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WHO: The Office of the Federal Register.

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4. An introduction to the finding aids of the FR/CFR system.

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

SAN FRANCISCO, CA

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WHERE: Federal Building and U.S. Courthouse, Conference Room 7209–A, 450 Golden Gate Avenue, San Francisco, CA
RESERVATIONS: Federal Information Center, 1–800–726–4995

SEATTLE, WA

WHEN: July 23, at 1:00 pm
WHERE: Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
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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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-92-006FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Finalize Relaxed Handling Requirements for Valencia and Other Late Type Oranges and Honey Tangerines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule an interim final rule which: (1) Relaxed the minimum size requirement for export shipments of Valencia and other late type oranges to 2 1/16 inches in diameter (size 163) from 2 5/16 inches in diameter (size 125) through September 26, 1992; and (2) relaxed the minimum grade requirement for domestic and export shipments of Honey tangerines to Florida No. 1 Golden from Florida No. 1 through August 23, 1992. The relaxations were based on this season's current and prospective crop and market conditions, and on the grade, size, and maturity of the remaining supplies of these fruits.

EFFECTIVE DATE: August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major"rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 10,200 producers of these citrus fruit in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (committee), which administers the marketing order locally, met January 21, 1992, and unanimously recommended the relaxations for Valencia and other late type oranges and Honey tangerines. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the marketing order. Committee meeting are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

The interim final rule was issued on March 23, 1992, and published in the **Federal Register** (57 FR 10612, March 27, 1992), with an effective date of March 23, 1992, and a 30-day comment period ending April 27, 1992. No comments were received.

Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for Florida citrus. Such requirements for domestic shipments are specified in that section in Table I of paragraph (a), and for export shipments in Table II of paragraph (b).

The interim final rule relaxed the minimum size requirement for export shipments of Valencia and other late type oranges to 2 1/16 inches in diameter (size 163) from 2 5/16 inches in diameter (size 125) for the period March 23, 1992, through September 27, 1992. Relaxation of the minimum size requirements for Valencia and other late type oranges was designed to make smaller fruit available of acceptable maturity and flavor to meet consumer needs. The

Valencia and other late type orange shipping season in Florida normally begins in January and ends with shipment of late-bloom fruit during the following September.

The interim final rule also relaxed the minimum grade requirement for domestic and export shipments of Honey tangerines to Florida No. 1 Golden from Florida No. 1 for the period March 23, 1992, through August 23, 1992. The relaxation allowed slightly dryer fruit to be shipped to the fresh market, by permitting a one-quarter inch of dryness on the stem end of the fruit instead of the one-eighth inch previously permitted. This relaxation recognized the fact that this fruit tends to dry out during the latter part of the shipping season. This relaxation was designed to provide Florida shippers with the alternative of shipping Honey tangerines grading Florida No. 1 Golden to the fresh market, rather than diverting them to processing channels where returns may be lower than in the fresh market. This relaxation was designed to make increased supplies of fresh Honey tangerines available to consumers from this season's remaining crop.

The committee recommended these actions based on its analysis of the grade and size composition of this season's remaining Valencia and other late type orange and Honey tangerine crops. The committee anticipates that the demand will be good for size 163 Valencia and other late type oranges in the export market, and for Florida No. 1 Golden grade Honey tangerines in both the domestic and export markets during the remainder of the 1991–92 season, and that the fruit will meet consumer acceptance.

The minimum grade and size requirements under the marketing order are designed to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

Under the marketing order for Florida citrus, handlers may ship up to 15 standards packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This action reflects the committee's and the Department's appraisal of the need to maintain the grade and size relaxations currently in effect. The Department's view is that this action will have a beneficial impact on producers and handlers since it will allow Florida citrus handlers to continue to ship those grades and sizes of fruit available to meet consumer needs consistent with this season's crop and market conditions.

Paragraph (a), Table I, column 4 of § 905.306 of the interim final set forth the correct minimum diameter requirement for Honey tangerines as 2$^{6}/_{16}$ inches, and this interim final rule maintains that action. That requirement was established for Honey tangerines shipped on and after August 18, 1986, by a rule published in the **Federal Register** (51 FR 15752, April 28, 1986). The minimum diameter requirement for Honey tangerines of 2$^{1}/_{16}$ inches cited in 7 CFR 905.306(a), Table 1 is incorrect, and the interim final rule corrected that error.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (57 FR 10612, March 27, 1992), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 905.306 [Amended]

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the **Federal Register** (57 FR 10612, March 27, 1992), is adopted as a final rule.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: July 9, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–16387 Filed 7–13–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 916 and 917

[Docket No. FV–92–075IR]

1992–93 Fiscal Year Expenses and Assessment Rates for the Marketing Orders Covering Nectarines and Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes assessment rates for the 1992–93 fiscal year (March 1–February 28) under Marketing Order Nos. 916 and 917. These expenses and assessment rates are needed by the Nectarine Administrative Committee and Peach Commodity Committee established under these marketing orders to pay their expenses and collect assessments from handlers to pay those expenses. This action will enable these committees to perform their duties and the marketing orders to operate.

DATES: This interim final rule becomes effective July 14, 1992. Comments which are received by August 13, 1992 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331, or Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St.,

suite 102–B, Fresno, California 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order Nos. 916 (7 CFR part 916) regulating the handling of nectarines grown in California, and 971 (7 CFR part 971) regulating the handling of fresh pears and peaches grown in California. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, nectarines and peaches grown in California are subject to assessments. It is intended that the assessment rate specified herein be made applicable to all assessable nectarines and peaches during the 1992–93 fiscal year, beginning March 1, 1992, through February 28, 1993. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court for the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 300 handlers of California peaches and nectarines subject to regulation under Marketing Order Nos. 916 and 917 and about 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

These marketing orders, administered by the Department, require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee and submitted to the Department for approval. The members of these committees are producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by the packages of fresh fruit expected to be shipped under the order. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Nectarine Administrative Committee (NAC) met May 5, 1992, and unanimously recommended approval of a 1992–93 budget with expenses of $4,106,247 and an assessment rate of $0.1825 per 25-pound package of assessable nectarines handled. The 1992–93 nectarine budget is similar in scope to the one approved for 1991–92. Actual expenses for 1991–92 totaled $3,769,577, while the assessment rate was $0.1825.

The 1992–93 nectarine budget contains $569,940 for marketing order administration and miscellaneous items, $2,192,400 for market development, $125,322 for research, $1,009,085 for inspection, and $222,000 for uncollected assessment accounts. In comparison, actual expenditures for 1991–92 were $484,548 for marketing order administration and miscellaneous items, $2,090,590 for market development, $122,128 for research, $1,009, 519 for inspection, and $62,792 for uncollected assessment accounts.

Nectarine marketing order income for 1992–93 is expected to total $4,106,172, with assessment income estimated at $3,348,328, based on projected shipments of 18,347,000 packages of assessable nectarines. Other income includes $484,000 in Foreign Agriculture Service matching promotion program funds, $40,000 in other income including interest, and a $110,000 rebate from the inspection service from last season's inspection payment. The NAC's reserve amounted to $1,273,826 on March 1, 1992, an amount well within the maximum authorized under the marketing order.

The Peach Commodity Committee (PAC) met May 5, 1992, and recommended approval of a 1992–93 budget with expenses of $3,925,512 and an assessment rate of $0.19 per 25-pound package of assessable peaches handled. Eight members voted in favor of the proposed 1992–93 budget, while two members voted "no", because they favored a one-half cent lower assessment rate. The 1992–93 peach budget is similar in scope to the one approved for 1991–92. Actual expenses for 1991–92 totaled $3,626,005, while the assessment rate was $0.19.

The 1992–93 peach budget contains $550,270 for marketing order administration and miscellaneous items, $2,122,000 for market development, $125,322 for research $913,920 for inspection, and $214,000 for uncollected assessment accounts. In comparison, actual expenditures for 1991–92 were $436,886 for marketing order administration and miscellaneous items, $1,804,531 for market development, $136, 321 for research $1,226,304 for inspection, and $21,963 for uncollected assessment accounts.

Peach marketing order income for 1992–93 is expected to total $4,224,017, with assessment income estimated at $3,404,800, based on projected shipments of 17,900,000 packages of assessable nectarines. Other income includes $484,000 in Foreign Agriculture Service matching promotion program funds, $32,000 in other income including interest, and a $100,000 rebate from the inspection service from last season's inspection payment. The PAC's reserve amounted to $911,156 on March 1, 1992, an amount well within the maximum authorized under the marketing order.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committees, and other information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) 1992–93 season California nectarines and peaches are currently being shipped to market; (2) this action should be expedited because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (3) the 1992–93 fiscal year for each marketing order began on March 1, 1992, and the marketing orders require that the rate of assessment for the fiscal year apply to all assessable California nectarines and peaches during the fiscal year; (4) handlers are aware of this action which was recommended by the committees at a public meeting and they will need no additional time to comply with these requirements; (5) the committees' financial reserves are expected to be depleted early in the 1992–93 season; and (6) the rule provides a 30-day comment period, and any written comments received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 916.230 is added to read as follows:

§ 916.230 Expenses and assessment rate.

Expenses of $4,106,247 by the Nectarine Administrative Committee are authorized, and an assessment rate of $0.1825 per 25-pound package or equivalent of assessable nectarines is established for the fiscal year ending February 28, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 971—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

3. A new § 917.254 is added to read as follows:

§ 917.254 Expenses and assessment rate.

Expenses of $3,925,512 by the Peach Commodity Committee are authorized, and an assessment rate of $0.19 per 25-pound package or equivalent of assessable peaches is established for the fiscal year ending February 28, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: July 8, 1992.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 92–16389 Filed 7–13–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 917

[Docket No. FV–92–041IFR]

Fresh Pears and Peaches Grown in California; Relaxation of Grade Requirements for Organic Pears for the 1992 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes grade requirements for fresh shipments of Bartlett and Max-Red (Max-Red Bartlett, Red Bartlett) organic pears grown in California during the 1992 season. Organic pears are produced without the application of synthetically compounded fertilizers, pesticides, and growth regulators. The relaxation would facilitate the marketing of organic pears grown in California.

DATES: This interim final rule becomes effective July 14, 1992. Comments which are received by August 13, 1992 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331, or Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., suite 102–B, Fresno, California 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 45 California pear handlers subject to regulation under the marketing order covering pears grown in California, and about 300 producers of pears in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

Handling regulations effective under this marketing order are effective on a continuing basis, subject to amendment, modification, or suspension as may be recommended by the Pear Commodity Committee (committee) and approved by the Secretary. The committee met February 6, 1992, and unanimously recommended that grade requirements for organic pears be relaxed to permit shipment of fruit with more appearance defects during the 1992 season.

Shipments of fresh California Bartlett and Max-Red (Max-Red Bartlett, Red Bartlett) pears are currently regulated by grade and size under § 917.461 (7 CFR 917.461, as amended at 56 FR 32062) of the marketing order. Under these requirements, such pears must grade at least U.S. Combination with 80 percent, by count, grading U.S. No. 1 and the balance grading U.S. No. 2. This rule relaxes these grade requirements to permit organic pears to be shipped if they grade at least U.S. Combination with 50 percent, by count, grading U.S. No. 1 and the remainder grading at least U.S. No. 2. Also, russeting, a discoloration of the skin of the fruit, would not be scored as a defect for organic pears.

Organic pears are defined in § 917.461 of the regulations as pears which are produced, harvested, distributed, stored, processed and packaged without the application of synthetically compounded fertilizers, pesticides or growth regulators. Additionally, no synthetically compounded fertilizers, pesticides or growth regulators shall be applied by the grower to the orchard in which the pears are grown for 12 months prior to the appearance of flower buds and throughout the entire pear growing and harvest season. Handlers who ship organic pears must provide, upon request, proof that such pears are grown in accordance with the provisions cited above.

The relaxation is expected to facilitate the marketing of organic pears, provide handlers with the opportunity to better meet the needs of organic pear consumers, and result in overall larger shipments of organic pears during the 1992 season. This relaxation is the same as relaxations made for organic pears for each of the past three seasons, and reflects the organic pear industry's experience in producing and marketing organic pears over that time.

Other handling requirements currently in effect for organic pears under § 917.461, including size, container and pack, remain in effect unchanged for 1992 season shipments.

This action reflects the committee's and the Department's appraisal of the need to relax the grade requirements for organic pear shipments. The Department's view is that the relaxation would not adversely affect marketing conditions for non-organic pears, particularly since organic fruit is normally sold in specialty markets.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the regulations set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) Shipments of the 1992 crop are expected to begin in mid-July; (2) handlers are aware of the relaxed requirements and they need no additional time to prepare; (3) no useful purpose would be served by delaying the effective date of this action; and (4) the rule provides a 30-day comment period, and any written comments received will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 917

Marketing Agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 917 is amended as follows:

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 917.461 is amended by revising paragraph (a)(1) to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 917.461 Pear Regulation 12.

(a) No handler shall ship:

(1) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears which do not grade at least U.S.

Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1: *Provided,* That for the 1992 crop year, no handler shall ship organic pears of these varieties unless they grade at least U.S. Combination with not less than 50 percent, by count, grading at least U.S. No. 1 and the remainder grading at least U.S. No. 2, except that russeting shall not be scored as a defect for such organic pears. Handlers who intend to ship organic pears in accordance with this paragraph shall provide, upon request of the committee, with the approval of the Secretary, information to indicate that the pears were grown in accordance with the provisions of paragraph (b)(5) of this section.

* * * * *

Dated: July 8, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-16388 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1220

[LS-91-004]

Soybean Promotion and Research Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts with changes the interim final rule which amended the Soybean Promotion and Research Order to modify the assessment collection procedures concerning soybeans pledged as collateral for loans issued by the Commodity Credit Corporation. This rule provides that the Commodity Credit Corporation would not collect assessments from proceeds of a loan unless a producer forfeits soybeans in lieu of loan repayment. The Commodity Credit Corporation as first purchaser would collect the assessments only on such forfeitures and remit to the Qualified State Soybean Board in the State where the soybeans were pledged, or if no Qualified State Soybean Board exists in such State, the Board. If a producer repays a loan and the soybeans are redeemed, the first purchaser of the redeemed soybeans would collect and remit the assessments or the producer would remit the assessment when the producer markets the soybeans as processed soybeans or soybean products of that producer's own production. These changes are designed to facilitate the assessment collection and remittance process and reduce the time and expense involved by eliminating the need for (1) the Commodity Credit Corporation to collect assessments from loans made to producers except in the case of forfeiture, and (2) Qualified State Soybean Boards to reimburse producers for assessments collected and remitted by the Commodity Credit Corporation upon disbursement of the loan.

EFFECTIVE DATE: July 14, 1992.

ADDRESSES: Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture, room 2624-S; P.O. Box 96456; Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; AMS, USDA, room 2624-S; P.O. Box 96456; Washington, DC 20090-6456. (Telephone: 202/720-1115).

SUPPLEMENTARY INFORMATION: Prior documents:

Final Rule—Soybean Promotion and Research Order published July 9, 1991 (56 FR 31043).

Interim Final Rule—Soybean Promotion and Research; Rules and Regulations published August 30, 1991 (56 FR 42923).

Interim Final Rule with request for comments published August 30, 1991 (56 FR 42921).

Regulatory Impact

This final rule was reviewed in accordance with Executive Order No. 12291 and Departmental Regulation No. 1512-1 and has been classified as a "nonmajor" rule because it does not meet the criteria for a major rule as stated in the Order.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Soybean Promotion and Research Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The statute provides that the district court of the United States in any district in which the person who is a petitioner resides or carries on business has jurisdiction to review a ruling on the petition if a complaint for that purpose is filed not later than 20 days after the date of the entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards. The exception provides that to ensure adequate funding of the operations of Qualified State Soybean Boards under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a Qualified State Soybean Board in that State may collect, and which is authorized to be credited under the Act.

This action also was reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). This rule modifies assessment collection procedures concerning soybeans pledged as collateral for loans issued by the Commodity Credit Corporation. The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) the reporting and recordkeeping included in 7 CFR part 1220 were previously approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581-0093 except that OMB No. 0581-0001 was assigned to an information collection requirement in § 1220.525(a)(2).

Background

The Soybean Promotion, Research, and Consumer Information Act (Act) approved November 28, 1990, as subtitle E of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 provides for the establishment of a national program of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace, to maintain and expand existing domestic and foreign markets and uses for soybeans and soybean products, and to develop new markets and uses for soybeans and soybean products. This program will be financed by assessments on soybeans.

The Soybean Promotion and Research Order (Order), 7 CFR part 1220

published in the **Federal Register** on July 9, 1991, (56 FR 31043) in § 1220.223 defined the Commodity Credit Corporation as a "First Purchaser." Further, the Order provided that the Commodity Credit Corporation would deduct the assessments due pursuant to the Order prior to any loan proceeds being distributed to the producer. Designation of the Commodity Credit Corporation as a first purchaser in the case of all loans adds considerably to the administrative and clerical workload of the producer, the Commodity Credit Corporation, the Qualified State Soybean Boards and the United Soybean Board (Board). The procedure, as the Order is written, would require that the Commodity Credit Corporation deduct an assessment from the loan proceeds, remit it to the Qualified State Soybean Board or Board.

The Qualified State Soybean Board or the Board would refund the assessment to the producer upon notification from the Commodity Credit Corporation that the soybeans had been redeemed. The producer upon selling the redeemed soybeans would then pay an assessment to the first purchaser of the redeemed soybeans or the producer would remit the assessment when the producer markets the soybeans as processed soybeans or soybean products of that producer's own production. In most cases, the producer would not have received the refund of the assessment collected by the Commodity Credit Corporation by the time the producer would have to pay an assessment on the redeemed soybeans. This procedure is cumbersome and creates the opportunity for duplication and error. Under the loan program provisions of the Agricultural Act of 1949, the Commodity Credit Corporation is to minimize potential loan forfeitures.

The Board recommended that the remittance process would be greatly facilitated if the Commodity Credit Corporation were deemed to be the "First Purchaser" only when the producer forfeits soybeans pledged by that producer as collateral for said loan. The Commodity Credit Corporation, at the time of the loan settlement on the forfeited soybeans, would bill the producer for the assessments due based on 0.5 percent of the principal loan amount received by the producer and notify the producer to remit the specified amount of assessment to the Qualified State Soybean Board in the State in which the soybeans were pledged, or if no Qualified State Soybean Board exists in such State, the Board.

On August 30, 1991, the Agricultural Marketing Service published an interim final rule with request for comments (56 FR 42921) to amend the Order to provide that the Commodity Credit Corporation would be the first purchaser only when soybeans are forfeited in lieu of loan repayment.

The Department of Agriculture received five written comments concerning the amendment to the Soybean Promotion and Research Order. The commenters generally supported the amendment with certain qualifications.

The changes suggested by commenters are discussed below, together with a description of changes made by USDA as a result of the comments.

Section 1220.223 Assessments

Regarding section 1220.223(a)(5)(ii)(A), one commenter recommended that the Commodity Credit Corporation as first purchaser collect and remit assessments on soybeans forfeited in lieu of loan repayment instead of billing and notifying the producer to remit the assessment to the Qualified State Soybean Board or the Board. We believe this suggestion has merit. Therefore, we have amended this section to provide that the Commodity Credit Corporation must collect assessments, at the time of loan settlement, from producers who forfeit soybeans in lieu of loan repayment. Two commenters suggested changes in billing and notification procedures. However, due to adoption of the first suggestion eliminating the billing and notification procedures, these comments are not adopted.

Regarding § 1220.223(a)(5)(ii)(B), one commenter suggested adding the words "redeems and subsequently" to the first sentence after "If a producer * * *" We agree that adding the suggested words adds clarity to the sentence and this suggestion is therefore adopted.

These changes to the rule would further simplify the process by having the Commodity Credit Corporation collect and remit the assessment on soybeans forfeited in lieu of loan repayment.

The Commodity Credit Corporation would not be considered to be a first purchaser in instances where a producer has not forfeited the soybeans pledged as collateral for a loan. If a producer repays a loan and the soybeans are redeemed, the first purchaser of the redeemed soybeans would collect and remit the assessment or the producer would remit the assessment if the producer markets the redeemed soybeans as processed soybeans or soybean products of that producer's own production.

Accordingly, section 1220.223 is further amended to reflect these changes. Also, the definitions of first purchaser in § 1220.110 and of net market price in § 1220.115 are amended. Additional nonsubstantive changes are being made for clarity.

Pursuant to 5 U.S.C. 553 it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**.

The Soybean Promotion and Research Order was published as a final rule in the July 9, 1991, issue of the **Federal Register** (56 FR 31043). The Order was made effective on July 9, 1991, except that § 1220.223 concerning assessments was effective on September 1, 1991. This action amends § 1220.223 concerning assessments, and therefore, the revisions made herein should be made effective as soon as possible in order to facilitate the collection of assessments under the Order.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 1220 which was published at 56 FR 42921–42923 on August 30, 1991, is adopted as a final rule with the following changes:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: Title XIX, Pub. L. No. 101–624, 104 Stat. 3359,3881 (7 U.S.C. 6301–6311).

2. Section 1220.110 is amended by revising paragraph (b) to read as follows:

§ 1220.110 First Purchaser.

The term *first purchaser* means—

(a) * * *

(b) In any case in which soybeans are pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program and the soybeans are forfeited by the producer in lieu of loan repayment, the Commodity Credit Corporation.

3. Section 1220.115 is amended by revising paragraph (b) to read as follows:

§ 1220.115 Net Market Price.

The term *Net Market Price* means—

(a) * * *

(b) For soybeans pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program, and where the soybeans are forfeited by the producer in lieu of loan repayment, the principal amount of the loan.

4. Section 1220.223 is amended by revising paragraph (a)(5)(ii) to read as follows:

§ 1220.223 Assessments.

(a)(1) * * *

(5)(i) * * *

(ii)(A) If a producer pledges soybeans grown by that producer as collateral for a loan issued by the Commodity Credit Corporation and if that producer forfeits said soybeans in lieu of loan repayment, the Commodity Credit Corporation shall at the time of the loan settlement, collect from the producer the assessments due based on 0.5 percent of the principal loan amount received by the producer and remit the assessment to the Qualified State Soybean Board in the State in which the soybeans were pledged, or if no Qualified State Soybean Board exists in such State, the Board.

(B) If a producer redeems and subsequently markets soybeans which have been pledged as collateral for a loan issued by the Commodity Credit Corporation, the first purchaser shall collect and remit the assessments due pursuant to paragraph (a)(1) of this section; or if a producer markets such soybeans as processed soybeans or as soybean products, the producer shall remit the assessment pursuant to paragraph (a)(2) of this section.

* * * * *

Done at Washington, DC, July 8, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92-16386 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-217-AD; Amendment 39-8296; AD 92-15-03]

Airworthines Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes, which requires that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this amendment are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. This amendment is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway. An investigation revealed that eight out of ten brakes were near the maximum allowable wear limits before the RTO and were unable to absorb the required RTO energy, thus contributing to the accident. The actions specified by this AD are intended to prevent loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.

DATES: Effective August 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of Federal Register as of August 18, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and BFGoodrich Aerospace, Aircraft Wheels and Brakes Division, P.O. Box 340, Troy, Ohio 45373. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (206) 227-2672; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Boeing Model 737 series airplanes was published in the **Federal Register** on January 10, 1992 (57 FR 1124). That action proposed to require that all landing gear brakes be inspected for wear and be replaced if the wear limits prescribed in this amendment are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program.

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

Two commenters support the rule as proposed.

One commenter requests that the proposed rule be revised to specify an interval for (repetitive) brake wear inspections. This commenter notes that the Boeing Maintenance Planning Document recommends that the brakes be inspected daily for wear; however, the commenter is concerned that brakes may wear beyond the maximum wear limit (mandated by the proposed AD) between two daily inspections during normal operations, especially if one or more high energy landings were made just after a scheduled brake wear inspection. The FAA infers that the commenter is requesting that the rule be changed to require a brake wear inspection prior to every flight. The FAA does not concur with such a request. The FAA recognizes that the commenter's concerns may be applicable to brakes toward the end of their wear life; however, to mandate such an inspection requirement would impose an undue economic burden on operators. By means of its maintenance inspection program, each operator establishes brake inspection and removal criteria based upon its individual operations. The intent of this AD is not to address any problem in the failure to detect wear, but to establish specific maximum limits for brake wear that have been validated as acceptable as they relate to the effectiveness of the brakes during a high energy RTO.

One commenter advises the FAA that, since the issuance of the notice, BFGoodrich has revised two service bulletins that were cited in the notice. The commenter requests that the changes described in the revised service bulletins be incorporated in the rule. The FAA concurs. Since the issuance of the notice, the FAA has reviewed and approved BFGoodrich Service Bulletin 2-1474-32-13, Revision 2, dated February 12, 1992, which changes the maximum brake wear limit for the 2-1474 series brakes from "1.0 to 1.3" inches to "1.0 to 1.4" inches depending on its build-up. The FAA has also reviewed and approved BFGoodrich Service Bulletin 2-1474-32-14, Revision 2, dated January 15, 1992, which improves clarity of the brake wear tables by adding headings. This service bulletin also changes the wear limit for the 2-1474 series brakes when used on Model 737-200 series airplanes from 1.55 inches to 1.50 inches. The following BFGoodrich brake part numbers are affected by the changes listed in the Revision 2 of these two service bulletins: 2-1474-5, 2-1474-3, 2-1474-2, 2-1474-1, and 2-1474. Both revisions were issued

as a result of wider and more accurate data related to service wear information. The FAA has changed the final rule to cite the latest revisions of these service bulletins.

The same commenter advises the FAA, that since issuance of the notice, Bendix has issued Service Bulletin No. 2606672–32–027, dated February 28, 1992. The commenter requests that operators be permitted to refer to this service bulletin for the listing of brake wear limits of Bendix brake part numbers 2606672–2, 2606672–3, and 2606672–4. The FAA concurs. Since the issuance of the notice, the FAA has reviewed and approved information in the service bulletin, described above. The brake wear limits called out are the same as those specified in the final rule. (The Bendix service bulletin is not referenced in the final rule, however.)

Paragraph (d)(2) of the notice contained a typographical error that has been corrected in this final rule. The service bulletin number was cited incorrectly as BFGoodrich Service Bulletin "2–1474–32–13." The correct service bulletin number is "2–1474–32–14."

Paragraph (e) of the final rule has been revised to clarify the procedure for requesting alternative methods of the compliance with this AD.

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

There are approximately 1,850 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimated that 882 airplanes of U.S. registry and 13 operators will be affected by this AD.

For 619 airplanes of U.S. registry, it will take approximately 15 work hours per airplane to accomplish the required actions, and the average labor cost will be $55 per work hour. In addition, the cost of parts to accomplish the change in wear limits for these 619 airplanes (the cost resulting from the requirement to change brakes before they are worn to their previously approved limits for a one-time change) is estimated to be an average of $2,270 per airplane.

For the remaining 263 airplanes there is no change to the currently recommended allowable wear limits and, therefore, no additional costs associated with this action.

Further, the FAA estimates that it will require 20 work hours per operator, at an average labor cost of $55 per work hour, to incorporate the requirements into an operator's FAA-approved maintenance inspection program.

Based on the figures discussed above, the total cost impact of the AD on U.S. operators is estimated to be $1,930,105.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subject in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92–15–03. Boeing. Amendment 39–8296. Docket 91–NM–217–AD.

Applicability: Model 737 series airplanes, equipped with brake part numbers (P/N) identified in paragraphs (a) through (d) of this AD, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this AD, accomplish the following:

(1) Inspect brakes having the brake part numbers shown below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within that limit.

