteria in the SBA's definition. Because the transactions are typically very small, these commenters stated, the cost of obtaining the additional information required by the SBA's definition for each lease would effectively preclude use of section 208 to facilitate securitization of these leases.

The agencies have considered these comments and believe that section 208 and the agencies' regulations permit an institution to apply the section 208 capital treatment without incurring this additional cost. If the specific information required by the SBA definition is not readily available, an institution should use its best efforts to ensure that, based on other information that is available to the institution, the borrower would meet the SBA criteria for a small business. Additionally, an institution should not classify a borrower as a small business if the institution has access to readily available information that is not consistent with such a classification. If, during the course of an examination, it is determined that the information being used to evaluate whether a borrower is a small business is being used in a manner that is inconsistent with or that appears to circumvent the provisions of the actual SBA definition of a small business, the agencies may require appropriate adjustments to be made to the institution's regulatory capital calculations for those periods during which the SBA definition was not consistently applied.

Another commenter observed that the agencies did not state in the interim rules that the accounting principles for transfers of small business loans and leases with recourse in Consolidated Reports of Condition and Income (Call Reports) and Thrift Financial Reports should be governed by GAAP. All of the agencies intend to apply GAAP as required by section 208. No regulatory amendments will be necessary to implement this change. As of January 1997, all institutions generally must follow GAAP for financial reporting in their Call Reports and Thrift Financial Reports, including the reporting of transfers of small business loans with recourse in accordance with section 208.[4]

This commenter also noted that the interim rule requires an institution to hold capital against the entire face amount of recourse retained and also to establish a liability reserve for expected future losses associated with the recourse arrangements. The commenter stated that this requirement would result in an excessive capital requirement and that the retained recourse liability should be reduced by the amount of the reserve before calculating capital requirements.

The agencies have decided not to change the treatment in the interim rule. Section 208 specifically requires the treatment described in the interim rule. Also, as the FRB noted in its final rule implementing section 208, capital and the GAAP reserve serve different purposes. The GAAP reserve covers expected losses, while capital is maintained to absorb unexpected losses. 60 FR 45613 (August 31, 1995).

Three commenters suggested that the agencies make the risk-based capital treatment described in section 208 available for all sales of assets with recourse. One commenter noted that section 208(h) permits the agencies to adopt an alternative capital treatment that does not require more aggregate capital and reserves than the treatment described in section 208. This commenter urged the agencies to use this discretion to further reduce the capital requirement on transfers of small business obligations with recourse. The agencies are not undertaking that change now, but are continuing to review the risk-based capital requirements applicable to sales of assets with recourse. The agencies will consider the commenters' suggestions in the context of that review.

One commenter asked the agencies to confirm that an institution may apply the section 208 treatment to small business loans transferred with recourse after March 22, 1995, the statutory implementation date, even though the agencies' interim rules were published in August and September of 1995. Consistent with the guidance previously provided in the agencies' interim rules, the agencies will not object if an institution chooses to apply the provisions of the final rule to small business obligations that were transferred with recourse between March 22, 1995 and the effective date of the final rule, provided the institution would have been a qualifying institution under the provisions of the rule at the time of the transfer.

Under the statute, an adequately capitalized institution will be a ''qualified institution'' eligible to use the capital treatment for small business loans with the written permission of the responsible agency. One commenter to the OTS suggested that all adequately capitalized institutions should be permitted to use the section 208 capital treatment unless the agency determines that an individual minimum capital requirement or other action is necessary for safety and soundness purposes. The OTS generally intends to allow institutions to use the section 208 computational method if OTS determines institutions will have capital commensurate with their risk exposure.

One commenter thought that the OCC's treatment of low-level recourse transactions differed from that of the FDIC and FRB. Although this issue is not directly related to the final rule implementing section 208, the OCC wishes to clarify that its treatment of low-level recourse transactions is consistent with that of the FDIC and FRB. A low-level recourse transaction is a transaction in which the amount of retained recourse is less than the effective capital requirement on the underlying assets. As required by section 350 of the CDRI Act, 12 USC 4808, the OCC, FDIC, and FRB have adopted rules limiting the risk-based capital requirement for low-level recourse obligations to the bank's maximum contractual obligation under the recourse provision. (The OTS already had such a rule in place.[5]) In addition, the OCC, FRB, and FDIC, acting under the auspices of the Federal Financial Institutions Examination Council, have jointly issued Call Report instructions describing the regulatory reporting treatment applicable to low-level recourse transactions in the regulatory capital schedule. (See Call Report Instructions for Schedule RC–R—Regulatory Capital.)