Brake Mfr.	Brake P/N	Boeing P/N	Max. wear limit
Bendix	2601042–1	10–61063–12	1.36 Inches.
Bendix	2601042–2	10–61063–13	1.36 Inches.
Bendix	2601042–3	10–61063–14	1.36 Inches.
Bendix	2601042–4	10–61063–18	1.36 Inches.
Bendix	2601042–5	10–61063–21	1.63 Inches.
Bendix	2603442–2	10–61819–5	0.50 Inch.
Bendix	2603442–3	10–61819–8	0.50 Inch.
Bendix	2606672–1	10–61819–14	1.38 Inches.
Bendix	2606672–2	10–61819–17	1.60 Inches.
Bendix	2606672–3	10–61819–21	1.60 Inches.
Bendix	2606672–4	10–61819–28	1.60 Inches.
BF Goodrich.	2–1521	10–62174–2	1.00 Inch.

(2) Incorporate the maximum brake wear limits specified in paragraph (a)(1) of this AD into the FAA-approved maintenance inspection program.

(b) For airplanes equipped with BFGoodrich Brake part number (P/N) 2–1444 (Boeing P/N 10–61819–11): Within 180 days after the effective date of this AD, accomplish the following:

(1) Accomplish the procedures described in paragraph 2.B(1) of the Accomplishment Instructions of BFGoodrich Service Bulletin 2–1444–32–5, dated January 24, 1991. If any brake is found to be worn more than the allowable brake wear limit specified in Table 1 of that service bulletin, prior to further flight, remove and replace the brake with a brake built in accordance with paragraph 2.B.(1)b. of that service bulletin, or with a brake having more than the allowable wear remaining as specified in Table 1 of that service bulletin.

(2) Incorporate the allowable wear limits specified in Column B of Table 1 of BFGoodrich Service Bulletin 2–1444–32–5, dated January 24, 1991, into the FAA-approved maintenance inspection program.

(c) For airplanes equipped with BFGoodrich Brake P/N 2–1474; 2–1474–1, –2, –2, –3, and –5 (Boeing P/N 10–61891–15, –22, –26, –27, and –31): Within 180 days after the effective date of this AD, accomplish the following:

(1) Accomplish one of the procedures described in paragraph 2.B.(1)a. of BFGoodrich Service Bulletin 2–1474–32–13, Revision 1, dated July 9, 1991 or Revision 2, dated February 12, 1992. If any brake is found to be worn more than the allowable brake wear limit specified in Table 1 of that service

bulletin, prior to further flight, remove and replace the brake with a brake built in accordance with paragraph 2.B.(1)b. of these service bulletins, or with a brake having more than the allowable wear specified in Table 1 of these service bulletins.

(2) Incorporate the procedures described in paragraph 2.B(1)b. of BFGoodrich Service Bulletin 2–1474–32–13, Revision 1, dated July 9, 1991 or Revision 2, dated February 12, 1992, into the FAA-approved maintenance inspection program.

(d) For brakes specified in paragraph (c) of this AD and used on Model 737–200 series airplanes only: As an alternative to the requirements of paragraph (c) of this AD, operators instead may accomplish the procedures specified in paragraphs (d)(1) and (d)(2) of this AD within 180 days after the effective date of this AD:

(1) Accomplish the procedures described in paragraph 2.B. (1)b of the Accomplishment Instructions of BFGoodrich Service Bulletin 2–1474–32–14, Revision 2, dated January 15, 1992. If any brake is found to be worn more than the allowable brake wear limit specified in Figure 1 of that service bulletin, prior to further flight, remove and replace the brake built in accordance with paragraph 2.B.(1)b. of that service bulletin, or with a brake having more than the allowable wear remaining as specified in Figure 1 of that service bulletin.

(2) Incorporate the procedures described in paragraph 2.B(1)b. of the Accomplishment Instructions of BFGoodrich Service Bulletin 2–1474–32–14, Revision 2, dated January 15, 1992, into the FAA-approved maintenance inspection program.

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

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

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

(g) The inspection and replacement of landing gear brakes shall be done in accordance with the following service documents, as applicable: BFGoodrich Service Bulletin 2–1444–32–5, dated January 24, 1991; BFGoodrich Service Bulletin 2–1474–32–13, Revision 1, dated July 9, 1991; BFGoodrich Service Bulletin 2–1474–32–13, Revision 2, dated February 12, 1992; or BFGoodrich Service Bulletin 2–1474–32–14, Revision 2, dated January 15, 1992, which contains the following list of effective pages:

Page No.	Revision level	Date
1, 5	2	January 15, 1992.
2–4, 6–8	1	July 9, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and BFGoodrich Aerospace, Aircraft Wheels and Brakes Division, P.O. Box 340, Troy, Ohio 45373. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 22, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–16524 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–226–AD; Amendment 39–8284; AD 92–14–02]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires inspection and modification of the life raft mooring line and inflation length. This amendment is prompted by reports of life rafts installed on freighters that do not have long enough mooring and/or inflation lines. The actions specified by this AD are intended to prevent damaged or unusable life rafts due to improper mooring line and inflation length on life rafts.

DATES: Effective August 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; or Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719–0180; or BFGoodrich Aerospace, Aircraft Evaluations Systems, 3414 South 5th Street, Phoenix, Arizona 85040; or Eastern Aero Marine, P.O. Box 593513, Miami, Florida 33159. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2784; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on January 15, 1992 (57 FR 1694). That action proposed to require inspection and modification of the life raft mooring line and inflation length.

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

One commenter supports the rule as proposed.

Two commenters request that service information released since the issuance of the notice be included in paragraph (a) of the rule as an acceptable means of compliance. The service information, which was issued by BFGoodrich, also provides specific cost estimates for accomplishing the proposed modification ($175 per life raft × 2 life rafts per airplane = $350 per airplane). The FAA concurs. Since the issuance of the notice, the FAA has reviewed and approved BFGoodrich Alert Service Bulletin No. 100102–25A–244, Dated December 13, 1991, that describes procedures for replacing the existing mooring/firing line of the life raft with one having a 33.5 foot inflation lanyard length and a 42 foot mooring lanyard length. These dimensions fall within the inflation and mooring lanyard length specifications required by paragraph (a) of this AD. The economic analysis paragraph, below, has been revised to include the parts costs listed in this service bulletin.

One commenter states that improper mooring/inflation line lengths on life rafts installed on Model 747 series airplanes used as freighters do not warrant AD action, since (1) an unusable life raft event due to the

unsafe condition has not occurred during test or in service; (2) the unsafe condition does not necessarily render an exit or escape system inoperable; and (3) to date, there have been no ditching incidents involving a Model 747 series airplane. The FAA does not concur. Although there have been no occurrences to date of ditching involving a Model 747 freighter, the potential always exists for such incidents to occur involving any airplane that conducts operations over bodies of water. Likewise, there have been no in-service incidents in which the life rafts have been rendered unusable due to the subject unsafe condition; however, a review of the design of the life raft's mooring line and inflation lanyard length, conducted by the manufacturers of the rafts, has revealed evidence that insufficient length of these components is an unsafe condition that could render the raft unusable when its use is required in the event of an emergency ditching. (The related details were explained fully in the preamble to the notice.) The fact that this unsafe condition may potentially exist on airplanes equipped with these life rafts justifies this AD action to eliminate the identified unsafe condition.

Several commenters request that the proposed compliance time of 6 months be extended to a period of time ranging from 12 to 18 months. This will allow the requirements of this AD to be accomplished during the time of a regularly scheduled "C" check. The commenter considers that the adoption of the proposed compliance time of 6 months would require operators to schedule special times for the accomplishment of the requirements of this AD, at additional expense. The FAA concurs with the commenter's request to extend the compliance time for the inspection requirement. Extending the compliance time by 6 additional months will not adversely affect safety, and will allow the required inspection and any necessary modification to be performed at a main base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available, if necessary. Paragraph (a) of the final rule has been revised to specify a compliance time of 12 months.

One commenter states that the rule should include the requirement for installation of an attachment fitting that is simple to operate and compatible with existing aircraft attachment provisions. The FAA does not concur. The FAA has determined, based on all data available to date, that there are no known problems with the attachment fittings on these airplanes.

One commenter asks that the rule permit operators to use a new service bulletin, recently released by Eastern Aero Marine, as a source of service information for procedures relevant to modifying the life rafts. The FAA concurs. The FAA has reviewed and approved Eastern Aero Marine Service Bulletin T9–25–1, dated January 31, 1992, that describes procedures for modifying certain life rafts that were manufactured by Eastern Aero Marine. Paragraph (a)(2)(iii) of the final rule has been revised to include this service document as an appropriate source of service information.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

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

There are approximately 175 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 75 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $350 per airplane ($175 per life raft × 2 life rafts per airplane). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $108,750 or $1,450 per airplane.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92–14–02. Boeing: Amendment 39–8284. Docket 91–NM–226–AD.

Applicability: Model 747 series airplanes operated as freighters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damaged or unusable life rafts due to improper mooring line and inflation length on life rafts, accomplish the following:

(a) Within 12 months after the effective date of this AD, inspect the life raft mooring line and inflation length. The mooring line length is measured from attachment fitting on the end of the mooring line to the connecting point on the raft. The mooring line must be no less than 39 feet long and no more than 44 feet long. The inflation length is the distance the life raft must be from its mooring line attachment point for inflation of the life raft to be initiated. Inflation should begin at not less than 33 feet and not more than 38 feet, as defined by the mooring line length.

(1) For life rafts with mooring line length and inflation length that meet the measurements specified in paragraph (a) of this AD, no additional action is required.

(2) For life rafts with mooring line length and inflation length that do not meet the measurements specified in paragraph (a) of this AD, accomplish the following prior to further flight:

(i) For life rafts listed in Air Cruisers Service Bulletin 35–25–3, dated October 22, 1990: Modify the life raft in accordance with that service bulletin.

(ii) For life rafts listed in Air Cruisers Service Bulletin 35–25–2, dated October 30, 1990: Modify the life raft in accordance with that service bulletin.

(iii) For all other life rafts: Modify the life raft in accordance with BFGoodrich Alert Service Bulletin No. 100102-25A-244, dated December 13, 1991, or Eastern Aero Marine Service Bulletin T9-25-1, dated January 31, 1992, as applicable; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

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

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

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

(d) The modifications shall be done in accordance with Air Cruisers Service Bulletin 35-25-3, dated October 22, 1990; Air Cruisers Service Bulletin 35-25-2, dated October 30, 1990; BFGoodrich Alert Service Bulletin No. 100102-25A-244, dated December 13, 1991; or Eastern Aero Marine Service Bulletin T9-25-1, dated January 31, 1992; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; Air Cruisers Company P.O. Box 180, Belmar, New Jersey 07719-0180; or BFGoodrich Aerospace, Aircraft Evaluations Systems, 3414 South 5th Street, Phoenix, Arizona 85040; or Eastern Aero Marine, P.O. Box 593513, Miami, Florida 33159. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 8, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-16523 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-04-AD; Amendment 39-8295; AD 92-15-02]

Airworthiness Directives, Beech Model 400 and Mitsubishi Models MU-300 and MU-300-10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400 and Mitsubishi Models MU-300 and MU-300-10 airplanes, that requires replacement of all engine mount nuts and bolts with parts that have been inspected using required magnetic particle techniques. This amendment is prompted by a recent report that some engine mount nuts and bolts installed on these airplanes may not have been subjected to the required magnetic particle inspection prior to installation. The actions specified by this AD are intended to prevent reduced structural integrity of the engine mounting system.

DATES: Effective August 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Propulsion Branch, ACE-140W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4145; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Beech Model 400 and Mitsubishi Models MU-300 and MU-300-10 airplanes was published in the **Federal Register** on April 8, 1992 (57 FR 11921). That action proposed to require replacement of all engine mount nuts and bolts with parts that have been inspected using required magnetic particle techniques.

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

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

The FAA has determined that air safety and the public interest require the adoption of the rule with the change described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 154 Beech Model 400 and Mitsubishi Models MU-300 and MU-300-10 airplanes of the affected design in the worldwide fleet. The FAA estimates that 87 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $211 per airplane. Based on these figures, the total cost impact of the AD is estimated to be $32,712. This total cost figure has assumed that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92–15–02. Beech Aircraft Corporation: Amendment 39–8295. Docket 92–NM–04–AD.

Applicability: Beech Model 400 airplanes, serial numbers RJ–1 through RJ–65, inclusive, Mitsubishi Model MU–300 airplanes, serial numbers A003SA through A091SA, inclusive; and Mitsubishi Model MU–300–10 airplanes, serial numbers A1001SA through A1011SA, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the engine mounting system, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, or at the next scheduled inspection interval, whichever occurs first, replace each engine mount nut and bolt with nuts and bolts that have been inspected using magnetic particle techniques (identified by green dye), in accordance with Beechcraft Service Bulletin 2408, dated June 1991 (for Beech Model 400 and Mitsubishi Model MU–300–10 airplanes); or Mitsubishi Service Bulletin 71–004, dated January 8, 1992 (for Mitsubishi Model MU–300 airplanes); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manger, Wichita Aircraft Certification Office (ACO), ACE–115W, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manger, Wichita ACO.

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

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

(d) The replacement shall be done in accordance with Beechcraft Service Bulletin 2408, dated June 1991 (for Beech Model 400 and Mitsubishi Model MU–300–10 airplanes); or Mitsubishi Service Bulletin 71–004, dated January 8, 1992 (for Mitsubishi Model MU–300 airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 22, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–16525 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–07–AD; Amendment 39–8283; AD 92–14–01]

Airworthiness Directives; SAAB–SCANIA Models SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain SAAB–SCANIA Models SAAB SF340A and SAAB 340B series airplanes, that requires inspections of the lower drag strut assembly to detect loose, damaged, or worn parts, and repair of discrepant parts. This amendment is prompted by recent field experience, which has revealed that the bolts and collars attaching the lower drag strut fitting have been losing their torque. The actions specified by this AD are intended to prevent loss of structural integrity of the powerplant installation and subsequent damage to the engine forward frame.

DATES: Effective August 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB–SCANIA AB, Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain SAAB–SCANIA Models SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on March 4, 1992 (57 FR 7684). That action proposed to require inspections of the lower drag strut assembly to detect loose, damaged, or worn parts, and repair of discrepant parts.

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

Since issuance of the Notice, SAAB–SCANIA has issued Revision 2 to Service Bulletin 340–54–027, dated March 10, 1992, which corrects material information and certain costs associated with accomplishing the procedures described in the service bulletin. The FAA has revised the final rule to reflect this latest revision to the service bulletin as the appropriate service information source.

The FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,048. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92–14–01. SAAB–SCANIA Amendment 39–8283. Docket 92–NM–07–AD.

Applicability: Model SAA SF340A series airplanes, serial numbers 004 through 159, inclusive; and Model SAAB 340B series airplanes, serial numbers 160 through 166, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of structural integrity of the powerplant installation and subsequent damage to the engine forward frame, accomplish the following:

(a) If, when accomplishing the inspections required by AD 90–05–10, Amendment 39–6530 (reference SAAB Service Bulletin 340–54–026), it was determined that MS21042 nuts had already been installed, and no change from collars to nuts had taken place, then accomplishment of this AD is not required.

(b) Except as provided in paragraph (a) of this AD, within 1,500 hours time-in-service after the effective date of this AD; and thereafter at intervals not to exceed 1,500 hours time-in-service; accomplish a visual inspection of the upper and lower drag strut attachment fittings and the adjacent skin area, the upper longeron and attaching frame, and the angle attaching the frame to the side wall to detect loose fasteners, loose fittings, and cracks; and accomplish a torque inspection of the MS21042 nuts, in accordance with section 1.B.(i) of SAAB Bulletin 340–54–027, Revision 2, dated March 10, 1992.

(1) If loose fasteners or fittings are found, prior to further flight, perform the detailed inspection required by paragraph (c) of this AD.

(2) If the installed MS21042 nuts are not loose, check the torque; and retorque, prior to further flight, if nuts are out of torque tolerance.

(3) If cracks are found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANN–113, FAA, Transport Airplane Directorate.

(c) Except as provided in paragraph (a) of this AD, within 3,000 hours time-in-service after the effective date of this AD; and thereafter at intervals not to exceed 3,000 hours time-in-service; inspect the drag strut attaching holes at each end of the drag strut (one upper and one lower attach fitting) to detect elongation, damage, and abnormal wear, in accordance with section 2.B.(ii) of SAAB Service Bulletin 340–54–027, Revision 2, dated March 10, 1992.

(1) If any holes are elongated or outside the specified tolerance, prior to further flight, repair in accordance with sections E. and F. of the service bulletin, as appropriate.

(2) If any damage found exceeds the limits of the modifications described in the service bulletin, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) Except as provided in paragraph (a) of this AD, prior to the total accumulation of 22,000 landings, or within 500 landings after the effective date of this AD, whichever occurs later, accomplish a detailed inspection of the lower drag strut attachment holes (Eddy Bolt/Hi-Lok) of the lower drag strut fitting, the inner side beam skin and the upper longerons, and the drag strut attachment holes in the upper and lower fittings, in accordance with section 2.D. of SAAB Service Bulletin 340–54–027, Revision 2, dated March 10, 1992.

(1) If the attaching holes are elongated or out of the specified tolerance, nmprior to further flight, repair in accordance with sections E. and F. of the service bulletin, as appropriate.

(2) If defects such as gouges, nicks, cracks, and creases are found, or if the damage found exceeds the limits of the modifications described in the service bulletin, prior to further flight, repair in a manner approved by the manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(e) Accomplishment of paragraph (d) of this AD constitutes terminating action for the requirements of paragraphs (b) and (c) of this AD.

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

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

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections and repair shall be done in accordance with SAAB Service Bulletin 340–54–027, Revision 2, dated March 10, 1992, which incorporates the following list of effective pages:

Page No.	Revision level	Date
1–3, 5–12,14	1	July 4, 1991.
4, 13	2	March 10, 1992.
15–20	Original	Undated.

This incorporation by reference was approved by the Director of the Federal Register in accordance with U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB–SCANIA AB, Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(i) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 8, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–16529 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–250–AD; Amendment 39–8285; AD 92–14–03]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model A320 series airplanes, that requires inspection, operational tests, and replacement of the hydraulic fire shut off valve actuator. This amendment is prompted by reports of the hydraulic fire shut off valve failing to close during maintenance checks. The actions specified by this AD are intended to prevent a short circuit of the hydraulic fire shut off valve actuator, which could result in the inability to isolate hydraulic fluid from an engine fire.

DATES: Effective August 18, 1992.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of August 18, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket No. 91–NM–250–AD, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Model A320 series airplanes was published in the **Federal Register** on February 12, 1992 (57 FR 5088). That action proposed to require inspection, operational tests, and replacement, of the hydraulic fire shut off valve actuator.

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

Two commenters support the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the compliance time for the replacement of hydraulic fire shut off valve actuators be extended from the proposed 3,000 hours time-in-service to 4,000 hours time-in-service, since the proposed timeframe is insufficient to remove and modify units. ATA maintains that the operational tests that would be required under proposed paragraph (c) will provide interim safety assurances to allow extension of the compliance period. The FAA concurs with this request. The FAA has received information indicating that the timeframe in which the vendor of the actuators can obtain, modify, and ship affected parts may exceed the proposed compliance time of 3,000 hours. For this reason, the FAA now considers that a compliance time of 4,000 hours time-in-service is warranted in order to provide adequate time for operators to comply with the requirements of this AD. The FAA has revised paragraph (d) of the final rule accordingly. The FAA has determined that this extension of the compliance time will not adversely affect safety.

Paragraph (e) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

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

The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,940. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92–14–03. Airbus Industrie: Amendment 39–8285. Docket 91–NM–250–AD.

Applicability: Model A320 series airplanes on which Modification 22155 has not been accomplished, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit of the hydraulic fire shut off valve actuator, which could result in the inability to shut off fuel to the engine in the event of an engine fire, accomplish the following:

(a) Within 400 hours time-in-service after the effective date of this AD, perform an inspection of the hydraulic fire shut off valve to ascertain the part number (P/N) of the actuator, in accordance with Airbus Industrie All Operator Telex (AOT) 29–04, Revision 1, dated June 1, 1991.

(b) If the actuator does not have P/N "EO 1100," without Amendment designation; or P/N "EO 1100, Amendment B": No further action is required.

(c) If the actuator has P/N "EO 1100," without Amendment designation; or P/N "EO 1100, Amendment B": Within 400 hours time-in-service after the effective date of this AD, perform an operational test of the fire shut off value in accordance with Chapter 29–10–00, page 501, of the airplane maintenance manual.

(1) If the value passes the operational test, repeat that operational test at intervals not to exceed 400 hours time-in-service.

(2) If the valve fails the operational test, prior to further flight, replace the actuator in accordance with Airbus Industrie All Operator Telex (AOT) 29–04, Revision 1, dated June 1, 1991.

(i) If the replacement actuator has P/N "EO 1100, Amendment A"; or P/N "EO 1100, Amendment AB"; or P/N "EO 1100, Amendment C"; or P/N "A06 A00": No further action is required.

(ii) If the replacement actuator has P/N "EO 1100," without Amendment designation; or P/N "EO 1100, Amendment B": Repeat the operational test at intervals not to exceed 400 hours time-in-service.

(d) Prior to the accumulation of 4,000 hours time-in-service after the effective date of this AD, replace each actuator that has P/N "EO 1100," without Amendment designation; or P/N "EO 1100, Amendment B"; with an actuator having P/N "EO 1100, Amendment A"; or P/N "EO 1100, Amendment AB"; or P/N "EO 1100, Amendment C"; or P/N "A06 A00." Accomplishment of this replacement constitutes terminating action for the repetitive operational tests required by this AD.

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

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

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

(g) The inspection and replacement shall be done in accordance with Airbus Industrie All Operator Telex (AOT) 29–04, Revision 1, dated June 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

(h) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 9, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–16526 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–13–M#

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14 CFR Part 39

[Docket No. 91–NM–211–AD; Amendment 39–8286; AD 92–14–04]

Airworthiness Directives; Fokker Model F–28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F–28 Mark 0100 series airplanes, that requires a one-time inspection to detect cracks in the rivet holes of the vertical stabilizer, and repair, if necessary; and modification of the vertical stabilizer. This amendment is prompted by full-scale fatigue testing which revealed cracks in the surface and underlying structure of the vertical stabilizer. The actions specified by this AD are intended to prevent reduced structural capability of the vertical stabilizer.

DATES: Effecive August 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register and of August 18, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate,1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F–28 Mark 0100 series airplanes was published in the **Federal Register** on April 8, 1992 (57 FR 11926). That action proposed to require a one-time inspection to detect cracks in the rivet holes of the vertical stabilizer, and repair, if necessary; and modification of the vertical stabilizer.

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

The commenter supports the proposed rule.

Paragraphs (a) and (b) of the final rule have been revised to clarify the compliance time for the initial action.

Paragraph (c) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

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

Currently, no airplanes of U.S. registry will be affected by this AD. However, should one of the affected airplanes be imported and placed on the U.S. Register in the future, it will take approximately 60 work hours per airplane to accomplish the required actions, and that the average labor rate will be $55 per work hour. Required parts will cost approximately $3,808 per airplane. Based on these figures, the total cost impact of the AD is estimated to be $7,108 per airplane.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption"**ADDRESSES** ."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92–14–04. Fokker: Amendment 39–8286. Docket 91–NM–211–AD.

Applicability: Model F–28 Mark 0100 series airplanes; serial numbers 11244, 11245, 11250 through 11256, inclusive, and 11268 through 11273, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural capability of the vertical stabilizer, accomplish the following:

(a) For airplanes having serial numbers 11244, and 11250 through 11256, inclusive: Prior to the accumulation of 6,500 landings, or within 60 days after the effective date of this AD, whichever occurs later, disassemble the vertical stabilizer in accordance with part 1, Steps A. through C., of Fokker Service Bulletin SBF100–55–011, dated October 1, 1991.

(1) For airplanes that have accumulated 3,000 or fewer landings at the time the airplane is disassembled to comply with paragraph (a) of this AD, modify the vertical stabilizer, in accordance with part 1, Steps E. through G., of the service bulletin.

(2) For airplanes that have accumulated more than 3,000 landings at the time the airplane is disassembled to comply with paragraph (a) of this AD, inspect the rivet holes for cracks, in accordance with part 1, Step D., of the service bulletin.

(i) If no cracks are found, or if cracks are found that are less than 0.8 mm in length, modify the vertical stabilizer, in accordance with part 1, Steps E. through G., of the service bulletin.

(ii) If any crack is found that is 0.8 mm or longer, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) For airplanes having serial numbers 11245, and 11268 through 11273, inclusive: Prior to the accumulation of 6,500 landings, or within 60 days after the effective date of this AD, whichever occurs later, disassemble the vertical stabilizer in accordance with part 2, Steps A. through C., of Fokker Service Bulletin SBF100–55–011, dated October 1, 1991.

(1) For Airplanes that have accumulated 3,000 or fewer landings at the time the airplane is disassembled to comply with paragraph (b) of this AD, modify the vertical stabilizer, in accordance with part 2, Steps E. through G., of the service bulletin.

(2) For airplanes that have accumulated more than 3,000 landings at the time the airplane is disassembled to comply with paragraph (b) of this AD, inspect the rivet holes for cracks, in accordance with part 2, Step D., of the service bulletin.

(i) If no cracks are found, or if cracks are found that are less than 0.8 mm in length, modify the vertical stabilizer, in accordance with part 2, Steps E. through G., of the service bulletin.

(ii) If any crack is found that is 0.8 mm or longer, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

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

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and modifications shall be done in accordance with Fokker Service Bulletin SBF100–55–011, dated October 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

(f) This amendment becomes effective on August 18, 1992.

Issued in Renton, Washington, on June 9, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–16530 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 928 and 932

[Docket No. 910815–2061]

Implementing the Coastal Zone Act Reauthorization Amendments of 1990; Phase One

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements sections 6210 and 6212 of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990. These sections amended the Coastal Zone Management Act of 1972 (CZMA) to authorize the making of coastal zone enhancement grants to the states, to revise the procedures applicable to review by the Secretary of Commerce, under section 312 of the CZMA, of a state's performance with respect to coastal management, and to authorize the Secretary to impose interim sanctions against a state. The regulations issued today set forth the criteria and procedures for applying for and awarding coastal zone enhancement grants, revise the procedures applicable to review by the Secretary of a state's performance with respect to coastal management, and set forth procedures for invoking and lifting interim sanctions.

EFFECTIVE DATE: August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Vickie Allin, Policy Coordination Division (202/606–4100).

SUPPLEMENTARY INFORMATION:

I. Authority

This final rule is issued pursuant to the authority of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451–1464).

II. Availability of Comments

All comments received in response to the notice of proposed rulemaking for this rule (56 FR 52220, Oct. 19, 1991) are available for inspection at the Office of Ocean and Coastal Resource Management during normal business hours (8 a.m.–4:30 p.m.) in suite 701, Universal South Building, 1825 Connecticut Avenue, NW., Washington DC 20235.