The preamble to the OTS's interim rule on section 208 also addressed the implementation of section 350 and requested comments on the proper calculation of the risk-based capital ratio for low-level recourse exposures. The OTS received one comment on low-level recourse exposures, which supported the current OTS approach. However, because this issue was not

[4] Because the Call Report instructions have been revised to conform with GAAP in the reporting treatment of all transfers of financial assets, including small business loans and leases transferred with recourse, the FDIC has decided that the interim rule amendment that added a new paragraph (e) to § 325.3 of the FDIC's leverage capital rule is now redundant. Therefore, the FDIC's final rule removes this paragraph.

[5] 12 CFR 567.6(a)(2)(i)(C).

raised in the FDIC and OCC interim rules implementing section 208, the OTS is not addressing the issue in this joint final rule. The OTS will consider this comment in reviewing its policy guidance and Thrift Financial Report instructions.

Prompt Corrective Action

Section 208(f) states that the capital of an insured depository institution shall be computed without regard to section 208 in determining whether the institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o). Section 38 addresses prompt corrective action.

The caption to section 208(f), ''Prompt Corrective Action Not Affected,'' and the legislative history indicate that section 208 was not intended to affect the operation of the prompt corrective action system. See S. Rep. No. 103–169, 103d Cong., 1st Sess. 38, 69 (1994). However, the statute does not include ''well capitalized'' in the list of capital categories not affected. The prompt corrective action system deals primarily with imposing corrective sanctions on institutions that are less than adequately capitalized. Therefore, allowing an institution that is adequately capitalized without the section 208 treatment [6] to use section 208 for purposes of determining whether the institution is well capitalized generally would not affect the application of the prompt corrective action sanctions to the institution. Other statutes and regulations treat an institution more favorably if it is well capitalized as defined under the prompt corrective action statute, but these provisions are not part of the prompt corrective action system of sanctions. Permitting an institution to be treated as well capitalized for purposes of these other provisions also will not affect the imposition of prompt corrective action sanctions.

There is one provision of the prompt corrective action system that could be affected by treating an institution as well capitalized rather than adequately capitalized. If an agency determines that an institution is in an unsafe or unsound condition or is engaging in an unsafe or unsound practice, section 38(g) (12 U.S.C. 1831o(g)) authorizes the agency (1) to reclassify a well capitalized institution as adequately capitalized and (2) to require an adequately capitalized institution (but not a well capitalized institution) to comply with certain prompt corrective action provisions as if the institution were undercapitalized. Because the text and legislative history of section 208 indicate that it was not intended to affect prompt corrective action, the agencies believe that section 208 does not affect the capital calculation for purposes of section 38(g) regardless of the institution's capital level.

Thus, an institution may use the capital treatment described in section 208 when determining whether it is well capitalized for purposes of prompt corrective action as well as for other regulations that reference the well capitalized capital category.[7] An institution may not use the capital treatment described in section 208 when determining whether it is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized for purposes of prompt corrective action or other regulations that directly or indirectly reference the prompt corrective action capital categories.[8] The agencies will disregard the capital treatment described in section 208 for purposes of section 38(g).

Final Rules

The OCC is adopting its interim rule without change.

The OTS is also adopting its interim rule without change.

The FDIC is adopting its interim rule with one technical, non-substantive change: section 325.5(e) is being removed as redundant. Even though paragraph 6 of section II.B. of appendix A to part 325 is unchanged, it is being republished for the convenience of the reader.

Regulatory Flexibility Act

Each of the agencies certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rulemaking is required by statute. The final rule authorizes an alternative method of calculating risk-based capital that permits institutions to hold less capital for certain recourse obligations. The final rule will benefit qualified institutions regardless of size. The final rule will not affect any institution's risk-based capital for prompt corrective action purposes.

Executive Order 12866

The OCC and OTS have determined that this final rule is not a significant regulatory action under Executive Order 12866. Under the final rule, some institutions' risk-based capital ratios may improve. This change will not have a material effect on the safety and soundness of affected institutions and will not affect their measured risk-based capital for prompt corrective action purposes.

Paperwork Reduction Act

The Agencies have determined that this final rule will not increase the regulatory paperwork of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, the final rule authorizes an alternative method of calculating capital that permits institutions to elect to hold less capital for certain recourse obligations. Because the agencies have determined that the final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year, the agencies have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks,

[6] It is very unlikely but theoretically possible that an institution that is undercapitalized without section 208 would become well capitalized if it applied the treatment in section 208. Because section 208 was not intended to affect prompt corrective action, and because allowing an undercapitalized institution to become well capitalized would affect prompt corrective action, the agencies interpret section 208 not to allow an undercapitalized institution to use the capital treatment it describes to become well capitalized for purposes of prompt corrective action.

[7] An institution that is subject to a written agreement or capital directive as discussed in the agencies' prompt corrective action regulations would not be considered well capitalized.

[8] Under section 208, the capital calculation used to determine whether an institution is well capitalized differs from the calculation used to determine whether an institution is adequately capitalized. As a result, it is possible that an institution could be well capitalized using one calculation and adequately capitalized using the other. In this situation, the institution would be considered well capitalized.

Reporting and recordkeeping requirements.

12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Issuance

For the reasons set out in the preamble, the interim rule amending 12 CFR part 3 which was published at 60 FR 47455 on September 13, 1995, (as corrected by the document published in the **Federal Register** at 60 FR 64115 on December 14, 1995) is adopted as a final rule without change.

Office of The Comptroller of the Currency.

Dated: September 12, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Issuance

For the reasons set out in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation adopts as final the interim rule amending 12 CFR part 325 which was published at 60 FR 45606 on August 31, 1995, with the following change:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831(o), 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831(n) note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

§ 325.3 [Amended]

2. In § 325.3 paragraph (e) is removed.

3. In appendix A to part 325, paragraph 6 of section II.B. is republished to read as follows:

Appendix—A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

B. * * *

6. *Small Business Loans and Leases on Personal Property Transferred with Recourse*—(a) Notwithstanding other provisions of this appendix A, a qualifying institution that has transferred small business loans and leases on personal property (small business obligations) with recourse shall include in risk-weighted assets only the amount of retained recourse, provided two conditions are met. First, the transaction must be treated as a sale under generally accepted accounting principles (GAAP) and, second, the qualifying institution must establish pursuant to GAAP a non-capital reserve sufficient to meet the institution's reasonably estimated liability under the recourse arrangement. Only loans and leases to businesses that meet the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act (15 U.S.C. 632(a)) are eligible for this capital treatment.

(b) For purposes of this appendix A, a qualifying institution is a bank that is well capitalized. In addition, by order of the FDIC, a bank that is adequately capitalized may be deemed a qualifying institution. In determining whether a bank meets the qualifying institution criteria, the prompt corrective action well capitalized and adequately capitalized definitions set forth in § 325.103 shall be used, except that the bank's capital ratios must be calculated without regard to the preferential capital treatment for transfers of small business obligations with recourse specified in section II.B.6.(a) of this appendix A. The total outstanding amount of recourse retained by a qualifying institution on transfers of small business obligations receiving the preferential capital treatment cannot exceed 15 percent of the institution's total risk-based capital. By order, the FDIC may approve a higher limit.

(c) If a bank ceases to be a qualifying institution or exceeds the 15 percent of capital limit under section II.B.6.(b) of this appendix A, the preferential capital treatment will continue to apply to any transfers of small business obligations with recourse that were consummated during the time the bank was a qualifying institution and did not exceed such limit.

(d) The risk-based capital ratios of a bank shall be calculated without regard to the preferential capital treatment for transfers of small business obligations with recourse specified in paragraph (a) of this section for purposes of:

(i) Determining whether a bank is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under the prompt corrective action capital category definitions specified in § 325.103; and

(ii) Applying the prompt corrective action reclassification provisions specified in § 325.103(d), regardless of the bank's capital level.

* * * * *

Federal Deposit Insurance Corporation.