III. Regulatory Issues

A. General Background

The CZMA was enacted to encourage and assist coastal states and territories (states) in developing and implementing management programs to preserve, protect, develop and, where possible, restore or enhance the resources of our Nation's coast. On November 5, 1990, the President signed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990. Subtitle C, known as the Coastal Zone Act Reauthorization Amendments of 1990 (1990 Reauthorization), of title VI of that Act, reauthorized and comprehensively amended the CZMA. The amendments include:

- A new Coastal Nonpoint Pollution Control Program, which requires each coastal state with a federally approved coastal zone management (CZM) program to develop a program, to be implemented through section 306 of the CZMA and section 319 of the Clean Water Act, to protect coastal waters from nonpoint source pollution. Program approval and oversight are shared between NOAA and the Environmental Protection Agency (EPA);
- A new enhancement grants program which encourages each coastal state to improve its CZM program in one or more of eight identified national priority areas: coastal wetlands management and protection, natural hazards management (including potential sea and Great Lakes level rise), public access improvements, reduction of

marine debris, assessment of cumulative and secondary impacts of coastal development, special area management planning, ocean resource planning, and siting of coastal energy and government facilities;

• A new "Coastal Zone Management Fund" (CZM Fund) consisting of Coastal Energy Impact Program loan repayments from which the Secretary of Commerce is directed to pay (subject to amounts provided in appropriation Acts) for the Federal administrative costs of the program and to fund special projects, emergency state assistance, and other discretionary CZM activities;

• New requirements for expanded public participation opportunities in the program evaluation process and expedited production of final evaluation findings, and new authority to impose interim sanctions involving suspension of financial assistance for 6 to 36 months if a state or national estuarine research reserve (reserve) designated under section 315 of the CZMA is failing to adhere to its federally-approved program or management plan or the terms of financial assistance awards;

• A new requirement for the Secretary to provide technical assistance and management-oriented research to support development and implementation of state CZM programs;

• Authorization for NOAA to make annual achievement awards to individuals and local governments for outstanding accomplishments in the field of coastal zone management;

• Clarification of the scope of the CZMA's Federal consistency provisions, which state that Federal actions in or affecting the coastal zone must be consistent with federally-approved state coastal management programs, and overturning the Supreme Court's 1984 decision in *Secretary of the Interior* v. *California*, in which the Court held that OCS oil and gas lease sales were not subject to Federal consistency;

• Modifications to the National Estuarine Research Reserve System under section 315 of the CZMA, including increasing the maximum amount of Federal financial assistance for land or water acquisition at an individual reserve from $4 to $5 million, and increasing the maximum Federal share of costs for managing reserves and supporting educational activities from 50 to 70 percent;

• Reorganization and consolidation of CZM program approval requirements and other technical changes, including new statements of findings and purpose, new and revised policies and objectives, and new and revised statutory definitions; and

• Three new program approval requirements regarding public participation in permitting processes, consistency determinations and other similar decisions, providing a mechanism to ensure that all state agencies will adhere to the program, and requiring enforceable policies and mechanisms to implement the applicable requirements of the new Coastal Nonpoint Pollution Control Programs, respectively.

B. Approach to Rulemaking

Because of the substantial scope of the amendments and the statutory requirement to promulgate regulations for the Coastal Zone Enhancement Grants Program by November 5, 1991, NOAA decided to undertake a phased rulemaking. The final rule issued today is the first phase. It implements sections 6210 and 6212 of the Omnibus Budget Reconciliation Act of 1990. These Sections amended the CZMA to authorize the making of coastal zone enhancement grants to the states, to revise the procedures applicable to review by the Secretary of Commerce, under section 312 of the CZMA, of a state's performance with respect to coastal management, and to authorize the Secretary to impose interim sanctions against a state.

NOAA believes it is premature to undertake rulemaking on most of the other amendments at this time. For example, NOAA needs more information before proceeding to rulemaking on program approvability requirements for the new nonpoint pollution control programs. This is because EPA must issue guidance on management measures for sources of nonpoint pollution on the basis of which States are to develop their programs. EPA has 18 months in which to develop this guidance. In addition, NOAA and EPA have joint approval authority for these programs. NOAA's regulations need to reflect agreement between NOAA and EPA on who will have authority to approve which parts of the program. Thus, rulemaking to implement the Coastal Nonpoint Pollution Control Program will be a later phase of the rulemaking process.

Similarly, NOAA will not proceed with rulemaking at this time to implement the new program approval requirements of section 306(d) (14), (15) and (16). This is because no state is required to meet these requirements until, at the earliest, 3 years from the date of enactment (or November 1993), and because the requirements of sections 306(d) (14) and (15) have been partially met already by existing state programs. NOAA will incorporate the requirements of sections 306(d) (14) and (15) into its program approval regulations and issue guidance to the States on meeting these requirements. The new requirement of section 306(d)(16) that state CZM programs contain enforceable policies to implement the new Coastal Nonpoint Pollution Control Programs will be incorporated into program approval regulations for these programs, when those regulations are developed.

NOAA will not issue regulations on the CZM Fund, the technical assistance program, or the CZM achievement awards at this time. Also, NOAA does not intend to revise its Federal consistency rules at this time. The changes to the Federal consistency provisions, except for overturning the Supreme Court's decision on outer continental shelf (OCS) oil and gas lease sales, merely codify NOAA's existing regulations. NOAA wishes to gain more experience with the new provisions, the issues likely to arise in their implementation, and the public and interagency concerns, before deciding how to address rulemaking on this subject.

The changes to the National Estuarine Research Reserve System (section 315 of the CZMA) are non-controversial conforming changes which will be included as a part of a separate rulemaking that will make other necessary clarifying changes to NOAA's existing section 315 regulations.

C. Final Rule

1. Coastal Zone Enhancement Grants Program

The 1990 Reauthorization amended section 309 of the CZMA to authorize a new Coastal Zone Enhancement Grants Program to encourage each coastal state to improve its CZM program in one or more of eight identified areas. Beginning in FY 1991, the Secretary is authorized to make grants (not less than 10 percent and not more than 20 percent of the amounts appropriated under sections 306 and 306A of the CZMA, up to a maximum of $10 million annually) to coastal states to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives. As part of this effort, the Secretary is required to evaluate and rank state proposals for funding, and make funding awards based on those proposals. The Secretary has the authority to suspend a state's eligibility for enhancement grant funding for at least one year, if the Secretary finds that the state is not

undertaking the actions committed to under the terms of the enhancement grant.

Section 309(d) requires NOAA to issue regulations relating to the new enhancement grants program that establish:

(1) Specific and detailed criteria that must be addressed by a coastal state (including the State's priority needs for improvement as identified by the Secretary after careful consultation with the State) as part of the State's development and implementation of coastal zone enhancement objectives;

(2) Administrative or procedural rules or requirements as necessary to facilitate the development and implementation of such objectives by coastal states; and

(3) Other funding award criteria as are necessary or appropriate to ensure that evaluations of proposals, and decisions to award funding, under this section are based on objective standards applied fairly and equitably to those proposals.

Since the statute required NOAA to implement the new enhancement grants program immediately, NOAA adopted an interim approach for FY 1991. This allowed time for development of the statutorily-mandated regulations and identification of each state's priority needs for improvement with regard to the coastal zone enhancement objectives. In FY 1991, NOAA set aside 10 percent of the funds allocated under section 318(a)(2) for section 309 purposes. These funds were allocated to states based on the formula and weighting factors at 15 CFR 927.1(c).

The process developed by NOAA for determining a state's priority needs has been set forth in NOAA guidance on "Section 309 Assessments and Strategies," issued on May 10, 1991. NOAA guidance is available from the Office of Ocean and Coastal Resource Management, Coastal Programs Division, Universal South Building, room 724, 1825 Connecticut Avenue, NW., Washington, DC 20235.

The process for determining a state's priority needs has two stages. First, each state develops a public assessment document ("Assessment") that reviews each enhancement objective as it applies to the state and identifies the relative importance of each objective. Based on the Assessment, NOAA, after careful consultation with the state, identifies the priority needs for improvement in the state.

Once NOAA has identified the priority needs, the second stage is development of a multi-year strategy ("Strategy"). The state, in consultation with NOAA, proposes, to NOAA for approval, a Strategy that identifies specific program changes that the state will seek to achieve in the identified priority areas. The Strategy guides the development of the state's FY 1992 and subsequent year section 309 grant proposals.

The final regulations implementing the new Coastal Zone Enhancement Grants Program under section 309 of the CZMA, as amended, assume that a state has completed an Assessment and Strategy in accordance with NOAA guidance. The final regulations are set forth at 15 CFR part 932, replacing the regulations currently at 15 CFR part 932.

The regulations at 15 CFR 932.1 set forth the basic eligibility requirements for receiving financial assistance under section 309. The objectives of assistance under section 309 (b), (c) and (d) are provided at 15 CFR 932.2.

Section 309(b) authorizes the Secretary to make grants to coastal States to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives. The term "program change" is defined at 15 CFR 932.3 to include state actions that change current management programs, such as the development of new or revised enforceable policies, authorities and state coastal land acquisition and management programs. NOAA believes the definition is generally flexible enough to fund many types of activities that will ultimately lead to a program change. However, NOAA will provide additional guidance to the states on eligible activities. Other key terms, such as "project of special merit," "fiscal needs" and "technical needs," are also defined at 15 CFR 932.3.

The regulations for allocating funds under section 309 are set forth at 15 CFR 932.4. NOAA will annually determine the amount of funds to be devoted to section 309, taking into account the amount appropriated under section 318(a)(2) of the CZMA, as amended. NOAA recognizes the need to maintain core funding for state coastal zone management programs and has modified its guidance accordingly.

NOAA will award section 309 funds by: (1) Weighted formula and (2) individual review of projects of special merit. Projects proposed for funding under both categories are not state entitlements and, therefore, would be required to meet the identified criteria discussed below. NOAA will annually determine the proportion of available funds to be awarded to all eligible coastal states by weighted formula and the proportion to be awarded to eligible coastal states based on NOAA's review of individual project proposals of special merit.

In response to comments received on the proposed regulations, NOAA will set a base allocation for section 306 and weighted formula funding. If funding allocations for sections 306 and 309 in any year are reduced, the reduction would first be taken from project of special merit funding, secondly from weighted formula funding and lastly from section 306 funding. This funding allocation scheme will be a part of the guidance document for the enhancement grant process.

Under the weighted formula approach, NOAA will establish state weighted formula funding targets. The weighted formula funding targets will be the state base allocation determined by operation of the formula at existing 15 CFR 927.1(c), multiplied by a weighting factor derived from NOAA's evaluation and ranking of the quality of the state's Strategy, as supported by the state's Assessment. The application of the weighting factor could result in a weighted formula funding target that is higher or lower than the state's base allocation.

Section 309 requires that the Secretary "evaluate and rank State proposals for funding." NOAA interprets the word "rank" to mean that a state's Strategy or project would be assigned a position or rank, relative to other state submissions, according to its satisfaction of the applicable criteria. NOAA anticipates that the ranking under the weighted formula approach could result in several ranking categories (so that some states would be assigned the same rank.)

NOAA will award the remaining section 309 funds, which are not awarded by the weighted formula approach, based on an annual review of projects of special merit. NOAA will limit the funding of projects of special merit to the highest ranked proposals based on criteria set forth at proposed 15 CFR 932.5(b). Competitive funding for projects of special merit is a new concept in distributing coastal zone management funding. However, NOAA believes that this is the CZMA's intent and will yield better projects.

The allocation process will allow each coastal state that has a NOAA approved Assessment and Strategy to pursue an enhancements program, while at the same time provide incentive for states to develop and submit more aggressive proposals which commit to making the greatest improvements toward the coastal zone enhancement objectives.

The regulations set forth the criteria for section 309 project selection at 15 CFR 932.5. States will be required to meet minimum criteria for projects that will be funded by weighted formula. For projects of special merit, states will be required to meet both minimum criteria

and additional criteria that include the merit of the project. NOAA will evaluate and rank projects of special merit using a point system. Following the first year of funding under this part, NOAA will consider a state's past performance in assessing the merit of the state's individual project proposals.

The regulations also set forth pre-application procedures for financial assistance under section 309 at 15 CFR 932.6. As suggested in many of the comments received on the proposed regulations, the procedures have been simplified. States are encouraged but not required to annually consult with the Assistant Administrator or his/her designee. Further, only one submission prior to the final application is required. This "draft proposal" would include all of the information necessary to make grants for the section 309 projects the state proposes for funding during the next fiscal year and would be submitted on a schedule set by the Assistant Administrator.

The procedures for submission of formal applications and for reviewing and approving projects under section 309 are set forth at 15 CFR 932.7. Applications for financial assistance under section 309 will be included with applications for financial assistance under subpart J of existing 15 CFR part 923. States will be notified of their section 309 awards at the same time that they are notified of their section 306/306A awards.

The regulations set forth the procedures for revising a state's Assessment and Strategy at 15 CFR 932.8. States will be required to submit proposed revisions to the Assistant Administrator prior to the initiation of the contemplated change. Based on the extent to which the proposed revision(s) change the original scope of the state's Strategy, the Assistant Administrator may require the State to provide public review and comment on the proposed revision(s) in accordance with NOAA guidance.

2. Review of Performance (Program Evaluation)

Section 312 of the CZMA requires a continuing review of the performance of coastal states with respect to coastal management, and detailed written findings on the extent to which the state has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A)–(K) of the CZMA, and adhered to the terms of any grant or cooperative agreement. Section 312 further requires that a public meeting be conducted as part of each evaluation and that opportunity be provided for oral and written comment by the public. Evaluation reports must be issued following each review of state performance.

The 1990 Reauthorization mandated changes to the procedures for carrying out evaluations of state coastal management programs and national estuarine research reserves. (Any changes to procedures for evaluation of estuarine reserves will be included as a part of a separate rulemaking to revise NOAA's section 315 regulations.) These changes require: A 45-day notice for public meetings, written response to all written comments on the evaluation, and completion of the final evaluation report within 120 days of the last public meeting held in the state. The 1990 Reauthorization amended section 312 of the CZMA to authorize new interim sanctions which provide for suspension and redirection of any portion of financial assistance awards to state coastal management programs or estuarine reserves if the state is failing to adhere to its approved program or reserve management plan, or a portion of the program or plan. Final sanction provisions at section 312(d) require the Secretary to withdraw program approval and financial assistance if the state refuses to take corrective actions specified under section 312(c)(2).

The basic requirements for review of performance are set forth at existing 15 CFR part 928. They define key terms, such as "continuing review," and provide that evaluations will be conducted in the course of continuing reviews and that written findings will be prepared.

Specifically, these final regulations revise existing 15 CFR 928.4(b)(2) to require that notice of public meeting(s) be provided at least 45 days in advance. They revise existing 15 CFR 928.3(b)(7) to require that final findings be completed within 120 days of the last public meeting in the state. The regulation specifies that copies of the final findings document will be sent to all persons and organizations who participate in the evaluation. Persons who attend a public meeting or are interviewed during an evaluation may be asked to complete a card or sign-in sheet containing their name and address and indicating a desire to receive the final findings. A new regulation has been added at existing 15 CFR 928.3(b)(8) requiring that all final findings documents contain a section which specifically identifies, summarizes and responds to the written comments received during the evaluation process.

In addition, NOAA has determined that two of the statutory changes to section 312(b)—namely, the requirement to respond in writing to all written comments received and the requirement to complete the evaluation within 120 days of the last public meeting—will increase the workload associated with the evaluation process. To deal with this increased workload, the final regulations revise the definition of "continuing review" at existing 15 CFR 928.2(a) to state that evaluations of State coastal management programs will be conducted and written findings prepared at least once every three years, rather than at least once every two years as previously provided. (NOAA's estuarine reserve regulations at existing 15 CFR 922.40(b) already provide for evaluation of estuarine reserves at least once every three years.) The phrase "but not more than once every year" has been deleted, so as not to restrict unnecessarily NOAA's flexibility to conduct issue or problem specific evaluations, as described below.

In addition, because NOAA recognizes that significant changes can occur in three years, the final regulations at existing 15 CFR 928.3(b)(9) provide for issue or problem specific evaluations to be conducted between regularly scheduled evaluations. In response to public comment, the regulation has been revised to clarify the conditions under which an issue or problem specific evaluation will be held: (1) To follow-up on potentially serious problems or issues identified in the most recent scheduled evaluation, or (2) to evaluate evidence of potentially serious problems or issues that may arise during the day-to-day monitoring of state performance of grant tasks and other program implementation activities in the interim between scheduled evaluations. These issue or problem specific evaluations will still be subject to the public participation and other minimum requirements of section 312. States will be notified of an issue or problem specific evaluation in the same manner as they are notified of a regularly schedule evaluation.

The regulations set forth the process for invoking interim sanctions at existing 15 CFR 928.5(a). They replace the old regulations on reduction of financial assistance for failure to make significant improvements, which were deleted because the significant improvement provisions were deleted in the 1990 Reauthorization. The process for invoking interim sanctions includes notice to the state and opportunity to comment on and rebut the finding of non-adherence on which the sanctions are based before any action is taken. Indicators of non-adherence are

provided to inform states of what NOAA expects and on what basis interim sanctions might be invoked.

To implement the changes to section 312(d) of the CZMA made by the 1990 Reauthorization, existing 15 CFR 928.5(b) entitled "Withdrawal of Program Approval and Financial Assistance" replaces the references to "unjustifiable deviation" with the requirement that the Assistant Administrator withdraw program approval and financial assistance if he/she finds that a state has failed to take the actions required under the interim sanction provisions of section 312(c).

D. Summary of Public Comments and Responses

On February 22, 1991, OCRM distributed issue papers on the rulemaking for the Coastal Zone Enhancement Grants Program and Review of Performance to approximately 225 interested parties on a mailing list established for this rulemaking and maintained by OCRM. Thirty-eight comments were received. After considering these comments, NOAA published a Notice of Proposed Rulemaking (56 FR 52220, Oct. 19, 1991) which invited public comments for 45 days, ending December 2, 1991. A public meeting was held on November 20, 1991. Comments were received from 41 sources, including 1 Federal agency, 3 NOAA offices, 20 coastal states and territories (30 letters), 3 interest groups, 1 business, 2 members of the Coastal Ocean Policy Roundtable, and 1 Congressional committee. The majority of commenters submitted comments on the regulations proposed to govern the Coastal Zone Enhancement Grant Program. A summary of the significant comments received together with NOAA's response organized by applicable subheading appear below.

A. Part 928—Review of Performance

Section 928.3 Procedures for Continuing Review of Approved State Coastal Zone Management Programs

Comment: Three comments expressed concern with the proposed revisions to § 928.3(b)(7).

(a) One comment objected to the deletion of the phrase "state comments" which the commenter felt may indicate unwillingness on the part of the Assistant Administrator to respond to a state's position or reasoning.

Response: No such intention should be read into this revision. Subsection 928.3(b)(7) established the timeframe for completing final evaluation findings. Previously, that timeframe was measured from the date of receipt of state comments on the draft findings. The 1990 Amendments instituted a new requirement to complete the final findings within 120 days, measured from the date of the last public meeting in the state. The revisions simply implement the new requirement. They do not change the state's right to comment on the draft findings or NOAA's obligation to consider the state's comments.

(b) Another comment asked why the final evaluation findings should only be sent to those completing a card or sign-in sheet when the amendments call for the final findings to be sent to all participants in the evaluation.

Response: NOAA intends to send final findings to all who participate in evaluations. The purpose of the card or sign-in sheet is to verify the addresses and affiliations of persons who speak or are interviewed during the evaluation and to offer multiple individuals from the same organization the option of receiving individual copies or a single copy for the organization, as they wish. NOAA has modified the language of this regulation slightly to clarify its intent.

(c) One comment recommended that NOAA send a notice announcing the availability of the draft evaluation findings to all participants in the evaluation at the time the draft findings are sent to the state for review.

Response: NOAA disagrees. The draft findings contain preliminary conclusions and tentative recommendations and include material subject to revision. They are made available for review and comment to the organization responsible for the matters addressed.

Comment: One comment concerned proposed § 928.3(b)(8). That comment recommended that NOAA summarize and respond to oral comments made at the public meetings and attach the full text of the written comments it summarizes and responds to as an appendix to the final findings.

Response: NOAA disagrees. The statute requires NOAA to respond only to written comments, recognizing the difficulty of summarizing and responding to the vast amount of oral comment on evaluations. Even restricting a summary to oral comments at public meetings would require turning those informal meetings into formal hearings with written transcripts. This would add greatly to the cost and workload of evaluation without a corresponding benefit. Oral comments are considered in developing the findings and recommendations and are cited as appropriate in the findings document.

Comment: One comment sought criteria and a mechanism for notifying states of issue or problem-specific evaluations under the proposed revisions to § 928.3(b)(9).

Response: NOAA agrees and has revised the regulation to indicate when it would consider undertaking an issue or problem-specific evaluation. NOAA does not believe any change is needed regarding notification mechanism since the regulation states that the procedures of §§ 928.3 and 928.4 will be followed. This includes the notification procedure at § 928.3(b)(3).

Section 928.5 Enforcement

Comment: Several comments concerned the procedures for imposing interim sanctions.

(a) One comment stated that the enforcement section was onerous and dealt only with mandatory recommendations.

Response: The comment appears to confuse the regulations implementing the interim sanctions provisions with changes made by NOAA to the format of its evaluation findings. Recently, in conjunction with notifying states of its FY 1992 evaluation schedule, NOAA/OCRM informed them that it was making two changes to the format of the evaluation findings. One of these changes is to distinguish between suggested or necessary actions. Since the format of evaluations is not specified in regulation, the regulations are not affected by this change. The regulations at § 928.5 specify the procedures for invoking interim sanctions. These procedures will be invoked only if a state is found to be not adhering to all or a portion of its approved management program.

(b) One comment expressed concern that suspension and redirection of funds already allocated by the lead state agency through signed contracts could cause undue hardship.

Response: NOAA's procedures for invoking interim sanctions call for the state to develop a proposed workplan which may propose alternative actions and/or an alternative schedule to correct a non-adherence problem. NOAA expects that its consultations with the state on this workplan would serve to identify and provide a means to avoid the undue hardship identified by the commenter.

(c) One comment recommended that the state be required to provide for public review and comment on the workplan it submits pursuant to § 928.5(a)(vi).

Response: NOAA believes that public review and comment is inappropriate. Of course a state is free to solicit comments regarding its proposed workplan.

(d) One commenter recommended that the "schedule of actions that should be undertaken by the State" in § 928.5(a)(1)(ii)(A) be one that is developed with due regard for the state's administrative ability to satisfy it.

Response: NOAA's procedures at § 928.5(a)(2)(vi) provide for the state to suggest an alternative schedule.

Comment: Several comments concerned the indicators of non-adherence that NOAA may consider in deciding whether to invoke interim sanctions.

(a) One comment called for the development of national standards for judging the performance of state coastal zone management programs.

Response: Given the statutory flexibility given to states in designing the content and organization of their programs, NOAA has concluded that national standards applicable to all programs are infeasible at this time. NOAA has included several indicators on non-adherence which encompass the various approvable organizational structures of approved programs and which provide guidance to the states on what NOAA expects and on what basis NOAA would consider imposing interim sanctions.

(b) One comment cautioned NOAA not to rely on the new requirements of Sections 306(d) (14), (15), and (16) in assessing state performance until guidance has been issued to the states and they have had a reasonable opportunity to comply.

Response: NOAA agrees and has revised its indicators at § 928.5(a)(3)(i) (B) and (E) accordingly.

(c) One commenter stated that the regulatory requirements at § 923.40 (as referenced in § 928.5(a)(3)(i)(B)) did not become legally binding until April 1, 1978, and therefore should not be applied to state programs approved before that date.

Response: Although not applied retroactively, states whose programs were approved prior to April 1, 1978, were given a reasonable time to bring their programs into conformance with the new requirements. At this time, all approved programs have been found to comply with § 923.40.

(d) One commenter requested that the statutory and regulatory basis for requiring notice that a management program decision would conflict with a local zoning ordinance be set forth in § 928.5(a)(3)(i)(E).

Response: NOAA has done so.

(e) One comment expressed concern that the review standard of "non-compliance of local coastal programs with the approved state program [including] local permitting or zoning decisions that are inconsistent with state standards or criteria * * *" may be outside a state coastal zone management program's control.

Response: This indicator refers only to state coastal programs that have chosen the local coastal program form of organization. All of these programs must be found to have a legally enforceable mechanism to assure local coastal programs they approve will adhere to state standards or criteria. Therefore, if this indicator were truly outside the state coastal management program's control, that program would no longer be approvable.

(f) One comment requested NOAA define what it meant by "in a timely fashion" at § 928.5(a)(3)(i)(G).

Response: NOAA has modified this indicator to clarify that program changes must be submitted within the timeframes specified at §§ 923.81 and 923.84.

(g) One commenter recommended adding to the indicator at § 928.5(a)(3)(ii) consideration of the magnitude of the injury or threat to coastal resources caused by the non-adherence.

Response: NOAA's indicators encompass both procedural and substantive aspects of program performance. Although NOAA does not believe it is appropriate to modify the section indicated, NOAA does agree that its consideration of the substantive aspects of program performance should consider the on-the-ground impacts of a possible non-adherence issue.

Therefore, NOAA has modified § 928.5(a)(3)(i)(A) to encompass such consideration.

Comment: One comment concerned the proposed revisions to the regulations on withdrawal of program approval and financial assistance. That comment recommended NOAA increase the period for states to respond to a proposed notice of withdrawal from a maximum of 60 days to a maximum of 90 days, in light of NOAA's proposal to increase the period between regularly scheduled evaluations from 2 to 3 years.

Response: There is no relationship between the period of time between regularly scheduled evaluations and the period of time allowed for state response to a notice of withdrawal of program approval. NOAA believes 60 days for state response to the proposed withdrawal notice is sufficient.

B. Part 932—Coastal Zone Enhancement Grants

NOAA received many comments that were critical of its proposed regulations. However, NOAA believes the basic structure of its regulations is sound. NOAA believes the allocation of some funds by weighted formula and some by individual project evaluation and ranking provides a reasonable accommodation to state needs for longer-term predictable funding while assuring that the funds will go to the best projects. Therefore, although some changes have been made to address specific suggestions and to simplify the requirements where possible, the basic provisions contained in the proposed regulations remain unchanged.

Section 932.1 General

Comment: Seven comments expressed opinions about the general nature of the regulations.

(a) Several comments supported the enhancement grants program. One of them stated, however, that a state should not be punished if it did not participate in the program.

Response: The enhancement grants program under § 309 is a voluntary program. Failure to participate will in no way affect funding of base programs under § 306.

(b) One comment expressed concerns about the use of a weighted formula for any portion of the grants. The comment stated that the proposed weighting formula was too cumbersome, unnecessarily complex, and not in the spirit of the original CZMA.

Response: NOAA believes that a weighted formula is an appropriate method of carrying out CZMA's intent for NOAA to "rank and evaluate" proposals.

(c) Several comments stated major concerns about the competitive nature of grant awards.

Response: NOAA believes that Congress intended that section 309 grants be awarded through a competitive process.

(d) One comment recommended that an alternative process for allocating funds under section 309 be instituted for FY 92, and that the majority of the money be distributed using the same formula as for section 306 funding. Another commented that the rules should be adopted as "interim final" and finalized after experience is gained.

Response: NOAA believes that proceeding with the adoption of these regulations will not interfere with the fair and timely issuance of grants under these regulations for FY 92. NOAA does not believe that the intent of the CZMA is for NOAA to distribute these funds through the use of the section 306 formula. NOAA believes that the issue of potential amendments to the regulations is premature and that the

majority of issues can be addressed in periodic guidance documents.

Section 932.2 Objectives

Comment: Three comments concerned the objectives.

(a) Two comments stated that the regulations too narrowly defined the objectives in regards to demonstrable improvements in the way resources are managed. They cited section 309(a) and (d) to show that other methods of management may be warranted under the enhancement grant program.

Response: NOAA disagrees. The overriding factor in determining both the objectives and the definition of "program change" at § 932.3(a) is the use of the phrase "may make grants to coastal states to provide funding for development and submission for Federal approval of program changes." Therefore, no changes have been made to this section.