By the order of the Board of Directors.

Dated at Washington, D.C. this 16th day of September 1997.

James D. LaPierre,

Deputy Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Issuance

Accordingly, the Office of Thrift Supervision hereby adopts as final the interim rule amending 12 CFR part 567 which was published at 60 FR 45618 on August 31, 1995, without change.

Office of Thrift Supervision.

By the Office of Thrift Supervision.

Dated: September 18, 1997.

Nicolas P. Retsinas,

Director.

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Federal Register

Vol. 62, No. 206

Friday, October 24, 1997

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

51367–51592 1
51593–51758 2
51759–52004 3
52005–52224 6
52225–52470 7
52471–52652 8
52653–52928 9
52929–53222 10
53223–53528 14
53529–53710 15
53711–53928 16
53929–54338 17
54339–54568 20
54569–54756 21
54757–55140 22
55141–55328 23
55329–55494 24

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7029 52005
7030 52007
7032 52471
7033 52473
7034 52645
7035 53525
7036 53527
7037 53529
7038 53695
7039 53697
7040 53701
7041 54335
7042 54751
7043 54755

Executive Orders:
March 21, 1914 (Revoked in Part by PLO 7288) 52767
6544 (Revoked in Part by PLO 7289) 52766
11145 (Continued by EO 13062) 51755
11183 (Continued by EO 13062) 51755
11216 (Continued by EO 13062) 51755
11287 (Continued by EO 13062) 51755
12131 (Continued by EO 13062) 51755
12196 (Continued by EO 13062) 51755
12345 (Continued by EO 13062) 51755
12367 (Continued by EO 13062) 51755
12382 (Continued by EO 13062) 51755
12864 (Revoked by EO 13062) 51755
12871 (Continued by EO 13062) 51755
12876 (Continued by EO 13062) 51755
12882 (Continued by EO 13062) 51755
12891 (Revoked by EO 13062) 51755
12900 (Continued by EO 13062) 51755
12905 ((Continued by EO 13062) 51755
12946 (Revoked by EO 13062) 51755
12964 (Revoked by EO 13062) 51755
12974 (Superseded by EO 13062) 51755
12994 (Continued by EO 13062) 51755
13010 (Amended by EO 13064) 53711
13015 (Revoked by EO 13062) 51755
13038 (Amended in part by EO 13062) 51755
13038 (Amended by EO 13065) 55329
13054 (Amended in part by EO 13062) 51755
13062 51755
13062 (See EO 13065) 55329
13063 51755
13064 53711
13065 55329

Administrative Orders:
Notices of September 30, 1997 51591
Notice of October 17, 1997 54561

Memorandums:
August 5, 1997 51367

Presidential Determinations:
No. 97–33 of September 22, 1997 53217
No. 97–34 of September 22, 1997 52009
No. 97–35 of September 26, 1997 52647
No. 97–36 of September 30, 1997 52475
No. 97–37 of September 30, 1997 53219
No. 97–38 of September 30, 1997 53221
No. 97–39 of September 30, 1997 52477
No. 98–1 of October 8, 1997 55139
No. 98–2 of October 9, 1997 54569

5 CFR

Ch. XXV 53713
532 51759
870 52181
890 53223
900 53223

Proposed Rules:
1303 52668

7 CFR

Ch. II 55141

0 51759
17 52929
247 55142
250 53727
251 53727
253 53727
301 ....53223, 54571, 54572
401 54339
457 54339
905 52011
930 55146
982 53225
1214 54310
1220 53731
1412 55150
1422 51760
1437 53929

Proposed Rules:

Ch. XIII 53769
6 ....53580, 55184
58 53760
300 53761
319 53761
966 ....52047, 54809
980 ....52047, 54809
1214 54314
1980 52277

8 CFR

213a 54346
214 55458
240 51760
245 55152
274a 52620
299 54346

9 CFR

71 54757
78 ....53531, 54757
94 54574
97 53732
318 54758
381 54758

10 CFR

Ch. I 52184
50 53932
430 ....51976, 53508
820 52479

Proposed Rules:

32 51817
35 ....52513, 43249
50 ....53250, 53975
430 54809
1703 54594

12 CFR

3 55490
8 54744
213 53733
261 54356
325 55490
506 54759
545 54759
556 54759
557 54759
561 54759
563 54759
563g 54759
567 55490
602 51593
615 53227
650 51369
935 52011

Proposed Rules:

8 54747
303 52810
329 53769
337 52810
341 52810
346 52810
348 52810
359 52810
545 51817
614 53581
616 53581
618 53581
621 53581
933 53251
935 53251

13 CFR

Proposed Rules:

107 53253

14 CFR

23 53733
25 53737
39 ....51593, 51594, 52225, 52486, 52489, 52653, 52655, 52942, 53532, 53935, 53937, 53939, 54366, 54368, 54369, 54372, 54373, 54375, 54376, 54378, 54575, 54577, 54579, 55154, 55156
71 ....52491, 53739, 53740, 53741, 53742, 53743, 53940, 53941, 53942, 53943, 53944, 53945, 53946, 53948, 54379, 55157, 55458
73 ....52226, 53878
97 ....51597, 51598, 51600, 53744, 53746, 53747, 53749, 53750, 53751, 53753, 54581
187 51736
1203 54380

Proposed Rules:

39 ....51383, 51385, 51386, 51388, 52051, 52053, 52055, 52294, 53269, 53272, 53976, 53977, 53979, 54595, 55364
71 ....53979, 53980, 53981, 53982, 53983, 53984, 53985, 53986, 53987, 53989, 53990, 53991, 53992, 53993, 53995, 55184
93 51564

15 CFR

400 53534
744 51369
922 54381

Proposed Rules:

Ch. VII 52514
700 51389
806 52515

17 CFR

230 53948
240 ....52229, 53948
249 52229
270 51762

18 CFR

Proposed Rules:

388 51610

19 CFR

4 51766
10 51766
11 51766
12 ....51766, 51771
18 51766
24 ....51766, 51774
103 51766
112 51766
122 51766
127 51766
133 51766
141 51766
143 51766
148 51766
151 51766
152 51766
159 51766
171 51766
177 51766
191 51766

Proposed Rules:

201 55185
207 55185

20 CFR

702 53955

Proposed Rules:

216 55196

21 CFR

Ch. I 51512
20 52237
101 55331
177 53957
310 52237
312 52237
314 52237
331 52659
436 52659
510 ....52659, 55158, 55159
520 ....55158, 55159, 55160
524 ....55160, 55160
556 55160
558 ....55159, 55160, 55161,
600 ....52237, 53536
601 53536
606 53536
1308 ....51370, 51774, 51776
1309 ....52253, 53958, 53959
1310 ....52253, 53959
1313 52253

Proposed Rules:

101 52057
161 52057
501 52057
1240 54398
1300 ....52294, 53688
1309 ....52294, 53688
1310 ....52294, 53059, 53688

23 CFR

Proposed Rules:

655 54598

24 CFR

3280 54546

Proposed Rules:

5 55324
960 55324
964 55324
984 55324
990 55324
1000 54399
1003 54399
1005 54399
3500 53912

25 CFR

181 55331

26 CFR

1 ....53384, 53367, 53498
31 ....53384, 53367, 53498
35a 53367
53 52256
301 ....53230, 53384, 53367
502 53367
503 53367
509 53367
513 53367
514 53367
516 53367
517 53367
520 53367
521 53367
602 ....53230, 53384, 53367

Proposed Rules:

1 ....52953, 53503, 53504, 53588
25 53588
301 53274

27 CFR

Proposed Rules:

9 54399

28 CFR

0 ....52492, 52493
2 51601
58 51740
524 53690
550 53690

29 CFR

101 52381
102 ....52381, 55162
697 52944
2702 55332
4044 53538

Proposed Rules:

1910 ....52671, 54160, 54382
1917 52671
1918 52671

30 CFR

210 52016
218 52016
913 54765
935 53232
946 52181

Proposed Rules:

Ch. II 55197
206 ....52518, 55198
250 51614
707 55365
874 55365
901 53996
920 55321
946 53275

31 CFR

501 52493
597 52493

Proposed Rules:

208 51618

32 CFR

199 54383

33 CFR

100 52501
110 55167
117 ....52502, 52946, 54384
165 ....51778, 51779, 51780, 51781, 55167