(b) One comment sought the addition of two objectives.

Response: The objectives in this section reflect the objectives in section 309(a) of the CZMA. NOAA does not believe that additional objectives can be added unless the CZMA is further amended.

Section 932.3 Definitions

Comment: Twenty-five respondents commented on the definition of "Program change". One comment stated that the definition should be tied directly to accomplishments such as routine program implementation (RPI) or program amendments and should not be used simply to implement existing programs. Twenty-three respondents (all coastal states and territories) felt the definition was much too narrow. The most frequent clarification was that the definition should include limited implementation of program improvements developed under section 309. Another frequently recommended expansion of the definition was to allow program improvements that were somehow under the threshold of RPI.

Response: NOAA believes that the objective of the enhancement grant program is "program changes", primarily enforceable policies. Historically, states have tended not to submit routine changes due to the amount of processing necessary to initiate these changes. NOAA will consider revising its guidance for routine program changes (called routine program implementation or RPI) to effectively reduce the amount of paperwork required of the states so that this enhancement grant program can run efficiently.

Comment: Two respondents offered comments on the definition of "Assessment".

(a) One commenter stated that the guidance for preparing an assessment should have to be submitted to public review just as the state must have public review as an integral part of the assessment process.

Response: NOAA routinely circulates draft guidance to the states and other interested parties for comment prior to initiating its use. The guidance is not of such a nature that it requires comment through a formal public notice process.

(b) One commenter stated that the proposed definition was too negative in that it only mentioned "problems" related to the enhancement objectives.

Response: NOAA agrees and has used the phrase "problems and opportunities" in the final regulations.

Comment: Two respondents offered comments on the definition of "Strategy". They felt that the strategy document was being too narrowly defined and that it should focus on a wider variety of issues and not necessarily identify all implementation methods that may be used. They pointed out that a part of the strategy may be to identify the tools.

Response: NOAA does not intend to exclude meaningful visionary elements from the strategy process, but must insist that the documents submitted have defined goals and objectives with paths and benchmarks to determine if the objectives are being met. While some "solutions" may not be evident at the beginning of the process, NOAA would like a clear, focused description of the process to be used to develop the enforceable policies required of the enhancement grant program.

Comment: Two respondents commented on the definition of "Fiscal needs". They stated that the definition combined with the requirements at § 932.6(b)(5)(i) are far greater than are required to adequately show fiscal need.

Response: NOAA is required to show that the Federal funds are needed by the state prior to making grant awards. The requirements at § 932.6(b) may seem extensive, yet are not meant to require lengthy analysis. Therefore, the language has been retained in the final regulations.

Comment: One respondent commented that the definition of "Assistant Administrator" needed to specifically define who would be the "designee".

Response: Delegation of Authority within NOAA will follow normal defined NOAA procedures. Accordingly, no change is needed to this definition.

Section 932.4 Allocation of Section 309 Funds

Comment: Twenty-one respondents commented that the base level of funding under section 306 should be maintained.

Response: NOAA agrees that a base dollar level of funding (based on FY 91 funding) should be maintained and will modify its guidance document accordingly. The guidance document is also being amended to reflect a three tier approach to funding: Base section 306 funding, a base weighted formula funding, and project of special merit (PSM) funding available annually on a competitive basis. Each of the three levels would be set annually after appropriation levels have been enacted. If less funds are appropriated than the previous year, the PSM funding would be reduced. If additional cuts are needed, weighted formula funding would be reduced, followed, as a last resort, by reductions in base section 306 funding.

Comment: Sixteen respondents commented on (b) the allocation of funds between sections 306 and 309. One party commented that the regulations should reflect Congressional intent by providing that the full 20 percent of CZM funding go to section 309 unless, due to lower than anticipated appropriations, base state programs would be impaired. Fifteen respondents recommended that the Assistant Administrator set the allocation to section 309 at the minimum (10 percent) level unless the base section 306 funding increased.

Response: NOAA believes that the funding levels should be set annually as a part of the guidance document after appropriation levels have been set by Congress. The rule merely repeats the language of section 309, and no change has been made.

Comment: Twenty-two respondents commented on (c) the allocation of funds between weighted formula and projects of special merit. Of these, one commenter recommended that at least 90 percent be allocated to weighted formula; four commented that at least 80 percent go to weighted formula; two stated 75 percent to weighted formula; one recommended at least 60 percent to weighted formula. The remainder stated that "as much as possible go to weighted formula" or "the allocation of funds be made as predictable as possible."

Response: NOAA is establishing, as a matter of policy, as previously stated in the response to comments on section 932.4(1) above, a base weighted formula

dollar amount rather than a ratio between weighted formula and projects of special merit. This will give the states more predictability in funding multi-year strategies and projects. This funding criterion will also appear in the guidance document.

Comment: Several respondents commented on section (d) weighted formula funding.

(a) Several commented on the range of weights as applied in the guidance.

Response: Section 932.4(d)(4) merely states that the Assistant Administrator may set a range of weights. NOAA believes that the actual range of weights should be set forth in the guidance document, as opposed to the regulations, so that it can be readily amended to reflect changes in funding levels and experience with managing the program.

(b) Several commented that the weighted formula process was much too complicated and subjective.

Response: NOAA has revised this section to clarify the actual process to be followed in the review of weighted formula projects which will make it less complex. In regard to the subjectivity comment, NOAA believes that the detailed process outlined in these regulations and the guidance document will ensure the objective application of the standards.

Comment: Eighteen respondents commented on (e) funding for projects of special merit. Of these, seventeen expressed their concern about interstate competition, and one expressed support for the process and recommended that there not be any caps placed on the amount that any one state should be able to receive.

Response: NOAA continues to believe that the projects of special merit are a vital part of the enhancement grants program. We are refining the FY 92 guidance document to address the issue of caps on individual state grants under this program. We believe that increasing the amount of funds available under weighted formula funding has made the projects of special merit (with lower funding levels) even more competitive and thus caps for individual states may not seem appropriate at this time. The guidance document is the appropriate place for discussion of these caps.

Section 932.5 Criteria for Section 309 Project Selection

Comment: Twenty respondents commented on the general project selection criteria.

(a) Nineteen of these respondents commented that the procedures outlined in the proposed regulations were much too complex and cumbersome.

Response: In an effort to make the application procedures less complicated, in addition to the changes made at § 932.5, other changes have been made. In § 932.6, pre-submission consultation is made optional. The regulations also clarify that the initial or draft proposal is in the same format and will contain the same information as the final application at § 932.7.

(b) One commented that NOAA should avoid the urge to "over-quantify" the process.

Response: NOAA believes that the process outlined in § 932.5 is an objective and fair process without unnecessary reliance on quantification.

Comment: Several parties commented on (b) the criteria for projects of special merit.

(a) One commenter stated that interstate projects should be given higher priority.

Response: The former section 309 of the CZMA dealing with interstate grants was repealed as a part of the 1990 Reauthorization. Therefore, projects of this type are ineligible for funding under the new section 309; however, they are eligible for funding under the new section 308, the Coastal Zone Management Fund.

(b) One respondent commented that the terms "overall benefit of the project to the public" and "transferability" should either not be used or should be defined prior to their use as evaluation criteria. Another respondent commented that "technical needs" should not be used an evaluation criteria.

Response: NOAA believes that all three of these criteria are appropriate and necessary evaluation measures.

Section 932.6 Pre-application Procedures

Comment: As stated at § 932.5, many commenters stated their opinion that the evaluation and application processes were too complex.

Response: NOAA has simplified the process in the final regulations. The "pre-submission consultation" has been made an optional process due to the high level of consultation that will be required during the assessment and strategy preparation. Further, the "pre-proposal" process has been clarified by renaming it the "draft proposal" to indicate that no additional information is required for the final application.

Comment: Two respondents commented that travel should be an eligible expense under the enhancement grants.

Response: NOAA agrees and has revised § 932.6(b) to include travel as an allowable expense.

Comment: One commenter suggested that a public review step be added to both the pre-proposal process and the strategy revision process.

Response: Public participation in the strategy amendment process may be required by the Assistant Administrator at § 932.8 if the changes significantly revise the scope of the approved strategy. Public participation at the draft proposal stage is not necessary due to the direct linkages to the assessment and strategy development processes.

Comment: One respondent recommended amending § 932.6(b)(3) to allow expenses for capital projects.

Response: NOAA disagrees. Congressional intent clearly indicates that enhancements be developed for coastal zone management programs.

Comment: One respondent commented that § 932.6(b)(8) be amended to allow states to submit proposals for more money than the weighted formula funding target, so as to put a state at an advantage to use funds not used by other states.

Response: NOAA has clarified its regulations accordingly. However, NOAA retains the right to choose which projects are funded with weighted formula or project of special merit funds if additional funds are available.

Comment: One respondent recommended that an additional requirement be added to § 932.6(c)(2) to ensure that technical advisors have a knowledge of the specific geographic area upon which they are commenting.

Response: NOAA agrees as a matter of policy to ensure regional representation of any external reviewers.

Section 932.7 Formal Application for Financial Assistance and Application Review and Approval Procedures

Comment: Eight respondents commented that interim regulations should be followed for FY 92 funding, as the time periods outlined in the guidance cannot be met.

Response: These comments generally refer to issues considered in the FY 92 guidance document. NOAA believes that proceeding with adoption of these regulations will not interfere with the fair and timely issuance of section 309 grants for FY 92.

IV. Other Actions Associated With the Notice of Proposed Rulemaking

A. Executive Order 12291: Regulatory Impact Analysis

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined

by the Order and, "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. NOAA has concluded that this is not a "major" regulatory action, as defined by the Executive Order, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These rules will provide for enhancement of State CZM programs in eight national objective areas and will improve the evaluation of their performance. The rules only serve to strengthen the framework for making rational coastal management decisions and will not result in any major direct or indirect economic or environmental impacts. Therefore, preparation of an RIA is not required.

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires Federal agencies to consider explicitly the effect of regulations on "small entities." A Regulatory Flexibility Analysis was not prepared for this regulatory action. This rule sets forth procedures for the Coastal Zone Enhancement Grants Program and review of performance. The rule affects only State governments, which are not "small government entities," as defined by the RFA. Since the rule will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 is not required.

C. Paperwork Reduction Act

The Paperwork Reduction Act is intended to minimize the reporting burden on the regulated community as well as minimize the cost of Federal information collection and dissemination. Information requirements of section 312—Review of Performance—embody existing procedures and do not constitute any increase in reporting on the part of any affected party.

The rule to implement section 309—Coastal Zone Enhancement Grants—contains a collection of information requirement subject to the Paperwork Reduction Act. This collection of information requirement is a one-time requirement for Assessments of State priority needs for improvement in the eight national priority areas and Strategies for making those improvements and is necessary to implement section 309(d) of the CZMA, as amended, which requires the Secretary of Commerce to identify each State's priority needs for improvement, after careful consultation with the States. These Assessments and Strategies will replace an existing reporting requirement (part C of the annual performance report) for FY 1991. Therefore, the paperwork burden has been minimized.

In addition, all States will be required to provide pre-proposals containing their proposed enhancement grant projects annually at the same time, in order that NOAA may carry out the individual evaluation and ranking of proposals required by statute and provide States with timely information on approved projects to include in their joint section 306/306A/309 financial assistance award applications. This procedure for pre-proposals will replace a similar procedure for interstate grants, authorization for which was repealed by the 1990 Reauthorization.

The request to collect this information has been approved by the Office of Management and Budget under section 3504(h) of that Act (OMB Control No. 0648–0119). Public reporting burden for this collection is estimated to average 480 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and developing the Assessments and Strategies. Comments on this estimate may be sent to:

The Office of Ocean and Coastal Resource Management, Policy Coordination Division, 1825 Connecticut Avenue, NW., Washington, DC 20235, Attention: Vickie A. Allin.

or

Office of Management and Budget, Paperwork Reduction Project (0648–0119), Washington, DC 20530.

D. National Environmental Policy Act (NEPA)

NOAA has determined that this regulatory action will not significantly affect the quality of the human environment. Therefore, an environmental assessment or environmental impact statement will not be prepared.

E. Executive Order 12612

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

List of Subjects

15 CFR Part 928

Administrative practice and procedure, Coastal zone, Grant programs—natural resources, and Natural resources.

15 CFR Part 932

Coastal zone, Grant programs—natural resources, Natural resources, and Reporting and recordkeeping requirements.

Dated: July 2, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, NOAA amends 15 CFR chapter IX as set forth below.

PART 928—REVIEW OF PERFORMANCE

1. The authority citation for part 928 is revised to read as follows:

Authority: Section 312 of the Coastal Zone Management Act, as amended (16 U.S.C. 1458).

2. Section 928.1 is revised to read as follows:

§ 928.1 General.

This part sets forth the requirements for review of approved State coastal zone management (CZM) programs pursuant to section 312 of the Act (16 U.S.C. 1458). This part defines "continuing review" and other important terms, and sets forth the procedures for:

(a) Conducting continuing reviews of approved State CZM programs;

(b) Providing for public participation;

(c) Invoking interim sanctions for non-adherence to an approved coastal zone management program or a portion of such program; and

(d) Withdrawing program approval and financial assistance.

3. Section 928.2 is amended by revising paragraphs (a), (c), (d), and (g) to read as follows:

§ 928.2 Definitions.

(a) *Continuing review* means monitoring State performance on an ongoing basis. As part of the continuing review, evaluations of approved CZM programs will be conducted and written findings will be produced at least once every three years.

* * * * *

(c) *Interim sanction* means suspension and redirection of any portion of financial assistance extended to any coastal State under this title, if the Secretary determines that the coastal State is failing to adhere to the management program or a State plan developed to manage a national estuarine reserve, or a portion of the program or plan approved by the Secretary, or the terms of any grant or cooperative agreement funded under this title.

(d) *Approved CZM program* means those elements of the program approved by the Secretary, under 15 CFR part 923 (Development and Approval Provisions), including any changes to those elements made by approved amendments and routine program implementation.

* * * * *

(g) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

4. Section 928.3 is amended by revising the section heading, paragraphs (a), (b)(7), (c)(1)(ii), (c)(3) introductory text, and (c)(3)(iii); and by adding paragraphs (b) (8) and (9) to read as follows:

§ 928.3 Procedure for conducting continuing reviews of approved State CZM programs.

(a) As required by section 312(a), the Secretary shall conduct a continuing review of the performance of coastal States with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the State has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A) through (K), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title (16 U.S.C. 1451–1464).

(b) * * *

(7) The Assistant Administrator will issue final findings to the State CZM program manager and the head of the State CZM agency within 120 days of the last public meeting in the State. Copies of the final findings will be sent to all persons and organizations who participated in the evaluation. Participants may be asked to complete a card or sign-in sheet provided by the evaluation team indicating that they wish to receive the final findings. Notice of the availability of the final findings will also be published in the **Federal Register.**

(8) The final findings will contain a section entitled "Response to Written Comments." This section will include a summary of all written comments received during the evaluation and NOAA's response to the comments. If appropriate, NOAA's response will indicate whether NOAA agrees or disagrees with the comment and how the comment has been addressed in the final findings.

(9) The Assistant Administrator may conduct issue or problem-specific evaluations between scheduled evaluations of approved State CZM programs. Such issue or problem-specific evaluations will be conducted to follow-up on potentially serious problems or issues identified in the most recent scheduled evaluation or to evaluate evidence of potentially serious problems or issues that may arise during day-to-day monitoring of State performance of grants tasks or other program implementation activities in the interim between scheduled evaluations. If the Assistant Administrator conducts an issue or problem specific evaluation, he/she will comply with the procedures and public participation requirements of 15 CFR 928.3 and 928.4.

(c) * * *

(1) * * *

(ii) Addressed the coastal management needs identified in section 303(2) (A)–(K) (16 U.S.C. 1452); and

* * * * *

(3) Procedure for assessing how the State has addressed the coastal management needs identified in section 303(2) (A)–(K). The assessment of the extent to which the State has addressed the coastal management needs identified in section 303(2) (A)–(K) will occur as follows:

* * * * *

(iii) The findings concerning how the State has addressed the coastal management needs of section 303 will be used by the Assistant Administrator in negotiating the next financial assistance award.

* * * * *

5. Section 928.4 is amended by revising paragraphs (a), (b)(2), and (b)(3) to read as follows:

§ 928.4 Public participation.

(a) As required by section 312(b) of the Act, in evaluating a coastal State's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days notice of such public meetings by placing a notice in the **Federal Register**, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process.

(b) *Requirements.* (1) * * *

(2) Each State will issue a notice of the public meeting(s) in its evaluation by placing a notice in the newspaper(s) of largest circulation in the coastal area where the meeting(s) is being held and by taking other reasonable action to communicate with persons and organizations known to be interested in the evaluation, such as sending a notice of the meeting(s) to persons on its mailing list and publishing a notice in its newsletter, at least 45 days before the date of the public meeting(s). The State will provide a copy of such notice to the Assistant Administrator. States are encouraged to republish the newspaper notice at least 15 days before the date of the public meeting(s). The State will inform the public that oral or written comments will be accepted and that attendance at the public meeting(s) is not necessary for submission of written comments.

(3) Notice of the availability of final findings will be published in the **Federal Register**. The notice will state that copies of the final findings will be available to the public upon written request. Copies of the final findings will be sent to persons and organizations who participated in the evaluation, in accordance with 15 CFR 928.3(b)(7).

6. Section 928.5 is amended by revising paragraphs (a), (b)(1), and (b)(2) (i) and (iii) to read as follows:

§ 928.5 Enforcement.

(a) *Procedures and criteria for invoking and lifting interim sanctions.* (1) As required by section 312(c) of the Act:

(i) The Secretary may suspend payment of any portion of financial assistance extended to any coastal State, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal State is failing to adhere to—

(A) The management program or a State plan developed to manage a national estuarine reserve established under section 315 of the Act (16 U.S.C. 1461), or a portion of the program or plan approved by the Secretary; or

(B) The terms of any grant or cooperative agreement funded under this title (16 U.S.C. 1451–1464).

(ii) Financial assistance may not be suspended under paragraph (a)(1)(i) of this section unless the Secretary provides the Governor of the coastal State with—

(A) Written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

(B) Written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal State to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(iii) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.

(2) *Requirements.* (i) The Assistant Administrator will identify the need for interim sanctions through the continuing review process. The Assistant Administrator will use the criteria at 15 CFR 928.5(a)(3) in determining when to invoke interim sanctions.

(ii) The Assistant Administrator will issue the State a preliminary finding of non-adherence with the approved CZM program, or a portion thereof, and/or with a term or terms of a grant or cooperative agreement. This preliminary finding of non-adherence may be contained in the draft evaluation findings, or in a preliminary notification letter to the State CZM program manager. If the preliminary finding is contained in a preliminary notification letter, the Assistant Administrator will comply with the applicable public participation requirements of section 312(b) and NOAA's regulations at 15 CFR 928.4. The draft evaluation findings or preliminary notification letter containing a preliminary finding of non-adherence will explain that if the finding of non-adherence is issued, the State is subject to suspension of financial assistance and, if the State fails to take the actions specified pursuant to section 312(c) and this part, to withdrawal of program approval and financial assistance.

(iii) The State will be given 30 days from receipt of the draft evaluation findings or preliminary notification letter to comment on and rebut the preliminary finding of non-adherence. During this 30-day period, the State may request up to 15 additional days to respond, for a maximum of 45 days from receipt of the draft evaluation findings or preliminary notification letter.

(iv) After considering the State's comments, the Assistant Administrator will decide whether or not to issue a final finding of non-adherence. If the Assistant Administrator decides to issue a final finding of non-adherence, he/she will do so in the final evaluation findings issued pursuant to section 312(b) or in a final notification letter as provided by paragraph (a)(2)(ii) of this section. The Assistant Administrator may invoke interim sanctions provided by section 312(c) immediately or at any time after issuing the final evaluation findings or final notification letter containing the finding of non-adherence, but not later than the next regularly scheduled evaluation.

(v) If the Assistant Administrator decides to invoke interim sanctions, he/she will do so by sending the final evaluation findings or final notification letter to the Governor of the State and the State CZM program manager. The final evaluation findings or final notification letter will contain the information required in section 312(c)(2)(A) and (B). This information will include the amount of financial assistance to be suspended and redirected, the actions the State should take in order to have the suspension withdrawn, how the suspended funds shall be expended to take the required actions, and a schedule for taking the required actions. The final evaluation findings or final notification letter will also contain the length of the suspension, which may not last for less than 6 months or more than 36 months. The Assistant Administrator will establish the length of the suspension based on the amount of time that is reasonably necessary for the State to take the required actions. If the State can take the required actions faster than expected, the suspension can be withdrawn early (but not in less than six months).

(vi) The State must respond to the final evaluation findings or final notification letter by developing a proposed work program to accomplish the required actions on the schedule set forth in the final evaluation findings or final notification letter. The State may propose an alternative approach to accomplishing the required actions and/or an alternative schedule. The Assistant Administrator's approval of the State's work program will signify his/her agreement with the approach and schedule for accomplishing the actions necessary to withdraw the suspension.

(vii) The Assistant Administrator will monitor State performance under the work program. This may involve additional direction to the State through the grant administration process and/or a visit to the State by appropriate NOAA program staff, evaluation staff and/or other experts to work with the State on a specific problem or issue. The Assistant Administrator will consider proposals to revise the work program on a case-by-case basis, providing that the State will still be able to accomplish the necessary actions within a maximum of 36 months.

(viii) The State must document that it has taken the required actions on the schedule established under this section. The State must provide its documentation in writing to the Assistant Administrator. The Assistant Administrator may conduct a follow-up evaluation or otherwise revisit the State at his/her discretion.

(ix) If the Assistant Administrator determines that the required actions have been taken, the Assistant Administrator will promptly notify the Governor and the State program manager, in writing, that NOAA has withdrawn the suspension of financial assistance. If, however, the State does not take the required actions, then the Assistant Administrator will invoke the final sanction provisions of section 312(d) on program termination and withdrawal of all financial assistance.

(3) *Criteria for invoking interim sanctions.* (i) The Assistant Administrator may consider the following indicators of non-adherence to an approved State CZM program in determining whether to invoke interim sanctions.

(A) Ineffective or inconsistent implementation of legally enforceable policies included in the CZM program. Indicators of ineffective or inconsistent implementation could include: evidence of non-compliance with core authorities by the regulated community; insufficient monitoring and inspecting of coastal development to ensure that it conforms to program requirements and applicable conditions; or inadequate enforcement action when development is found not to be in compliance with the program or permit under which it is authorized or is found to be an unpermitted activity. In applying this indicator, NOAA will consider any available evidence of the impacts of ineffective or inconsistent implementation on coastal resources.

(B) Inadequate monitoring of the actions of State and local agencies for compliance with the program. Indicators of inadequate monitoring of these agencies could include: evidence of non-compliance of networked agencies with the CZM program, unresolved conflicts between agencies regarding what constitutes compliance with the program, or lack of a mechanism to ensure that all State agencies will

adhere to the program or to approved local coastal programs pursuant to NOAA's regulations at 15 CFR 923.40 (and pursuant to new section 306(d)(15), after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance).

(C) Non-compliance of local coastal programs with the approved State program. Indicators of non-compliance could include: Local permitting or zoning decisions that are inconsistent with State standards or criteria, widespread granting of variances such as to render a zoning program ineffective in meeting State standards or criteria, changes to local comprehensive plans or zoning maps that are inconsistent with State standards or criteria, or inadequate monitoring and enforcement, as described in paragraph (a)(3)(i)(A) of this section.

(D) Ineffective implementation of Federal consistency authority. Indicators of ineffective implementation could include: Not reviewing Federal activities, Federal licenses and permits, including offshore oil and gas exploration and development, and Federal financial assistance to State and local governments for consistency with the approved CZM program or employing review procedures that are not in accordance with State and NOAA regulations.

(E) Inadequate opportunity for intergovernmental cooperation and public participation in management program implementation. Indicators of inadequate opportunity could include: not carrying out procedures necessary to insure adequate consideration of the national interest in facilities which are necessary to meet requirements which are other than local in nature, not implementing effectively mechanisms for continuing consultation and coordination, not providing required notice that a management program decision would conflict with a local zoning ordinance, decision or other action pursuant to section 306(d)(3)(B)(i) and 15 CFR 923.57, or not providing opportunities for public participation in permitting processes, consistency determinations and other similar decisions pursuant to new section 306(d)(14) after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance.

(F) Non-adherence to the terms of a grant or cooperative agreement, including the schedule for funded activities. The Assistant Administrator will also consider the extent to which priorities for expenditure of Federal funds reflect an appropriate priority for activities necessary to implement and enforce core program authorities effectively

(G) Not submitting changes to the approved program for Federal approval on a schedule developed pursuant to 15 CFR 923.81(c) and 923.84(b)(1)(i) or developing and implementing changes to the approved program without Federal approval which are inconsistent with the Act or the approved program or which result in a reduced level of protection of coastal resources.

(ii) The Assistant Administrator may consider whether an indication of non-adherence is of recent origin (in which case the State may be given a reasonable opportunity to correct it) or has been repeatedly brought to the State's attention without corrective action in determining whether to invoke interim sanctions.

(b) *Withdrawal of program approval and financial assistance.* (1) As required by sections 312(d) and 312(e) of the Act:

(i) The Secretary shall withdraw approval of the management program of any coastal State and shall withdraw financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal State has failed to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(ii) Management program approval and financial assistance may not be withdrawn under paragraph (b)(1)(i) of this section, unless the Secretary gives the coastal State notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under paragraph (b)(1)(i) of this section, the Secretary shall provide the coastal State with written specifications of the actions that should be taken, or not engaged in, by the State in order that such withdrawal may be canceled by the Secretary.

(2) *Requirements.* (i) If the Assistant Administrator determines that the State has not taken the actions required in 15 CFR 928.5(a)(2), the Assistant Administrator will provide the Governor and the State CZM program manager with written notice of this finding and NOAA's obligation to withdraw program approval and financial assistance under this title. The State will be given 30 days from receipt of this notice to respond with evidence that it has taken the actions specified pursuant to 15 CFR 928.5(a)(2). During this 30-day period, the State may request up to 30 additional days to respond, for a maximum of 60 days from receipt of notice.

(ii) * * *

(iii) If the State does not request a public hearing or submit satisfactory evidence that it has taken the actions specified pursuant to 15 CFR 928.5(a)(2) within 30 days of publication of this notice, and the Assistant Administrator determines that the State has failed to take the actions specified pursuant to 15 CFR 928.5(a)(2), the Assistant Administrator will withdraw program approval and financial assistance and will notify the State in writing of the decision and the reasons for it. The notification will set forth actions that must be taken by the State which would cause the Assistant Administrator to cancel the withdrawal.

* * * * *

7. Part 932 is revised to read as follows:

PART 932—COASTAL ZONE ENHANCEMENT GRANTS PROGRAM

Sec.

932.1 General.
932.2 Objectives.
932.3 Definitions.
932.4 Allocation of section 309 funds.
932.5 Criteria for section 309 project selection.
932.6 Pre-application procedures.
932.7 Formal application for financial assistance and application review and approval procedures.
932.8 Revisions to assessments and strategies.

Authority: Section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456).

§ 932.1 General.

(a) The purpose of this part is to set forth the criteria and procedures for awarding coastal zone enhancement grants under section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456). This part describes the criteria States must address in developing and implementing coastal zone enhancement objectives, the procedures for allocating section 309 funds between weighted formula and individual review of proposals of special merit, how the amount of section 309 weighted formula grants will be determined, the criteria NOAA will use to evaluate and rank individual proposals of special merit, and the procedures for applying for financial assistance under section 309.