187....54385
334....53754
Proposed Rules:
Ch. S....55199
117....53770
155....52057
165....55366
183....52673
334....51618, 55367

34 CFR

Proposed Rules:
300....55026
301....55026
303....55026

36 CFR

1228....54582
1234....54582
Proposed Rules:
13....54409

37 CFR

1....53132
3....53132
5....53132
7....53132
10....53132
202....51603
Proposed Rules:
253....51618

38 CFR

1....51782
17....53960
19....52502
20....55169
21....51783
36....52503, 53963
Proposed Rules:
20....55200
47....52519

39 CFR

111....51372, 53539

40 CFR

9....52384, 54694, 55460
52....51603, 52016, 52029, 52622, 52659, 52661, 52946, 52948, 53234, 53239, 53242, 53542, 53544, 54585, 54587, 54769, 55170, 55172, 55173, 55336, 55341
60....52384, 52622, 53245
61....53245
62....54589
63....52384
64....54900
70....54900
71....54900
72....55460
73....55460
74....55460
75....55460
77....55460
78....55460
80....54552
81....51604, 55173
86....54694
112....54508
131....52926, 53212
132....52922
170....52003, 53688
180....52505, 54771, 54778, 54784
186....54784
258....51606
261....55344
264....52622
265....52622
271....52951
300....52032, 53246, 55178
410....52034
412....52034
721....51606
Proposed Rules:
50....55201
51....55202
52....52071, 52959, 53277, 53588, 53589, 53997, 54409, 54598, 54601, 55203, 55368
62....54598
63....54410
81....52071, 52674, 55203
136....51621
170....51994
180....51397
300....52072, 52074, 52674, 52961
745....51622

42 CFR

51....53548
57....51373
418....52034
433....53571
Proposed Rules:
84....53998

43 CFR

20....53713
36....52509
2090....51375, 52034
2110....52034
2230....52034
5510....51376
Proposed Rules:
4....51822
1820....51402

44 CFR

64....54386
65....51785, 51788, 54388, 54390
67....51791, 54392
206....52952
Proposed Rules:
61....52304, 53589
67....51822, 54410

45 CFR

74....51377
Proposed Rules:
303....52306

46 CFR

586....54396
Proposed Rules:
25....52057
27....52057
32....52057

47 CFR

0....51795, 52257
1....51377, 55348
24....55348
25....51378
43....51378
52....55179
61....51377
63....51377
68....54790
73....51798, 51799, 53973, 54790, 54791
76....52952, 53572
90....52036
Proposed Rules:
1....55204, 55375
15....52677
20....53772
24....55375
52....54817
54....51622
64....54817
73....51824, 52677, 54006, 54007, 54819
74....52677
76....51824, 52677
90....52078

48 CFR

16....51379
36....51379
37....51379
52....51379
901....53754
903....53754
904....53754
912....53754
913....53754
915....53754
916....53754
932....53754
933....53754
939....53754
944....53754
952....51800
970....51800, 53754
1401....52265
1425....52265
1452....52265
Proposed Rules:
203....51623
216....54008
245....54008
252....51623, 54008, 54017
426....52081
452....52081

49 CFR

1....51804, 55357
10....51804
107....51554
171....51554
172....51554
173....51554
175....51554
176....51554
177....51554
178....51554
179....51554
180....51554
195....52511, 54591
541....52044
571....51379
593....52266
1241....51379
Proposed Rules:
10....55380
192....51624
216....55204
223....55204
229....55204
231....55204
232....55204
238....55204
Ch. X....54820

50 CFR

17....54791
229....51805
285....51608, 52666, 53247, 53577
622....52045
630....55357
648....51380, 52273, 52275, 55362
660....51381, 51814, 53577
679....51609, 52046, 52275, 53577, 53973, 54397, 54592
Proposed Rules:
17....52679, 54018, 54020, 54028, 55381
32....53773
227....54018
285....54035
622....53278, 55205
630....54035
642....53281
644....54035
648....53589, 54427, 55211
660....55212
678....54035

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 24, 1997

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (tart) grown in—
- Michigan et al.; published 10-23-97