(b) A coastal State with an approved program under section 306 of the Coastal Zone Management Act (CZMA), as amended (16 U.S.C. 1455), is eligible for grants under this part if the State meets the following requirements:

(1) The State must have a NOAA approved Assessment and Strategy,

submitted in accordance with NOAA guidance and 15 CFR 932.8;

(2) The State must be found to be adhering to its approved program and must be making satisfactory progress in performing grant tasks under section 306, as indicated by not being under interim or final sanctions; and

(3) The State must be making satisfactory progress in carrying out its previous year's award under section 309.

(c) If the Assistant Administrator finds that a State is not undertaking the actions committed to under the terms of a section 309 grant, the Assistant Administrator shall suspend the State's eligibility for future funding under this section for at least one year.

(d) A State's eligibility for future funding under this section will be restored after the State demonstrates, to the satisfaction of the Assistant Administrator, that it will conform with the requirements under this part.

(e) Funds awarded to States under section 309 are for the enhancement of existing coastal zone management programs. A State which reduces overall State financial support for its CZM program as a result of having been awarded section 309 funding may lose eligibility for funding under section 309 in subsequent years.

(f) All applications for funding under section 309 of the CZMA, as amended, including proposed work programs, funding priorities and funding awards, are subject to the administrative discretion of the Assistant Administrator and any additional NOAA guidance.

(g) Grants awarded under section 309 may be used to support up to 100 percent of the allowable costs of approved projects under section 309 of the CZMA, as amended.

(h) All application forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1825 Connecticut Avenue, NW., suite 724, Washington, DC 20235.

§ 932.2 Objectives.

(a) The objective of assistance provided under this part is to encourage each State with a federally-approved coastal management program to continually improve its program in specified areas of national importance. The Secretary is authorized to make grants to a coastal State for the development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

(b) As required by section 309(a) of the Act, for purposes of this part, the term "coastal zone enhancement objective" means any of the following objectives:

(1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.

(2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lakes level rise.

(3) Attaining increased opportunities for public access, taking into account current and future public access needs, to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.

(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

(5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.

(6) Preparing and implementing special area management plans for important coastal areas.

(7) Planning for the use of ocean resources.

(8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

§ 932.3 Definitions.

(a) *Program change* means "routine program implementation" as defined in 15 CFR 923.84 and "amendment" as defined in 15 CFR 923.80, and includes the following:

(1) A change to coastal zone boundaries that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(2) New or revised authorities, including statutes, regulations, enforceable policies, administrative decisions, executive orders, and memoranda of agreement/understanding, that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(3) New or revised local coastal programs and implementing ordinances that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(4) New or revised coastal land acquisition, management and restoration programs that improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(5) New or revised Special Area Management Plans or plans for Areas of Particular Concern (APC), including enforceable policies and other necessary implementing mechanisms or criteria and procedures for designating and managing APCs that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(6) New or revised guidelines, procedures and policy documents which are formally adopted by a State and provide specific interpretations of enforceable CZM policies to applicants, local governments and other agencies that will result in meaningful improvements in coastal resource management and that will improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(b) *Assessment* means a public document, prepared by a State and approved by NOAA in accordance with guidance on Assessments and Strategies issued by NOAA (hereafter referred to as the guidance [1]), that identifies the State's priority needs for improvement with regard to the coastal zone enhancement objectives. The Assessment determines the extent to which problems and opportunities exist with regard to each of the coastal zone enhancement objectives and the effectiveness of efforts to address those problems. The Assessment includes the factual basis for NOAA and the States to determine the priority needs for improvement of management programs in accordance with this Part.

(c) *Strategy* means a comprehensive, multi-year statement of goals and the methods for their attainment, prepared by a State in accordance with NOAA guidance and these regulations and approved by NOAA, that sets forth the specific program changes the State will seek to achieve in one or more of the coastal zone enhancement objectives. The Strategy will address only the

[1] NOAA guidance is available from the Office of Ocean and Coastal Resource Management, Coastal Programs Division, Universal South Building, room 724, 1825 Connecticut Avenue, NW., Washington, DC 20235.

priority needs for improvement identified by the Assistant Administrator, after careful consultation with the State. The strategy will include specific task descriptions, cost estimates and milestones, as appropriate.

(d) *Weighted Formula Project* means a project or task for which NOAA awards funding based on the criteria at 15 CFR 932.5(a). Such tasks are essential to meeting the milestones and objectives of each state's strategy. As funding for weighted formula tasks is more predictable than for projects of special merit, basic functions necessary to achieve the objectives of the strategy, such as hiring of full time staff should be included in weighted formula tasks.

(e) *Projects of Special Merit (PSM)* means a project or task that NOAA will rank and evaluate based on criteria at 15 CFR 932.5(b). As PSM funds will be awarded competitively on an annual basis, these projects should further the objectives of the strategy but may not be essential to meeting specific benchmarks in the strategy. PSM projects should not be dependent on long term levels of funding to succeed.

(f) *Fiscal needs* means the extent to which a State must rely solely on Federal funds to complete a project under section 309 because State funds are not otherwise available.

(g) *Technical needs* means the extent to which a State lacks trained personnel or equipment or access to trained personnel or equipment to complete a project under section 309.

(h) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

§ 932.4 Allocation of section 309 funds.

(a)(1) As required by section 309(e) of the Act, a State will not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

(2) As required by section 309(f) of the Act, beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of the Act shall be retained by the Secretary for use in implementing this section, up to a maximum of $10,000,000 annually.

(b) The Assistant Administrator will annually determine the amount of funds to be devoted to section 309, which shall be not less than 10 percent nor more than 20 percent of the total amount appropriated under section 318(a)(2) of the Coastal Zone Management Act, as amended (16 U.S.C. 1464), taking into account the total amount appropriated under section 318(a)(2). The total amount of funds to be devoted to section 309 shall not exceed $10,000,000 annually.

(c) Of the total amount determined in paragraph (b) of this section, the Assistant Administrator will annually determine the proportion to be awarded to eligible coastal States by weighted formula and the proportion to be awarded to eligible coastal States for projects of special merit. This determination will take into account the total amount appropriated under section 318(a)(2) of the CZMA, as amended.

(d) *Weighted formula funding.* (1)(i) A weighted formula funding target will be determined for each State that meets the eligibility requirements at 15 CFR 932.1(b). The weighted formula funding target will be the State base allocation determined by the application of the formula at 15 CFR 927.1(c), multiplied by a weighting factor derived from the Assistant Administrator's evaluation and ranking of the quality of the State's Strategy (as described in (d)(1) of this section), as supported by the State's Assessment.

(ii) The application of the weighting factor may result in a weighted formula funding target that is higher or lower than the State's base allocation. Each State's weighted formula funding target will be adjusted to reflect the funds available.

(iii) The Assistant Administrator may establish minimum and maximum weighted formula funding targets under 15 CFR 932.4(d).

(2) The Assistant Administrator will determine each State's weighting factor based on an evaluation and ranking of the State's Strategy that takes into consideration the following:

(i) The scope and value of the proposed program change(s) contained in the Strategy in terms of improved coastal resource management;

(ii) The technical merits of the Strategy in terms of project design and cost effectiveness;

(iii) The likelihood of success that the State will have in attaining the proposed program change(s), including an evaluation of the State's past performance and support for the Strategy; and,

(iv) The fiscal and technical needs of the State.

(3) Each State will be notified individually of its weighting factor, the reasons for assigning this weighting factor, and any changes thereto. In consultation with the Assistant Administrator, a State may choose to make substantive changes to its approved Assessment and Strategy to improve its weighting factor, in accordance with the procedures at 15 CFR 932.8.

(e) *Funding for projects of special merit.* The Assistant Administrator will award the remaining section 309 funds, which are not awarded under 15 CFR 932.4(d), to States based on an annual evaluation and ranking of projects of special merit, as defined in 15 CFR 932.3(d). Funding of projects of special merit will be limited to the highest ranked projects based on the criteria at 15 CFR 932.5(b).

(f) The Assistant Administrator will notify each State annually of the total amount of funds to be devoted to section 309 pursuant to 15 CFR 932.4(b), the proportion to be awarded by weighted formula pursuant to 15 CFR 932.4(c), the State's weighted formula funding target pursuant to 15 CFR 932.4(d), and the total amount of funds available for funding for projects of special merit pursuant to 15 CFR 932.4(e).

§ 932.5 Criteria for section 309 project selection.

(a) *Section 309 criteria for weighted formula funding.*

(1) For those projects that will be funded by weighted formula, the Assistant Administrator will determine that:

(i) The project is consistent with the State's approved Assessment and Strategy and advances the attainment of the objectives of the Strategy;

(ii) Costs are reasonable and necessary to achieve the objectives of both the project and the Strategy. Allowability of costs will be determined in accordance with the provisions of OMB Circular A–87: Cost Principles for State and Local Governments [2];

(iii) The project is technically sound;

(iv) The State has an effective plan to ensure proper and efficient administration of the project; and

(v) The State has submitted the required project information as specified in 15 CFR 932.6(b)(1).

(2) In reviewing projects that will be considered under the weighted formula, the Assistant Administrator will take into consideration the fiscal and technical needs of proposing States and the overall merit of each proposal in terms of benefits to the public.

(b) *Section 309 criteria for evaluation and ranking of projects of special merit.* (1) After determining those projects that

[2] OMB Circular A–87: Cost Principles for State and Local Governments is available from the Office of Ocean and Coastal Resource Management, Policy Coordination Division, Universal South Building, room 701, 1825 Connecticut Avenue, NW., Washington, DC 20235.

will be funded under weighted formula funding, the Assistant Administrator will evaluate and rank State funding proposals of special merit which may be funded under 15 CFR 932.4(e).

(2) In addition to meeting the criteria in paragraph (a)(1) of this section, proposals will be evaluated and ranked under this subsection using the following criteria:

(i) *Merit.* (90 points) The Assistant Administrator will review each application to determine the following:

(A) Degree to which the project significantly advances the program improvements and leads to a program change identified in the State's Strategy. In making this determination, the Assistant Administrator shall consider the weighting factor derived from the evaluation of the quality of the State's Strategy, as supported by the State's Assessment, relative to the weighting factors assigned to other eligible States;

(B) Overall benefit of the project to the public relative to the project's cost;

(C) Innovativeness of the proposal;

(D) Transferability of the results to problems in other coastal States; and

(E) The State's past performance under section 309.

(ii) *Fiscal needs.* (5 points) The Assistant Administrator will review each application to determine the "fiscal needs" of a State as defined in 15 CFR 932.3(e).

(iii) *Technical needs.* (5 points) The Assistant Administrator will review each application to determine the "technical needs" of a State as defined in 15 CFR 932.3(f).

(c) Section 309 funds not awarded to States under § 932.5(a) will be awarded to States under 15 CFR 932.5(b).

§ 932.6 Pre-application procedures.

(a) *Pre-submission consultation.* Each State is strongly encouraged to consult with the Assistant Administrator prior to the submission of its draft proposal (see 15 CFR 932.6(b)) and formal application for section 309 funding. The purpose of the consultation will be to determine whether the proposed projects are consistent with the purposes and objectives of section 309 and with the State's approved Strategy, to resolve any questions concerning eligibility for funding under section 309 (see 15 CFR 932.1(b)), and to discuss preliminarily the State's recommendations regarding which projects should be funded by weighted formula and which projects should be individually evaluated and ranked as projects of special merit.

(b) *Draft proposals.* States shall submit draft proposals for section 309 funding annually on a schedule to be determined by the Assistant Administrator. These draft proposals shall contain all of the information needed for final application, including the following:

(1) A clear and concise description of the projects that the State proposes to be funded under section 309. This description shall explain the relationship of each proposed project to the State's approved Assessment and Strategy and how each proposed project will accomplish all or part of a program change that the State has identified in its Strategy. In addition, each project description shall include:

(i) A specific timetable for completion of each project;

(ii) A description of the activities that will be undertaken to complete each project and by whom;

(iii) The identification of any subawardees, pursuant to 15 CFR 923.95(d)(3)(ii); and

(iv) The estimated total cost for each project.

(2) Section 309 funds may be used for any of the following allowable uses which support the attainment of a program change:

(i) Personnel costs;

(ii) Supplies and overhead;

(iii) Travel;

(iv) Equipment (pursuant to 15 CFR part 24);

(v) Projects, studies and reports; and

(vi) Contractual costs including subcontracts, subawards, personal service contracts with individuals, memoranda of agreement/understanding, and other forms of passthrough funding for the purpose of carrying out the provisions of section 309.

(3) Funds may not be used for land acquisition or low cost construction projects.

(4) The State may recommend which projects should be funded by weighted formula under 15 CFR 932.5(a) and which projects should be funded as projects of special merit under 15 CFR 932.5(b).

(5) The draft proposal shall contain documentation of fiscal needs and technical needs, if any. This documentation shall include:

(i) For fiscal needs, information on the current State budget (surplus or deficit), the budget of the applying agency (increase or decrease over previous fiscal year), future budget projections, and what efforts have been made by the applying agency, if any, to secure additional State funds from the Legislature and/or from off-budget sources such as user fees; and

(ii) For technical needs, identification of the technical knowledge, skills and equipment that are needed to carry out proposed projects and that are not available to the applying agency, and what efforts the applying agency has made, if any, to obtain the trained personnel and equipment it needs (for example, through agreements with other State agencies).

(6) The Assistant Administrator may request additional documentation of fiscal and technical needs.

(7) Following the first year of funding under section 309, the draft proposal shall describe how the past year's work contributed to the attainment of a program change as defined in 15 CFR 932.3(a) in one or more of the coastal zone enhancement objectives.

(8) If the sum of estimated project costs for projects the State recommends be funded under 15 CFR 932.5(a) exceeds the State's weighted formula funding target pursuant to 15 CFR 932.4(d), NOAA shall determine, in consultation with the State, which projects are appropriate for funding with weighted formula funds.

(c) *Review of draft proposals.* (1) The Assistant Administrator will make the final determination of which projects should be funded by weighted formula and which projects should be funded as projects of special merit, taking into account the State's recommendations.

(2) The Assistant Administrator may seek advice from technical experts in the fields of the coastal zone enhancement objectives as to the technical soundness and overall merit of section 309 project proposals.

(3) The Assistant Administrator will make the final determinations on project selection using the criteria at 15 CFR 932.5(a) and evaluate and rank projects of special merit based on the criteria at 15 CFR 932.5(b).

(4) If the Assistant Administrator determines that a State's project proposal(s) for weighted formula funding fails to meet the criteria at 15 CFR 932.5(a), the Assistant Administrator may either reduce or deny the amount available to the State under 15 CFR 932.4(d).

(5) Each state will be notified of the results of the review of draft proposals, as described in paragraphs (c) (3) and (4) of this section, in time to include approved section 309 projects in their applications for financial assistance pursuant to subpart J of 15 CFR part 923.

§ 932.7 Formal application for financial assistance and application review and approval procedures.

(a) Applications for financial assistance under this part must be developed and submitted on the same

schedule as applications for financial assistance under subpart J of 15 CFR part 923.

(b) Applications for financial assistance under this part must be in a separate section of the application and must contain the information specified at 15 CFR 932.6(b)(1) for each approved section 309 project.

(c) Applications will be reviewed for conformance with the regulations at subpart J of 15 CFR part 923.

(d) States will be notified of their section 309 awards at the time they are notified of their section 306/306A awards.

(e) If the Assistant Administrator seeks technical advice pursuant to 15 CFR 932.6(c)(2), anonymous copies of the project reviews provided to the Assistant Administrator on projects proposed by a State will be made available to the State upon request after October 1 of each year.

§ 932.8 Revisions to assessments and strategies.

(a) A State, in consultation with the Assistant Administrator, may propose to revise its approved Strategy. Revision(s) to an approved Strategy must be submitted to and approved by the Assistant Administrator prior to the initiation of the contemplated change.

(b) The Assistant Administrator will review such proposed revision(s) and determine if public review and comment is required. This determination will be based on the extent to which the proposed revision(s) changes the original scope of the State's Strategy.

(c) If the Assistant Administrator determines that public review and comment is necessary, he/she will notify the State of his/her determination. The State will be required to provide public review and comment in accordance with NOAA guidance.

(d) A State that wants to revise substantively the program changes identified in its approved Strategy or to address new enhancement objectives not identified as a priority in the original Assessment, also must revise the Assessment through a public process as described in NOAA's guidance.

(e) The Assistant Administrator, in consultation with the State, may reduce a state's weighting factor assigned to its Strategy as a result of failure to meet the milestones in its Strategy.

(f) The Assistant Administrator will notify the State of his/her decision to approve or deny the proposed revision(s) to the Strategy, and any change in the weighting factor assigned to its Strategy.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35-25573; File No. S7-4-90]

RIN 3235-AF48

Exemption of Issuance and Sale of Certain Securities by Public-Utility Subsidiary Companies of Registered Public-Utility Holding Companies; Exemption of Acquisition of Public-Utility Subsidiary Company Securities by a Company in a Registered Public-Utility Holding Company System

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Final rule.

SUMMARY: The Commission is amending rule 52, which exempts certain financing transactions involving the securities of the public-utility subsidiary companies of a registered public-utility holding company from the requirement of prior Commission approval under the Public Utility Holding Company Act of 1935 ("Act"). The amendment deletes six of the eight conditions to the rule and broadens the types of securities within the exemption. The amendment also clarifies the scope of the rule in certain minor respects. The amendment is intended to eliminate unnecessary regulatory burdens and paperwork associated with seeking Commission approval for routine financings by the public-utility subsidiaries of registered holding companies.

EFFECTIVE DATE: August 13, 1992.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Assistant Director, (202) 272-7676, Sidney L. Cimmet, Senior Special Counsel, (202) 272-7676, Joanne C. Rutkowski, Senior Special Counsel, (202) 504-2267, or Brian P. Spires, Staff Attorney, (202) 272-7688, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is amending rule 52 (17 CFR 250.52) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*) to delete certain of the conditions of the rule. Rule 52 exempts from prior Commission authorization under section 6(a) the issuance and sale of certain securities by public-utility subsidiary companies of registered holding companies. Rule 52 as amended also exempts from the requirement of prior Commission approval under section 9(a) the acquisition by a parent holding company of the securities issued by an existing public-utility subsidiary company pursuant to the rule.

In a companion release published today in the **Federal Register**, the Commission is requesting comment, among other things, on a proposal to further amend rule 52 to exempt other types of securities, as well as certain financing transactions of nonutility subsidiary companies, from the requirement of prior Commission approval. The Commission is also requesting comment on a proposed amendment to rule 45(b)(4) that would complement rule 52, as further amended.[1]

Background

The Commission promulgated rule 52 under sections 6(b) and 9(c)(3) of the Act in 1990.[2] As adopted, the rule exempts from the requirement of prior Commission authorization under section 6(a) the issuance and sale of certain securities by public-utility subsidiary companies of registered public-utility holding companies. The rule also exempts from the requirement of prior Commission approval under section 9(a) the acquisition by a parent holding company of securities issued by a public-utility subsidiary under the rule.[3]

Under the present rule, no prior authorization of the Commission is required if the financing transaction:

(1) Is solely for the purpose of financing the business of the public-utility subsidiary company;

(2) Has been expressly authorized by the state commission of the state in which the public-utility subsidiary company is organized and doing business;

(3) Will not cause the capitalization of the public-utility subsidiary company or the holding company system to exceed certain specified debt limits or fall below certain common equity levels;

(4) Involves the issue and sale of preferred stock, first mortgage bonds, or general and refunding mortgage bonds,

[1] Rule 45(b)(4) exempts capital contributions and open account advances, without interest, by a registered holding company to its subsidiary company, provided that no subsidiary will receive more than $50,000 as a result of such transitions during any calendar year. The proposed amendment to rule 45(b)(4) would delete the $50,000 limitation.

[2] *See generally* 45 SEC Docket 1577 (Apr. 3, 1990), 55 FR 11362 (Mar. 28, 1990) (adopting rule 52).

[3] *See generally id.*

issued and sold in conformity with the Commission's Statements of Policy Regarding First Mortgage Bonds and Preferred Stock ("Statements of Policy"),[4] unless the company previously gives the Commission written notice of the proposed deviation and the Commission provides a written response that it has no objection;

(5) Involves an issue and sale to the holding company of common stock of the public-utility subsidiary company;

(6) Involves an issue and sale to nonassociated persons and financing at the holding-company level is limited to common stock and short-term debt;

(7) Involves an issue and sale which is either excepted from or made in compliance with rule 50,[5] or is made after the company has given the Commission written notice of its intention to issue and sell the securities pursuant to a negotiated offering and the Commission has provided a written response that it has no objection; and

(8) Involves a security that is not convertible into any other security and does not (except for stockholders' preemptive rights) entitle the holder to purchase or otherwise acquire any other security.

The first two conditions are mandated by the statute. The remaining six were drawn from orders issued by the Commission under section 6(b) before the adoption of the rule.

At the time the Commission adopted rule 52, it also requested comment as the appropriations of modifying or eliminating the six conditions to the rule that are not required by section 6(b). The Commission has received nine comment letters, six from registered electric holding companies [6] and three from registered gas holding companies.[7] Five of the commenters support the elimination of all six conditions. The remaining commenters have addressed the conditions selectively, and, in some instances, have raised special concerns.[8]

[4] Holding Co. Act Release Nos. 13105 and 13106 (Feb. 16, 1956), as amended in Holding Co. Act Release Nos. 16369 and 16758 (May 8, 1969 and June 22, 1970, respectively).

[5] Rule 50 requires competitive bidding, subject to certain exceptions, for the issue and sale of securities by a registered holding company and its subsidiaries.

[6] This group includes American Electric Power Company, Central and South West Corporation, General Public Utilities Corporation, New England Electric System, Northeast Utilities and The Southern Company.

[7] These commenters are The Columbia Gas System, Consolidated Natural Gas Company and National Fuel Gas Company.

[8] Certain of these concerns cannot be addressed under section 6(b) because it does not grant the requisite rulemaking authority to the Commission. One commenter noted the exemption is not available to its public-utility subsidiaries that are organized and doing business in a state that does not review security issuances. By its terms, however, section 6(b) does not permit an exemption for public-utility companies' issuances without state commission approval. Similarly, another commenter noted that rule 52 is unavailable where a public-utility subsidiary company is organized in one state but does business in another. Again, this restriction is required by the express language of section 6(b).

One commenter asked whether the rule would preclude an order of the Commission. In light of the flexibility afforded by rule 52, the Commission anticipates that companies generally will avail themselves of its exemption.

[9] Four commenters (the three registered gas holding companies and New England Electric System) recommended that the Commission go further and withdraw the Statements of Policy. The Columbia Gas System states that the Statements of Policy bring it no tangible benefit. It contends that the protections embodied in the Statements of Policy do not generate any price differential in the terms of the securities issued by its subsidiaries. Further, the three gas holding companies point out that since their external financing is done almost entirely at the holding company level, removal of the condition solely under rule 52 would not be of much assistance to them.

The Commission believes that a proposal to withdraw the Statements of Policy may require notice and opportunity for comment. In the meantime, as to those companies which cannot use rule 52 for the issuance of their securities, the Commission may continue to permit, on a case-by-case basis, the issuance of securities that do not conform to the Statements of Policy. *See, e.g., National Fuel Gas Co.*, Holding Co. Act Release No. 25116, 46 SEC Docket 1224 (July 24, 1990); *Massachusetts Elec. Co.*, Holding Co. Act Release No. 24762, 42 SEC Docket 515 (Dec. 13, 1988); *National Fuel Gas Co.*, Holding Co. Act Release No. 22670, 26 SEC Docket 705 (Nov. 2, 1982).

Discussion

Condition (3) requires each public-utility subsidiary as well as the consolidated holding company system to maintain a debt/equity ratio of 65%/30%. All but one of the commenters urged that this condition be eliminated. That commenter, while not opposing elimination of the condition, explained that it has had no problem in maintaining the required ratio and that the limitation on debt, by enhancing investor confidence, may translate into reduced financing costs for the holding company system. The majority of commenters, however, pointed to the ability of state regulators to enforce appropriate capital ratios, and further contended that the debt/equity restriction is unnecessary because market forces or corporate policy will cause utilities to seek balanced amounts of debt and equity to maintain their credit ratings. The Commission agrees with this assessment.

Condition (4) requires that first mortgage bonds or preferred stock be issued and sold in compliance with the Commission's Statements of Policy. The eight commenters which addressed this condition urged that it be eliminated.[9] In the proposing release, the Commission indicated its belief that the Statements of Policy are no longer relevant to contemporary financial markets.[10] Accordingly, the Commission does not find it necessary that securities exempted under rule 52 be subject to the Statements of Policy.

Further, the Commission finds no basis to distinguish first mortgage bonds from other types of bonds, so long as the statutory requirement of state review is satisfied. The Commission therefore believes it is appropriate to include all mortgage bonds, including general and refunding mortgage bonds, in the exemption provided by rule 52.

Condition (5) requires that a public-utility subsidiary company issue and sell its common stock solely to its parent holding company. Five commenters supported the elimination of this condition. Two others, while not opposing elimination, believe that the proposal deserves further study. The Commission agrees with the majority of commenters that the limitation, while appropriate in 1935 when minority common stock shareholders had little ability to assess their investment, is no longer necessary to protect investors and shareholders.

Condition (6) provides that a public-utility subsidiary company may issue and sell securities to nonassociates only if its parent holding company has issued no securities other than common stock and short-term debt. All eight commenters that considered this condition recommended it be eliminated. They noted that it may be appropriate for a holding company to issue and sell long-term debt and that such a transaction is subject to prior Commission approval. They further observed that other controls, that did not exist when the statute was enacted, provide assurance that such financings will not lead to abuse. These include the likely adverse reaction of rating agencies to excessive amounts of debt at the parent holding company level and the disclosure required of companies seeking public capital. The Commission agrees with these observations and also notes the power of many state utility commissions to limit the ability of utility subsidiaries to service holding company debt by restricting the payment of dividends to the parent company. The Commission concludes that this requirement should be eliminated.

Condition (7) requires competitive bids for the issuance and sale of

[10] See Holding Co. Act Release No. 25059, 45 SEC Docket 1582 (Apr. 3, 1990), 55 FR 11390 (Mar. 28, 1990) (proposing amendment to rule 52).

securities. The commenters supported the Commission's view that registered holding companies should have the flexibility to access the capital markets by the use of competitive binds, negotiated sales or private placements. The Commission concludes that this condition should be eliminated.

Condition (8) does not allow the issuance and sale of convertible securities. Most of the commenters agreed that this condition should be eliminated. Two, however, stated that, since convertible securities are not a significant alternative for registered holding companies, there is no need to eliminate the condition. On balance, the Commission believes that elimination of the condition would afford greater financing flexibility without harming investors or consumers.

In addition to these changes, the Commission has determined that the language of the rule should be modified in certain respects in order to clarify the type of securities that will be exempted under the rule and to make the language of the rule more precise. The text of the amended rule is modified in the following manner.

First, in paragraph (b), the word "calendar" is added to indicate that the filing of information on Form U–6B–2 may be done on a calendar quarterly basis in certain circumstances.

Second, paragraph (c) is modified to clarify that the exemption applies to the acquisition by any company in a registered holding company system of a security issued and sold by its public-utility subsidiary company pursuant to the rule.

Third, the phrase "and rules thereunder" is eliminated from the first sentence of the paragraph because there is no rulemaking authority in section 9(a) of the Act.

Finally, a proviso is added at the end of the paragraph to clarify that the exemption does not apply to any transaction involving the issuance of securities to form a new public-utility subsidiary company of a registered holding company. The Commission is including this clarification because section 9(c)(3), under which this provision of the rule is adopted, permits the Commission to exempt only acquisitions made in the "ordinary course of business." The issuance of securities to form a new public-utility subisidary company is not in the ordinary course of business.[11]

[11] *See, e.g., Michigan Cons. Gas Co.*, 44 S.E.C. 361, 366 (1970), *aff'd*, 444 F.2d 913 (D.C. Cir. 1971).

Four commenters, including the three gas holding companies, also recommended that the scope of rule 52 be expanded to cover other methods of financing between a parent holding company and its subsidiary companies. The Commission believes that the amended rule should be adopted essentially as proposed so as to permit the immediate realization of its benefits. The Commission believes, however, on the basis of the comments and its own additional analysis, that further expansion of rule 52 may be appropriate. The Commission is therefore requesting comment in a separate release issued today on a further amendment to rule 52. The proposed amendment would provide an exemption for other types of securities, including certain securities used in intrasystem financings, and would also expand the application of the rule to include the issuance and sale of securities by nonutility subsidiary companies of registered holding companies.

In addition, two commenters recommended that the rule 52 exemption be extended to include security issuances by nonutility subsidiary companies of registered holding companies.[12] The Commission has published notice in the **Federal Register** today seeking public comment on a proposal to extend the rule 52 exemption to nonutility subsidiary companies of registered holding companies.

Conclusion

The Commission believes that the regulatory burden on registered holding-company systems should be further lessened by eliminating conditions (a)(3) through (a)(8) in present rule 52 and has, accordingly, amended the rule to eliminate those conditions, and to make the other revisions described above.

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments with respect to the Chairman's certification.

[12] Rule 52 as presented in the rulemaking petition also included an exemption for nonutility subsidiary companies; however, the Commission decided to defer action concerning the financing of nonutility subsidiaries pending further review. In addition, seven comment letters received in support of the adoption of present rule 52 recommended that the rule be expanded to include nonutility subsidiaries.

Costs and Benefits

Amended rule 52 will decrease regulatory compliance costs for the registered holding companies. In fiscal year 1991, for example, 3 applications and 15 letter requests would not have been filed, had amended rule 52 been in place. Estimated savings would have been approximately $58,000, including the $2,000 filing fee per application, and associated legal, accounting, and management costs. Moreover, the reduction in Commission staff hours associated with reviewing and analyzing these applications and letters would have been approximately 85 hours. The only cost to the registered holding companies in complying with the amended rule will be the cost of completing a Form U–6B–2 after the issue or sale of any security. It is estimated that approximately one hour will be required to complete such a form.

Paperwork Reduction Act

The Office of Management and Budget has approved the amended rule for use through July 31, 1995.

List of Subjects in 17 CFR Part 250

Utilities.

Text of Revised Rule 52

Part 250 of chapter II, title 17, of the Code of Federal Regulations is amended as set forth below:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 is revised to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

2. Section 250.52 is revised to read as follows:

§ 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act and rules thereunder with respect to the issue and sale of any common stock, preferred stock, mortgage bond, or note issued to a parent holding company (the interest rate and maturity date of which note are designed to parallel a debenture or preferred stock issued by the parent holding company), if:

(1) The issue and sale of such security are solely for the purpose of financing the business of such public-utility subsidiary company; and

(2) The issue and sale of such security have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business.

(b) Within ten days after the issue or sale or any security exempt under this section, the issuer or seller shall file with the Commission a Certificate of Notification on Form U–6B–2 containing the information prescribed by that form. However, with respect to exempt financing transactions between a parent holding company and a subsidiary which involve the repetitive issue or sale of securities or are part of an intrasystem financing program involving the issuance and sale of securities not exempted by this section, the filing of information on Form U–6B–2 may be done on a calendar quarterly basis.

(c) The acquisition by a company in a registered holding company system of any security issued and sold by its public-utility subsidiary company, pursuant to this section, is exempt from the requirements of section 9(a) of the of the Act; provided that the exemption granted by this paragraph (d) shall not apply to any transaction involving the issue and sale of securities to form a new public-utility subsidiary company of a registered holding company.

Dated: July 7, 1992.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–16502 Filed 7–13–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM91–8–001; Order No. 539–A]

Qualifying Certain Tight Formation Gas for Tax Credit

July 7, 1992.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order on rehearing of Order No. 539 which amended the Commission's tight formation regulations. The order on rehearing extends the deadline for notices of Natural Gas Policy Act (NGPA) category determinations to be received by the Commission and affirms the Commission's determination that the arithmetic averaging methodology should be employed to make permeability determinations for "tight sands" gas formations. The order also denies the requests for a six-month extension of the December 31, 1992 deadline to submit applications for NGPA category determinations to the appropriate jurisdictional agencies.

DATES: The deadline for NGPA category determinations is extended from June 30, 1993 to September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra Elliott, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. (202) 208–0694.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street NE., Washington, DC.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Order on Rehearing

This order addresses the requests of Undersigned Producers (Producers),[1] Shell Western E&P Inc. (Shell), Maralex Resources, Inc. (Maralex), and The Albuquerque District Office, Bureau of Land Management (BLM) for rehearing and clarification of the Commission's April 9, 1992 order in Docket No. RM91–8–000 (Order No. 539).[2] Order No. 539 amended the Commission's tight formation regulations and clarified that the Commission would continue its existing practice of using only the arithmetic averaging method in reviewing permeability data contained in tight formation recommendations. Order No. 539 also stated that the Commission would review well category determinations received by the Commission by June 30, 1993, provided the underlying application was filed with the jurisdictional agency by December 31, 1992. As discussed below, the Commission is clarifying the order, granting rehearing in part and denying rehearing in part.

Background

On March 20, 1991, the Commission issued a Notice of Proposed Rulemaking [3] in this proceeding proposing three minor amendments to the Commission's regulations to carry out Congress' intent in restoring the tax credit for gas produced from newly drilled tight formation wells. These amendments were proposed as a result of the provisions of the Revenue Reconciliation Act of 1990,[4] extending the tax credit for nonconventional fuels under section 29 of the Internal Revenue Code, and revising the terms of eligibility so that tight formation gas is eligible for the tax credit even though the price for such gas is no longer regulated. On February 6, 1992, the Commission issued a Request for Additional Comments [5] in this proceeding, seeking comments concerning the proper averaging methodology for establishing the permeability of a tight formation.

On April 9, 1992, the Commission issued Order No. 539 which amended the Commission's tight formation regulations as necessary to carry out Congress' intent in restoring certain tax credits for gas produced from tight formation wells. In that order, the Commission also, as a separate matter, clarified the permeability standard contained in its tight formation regulations by determining that it would continue its existing practice of using only the arithmetic averaging method in reviewing permeability data contained in tight formation recommendations.

The Commission also stated in the order that it will continue to process notices of well category determinations it receives by June 30, 1993, provided the underlying applications were filed with the jurisdictional agencies by December 31, 1992, to clarify the procedures the Commission would follow in light of the repeal by the Natural Gas Wellhead Decontrol Act of 1989 of the

[1] The Undersigned Producers are Texaco Inc. and ARCO Oil and Gas company.

[2] 59 FERC ¶ 61,036 (1992).

[3] 56 FR 13094 (Mar. 29, 1991), IV FERC Stats. & Regs. ¶32,479.

[4] Pub. L. No. 101–58, § 11501, 104 Stat. 1388–479 (1990).

[5] 58 FERC ¶ 61,126 (1992).

Commission's authority to review jurisdictional agency well category determinations as of January 1, 1993. Producers, Shell, Maralex, and BLM have filed requests for rehearing and clarification of the April 9, 1992 order.

Requests for Rehearing and Clarification

In a letter dated May 5, 1992, Maralex states that it anticipates drilling at least thirty to forty more wells by December 31, 1992, and that it will be impossible for it to furnish all well logs, gas analyses and other well data along with the NGPA applications to the appropriate jurisdictional agencies prior to December 31, 1992. Therefore, Maralex requests a six-month extension to June 30, 1993, in which to submit the applications and well data to the jurisdictional agencies.

In its April 21, 1992 letter, BLM states that it is currently receiving NGPA well determination applications 18 to 24 months after the wells were spudded. It currently has 300 applications for coal seam wells and anticipates another 600 to 700 applications for coal seam wells before the Internal Revenue Service tax credit deadline of December 31, 1992. BLM argues that it will be a very difficult task for both the applicants and BLM to process all NGPA well determination applications before the deadlines imposed by Order No. 539. Therefore, BLM requests a six month extension of the December 31, 1992 and June 30, 1993 deadlines.

BLM also requests that the Commission clarify whether the deadlines in Order No. 539 pertain to all types of NGPA well determination applications or only to tight formation well determination applications.

Producers request clarification that the jurisdictional agencies should consider an NGPA well determination application to be sufficiently complete to establish a filing date if a Form No. 121 is provided and the spud date of the well is provided on the Form No. 121 or on a transmittal letter. Any additional data required could be provided to the jurisdictional agency after December 31, 1992. Producers contend that such a process will ensure that some jurisdictional agencies do not restrict the availability of the energy tax credit by making excessive demands on producers and avoid discriminatory treatment by the various jurisdictional agencies.

Producers also contend that an extension of the deadline by which the Commission must receive the jurisdictional agencies' NGPA determinations to December 31, 1993 is necessary to allow sufficient time for the jurisdictional agencies to process the determinations because: (1) For wells spudded in the later portion of 1992, the data the producer is required to submit may not be available to the producer and the jurisdictional agencies for several months; (2) with the tax credit incentive it is likely that there will be a significant increase in NGPA well determination applications during the remainder of 1992; and (3) with funding declines, the jurisdictional agencies' staffing will likely not allow an expedited handling of the numerous NGPA well determinations expected.

Shell asserts that the April 9, 1992 order erred by: (1) Exceeding the Commission's statutory authority set forth in Section 503 of the Natural Gas Policy Act of 1978 (NGPA) by determining the methodology used to review permeability data; (2) relying on sections 501 and 107(c) to conduct rulemaking with regard to the averaging methodology to be used by the Commission to determine permeability in reviewing tight sand applications; and (3) purporting to grant the right not to use the arithmetic averaging methodology to some persons in Order No. 539 which the Commission is not granting to all persons.

Discussion

Applications after December 31, 1992

The Commission must deny the requests of Maralex and BLM for a six-month extension of the December 31, 1992 deadline to submit applications for well category determinations to the appropriate jurisdictional agencies, but the Commission will grant certain other relief as discussed below. Section 503 of the NGPA, which sets forth the jurisdictional agencies' authority to make well category determinations, is repealed effective January 1, 1993, by the Natural Gas Wellhead Decontrol Act of 1989.[6] While both the jurisdictional agencies and the Commission have authority to complete the processing of applications for well category determination under section 503 which are pending on December 31, 1992, it is clear from the legislative history that the authority is limited to completing section 503 well category determination proceedings that are pending before jurisdictional agencies or the Commission on December 31, 1992 and not commencing new proceedings. The Senate Report on the 1989 Wellhead Decontrol Act [7] states in part, "The Committee intends the usual 'savings clause' interpretations, such as those in 1 U.S.C. 109, to be applied to this legislation * * *. The Committee intends that any incomplete section 503 procedures continue to be carried out by the state agencies and the FERC, so that the necessary determination can be made as to sales of gas delivered before contract expiration and decontrol." The House Report on the 1989 Wellhead Decontrol Act similarly states, "the gradual expiration of controls after enactment and before January 1, 1993, and their complete expiration on and after that date, will not affect civil or criminal proceedings pending at the time of decontrol, nor any action or proceeding based on pre-decontrol acts or conduct."[8] Therefore, the Commission believes Congress intended that the applications for well category determinations must be received by the jurisdictional agencies before decontrol on January 1, 1993 in order for the applications to be processed. Accordingly, the Commission will not grant an extension of the December 31, 1992 deadline for filing well determination applications with the jurisdictional agencies.

However, the Commission emphasizes that the jurisdictional agencies have the discretion to assign a filing date to an application for a well determination that is substantially complete and specify a post-December 31, 1992 date when a complete application must be filed. The Commission clarifies that the jurisdictional agencies also have the discretion to determine how much information they will accept as sufficient to constitute a substantially complete filing by the end of 1992. For example, a jurisdictional agency may assign a filing date based on the submission of the Commission's Form No. 121 (application for determination of the maximum lawful price) and establish a deadline by which the filing must be complete. The Commission will not, as requested by the Producers, interject itself into the jurisdictional agencies' administrative process of assigning filing dates to well category determinations.

Similarly, Maralex, BLM, and Producers request that the Commission grant a six-month extension of the June 30, 1993 deadline for well category determinations to be received by the Commission. In Order No. 539 the Commission again recognized its duty to continue processing requests for well category determinations, including tight formation designations, to allow

[6] Public Law No. 101-60, 103 Stat. 157 (1989).

[7] S. Rept. No. 39, 101st Cong., 1st Sess. (1989).

[8] H. Rept. No. 29, 101st Cong., 1st Sess. (1989).

producers to obtain the tax credit. The Commission also determined, based on the committee reports quoted above, that Congress did not intend that repeal of the NGPA Title I and section 503 would terminate the authority of the Commission to process tight formation applications filed with the jurisdictional agencies on or before December 31, 1992. Accordingly, the Commission stated that it would continue to process notices of determination received by the Commission on or before June 30, 1993. After considering the arguments on rehearing, the Commission has determined to extend the deadline for the Commission to receive well category determinations for a further three months in order to provide the applicants and jurisdictional agencies additional time to complete and process all the applications for well determinations filed by December 31, 1992. This should be sufficient time, since the filings still must be substantially complete by December 31, 1992, and the parties were originally notified in Order No. 523,[9] issued April 18, 1990, that the Commission would terminate the processing of well category determinations as of January 1, 1993. Therefore, the Commission will continue to process notices of determination which are filed with the jurisdictional agencies by December 31, 1992 and received by the Commission by September 30, 1993.

Finally, in light of the fact that—effective January 1, 1993—decontrol applies to all section 503 procedures carried out by the state agencies and the FERC, the Commission clarifies that the December 31, 1992 and September 30, 1993 deadlines pertain to all NGPA categories, not just applications and determinations under section 107(c)(5).

Averaging Method for Determining the Permeability of a Tight Formation

On rehearing, Shell argues that the Commission exceeded its authority in Order No. 539 by determining that the arithmetic averaging methodology should be employed to make permeability determinations for "tight sands" gas formations. Shell argues, as it did in its February 27, 1992 comments in this proceeding, that in *Williston Basin*[10] the court found that in enacting section 503 of the NGPA, Congress expressly limited the Commission's role in "tight sands" determination to that of an appellate body. Therefore, Shell states, the Commission's review must be on a substantial evidence basis and its observes that the Commission apparently recognized the limitation on its authority in *Travis Peak*.[11] Accordingly, Shell argues that the Commission cannot create for itself powers under section 501 which are clearly limited by section 503. Shell also argues that the Commission cannot change the plain meaning of § 271.703 [12] through its general rulemaking authority in section 501 of the NGPA.

The Commission finds that these issues were adequately and correctly addressed in Order No. 539. Accordingly, the Commission reaffirms that it has the authority under NGPA sections 107(c)(5) and 501 to establish the generally applicable criteria a formation must meet in order to be designated a tight formation, including the methodology that must be used in analyzing permeability data. Here the Commission is not adjudicating a specific case—as in *Travis Peak*—to determine whether the notice of determination of a state agency that a particular formation is tight is supported by substantial evidence. Rather, the Commission is interpreting the standards for determining whether formations are "tight" as set forth in the Commission's regulation at § 271.703. If the Commission can establish the standard for determining what qualifies as a tight formation under section 501 of the NGPA, it logically follows that the Commission may interpret that standard. Therefore, the Commission will deny Shell's request for rehearing.

Finally, Shell argues that the Commission has stated in Order No. 539 that the Commission may not require the parties to the *Travis Peak* case to use the arithmetic average and since, Shell asserts, all parties do not have this "same right" with respect to filings made prior to Order No. 539, the Commission's action constitutes undue discrimination. That is not precisely what the Commission said and it is not clear what "right" Shell believes the parties to *Travis Peak* have that is any different than the rights any party has to any other proceeding now that Order No. 539 has issued.[13] We will clarify our statements lest there by any confusion that different standards are being applied in different cases. The parties to *Travis Peak* do not have any "right" to use any methodology other than the arithmetic averaging methodology. What right they do have, which is exactly the same as any other party to any other tight sand proceeding, is the right to raise the issue of whether there are special circumstances that justify not applying or, more precisely, waiving the arithmetic average rule as to their particular case. That is a change from when *Travis Peak* issued as there was no formal rule mandating the use of that particular methodology at that time (there being only a general practice to that effect) and the Commission left open the averaging methodology question for determination by the state agencies in the first instance.

Thus, as a result of the Commission's action in Order No. 539 of formally incorporating the arithmetic averaging methodology in its rules, the Commission has, in some measure, changed the rights of all parties to all proceedings by applying that rule without regard to the date the filing for a tight sand well determination was made. The arithmetic averaging methodology is now a part of the Commission's formal rules and must be applied by the state agencies unless it is shown that special circumstances warrant use of some other method in an individual case. Accordingly, in discussing *Travis Peak* in Order No. 539, the Commission was merely clarifying that the issue of whether such special circumstances exist in *Travis Peak* would be resolved in that proceeding and not in the instant generic rulemaking proceeding. That will be the procedure in any tight sands determination. Therefore, we will deny Shell's request for rehearing on this issue.

The Commission Orders

The requests for rehearing and clarification are denied in part and granted in part, as discussed in the body of this order. By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16417 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[9] Order Implementing the Natural Gas Wellhead Decontrol Act of 1989, 55 FR 17425 (Apr. 25, 1990), III FERC Stats. & Regs. ¶ 30,887 at p. 31,760 (1990).

[10] *Williston Basin Interstate Company* v. *Federal Energy Regulatory Commission*, 816 F.2d 777 (D.C. Cir., 1987).

[11] Texas Railroad Commission, Travis Peak Formation, 41 FERC ¶ 61,213 (1987).

[12] 18 CFR 271.703.

[13] In Order No. 539 the Commission said, "Therefore the Commission affirms here that it is not making a determination on the specific method to apply to determine the average permeability in the *Travis Peak* case in this proceeding, but will permit parties to raise the issue whether there are special circumstances in that case that warrant not applying the interpretation here adopted, after notice and comment, to that case."

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Removal of Thebaine-Derived Butorphanol from Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to remove thebaine-derived butorphanol from Schedule II of the Controlled Substances Act (CSA). This action is based on a recommendation from the Assistant Secretary for Health, Department of Health and Human Services (DHHS), that thebaine-derived butorphanol be decontrolled from Schedule II. As a result of this final rule, regulatory controls and criminal sanctions pertaining to Schedule II substances will not be applicable to thebaine-derived butorphanol.

EFFECTIVE DATE: July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Butorphanol is an agonist/antagonist, narcotic analgesic used to treat moderate to severe pain. To date, butorphanol marketed in the United States has been produced by totally synthetic means. When synthetic butorphanol was approved for marketing, no recommendation was made by DHHS for scheduling this drug under the CSA. In addition, there was no information indicating that butorphanol could be derived from thebaine, an opium constituent. As a result, synthetic butorphanol has never been considered a controlled substance under the CSA.

On May 16, 1990, a petition was filed with the DEA requesting that butorphanol derived from thebaine be decontrolled. The petitioner noted that new chemical manufacturing information indicated that butorphanol could be manufactured from thebaine. As such, the thebaine-derived butorphanol would be a Schedule II substance since 21 U.S.C. 812(c) Schedule II(a)(1) includes "opium and opiate, and any salt, compound, derivative or preparation of opium or opiate."

On February 15, 1991, in accordance with 21 U.S.C. 811(b), the Administrator of the DEA requested that the Assistant Secretary for Health conduct a scientific and medical evaluation of thebaine-derived butorphanol and provide the DEA with a recommendation concerning the scheduling of this drug. On October 28, 1991, following a review of relevant medical and scientific data, the Assistant Secretary for Health recommended that thebaine-derived butorphanol be decontrolled from Schedule II.

Accordingly, on April 3, 1992, the Administrator published a notice in the **Federal Register** proposing to remove thebaine-derived butorphanol from Schedule II of the CSA. The notice provided a 60-day period during which comments and objections to the proposed rulemaking could be sent to the Administrator. As of June 3, 1992 the Administrator did not receive any comments or objections regarding the proposal to remove thebaine-derived butorphanol from Schedule II of the CSA.

The Administrator of the DEA hereby certifies that this final rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act 5 U.S.C. 801 *et seq.* This scheduling matter is a formal action required by statute to be made on the record after opportunity for an agency hearing. It is not a major rule for purposes of Executive Order (E.O.) 12291. Accordingly, it has not been submitted for review by the Office of Management and Budget (OMB) pursuant to the provisions of Executive Order 12291. This matter is not subject to those provisions of Executive Order 12778, which are contingent upon review by OMB. As a formal rulemaking, this action is not subject to the moratorium on regulations ordered by the President in his memorandum of January 28, 1992.

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

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Preparation drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Administrator of the DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby orders that 21 CFR part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b)

2. Section 1308.12(b)(1) introductory text is revised to read as follows:

§ 1308.12 Schedule II.

* * * * *

(b) * * *

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

* * * * *

Dated: July 6, 1992.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 92–16485 Filed 7–13–92; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[T.D. ATF–326; Re: Notice No. 725]

RIN 1512–AA96

Standards of Fill for Distilled Spirits

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

ACTION: Final rule.

SUMMARY: ATF is amending the standard of fill regulations for distilled spirits in 27 CFR part 5 to authorize a 355 milliliter (approximately 12 fluid ounces) size for cans only. The 375 milliliter size and larger sizes will no longer be permitted for cans.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dick Langford or Gail Hosey, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20091–0221, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act) 27 U.S.C. 205(e) authorizes the Secretary of the

Treasury to prescribe regulations relating to, among other things, the "size and fill" of alcoholic beverage containers, "as will prohibit deception of the consumer with respect to such products or the quantity thereof * * * ." ATF has long held to the position that standards of fill are necessary for wine and distilled spirits and that without such standards there would be a proliferation of bottle sizes which would result in a number of bottle sizes that are similar in size and shape, thereby resulting in consumer confusion and deception.

Accordingly, ATF has prescribed metric standards of fill required for all bottles of domestic or imported distilled spirits in 27 CFR 5.47a(a) as follows:

1.75 liters
1.00 liter
750 milliliters
500 milliliters (Authorized for bottling until June 30, 1989.)
375 milliliters
200 milliliters
100 milliliters
50 milliliters

The term bottle is defined in § 5.11 as "any container, irrespective of the material from which made, used for the sale of distilled spirits at retail."

Metric standards of fill are likewise prescribed for wine in 27 CFR 4.73; however, the definition of wine in the FAA Act excludes those wine products which contain less than seven percent alcohol by volume. Consequently, the standards of fill for wine do not apply to low alcohol wine products such as "coolers." No standards of fill are prescribed in the regulations for malt beverages.

Coolers and similar ready-mixed alcoholic beverages are low-alcohol content products which are generally bottled at less than seven percent alcohol by volume, whether the base alcohol is derived from distilled spirits, wine or beer. As indicated above, such products, when produced from wine or beer, are not subject to standard of fill regulations under the FAA Act and are frequently put into cans which correspond to English units of measure. If the product is a spirits based product, however, it is subject to the metric standard of fill requirements in § 5.47a of the regulations.

ATF received a petition on behalf of Jim Beam Brands, Inc., to amend the distilled spirits standard of fill regulations in 27 CFR part 5 to permit the use of 355 milliliter (12 fluid ounces) cans for bottling distilled spirits products. The petitioner had developed a market for a low proof distilled spirits product packaged in 375 milliliter cans; however, due to recent changes in manufacturing standards made by the can industry, cans of a size which conforms to the 375 milliliter standard of fill were either not available or cost prohibitive.

Accordingly, the Bureau published Notice No. 725 (56 FR 49152, dated September 27, 1991) to solicit the views of the industry and public on the issue.

The Bureau proposed to establish a separate, 355 milliliter standard of fill for cans only. This proposal was based on the belief that cans are sufficiently distinct from other types of liquor bottles, in both shape and design, so that a different standard of fill would not be confusing to the consumer. Generally, cans are distinctly shaped, have a closure that is an integral part of the container, cannot be readily reclosed after opening, and are used only for ready-mixed products in single-serving sizes.

Accordingly, Notice No. 725 applied only to cans: standards of fill for bottles remained unchanged. For those containers with the general shape and design of a can, standards of fill larger than 355 milliliters are proposed to be eliminated.

Public Participation—Written Comments

ATF received 336 responses to Notice No. 725. Three hundred and twenty-six of the comments, submitted by various dealers and producers of distilled spirits, one trade association and two can manufacturers expressed unqualified support for the proposal.

Representatives of two distilled spirits producers supported the proposal with the reservation that the use of 355 milliliter cans be restricted to low alcohol content products.

Representatives of three trade associations, one distilled spirits plant and one winery raised the objection that approval of the new size would lead to requests for additional non-standard container sizes and to a proliferation of bottle sizes. The rule does not authorize an additional option for container sizes. Rather, for cans of distilled spirits, it substitutes one standard size for another; consequently, there will be no greater number of sizes for either cans or bottles of spirit. Furthermore, while the approval of 355 milliliter cans for distilled spirits might encourage other bottlers of spirits to seek approval for additional sizes, we do not believe that the approval of the 355 milliliter size for cans would predispose the outcome of any future rulemaking on standards of fill for other containers.

Two trade associations commented that it would be an unwise precedent to set a standard of fill which was dependent on the shape of the container or on the material from which the container is made.

We believe this observation misses the significant distinction between cans and other liquor bottles. Cans, as described by this rule, have closures which are an integral part of the container and cannot be reclosed readily after opening. As such, cans would be suitable containers only for quantities of spirits products intended to be consumed in a single sitting. We do not believe it unreasonable to set standards of fill for cans that differ from those established for containers which may be reclosed and returned to the liquor cabinet.

Finally, two trade associations observed that the 355 milliliter can is an odd size which is not a multiple of any other size and would make price comparisons unnecessarily complicated. We believe this observation places too much importance on the ability to make price comparisons between various sizes. Almost by definition, distilled spirits products in cans will be in single serving sizes. While a consumer may be interested in comparing the prices of a single serving of pre-mixed martinis with that of a "cooler" type product, we would not anticipate a need to compare a single serving size of a product with, for example, half a serving of the same product.

Final Rule

Accordingly, ATF is adopting the regulations as proposed in Notice No. 725.

Regulatory Flexibility Act

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

Executive Order 12291

It has been determined that this document is not a "major rule" within the meaning of Executive Order 12991, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government

agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, (Pub. L. 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR 1320, do not apply to this final rule because no requirement to collect information is proposed.

Drafting Information

The principal authors of this document are Dick Langford and Gail Hosey, Distilled Spirits and Tobacco Branch.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

Authority and Issuance

Under the authority of 27 U.S.C. 205, 27 CFR part 5 is amended as follows:

Paragraph. 1. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

Para. 2. Section 27 CFR 5.47a paragraph (a) is revised to read as follows:

§ 5.47a Metric standards of fill (distilled spirits bottled after December 31, 1979).

(a) *Authorized standards of fill.* The standards of fill for distilled spirits are the following:

(1) For containers other than cans described in paragraph (a)(2), of this section—

1.75 liters
1.00 liter
750 milliliters
500 milliliters (Authorized for bottling until June 30, 1989)
375 milliliters
200 milliliters
100 milliliters
50 milliliters

(2) For metal containers which have the general shape and design of a can, which have a closure which is an integral part of the container, and which cannot be readily reclosed after opening—

355 milliliters
200 milliliters
100 milliliters
50 milliliters

* * * * *

Signed: May 7, 1992.