Prunes (dried) produced in California; published 9-24-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries—
  - Summer flounder; published 10-24-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
- Municipal waste combustors—
  - Standards and emission guidelines; published 8-25-97
  - Standards and emission guidelines; published 8-25-97

Air quality implementation plans; approval and promulgation; various States:
- California; published 8-25-97
- Ohio; published 8-25-97

Hazardous waste:
- Identification and listing—
  - Exclusions; published 10-24-97

MINE SAFETY AND HEALTH FEDERAL REVIEW COMMISSION

Federal Mine Safety and Health Review Commission

Freedom of Information Act; implementation; published 10-24-97

TRANSPORTATION DEPARTMENT

Organization, functions, and authority delegations:
- Federal Aviation Administrator; secretarial succession; published 10-24-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Bell; published 10-9-97
- Eurocopter Deutschland GmbH; published 10-9-97
- Pratt & Whitney; published 9-19-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Specialty crops; import regulations:
- Peanuts; comments due by 10-27-97; published 9-25-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Oriental fruit fly; comments due by 10-27-97; published 8-26-97

Plant-related quarantine, foreign:
- Fruits and vegetables; importation
  - Papayas from Brazil and Costa Rica; comments due by 10-27-97; published 9-25-97

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Tree assistance program; CFR part removed; comments due by 10-29-97; published 9-29-97

AGRICULTURE DEPARTMENT

Farm Service Agency

Tree assistance program; implementation; comments due by 10-29-97; published 9-29-97

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:
- Electric standards and specifications for materials and construction—
  - Specifications and drawings for 24.9/14.4 kV overhead distribution line construction; bulletin numbering and reformatting; comments due by 10-27-97; published 8-26-97

AGRICULTURE DEPARTMENT

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

COMMERCE DEPARTMENT

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

COMMERCE DEPARTMENT

Export Administration Bureau

National security industrial base regulations:
- Defense priorities and allocations system; comments due by 10-31-97; published 10-1-97

COMMERCE DEPARTMENT

International Trade Administration

Uruguay Round Agreements Act (URAA):
- Antidumping and countervailing duties; conformance and Federal regulatory reform; comments due by 10-27-97; published 9-3-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Atlantic tuna, Atlantic swordfish, Atlantic billfish, and Atlantic shark fisheries; comments due by 10-27-97; published 8-28-97
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 10-29-97; published 10-14-97

Ocean and coastal resource management:
- Marine sanctuaries—
  - Thunder Bay National Marine Sanctuary; comments due by 10-31-97; published 7-23-97

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):
- CHAMPUS dual compensation/conflict of interest provisions; exception for part-time physician employees of Government agencies; comments due by 10-27-97; published 8-26-97

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

Vocational rehabilitation and education:
- Veterans education—
  - Educational assistance when educational institutions fail to meet requirements; payments suspension and discontinuance; comments due by 10-27-97; published 8-28-97

DEFENSE DEPARTMENT

Engineers Corps

Danger zones and restricted areas:
- Chesapeake Bay, Point Lookout to Cedar Point, MD
  - Correction; comments due by 10-31-97; published 10-2-97

EDUCATION DEPARTMENT

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

ENERGY DEPARTMENT

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
- Test methods and performance

specifications; editorial changes and technical corrections; comments due by 10-27-97; published 8-27-97

Air quality implementation plans; approval and promulgation; various States:

New Mexico; comments due by 10-27-97; published 9-26-97

Pennsylvania; comments due by 10-29-97; published 9-29-97

Virginia; comments due by 10-29-97; published 10-14-97

Clean Air Act:

Acid rain program—

Sulfur dioxide opt-ins; revisions; comments due by 10-27-97; published 9-25-97

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

Hazardous waste program authorizations:

Texas; comments due by 10-27-97; published 9-12-97

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Cyromazine; comments due by 10-28-97; published 8-29-97

Desmedipham; comments due by 10-28-97; published 8-29-97

Paraquat; comments due by 10-28-97; published 8-29-97

Vinclozolin; comments due by 10-27-97; published 8-27-97

EXECUTIVE OFFICE OF THE PRESIDENT

National Drug Control Policy Office

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Hawaii; comments due by 10-27-97; published 9-11-97

Television broadcasting:

Advanced television (ATV) systems—

Digital television service; State and local zoning and land use restrictions; preemption authority; comments due by 10-30-97; published 9-2-97

FEDERAL ELECTION COMMISSION

Reports by political committees:

Campaign-related receipts and disbursements; recording, reporting, and report filing; comments due by 10-27-97; published 9-26-97

FEDERAL EMERGENCY MANAGEMENT AGENCY

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

FEDERAL MEDIATION AND CONCILIATION SERVICE

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

GENERAL SERVICES ADMINISTRATION

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Medicated feed mill licenses; comments due by 10-28-97; published 7-30-97

Drug labeling controls; manufacturing, processing, packing, or holding; current good manufacturing practices; comments due by 10-27-97; published 7-29-97

Protection of human subjects:

Informed consent for use of investigational drugs and biologics; waiver procedures for personnel in certain battlefield or combat-related situations; comments due by 10-29-97; published 7-31-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Block grants:

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Recovery plans—

Chittenango ovate amber snail; comments due by 10-31-97; published 10-1-97

INTERIOR DEPARTMENT

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

JUSTICE DEPARTMENT

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

LABOR DEPARTMENT

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

LEGAL SERVICES CORPORATION

Assisted suicide, euthanasia, and mercy killing; restriction; comments due by 10-30-97; published 9-30-97

Cost standards and procedures; comments due by 10-28-97; published 8-29-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

ARTS AND HUMANITIES, NATIONAL FOUNDATION

National Foundation on the Arts and the Humanities

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

NATIONAL SCIENCE FOUNDATION

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

PERSONNEL MANAGEMENT OFFICE

Prevailing rate systems; comments due by 10-30-97; published 10-3-97

SMALL BUSINESS ADMINISTRATION

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

STATE DEPARTMENT

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:
St. Clair River; temporary speed limits reduction; comments due by 10-28-97; published 8-29-97

Regattas and marine parades:
Head of the South Rowing Regatta; comments due by 10-27-97; published 9-26-97

Vocational rehabilitation and education:
Veterans education—
Educational assistance when educational institutions fail to meet requirements; payments suspension and discontinuance; comments due by 10-27-97; published 8-28-97

TRANSPORTATION DEPARTMENT

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Aerospatiale; comments due by 10-27-97; published 10-1-97
Airbus; comments due by 10-27-97; published 10-1-97
British Aerospace; comments due by 10-27-97; published 10-1-97
Eurocopter France; comments due by 10-27-97; published 8-26-97
McDonnell Douglas; comments due by 10-27-97; published 9-15-97
New Piper Aircraft, Inc.; comments due by 10-30-97; published 8-22-97
Puritan-Bennett Aero Systems Co.; comments due by 10-31-97; published 8-26-97
Raytheon; comments due by 10-27-97; published 10-1-97

Class E airspace; comments due by 10-27-97; published 9-11-97

Gulf of Mexico high offshore airspace area; comments due by 10-27-97; published 9-11-97

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:
Railroad/highway projects and reimbursement for railroad work on Federal-aid highway projects; comments due by 10-27-97; published 8-27-97

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Occupant crash protection—
Interior impact; occupant protection; comments due by 10-27-97; published 8-26-97

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Rail carriers:
General purpose costing system; procedures modification; comments due by 10-31-97; published 10-1-97

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol, tobacco, and other excise taxes:
Posting of signs and written notification to purchasers of handguns; comments due by 10-27-97; published 8-27-97

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Qualified retirement plans; remedial amendment period; comments due by 10-30-97; published 8-1-97

UNITED STATES INFORMATION AGENCY

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

VETERANS AFFAIRS DEPARTMENT

Grants and cooperative agreements to State and local governments, universities, hospitals, and other non-profit organizations; comments due by 10-28-97; published 8-29-97

Vocational rehabilitation and education:
Veterans education—
Educational assistance when educational institutions fail to meet requirements; payments suspension and discontinuance; comments due by 10-27-97; published 8-28-97

LIST OF PUBLIC LAWS

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S. 1000/P.L. 105–63

To designate the United States courthouse at 500 State Avenue in Kansas City, Kansas, as the ''Robert J. Dole United States Courthouse''. (Oct. 22, 1997; 111 Stat. 1342)

Last List October 21, 1997

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