Stephen E. Higgins,

Director.

Approved: June 15, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92–16341 Filed 7–13–92; 8:45 am]

BILLING CODE 4810–31–M

POSTAL SERVICE

39 CFR Part 601

Procurement Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 5 of the Procurement Manual. The revisions are explained below in the Supplementary Information.

EFFECTIVE DATE: February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Paul D. McGinn, (202) 268–4638.

SUPPLEMENTARY INFORMATION: The Procurement Manual which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), is amended by the issue of Transmittal Letter 5. This Transmittal Letter contains numerous substantive and editorial changes, including all revisions made to the Procurement Manual since January 1, 1991, when Transmittal Letter 4 was issued. Accordingly, it picks up all changes published in the Postal Bulletin.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Procurement Manual, see 39 CFR 601.104.)

Summary of Changes

Chapter 1

1.6.2 Definitions. A new paragraph i., Evaluation Factors, has been added to the definitions. The definitions following have been recodified.

1.7.2 Contracts with Postal Employees. Subparagraphs b.1–4 have been recodified due to the new policy concerning vehicle leases with Postal Service employees contained in Handbook AS–707C, *Contracting for Vehicle Leasing.* Paragraph c. also reflects this change; as does Subparagraph a.4 of Part 1.10.2, Document Numbering. Lastly, Exhibit 1.10.2.a.6.a has been deleted, and 1.10.3, *Document Registers,* has also been revised.

Chapter 2

This chapter has been completely revised for purposes of clarity. Only the substantive changes noted below are marked by change bars.

2.1.7 Source Selection Plans. Subparagraph a.2 has been revised to emphasize that source selection plans must focus on obtaining the best value for the Postal Service. Subparagraph c.3 has been revised to state that when the consideration of evaluation factors overlaps with determinations of responsibility, they must be kept separate.

2.2.4 Warranties. Paragraph g has been revised to state that when offerors are allowed to quote their own standard warranty, the solicitation may provide that the terms and conditions of the warranty will be considered as part of evaluating proposals.

2.3.3 Technical Data Packages. This new part has been added to increase Procurement Manual coverage of the use of technical data packages (TDPs).

Chapter 3

3.3.1 Responsible Prospective Contractors. Paragraph b, *General Standards,* has been revised to emphasize that certain key areas must be considered in determining responsibility.

Chapter 4

4.1.2 Solicitations. Subparagraph i.1 has been revised to direct users to 2.3.3 should they amend a solicitation dealing with a Technical Data Package (TDP).

4.1.4 Evaluation of Proposals. A new paragraph c, *Evaluation of Other Factors,* replaces the old paragraph c, *Technical Evaluation.*

4.1.5 Contractor Selection Award. Subparagraph b.1 has been revised to clarify that the Postal Service awards contracts to the firm or individual offering the best value to the Postal Service. Paragraph g has been revised to simplify what uncertainties may be resolved during discussions.

4.2.1 General (Simplified Purchasing). Paragraph d is revised as previously published in Postal Bulletin 21798, 9/19/91.

4.2.2 Solicitations. Paragraph g has been revised to direct users to 2.3.3 should they amend a solicitation dealing with a Technical Data Package (TDP).

4.2.5 Basic Pricing Agreements. Paragraph e, *Restrictions,* is revised as previously published in Postal Bulletin 21798, 9/19/91.

4.3.1 General (Noncompetitive Purchasing) is revised to exempt institutional memberships from noncompetitive purchasing procedures.

Chapter 5

5.1.2 Selection of Contract Type. Paragraph b is revised as was previously published in Procurement Manual Circular 91–1.

Chapter 6

6.2.3 Contract Monitoring. Subparagraph c.1 has been revised to direct users to 2.3.3 should a contractor submittal affect a Technical Data Package (TDP).

6.5.1 Contract Modifications. Subparagraph b.2 has been revised to direct users to 2.3.3 should a contract modification affect a Technical Data Package (TDP).

Chapter 8

Part 8.2.2 has been revised to match the new definition of consultant services contained in Management Instruction AS–710 92–3, *Contracting for Consultant Services.*

Chapter 10

Part 10.1.5 has been revised to exempt small businesses from submitting formal subcontracting plans.

Appendix A

Provision A–8, Contract Award. This provision has been changed to clarify that the Postal Service awards contracts to the firm or individual offering the best value to the Postal Service.

Provision 2–4, Brand Name or Equal. This provision has been revised to state that the Postal Service will consider for award proposals offering equal products that contain all of the essential characteristics of the brand name products referenced in the solicitation.

Provision 10–1, Notice of Small, Minority-owned and Woman-owned Business Subcontracting Requirements. This provision has been changed to exempt small businesses from submitting formal subcontracting plans.

Appendix B

Clause B–3 Contract Type. This new clause is added as a result of the changes made effective in Procurement Manual Circular 91–1. This change is reflected throughout Appendix B.

Clause B–29 Order of Precedence. This new clause is added as a result of the changes made effective in Procurement Manual Circular 91–1. This change is reflected throughout Appendix B.

Clause 2–22 Value Engineering. Paragraph b is revised to clarify the language.

Clause 4–1 Notice to Suppliers. Paragraph a has been revised for clarification.

Clause 10–2 Small, Minority-owned and Woman-owned Business Subcontracting Requirements. This clause has been changed to exempt small businesses from submitting formal subcontracting plans.

Appendix F

The Index is updated to reflect the changes in this Transmittal Letter.

PART 601—[AMENDED]

1. The authority citation for part 601 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

2. In consideration of the foregoing, the table at the end of § 601.105 is amended by adding at the end thereof the following:

§ 601.105 Amendments to the Procurement Manual.

* * * * *

Transmittal letter, for issue 5, Federal Register publication 57 FR [insert FR page number].

Dated: February 1, 1992.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92–16436 Filed 7–13–92; 8:45 a.m.]

BILLING CODE 7710–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 911172–2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for rockfish of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the Bering Sea and Aleutian Island management area (BSAI). This action is necessary because the 1992 secondary bycatch allowance of Pacific halibut for the rockfish fishery in the BSAI has been caught.

DATES: Effective 12 noon, Alaska local time (A.l.t.), July 8, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1992 secondary bycatch allowance of Pacific halibut to the rockfish fishery, which is defined at § 675.21(g)(4)(iv), was established by emergency rule (57 FR 11433, April 3, 1992; extended by 57 FR 29223, July 1, 1992) as 200 metric tons.

The Regional Director, Alaska Region NMFS, has determined, in accordance with § 675.21(h)(1)(iv), that U.S. fishing vessels have caught the secondary bycatch allowance of Pacific halibut for the rockfish fishery. Therefore, NMFS is prohibiting directed fishing for rockfish of the genera *Sebastes* and *Sebastolobus* in the aggregate by vessels using trawl gear in the BSAI from 12 noon, A.l.t., July 8, 1992, until 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: July 8, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–16441 Filed 7–8–92; 4:42 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 135
Tuesday, July 14, 1992

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 91-094]

Fruits and Vegetables From Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands of the United States that are otherwise prohibited movement into or through the continental United States to transit a certain corridor of the continental United States en route to a foreign destination if certain safeguards are met. This amendment would provide growers and shippers in Hawaii, Puerto Rico, and the Virgin Islands additional cargo routes to foreign destinations, without significantly increasing the risk of introducing plant diseases and pests into the continental United States.

DATES: Consideration will be given only to comments received on or before August 13, 1992.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-094. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 am. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Peter Grosser, Senior Operations Officer, Permit Unit, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION:

Background

We are proposing to amend two subparts in the "Hawaiian and Territorial Quarantine Notices" (7 CFR part 318). The regulations in 7 CFR part 318, among other things, quarantine Hawaii, Puerto Rico, and the Virgin Islands of the United States (referred to below as the Virgin Islands) to prevent the spread of dangerous plant diseases and insect infestations that are not widely prevalent or distributed within and throughout the United States. The two subparts we are proposing to amend are "Hawaiiam Fruits and Vegetables" (7 CFR 318.13 et seq.) and "Fruits and Vegetables from Puerto Rico or Virgin Islands" (7 CFR 318.58 et seq.). We refer to these regulations, respectively, as the Hawaii regulations and the Puerto Rico-Virgin Islands regulations.

The Hawaii regulations govern the movement of raw and unprocessed fruits and vegetables, cut flowers, rice straw, mango seeds, and cactus plants and cactus parts, from Hawaii into or through the continental United States, Guam, Puerto Rico, and the Virgin Islands. The Puerto Rico-Virgin Islands regulations govern the movement of raw and unprocessed fruits and vegetables from Puerto Rico and the Virgin Islands into or through Guam, Hawaii, and the continental United States. The Puerto Rico-Virgin Islands regulations also govern the movement of cactus plants and parts of cactus plants from the Virgin Islands into or through Guam, Puerto Rico, and the continental United States.

Of the articles governed by the Hawaii regulations and the Puerto Rico-Virgin Islands regulations, some are obsolutely prohibited movement into the continental United States. Others are prohibited such movement if they fail to meet certain qualifying criteria. The prohibition on movement into the continental United States includes a ban on movement through the continental United States in transit to another country. However, such a ban on transiting unfairly restricts the movement of domestic fruits and vegetables when compared to transit authorizations that are available under 7 CFR part 352 for prohibited fruits and vegetables moving in transit through the United States from foreign sources. The regulations in 7 CFR part 352 contain a number of safeguards to ensure that the articles transiting the United States do not pose a significant risk of introducing or spreading plant pests or diseases in the United States.

A number of parties involved in the growing and shipping of fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands have requested that we amend the regulations to allow movement of those fruits and vegetables into or through the continental United States for export to a foreign destination. Such a change would provide growers and shippers in those locations access to cargo routes similar to those available to foreign growers and shippers.

We believe that, with certain safeguards, fruits and vegetables otherwise prohibited movement into or through the continental United States from Hawaii, Puerto Rico, or the Virgin Islands can transit a certain corridor of the continental United States en route to a foreign destination without posing a significant plant pest or disease risk. Therefore, in this document, we are proposing to allow such movement, subject to the criteria and restrictions discussed in this "Supplementary Information," below. Shipments that are moved in accordance with the proposed criteria and restrictions would not be further restricted by the provisions of 7 CFR part 301, which impose restrictions on the interstate movement of certain articles to protect against the spread of plant pests and diseases. We believe that the stringent safeguards established by these proposed provisions would be sufficient to protect against the spread of such plant pests and diseases. For the same reason, shipments moved under these proposed regulations would not be further restricted by the provisions of 7 CFR 318.30 and 318.30a, which impose restrictions on the movement of sweetpotatoes from Hawaii, Puerto Rico, and the Virgin Islands of the United States to other parts of the United States.

Transit Permits

We are proposing that you would have to obtain a transit permit from us for the arrival, unloading, and movement into or through the continental United States of fruits and vegetables that are otherwise prohibited movement into or

through the continental United States from Hawaii, Puerto Rico, or the Virgin Islands. We would define "transit permit" as a written authorization issued by the Administrator for the movement into or through the continental United States of fruits and vegetables that are en route to a foreign destination and that are otherwise prohibited movement under the regulations. We would define "continental United States" to mean the 48 contiguous States, Alaska, and the District of Columbia. Transit permits would authorize one or more shipments over a designated period of time.

The application for a transit permit would have to indicate the following: (1) The specific types of fruits and vegetables to be shipped; (2) the means of conveyance to be used to transport the fruits and vegetables into and through the continental United States; (3) the port of arrival in the continental United States and the location of any subsequent stop; (4) the location of, and the time needed for, any storage in the continental United States; (5) any location in the continental United States where the fruits and vegetables would be "transloaded," which we would define as being transferred from one sealable container to another sealable container, from one means of conveyance to another means of conveyance, or from a sealable container directly into a means of conveyance; (6) the means of conveyance to be used for transporting the fruits and vegetables from the port of arrival in the continental United States to the port of export; (7) the estimated time necessary to accomplish exportation, from arrival at the port of arrival in the continental United States to exit at the port of export; (8) the port of export; and (9) the name and address of the applicant and, if the applicant's address is not within the territorial limits of the United States, the name and address in the United States of an agent whom the applicant names for acceptance of service of process.

The information on the application would allow us to determine whether the conditions described by the applicant would meet certain safeguards set forth in the proposed regulations, and whether Animal and Plant Health Inspection Service (APHIS) resouces at designated locations would be sufficient to provide the services necessary under the proposed reguations. The inclusion of a United States address, either that of the applicant or of an agent for acceptance of service of process, would facilitate our ability to communicate with the permittee regarding problems or violations.

The transit permit would allow us to monitor closely the shipments in the United States, by describing an itinerary that would have to be followed and setting forth a listing of means of conveyance to be used. However the transit permit would not specify the quantity of fruits and vegetables to be shipped, which might vary over time. That information would be included on a limited permit, discussed below.

A transit permit would be issued only if the following conditions are met: (1) APHIS inspectors are available at the port of arrival, port of export, and any locations at which transloading of cargo would take place, and, in the case of air shipments, at any other stop in the continental United States, as indicated on the application for the transit permit and authorized by the proposed reguations; (2) the information on the application indicates that the proposed movement would comply with the provision in this section applicable to the transit permit; and (3) during the 12 months prior to receipt of the application by APHIS, the applicant has not had a transit permit withdrawn under either § 318.13–16 or § 318.58–16, unless the transit permit has been reinstated upon appeal. This last provision would be necessary to ensure that applicants who have had a transit permit withdrawn under the procedures described in §§ 318.13–16 and 318.58–16 are not able to reapply immediately. We believe this provision is necessary to discourage violations of the regulations, and to ensure that plant pests and diseases are not introduced into the continental United States.

Limited Permits

In addition to obtaining a transit permit approving the movement, you would be required to obtain a limited permit to accompany the fruits and vegetables being shipped into or through the continental United States. We would provide that a limited permit would be issued by an APHIS inspector if he or she determines that the specific type and the quantity of the fruits and vegetables to be shipped are accurately described in the accompanying documentation (e.g., the manifest, waybill, and bill of lading), and establishes that the shipment has been prepared in compliance with the provisions we are proposing. To facilitate inspection by an inspector, we would require that the fruits and vegetables be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of the proposed provisions. A limited permit would be required for each specific shipment, in contrast to transit permits, which could cover multiple shipments over time. A copy of the limited permit would have to be presented to an inspector at the port of arrival and the port of export in the continental United States, and at any other location in the continental United States where a shipment is authorized to stop or where overland shipments change means of conveyance.

A limited permit would allow us to verify that shipments leaving Hawaii, Puerto Rico, or the Virgin Islands are in compliance with applicable provisions of the transit permit when shipped. Additionally, the limited permit would provide a means of documenting the movement of the shipment following issuance of the limited permit. This would be necessary to ensure that the cargo moves in compliance with the transit permit and to allow for documentation of violations.

Marking Requirements

Under the marking requirements in proposed §§ 318.13–17(c) and 318.58–12(c), each of the smallest units, including each of the smallest bags, crates, or cartons, containing fruits and vegetables for transit through the continental United States under the provisions we are proposing would be required to be conspicuously marked with a printed label that includes a description of the specific type and the quantity of the fruits and vegetables, the fact that they were grown in either Hawaii, Puerto Rico, or the Virgin Islands, as applicable, the transit permit number under which the fruits and vegetables are to be shipped, and the statement "Distribution in the United States is Prohibited."

We believe that the proposed marking requirements would dissuade shippers and brokers from diverting cargo prohibited distribution in the United States back into the United States for distribution, and would alert cargo handlers and others who might not be familiar with the restrictions in the transit permit and limited permit that the fruits and vegetables are not for distribution in the United States.

Handling of Articles

Fruits and vegetables moved into or through the continental United States under the proposed provisions would not be permitted to be commingled in the same sealed container with articles that are intended for entry and distribution into the continental United States. Because the proposed

regulations would require that the fruits and vegetables be moved in sealed containers (except during certain transloading of air shipments from container to container, as discussed below), there would be no need to require segregation of containers. Commingling in the same container of fruits and vegetables being moved under this proposal and articles that are to remain in the United States would pose a significant pest and disease risk.

Movement of Fruits and Vegetables

We would also require that shipments that arrive in the continental United States under these proposed provisions enter and leave the continental United States at ports staffed by APHIS inspectors. APHIS inspectors would need to be present to (1) verify and track movement of shipments by receiving copies of limited permits, (2) ensure that containers or means of conveyance are sealed, (3) supervise certain transloading and ensure that further movement is in compliance with the regulations, and (4) prescribe actions as permitted by the proposed regulations. Our proposal includes a footnote indicating where to obtain a list of ports staff by APHIS inspectors.

It would additionally be required that transportation through the continental United States be by the most direct route to the final destination of the shipment in the country to which it is exported, as determined by APHIS based on commercial shipping routes and timetables, and as set forth in the transit permit. Requiring movement by the most direct route would help ensure that any pest risk from the shipment would be minimized, by ensuring that shipments do not linger unnecessarily in the continental United States.

It should be noted that the most direct route to the final destination may not include the shortest route through the United States. For example, it is possible that a shipment that enters the United States at an east coast port for ultimate shipment to western Canada could move to that destination more directly across the United States to its west coast, then to western Canada, than it could by moving from the east coast port to eastern Canada, then across Canada. This would provide shippers with reasonable and practical routes that might be unavailable if the shipper were required to move the cargo directly out of the continental United States without regard to its final destination.

Any temporary storage in the continental United States of fruits and vegetables shipped under the proposed provisions would have to be in a location and for a duration set forth in the transmit permit. Areas used for such storage would have to be either locked or guarded at all times.

Only repackaging described in the transit permit would be allowed, except for that allowed in extenuating circumstances by an APHIS inspector upon determination by the inspector that the repackaging would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. No change in quantity from that described in the limited permit would be allowed. No remarking would be allowed. No diversion or delay of the shipment from the itinerary described in the transit permit and limited permit would be allowed unless authorized by an APHIS inspector upon determination by the inspector that the change would not significantly increase the risk of plant pests or diseases in the United States, and unless each port to which the shipment is diverted is staffed by APHIS inspectors. In order to ensure that shipments can be tracked and safeguarded, it is necessary for APHIS to know which route the cargo is taking through the continental United States, as set forth in the transmit permit. However, we believe that practical considerations, such as changes in shipping schedules and the opportunity for more expeditious or economical shipping routes, warrant our allowing alternative itineraries when approved by an inspector, as set forth in the regulations, when such diversion would not pose a pest or disease risk. All movement in the continental United States would have to be carried out within a specified area, as discussed in this Supplementary Information under the heading "Authorized Movement Area."

Sealed Containers

To guard against pest and disease introduction, it is necessary that fruits and vegetables transported under the proposed provisions be contained in sealed containers. We would define "sealed (sealable) container" to mean a completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass, or other similarly sturdy and impenetrable material, providing an enclosure accessed through doors that are closed and secured with a lock or seal. We would describe sealed containers for sea shipments as being distinct and separable from the means of conveyance carrying them when arriving in an in transmit through the continental United States. We would describe sealed containers used for air shipments arriving in the continental United States as being distinct and separable from the means of conveyance carrying them, and would describe sealed containers used for air shipments after transloading in the continental United States or for overland shipments in the continental United States as being either distinct and separable from the means of conveyance carrying them, or the means of conveyance itself. The rationale for each of these provisions in the definition is set forth below under the headings "Shipments by Sea," "Shipments by Air," and "Overland Shipments."

Shipments by Sea

Most of the provisions we are proposing would apply both to shipments to the United States by air and those by sea. However, we believe that the differences between air transport and sea transport make it necessary to set forth certain provisions that differ according to the method of transport.

The types of containers used for sea shipments can be transferred directly to another ship or a railcar, or be used as part of a trailer truck. (The lack of availability of air carriers at seaports would make transfer of sea shipments to aircraft impracticable). Therefore, we are proposing to prohibit cargo arriving by sea from Hawaii, Puerto Rico, or the Virgin Islands under this proposed rule from being removed from the sealed container containing the cargo when it arrives in the United States, except under extenuating circumstances and when authorized by an APHIS inspector upon determination by the inspector that transferring the cargo from the original container to another container would not significantly increase the risk of introducing plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. We believe that this prohibition is both warranted and necessary because the longer transit time associatied with sea shipments, combined with an anticipated high volume of sea shipments and the normal delays related to handling and opening sea containers, would contribute to an increased and unacceptable risk of pest introduction. We believe further that, under normal shipping conditions, it is unlikely that the removal of fruits and vegetables from the original sea container would be necessary or practical. For the same reasons, we would define "sealed

(sealable) container" with regard to sea shipments as being distinct and separable from the means of conveyance carrying the container—i.e., the sealed container would not be the ship itself.

The proposed provisions would allow sea shipments arriving from Hawaii, Puerto Rico, or the Virgin Islands into or through the continental United States under the porposal to be transloaded once from a ship to another ship or, alternatively, once from a ship to a truck or railcar at the port of arrival and once from a truck or railcar to a ship at the port of export. No other transloading of sea shipments would be allowed, except under extenuating circumstances (such as equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of introducing plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

In order to accommodate standard shipping practices, we believe it is appropriate to allow shipments transloaded from a ship to a truck or railcar at the port of arrival to be transloaded back to a ship at the port of export. An APHIS inspector would be present in each case to accept a copy of the limited permit, and would be able to ensure that shipments transloaded back to a ship at the port of export actually leave the continental United States. However, allowing additional transloading as the shipments transit the continental United States would occasion additional handling of the shipment that we believe is unnecessary under standard shipping practices, and that increases the risk of unauthorized diversion of the shipment. Because of limited APHIS personnel resources, it generally would not be possible to supervise and monitor transloading beyond the port of arrival and the port of export.

Transloading sea containers from a ship to another ship, or from a ship to a truck or railcar is the industry standard for the movement of sea containers. Certain trucks and railcars are specially designed to receive and transport sea containers overland, and both trucks and railcars can usually be brought alongside a ship for direct loading or unloading of sea containers. Typically, however, sea containers are not designed to be transloaded into aircraft, or an aircraft directly into a ship is possible. Therefore, we are not proposing to include this option.

Any storage in the continental United States of fruits and vegetables shipped under this proposed rule would have to be for a duration and in a location authorized under the conditions of the transit permit.

The requirements regarding the transloading of sea shipments would not be as extensive as those regarding air shipments, described below, because, as discussed above, it would be required that sea shipments remain in their original containers, except under extenuating circumstances. For the reasons discussed below, however, air shipments would be permitted to be removed from their original containers for transloading.

Shipments by Air

Containers for air shipments often cannot practically be transferred to other aircraft or other means of conveyance, either because of their size or configuration. This means that transferring cargo shipped by air to another means of conveyance may require transloading the cargo from the original shipping container into another container or directly into another means of conveyance, such as the hold of an aircraft or a truck trailer. To accommodate this need, while at the same time providing adequate safeguards against pest and disease introduction, we are proposing certain requirements for air shipments. We are proposing that shipments arriving in and moving through the continental United States by air under this proposed rule may be transloaded only once within the continental United States, except under extenuating circumstances (such as equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that inspectors are available to provide supervision. Transloading of air shipments would have to be done in the presence of an APHIS inspector. As with sea shipments, we believe the number and type of transloadings that would be allowed for shipments arriving by air would be the minimum necessary to accommodate standard shipping practices, while at the same time guarding against unauthorized diversion of the shipment.

Because, practically speaking, landing facilities are not located close enough to either railheads or shipping docks to allow for direct transloading into railcars or ships, we would provide that shipments arriving by air that are transloaded may be transloaded either into another aircraft or into a truck trailer for export by the most direct route to the final destination of the shipment. Such transloading would be authorized only if the following conditions are met: (1) The transloading is done into sealable containers; (2) the transloading is carried out within the secure area of the airport— *i.e.*, that area of the airport that is open only to personnel authorized by the airport security authorities; (3) any storage of the shipment is in an area that is within a permanent building, and the cargo is completely surrounded by a fence or wall that is closed and locked or guarded so as to prevent access by persons other than those who need to handle the cargo under the conditions of the transit permit; and (4) APHIS inspectors are available to provide the supervision required by the proposed provisions.

In our proposed definition of "sealed (sealable) container," we would provide that sealed (sealable) containers used for air shipments are distinct and separable from the means of conveyance carrying them when arriving in the continental United States, but that sealed (sealable) containers used for air shipments after transloading in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself. Shipping air cargo arriving in the continental United States under this proposed rule in containers distinct and separable from the aircraft would be necessary for the cargo to be segregated from other cargo that may be offloaded in the continental United States.

We are also proposing to provide that shipments that continue by air from the port of arrival in the continental United States may be authorized by APHIS to stop at only one other port within the designated corridor, except as authorized by an APHIS inspector, upon determination by the inspector that another stop would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided the second port is staffed by APHIS inspectors. We believe that this extra stop would accommodate the practical needs of air shipments, such as refueling, without significantly increasing the risk of pest and disease spread or imposing a significant additional burden on APHIS resources. No transloading other than that described above would be allowed, except under extenuating circumstances (such as equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not

significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

Overland Shipments

Our proposed definition of "sealed (sealable) container" would state that a sealed (sealable) container used for overland shipments in the continental United States may be either distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself. This definition would take into account the fact that shipments arriving in the continental United States by air under this proposal may be removed from a shipping container used on the aircraft and loaded into a truck trailer or railcar. As discussed above under "Shipments by Sea," cargo arriving by sea would have to remain in the sealed container in which they arrive, which, under standard industry practice, are used either as the trailer portion of a truck trailer, or are loaded intact onto a railcar.

Temperature Requirement

The risk of any plant pests that might be present in the shipment maturing or propagating is reduced by chilling the cargo. Chilling the cargo also generally retards the ripening of fruits and vegetables. Ripened fruits and vegetables are more attractive to pests and more conducive to propagation of pests. Therefore, we are proposing that, except for time spent on aircraft and except for up to 24 hours for transloading, fruits and vegetables moved into or through the continental United States under these proposed provisions mut, from the time they leave either Hawaii, Puerto Rico, or the Virgin Islands, as applicable, be kept in containers, means of conveyance, or facilities in which the temperature if 60° F or lower. We are not applying this requirement to fruits and vegetables on aircraft, for two reasons. First, aircraft are generally not equipped with refrigeration capabilities. Second, air shipments are generally of a relatively brief duration, so refrigeration in such cases would not contribute significantly to reducing the plant pest risk. We are allowing up to 24 hours for transloading without chilling of the fruits and vegetables to meet the practical needs of removing fruits and vegetables from means of conveyance or containers. If the temperature exceeds 60° F for 24 hours or less, the additional pest risk would be minimal.

Authorized Movement Area

Fruits and vegetables currently prohibited movement from Hawaii, Puerto Rico, and the Virgin Islands, if allowed movement into all parts of the continental United States, would pose the greatest risk in those areas of the United States where climate and host materials are most similar to those of the areas where the fruits and vegetables originated. For this reason, we are proposing that the port of arrival, port of export, ports for air stops, and overland movement of fruits and vegetables transiting the continental United States under these proposed provisions would be limited to a defined corridor that includes all States in the continental United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas (except as discussed below), and Virgina. Movement would be allowed through Dallas/Forth Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into the designated corridor by the shortest route. Shipments through the United States would have to begin and end their movement through the continental United States at locations staffed by APHIS personnel.

Dallas/Fort Worth would be included within the designated corridor because it is an important air cargo connection point, and because it is sufficiently distant from more tropical locations in Texas where pest establishment would be more likely. Movement from Dallas/Fort Worth into the designated corridor by the shortest route would be required to ensure that shipments arriving at Dallas/Fort Worth do not linger unnecessarily outside the corridor, thereby increasing the potential for pest or disease introduction.

Prohibited Materials

We are proposing provisions to make clear which persons would be responsible for ensuring that means of conveyance and containers brought into or through the continental United States from Hawaii, Puerto Rico, or the Virgin Islands en route to a foreign destination and those subsequently brought back into the United States from a foreign destination after transiting the United States are clean and free of materials prohibited entry into the continental United States under 5 CFR chapter III. We would provide that the person in charge of or in possession of a sealed container used for movement into or through the continental United States under this proposed rule would be responsible for ensuring that the sealed container is carrying only those fruits and vegetables authorized by the required transit permit.

We would also set forth provisions regarding means of conveyance and containers returned to the United States from a foreign destination after previously transiting the continental United States. Based on standard shipping practices, we expect that means of conveyance or containers used to transport fruits and vegetables into or through the continental United States under the proposed provisions would sometimes be sent back to the United States from their destination country empty for further use. To ensure that these means of conveyance or containers contained therein pose no risk of pest introduction upon their return to the United States, we are proposing to require that the person in charge of or in possession of such a means of conveyance or container would have to ensure that the means of conveyance or container is free of materials prohibited importation into the United States under the regulations in 7 CFR chapter III.

Withdrawal of Transit Permits and Limited Permits

We are also proposing to add provisions for withdrawal of transit permits in the Hawaii regulations, and for the withdrawal of transit permits and limited permits in the Puerto Rico-Virgin Islands regulations. We would provide that the document in question may be withdrawn, orally or in writing, if an inspector determines that its holder has not complied with all conditions under the regulations for the use of the document. The regulations would provide that if the cancellation is oral, the decision and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. We would allow the holder of the document 10 days after receipt of written notification of the withdrawal to appeal the decision. The appeal would have to state all of the facts and reasons upon which the person relies to show that the document was wrongfully withdrawn. We would provide that the Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision, as promptly as circumstances allow. In cases where there is a conflict as to any material fact, a hearing would be held to resolve the conflict. Rules of practice concerning

such a hearing would be adopted by the Administrator.

We would also provide that authorization by APHIS of movement of fruits and vegetables into or through the continental United States under the proposed regulations does not imply that the fruits and vegetables are enterable into the destination country. Shipments returned to the United States from the destination country would be subject to all applicable regulations, including "Subpart—Fruits and Vegetables" of 7 CFR part 319, and 7 CFR part 352.

Responsibility for Compliance

In order to facilitate enforcement of the regulations, we would provide that any restrictions and requirements under the proposed provisions with respect to the arrival, temporary stay, unloading, transloading, transiting, exportation, or other movement or possession in the United States of any fruits or vegetables under the proposed provisions would apply to any person who, respectively, brings into, maintains, unloads, transloads, transports, exports, or otherwise moves or possesses in the United States such fruits or vegetables, whether or not that person is the one who was required to have a transit permit or limited permit for the fruits or vegetables or is a subsequent custodian of the fruits or vegetables. Failure to comply with all applicable restrictions and requirements under the proposed regulations by such a person would be deemed to be a violation of the proposed provisions.

Definitions

We are proposing to add or revise certain definitions to clarify the meaning of the proposed regulations. We are also proposing to revise the definition of "person" in the Hawaii regulations to make it consistent with the definition of "person" elsewhere in 7 CFR, and we are proposing to revise the definition of "inspector" in the Hawaii regulations to make it consistent with the definition in the Puerto Rico-Virgin Islands regulations. Additionally, we are proposing to revise the definition of "limited permit" in the Hawaii and Puerto Rico-Virgin Islands regulations to reflect its proposed use for fruits and vegetables moved into or through the continental United States in accordance with the proposed regulations.

Miscellaneous

Current § 318.58–7 contains a reference to § 318.58–12. Currently, § 318.58–12 is reserved and contains no provisions. However, in this proposed rule, we are proposing to include certain new provisions under § 318.58–12, which we do not intend to be referenced by § 318.58–7. We are therefore proposing to amend current § 318.58–7 to remove the reference to § 318.58–12. We are also proposing to make nonsubstantive changes to §§ 318.13–10 and 318.58–10 to clarify the intent of these provisions regarding the attachment of certificates or limited permits.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities.

In accordance with 7 U.S.C. 162, the Secretary of Agriculture is authorized to promulgate regulations governing the interstate movement of plants and plant products from a State or territory of the United States that is quarantined to prevent the spread of a dangerous plant disease or insect infestation new to or not widely prevalent or distributed within or throughout the United States. This proposed rule would allow the movement into and through the continental United States of fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands that would otherwise be prohibited. This movement would have to be carried out under restrictions that appear necessary to prevent the spread of dangerous plant diseases and insect infestations. We believe that this amendment to the regulations would provide additional cargo routes to shippers in Hawaii, Puerto Rico, and the Virgin Islands, without significantly increasing the introduction of plant diseases and pests into the continental United States.

This proposed rule would primarily benefit growers and shipping businesses in Hawaii, Puerto Rico, and the Virgin Islands. Current regulations allow prohibited fruits and vegetables from foreign sources to be shipped, under certain conditions, through the United States in transit to a third country. However, these same routes are closed to prohibited fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands. Currently, cargo connections are such that very limited direct flights or shipping routes exist between the locations in question and Europe and Canada. The proposed provisions would provide growers and shippers in Hawaii, Puerto Rico, and the Virgin Islands access to cargo routes similar to those available to foreign growers and shippers.

Puerto Rican growers/shippers have indicated that Canada represents a significant potential market for their vegetable crops. Similarly, both Canada and Europe are potential markets for Hawaiian produce, particularly fruits. However, the current lack of economical shipping routes makes shipment of certain fruits and vegetables to these destinations cost-prohibitive. The amount of produce that might transit the continental United States under these proposed regulations is unknown. Most of the requests to APHIS have been from growers/shippers of major crops such as pineapples and papayas from Hawaii. It is anticipated that a market for other nontraditional and exotic crops will develop as regulations are relaxed.

We considered two alternatives to the proposed regulations. The first was to defer any regulatory action in anticipation of the development of more direct shipping and air cargo routes between the locations in question and Canada and Europe that would bypass the continental United States. If and when these routes were established, we would reexamine the need to allow otherwise prohibited materials to transit the continental United States. This alternative was ruled out because we believe the low risk of pest introduction from the proposed regulations does not warrant the length of time that is likely to be involved before more accessible cargo routes could be in operation. We also considered proposing no changes at any time to the current regulations. In light of the low risk of pest and disease introduction under the proposed regulations, this option was deemed unduly restrictive.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule have been submitted for approval the Office of Management and Budget. Your written

comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Executive Order 12372

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

Executive Order 12778

This proposed rule would allow fruits and vegetable from Hawaii, Puerto Rico and the Virgin Islands of the United States that are otherwise prohibited movement into or through the continental United States to transit a certain corridor of the continental United States en route to a foreign destination if certain safeguards are met. All State and local laws regarding such fruits and vegetable would be preempted. No retroactive effect is to be given to this proposed rule. This proposed rule would require administrative proceedings before parties may file suit in court with regard to the withdrawal of transit permits and limited permits as provided in proposed §§ 318.13–16 and 318.58–16. Thus, the administrative remedies set forth in §§ 318.13–16 and 318.58–16 must be exhausted before parties may file suit in court.

List of Subjects in 7 CFR Part 318

Agricultural commodities, Guam, Hawaii, Plant diseases, Plant pests, Plants (Agriculture), Puerto Rico, Quarantine, Transportation, Virgin Islands.

Accordingly, we are proposing to amend 7 CFR part 318 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 318.13–1 would be amended by revising the definitions of "Inspector", "Limited permit" and "Person", and by adding defintions of "Continental United States", "Interstate", "Means of conveyance", Sealed (sealable) container", "State", "Transit permit", and "Transloading" in alphabetical order to read as follows:

§ 318.13–1 Definitions.

* * * * *

Continental United States. The 48 contiguous States, Alaska, and the District of Columbia.

* * * * *

Inspector. An inspector of the Plant Protection and Quarantine Programs, United States Department of Agriculture.

Interstate. From any State into or through any other State.

Limited permit. A document issued by an inspector for the interstate movement of regulated articles to a specified destination for:

(1) Consumption, limited utilization or processing, or treatment, in conformity with a compliance agreement; or (2) Movement into or through the continental United States in conformity with a transit permit.

* * * * *

Means of conveyance. For the purposes of § 318.13–17 of this subpart, "means of conveyance" shall mean a ship, truck, aircraft, or railcar.

* * * * *

Person. Any individual, corporation, company, society, association, or other organized group.

* * * * *

Sealed (sealable) container. A completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass, or other similarly sturdy and impenetrable material, providing an enclosure accessed through doors that are closed and secured with a lock or seal. Sealed (sealable) containers used for sea shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments after transloading in the continental United States or for overland shipments in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself.

State. Each of the 50 States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States, and all other territories and possessions of the United States.

Transit permit. A written authorization issued by the Administrator for the movement of fruits and vegetables en route to a foreign destination that are otherwise prohibited movement by the subpart into or through the continental United States. Transit permits authorize one or more shipments over a designated period of time.

Transloading. The transfer of cargo from one sealable container to another, from one means of conveyance to another, or from a sealable container directly into a means of conveyance.

* * * * *

3. Section 318.13–3 would be amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and by adding a new paragraph (c) to read as follows:

§ 318.13–3 Conditions of movement.

* * * * *

(c) *To a foreign destination after transiting the continental United States.* Fruits and vegetables from Hawaii otherwise prohibited movement from the State of Hawaii into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with § 318.13–17 of this subpart.

* * * * *

4. Section 318.13–4 would be amended by revising paragraph (d) to read as follows:

§ 318.13–4 Conditions governing the issuance of certificates or limited permits.

* * * * *

(d) *Limited permits.* (1) Limited permits may be issued by an inspector for the movement of noncertified regulated articles designated in § 318.13–3(b) of this subpart.

(2) Limited permits may be issued by an inspector for the movement of fruits and vegetables otherwise prohibited movement under this subpart, if the articles are to be moved in accordance with § 318.13–17 of this subpart.

* * * * *

5. Section 318.13–6 would be revised to read as follows:

§ 318.13–6 Container marking and identity.

Except as provided in § 318.13–17(c) of this subpart, shipments of regulated articles moved in accordance with this subpart must have the following information clearly marked on each

container, or, for shipments of multiple containers or bulk products, on the waybill, manifest, or bill of lading accompanying the articles: Nature and quantity of contents; name and address of shipper, owner, or person shipping or forwarding the articles; name and address of consignee; shipper's identifying mark and number; and, the number of the certificate or limited permit authorizing movement, if one was issued.

§ 318.13–8 [Amended]

6. In § 318.13–8, in the first sentence, the words "the port of departure and/or the port of arrival." would be removed, and the words "the port of departure, the port of arrival, and/or any other authorized port." would be added in their place.

§ 318.13–10 [Amended]

7. In § 318.13–10, at the end of paragraph (f)(1), the reference "§ 318.13–3(d)" would be removed and "§ 318.13–3(e)" would be added in its place.

8. In § 318.13–10, paragraph (f)(2) introductory text would be revised and a new paragraph (f)(3) would be added to read as follows:

§ 318.13–10 Inspection of baggage, other personal effects, and cargo.

* * * * *

(f) * * *

(2) Cargo designated in paragraph (f)(1) of this section may be loaded without a USDA stamp or USDA inspection sticker, and without a certificate attached to the cargo or a limited permit attached to the cargo if the cargo is moved:

* * * * *

(3) Cargo moved in accordance with § 318.13–17 of this subpart that does not have a limited permit attached to the cargo must have a limited permit attached to the waybill, manifest, or bill of lading accompanying the shipment.

* * * * *

§ 318.13–16 [Amended]

9. In § 318.13–16, the section heading would be amended by adding "transit permits," immediately after "certificates,".

10. Section 318.13–16 would be amended by adding "transit permit," immediately after "certificate," in the first sentence and in the third sentence.

11. In § 318.13–16, the fourth sentence would be amended by removing the words "certificate or limited permit" and adding in their place the words "certificate, transit permit, or limited permit".

12. A new § 318.13–17 would be added to read as follows:

§ 318.13–17 Transit of fruits and vegetables from Hawaii into or through the continental United States.

Fruits and vegetables from Hawaii otherwise prohibited movement from the State of Hawaii into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with this section and any other applicable provisions of this subpart. Any additional restrictions on such movement that would otherwise be imposed by part 301 of this chapter and §§ 318.30 and 318.30a of this part shall not apply.

(a) *Transit permit.* (1) A transit permit is required for the arrival, unloading, and movement into or through the continental United States of fruits and vegetables otherwise prohibited by this subpart from being moved into or through the continental United States from Hawaii. Application for a transit permit must be made in writing.[9] The transit permit application must include the following information:

(i) The specific types of fruits and vegetables to be shipped;

(ii) The means of conveyance to be used to transport the fruits and vegetables into or through the continental United States;

(iii) The port of arrival in the continental United States, and the location of any subsequent stop;

(iv) The location of, and the time needed for, any storage in the continental United States;

(v) Any location in the continental United States where the fruits and vegetables are to be transloaded;

(vi) The means of conveyance to be used for transporting the fruits and vegetables from the port of arrival in the continental United States to the port of export;

(vii) The estimated time necessary to accomplish exportation, from arrival at the port of arrival in the continental United States to exit at the port of export;

(viii) The port of export; and

(ix) The name and address of the applicant and, if the applicant's address is not within the territorial limits of the United States, the name and address in the United States of an agent whom the applicant names for acceptance of service of process.

(2) A transit permit will be issued only if the following conditions are met:

(i) APHIS inspectors are available at the port of arrival, port of export, and any locations at which transloading of cargo will take place, and, in the case of air shipments, at any interim stop in the continental United States, as indicated on the application for the transit permit;

(ii) The application indicates that the proposed movement would comply with the provisions in this section applicable to the transit permit; and

(iii) During the 12 months prior to receipt of the application by APHIS, the applicant has not had a transit permit withdrawn under § 318.13–16 of this subpart, unless the transit permit has been reinstated upon appeal.

(b) *Limited permit.* Fruits and vegetables shipped from Hawaii into or through the continental United States under this section must be accompanied by a limited permit, a copy of which must be presented to an inspector at the port of arrival and the port of export in the continental United States, and at any other location in the continental United States where an air shipment is authorized to stop or where overland shipments change means of conveyance. An inspector will issue a limited permit if the following conditions are met:

(1) The inspector determines that the specific type and quantity of the fruits and vegetables being shipped are accurately described by accompanying documentation, such as the accompanying manifest, waybill, and bill of lading. The fruits and vegetables shall be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of this section; and

(2) The inspector establishes that the shipment of fruits and vegetables has been prepared in compliance with the provisions of this section.

(c) *Marking requirements.* Each of the smallest units, including each of the smallest bags, crates, or cartons, containing fruits and vegetables for transit into or through the continental United States under this section must be conspicuously marked, prior to the sealing of the container in Hawaii, with a printed label that includes a description of the specific type and quantity of the fruits and vegetables, the fact that they were grown in Hawaii, the transit permit number under which the fruits and vegetables are to be shipped, and the statement "Distribution in the United States is Prohibited."

(d) *Handling of fruits and vegetables.* Fruits and vegetables shipped into or through the continental United States from Hawaii in accordance with this section may not be commingled in the same sealed container with articles that

[9] Applications for transit permits should be submitted to the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

are intended for entry and distribution in the continental United States. The fruits and vegetables must be kept in sealed containers from the time the limited permit required by paragraph (b) of this section is issued, until the fruits and vegetables exit the continental United States, except as otherwise provided in the regulations in this section. Transloading must be carried out in accordance with the requirements of paragraphs (a), (g), and (h) of this section.

(e) *Area of movement.* The port of arrival, the port of export, ports for air stops, and overland movement within the continental United States of fruits and vegetables shipped under this section is limited to a corridor that includes all States of the continental United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia, except that movement is allowed through Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into the designated corridor by the shortest route. Movement through the continental United States must begin and end at locations staffed by APHIS inspectors.[10]

(f) *Movement of fruits and vegetables.* Transportation through the continental United States shall be by the most direct route to the final destination of the shipment in the country to which it is exported, as determined by APHIS based on commercial shipping routes and timetables and set forth in the transit permit. No change in the quantity of the original shipment from the described in the limit permit is allowed. No remarking is allowed. No diversion or delay of the shipment from the itinerary described in the transit permit and limited permit is allowed unless authorized by an APHIS inspector upon determination by the inspector that the change will not significantly increase the risk of plant pests or diseases in the United States, and unless each port to which the shipment is diverted is staffed by APHIS inspectors.

(g) *Shipments by sea.* Except as authorized by this paragraph, shipments arriving in the continental United States by sea from Hawaii may be transloaded once from a ship to another ship or, alternatively, once to a truck or railcar at the port of arrival and once from a truck or railcar to a ship at the port of export, and must remain in the original sealed container except under extenuating circumstances and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(h) *Shipments by air.* (1) Shipments arriving in the continental United States by air from Hawaii may be transloaded only once in the continental United States. Transloading of air shipments must be carried out in the presence of an APHIS inspector. Shipment arriving by air that are transloaded may be transloaded either into another aircraft or into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second air stop within the designated corridor, as authorized in the transit permit and as provided in paragraph (h)(2) of this section. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. Transloading of air shipments will be authorized only if the following conditions are met:

(i) The transloading is done into sealable containers;

(ii) The transloading is carried out within the secure area of the airport—i.e., that area of the airport that is open only to personnel authorized by the airport security authorities;

(iii) The area used for any storage is within a permanent building, and the cargo is completely surrounded by a fence or wall that is closed and locked or guarded so as to prevent access by persons other than those who need to handle the cargo under the conditions of the transit permit; and

(iv) APHIS inspectors are available to provide the supervision required by paragraph (h)(1) of this section.

(2) Except as authorized by paragraph (f) of this section, shipments that continue by air from the port of arrival in the continental United States may be authorized by APHIS for only one additional stop in the continental United States, provided the second stop is within the designated corridor set forth in paragraph (e) of this section and is staffed by APHIS inspectors. As an alternative to transloading a shipment arriving in the United States into another aircraft, shipments that arrive by air may be transloaded into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second authorized air stop within the designated corridor. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(i) *Duration and location of storage.* Any storage in the continental United States of fruits and vegetables shipped under this section must be for a duration and in a location authorized in the transit permit required by paragraph (a) of this section. Areas where such fruits and vegetables are stored must be either locked or guarded at all times the fruits and vegetables are present.

(j) *Temperature requirement.* Except for time spent on aircraft, and except for up to 24 hours for transloading, fruits and vegetable moved into or through the continental United States under this section must, from the time they leave Hawaii, be kept in sealed containers, or the sealed containers kept in facilities, in which the temperature is 60° F or lower.

(k) *Prohibited materials.* (1) The person in charge of or in possession of a sealed container used for movement into or through the continental United States under this section must ensure that the sealed container is carrying only those fruits and vegetbles authorized by the

[10] For a list of ports staffed by APHIS inspectors, contact the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

transit permit required under paragraph (a) of this section; and

(2) The person in charge of or in possession of any means of conveyance or container returned to the United States without being reloaded after being used to export fruits and vegetables from the United States under this section must ensure that the means of conveyance or container is free of materials prohibited importation into the United States under this chapter.

(l) Authorization by APHIS of the movement of fruits and vegetbles into or through the continental United States under this section does not imply that the fruits and vegetbles are enterable into the destination country. Shipments returned to the United States from the destination country shall be subject to all applicable regulations, including "Subpart—Fruits and Vegetables" of part 319 of this chapter, and part 352 of this chapter.

(m) Any restrictions and requirements with respect to the arrival, temporary stay, unloading, transloading, transiting, exportation, or other movement or possession in the United States of any fruits or vegetables under this section shall apply to any person who, respectively, brings into, maintains, unloads, transports, exports, or otherwise moves or possesses in the United States such fruits or vegetables, whether or not that person is the one who was required to have a transit permit or limited permit for the fruits or vegetables or is a subsequent custodian of the fruits or vegetables. Failure to comply with all applicable restrictions and requirements under the proposed regulations by such a person shall be deemed to be a violation of the proposed provisions.

13. Section 318.58–1 would be amended by removing the paragraph designations, placing the definitions in alphabetical order, and adding new definitions of "Administrator," "Animal and Plant Health Inspection Service," "Continental United States", "Interstate", "Limited permit," "Means of conveyance", "Person," "Sealed (sealable) container", "State", "Transit permit," and "Transloading" in alphabetical order to read as follows:

§ 318.58–1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the Animal and Plant Health Inspection Service authorized to act in the Administrator's stead.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

* * * * *

Continental United States. The 48 contiguous States, Alaska, and the District of Columbia.

* * * * *

Interstate. From any State into or through any other State.

Limited permit. A document issued by an inspector for the interstate movement of regulated articles to a specified destination for:

(1) Consumption, limited utilization or processing, or treatment, in conformity with a compliance agreement; or

(2) Movement into or through the continental United States in conformity with a transit permit.

Means of conveyance. For the purposes of § 318.58–12 of this subpart, "means of conveyance" shall mean a ship, truck, aircraft, or railcar.

* * * * *

Person. Any individual, corporation, company, society, association, or other organized group.

* * * * *

Sealed (sealable) container. A completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass, or other similarly sturdy and impenetrable material, providing an enclosure accessed through doors that can be closed and secured with a lock or seal. Sealed (sealable) containers used for sea shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments after transloading in the continental United States or for overland shipments in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself.

State. Each of the 50 States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States, and all other territories and possessions of the United States.

Transit permit. A written authorization issued by the Administrator for the movement of fruits and vegetables en route to a foreign destination that are otherwise prohibited movement by this subpart into or through the continental United States. Transit permits authorize one or more shipments over a designated period of time.

Transloading. The transfer of cargo from one sealable container to another, from one means of conveyance to another, or from a sealable container directly into a means of conveyance.

14. Section 318.58–3 would be amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding a new paragraph (b) to read as follows:

§ 318.58–3 Conditions of movement.

* * * * *

(b) *To a foreign destination after transiting the continental United States.* Fruits and vegetables from Puerto Rico and the Virgin Islands of the United States that are otherwise prohibited movement from those territories into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with § 318.58–12 of this subpart.

* * * * *

15. Section 318.58–4 would be amended by revising the section heading and the introductory text, and by adding a new paragraph (c) to read as follows:

§ 318.58–4 Issuance of certificates or limited permits.

Under the following conditions, an inspector may issue a certificate or limited permit for the movement of regulated articles to be moved in accordance with this subpart:

* * * * *

(c) An inspector may issue a limited permit for the movement of fruits and vegetables otherwise prohibited movement under this subpart, if the articles are to be moved in accordance with § 318.58–12 of this subpart.

§ 318.58–7 [Amended]

16. In § 318.58–7, the reference "§§ 318–58–8 and 318.58–12," would be removed and a reference "§ 318.58–8," would be added in its place; and the designations "(a)", "b)", and "(c)" would be removed, and the word "and" would be added in place of the designation "(c)".

§ 318.58–8 [Amended]

17. In § 318.13–8, in the first sentence, the words "the port of departure and/or the port of arrival. "would be removed, and the words "the port of departure, the port of arrival, and/or any other authorized port." would be added in their place.

§ 318.58–10 [Amended]

18. In § 318.58–10, at the end of paragraph (f)(1), the reference "§ 318.58–3(c)" would be removed and "§ 318.58–3(d)" would be added in its place.

19. In § 318.58–10, paragraph (f)(2) introductory text would be revised and a new paragraph (f)(3) would be added to read as follows:

§318.58–10 Inspection of baggage, other personal effects, and cargo.

* * * * *

(f) * * *

(2) Cargo designated in paragraph (f)(1) of this section may be loaded without a USDA stamp or USDA inspection sticker and without a certificate attached to the cargo or a limited permit attached to the cargo, if the cargo is moved:

* * * * *

(3) Cargo moved in accordance with § 318.58–12 of this subpart that does not have a limited permit attached to the cargo must have a limited permit attached to the waybill, manifest, or bill of lading accompanying the shipment.

* * * * *

20. A § 318.58–12 would be added to read as follows:

§ 318.58–12 Transit of fruits and vegetables from Puerto Rico and the Virgin Islands of the United States into or through the continental United States.

Fruits and vegetables from Puerto Rico and the Virgin Islands of the United States that are otherwise prohibited movement from those territories into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with this section and any other applicable provisions of this subpart. Any additional restrictions on such movement that would otherwise be imposed by part 301 of this chapter and §§ 318.30 and 318.30a of this part shall not apply.

(a) *Transit permit.* (1) A transit permit is required for the arrival, unloading, and movement into or through the continental United States of fruits and vegetables otherwise prohibited by this subpart from being moved into or through the continental United States from Puerto Rico or the Virgin Islands of the United States. Application for a transit permit must be made in writing.[2] The transit permit application must include the following information:

(i) The specific types of fruits and vegetables to be shipped;

(ii) The means of conveyance to be used to transport the fruits and vegetables into or through the continental United States;

(iii) The port of arrival in the continental United States, and the location of any subsequent stop;

(iv) The location of, and the time needed for, any storage in the continental United States;

(v) Any location in the continental United States where the fruits and vegetables are to be transloaded;

(vi) The means of conveyance to be used for transporting the fruits and vegetables from the port of arrival in the continental United States to the port of export;

(vii) The estimated time necessary to accomplish exportation, from arrival at the port of arrival in the continental United States to exit at the port of export;

(viii) The port of export; and

(ix) The name and address of the applicant and, if the applicant's address is not within the territorial limits of the United States, the name and address in the United States of an agent whom the applicant names for acceptance of service of process.

(2) A transit permit will be issued only if the following conditions are met:

(i) APHIS inspectors are available at the port of arrival, port of export, and any locations at which transloading of cargo will take place, and, in the case of air shipments, at any interim stop in the continental United States, as indicated on the application for the transit permit;

(ii) The application indicates that the proposed movement would comply with the provisions in this section applicable to the transit permit; and

(iii) During the 12 months prior to receipt of the application by APHIS, the applicant has not had a transit permit withdrawn under § 318.58–16 of this subpart, unless the transit permit has been reinstated upon appeal.

(b) *Limited permit.* Fruits and vegetables shipped from Puerto Rico or the Virgin Islands of the United States into or through the continental United States under this section must be accompanied by a limited permit, a copy of which must be presented to an inspector at the port of arrival and the port of export in the continental United States, and at any other location in the continental United States where an air shipment is authorized to stop or where overland shipments change means of conveyance. An inspector will issue a limited permit if the following conditions are met:

(1) The inspector determines that the specific type and quantity of the fruits and vegetables being shipped are accurately described by accompanying documentation, such as the accompanying manifest, waybill, and bill of lading. The fruits and vegetable shall be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of this section; and

(2) The inspector establishes that the shipment of fruits and vegetables has been prepared in compliance with the provisions of this section.

(c) *Marking requirements.* Each of the smallest units, including each of the smallest bags, crates, or cartons, containing fruits and vegetables for transit into or through the continental United States under this section must be conspicuously marked, prior to the sealing of the container in Puerto Rico or the Virgin Islands of the United States, with a printed label that includes a description of the specific type and quantity of the fruits and vegetables, the fact that they were grown in Puerto Rico or the Virgin Islands of the United States, the transit permit number under which the fruits and vegetables are to be shipped, and the statement "Distribution in the United States is Prohibited."

(d) *Handling of fruits and vegetables.* Fruits and vegetables shipped into or through the continental United States from Puerto Rico or the Virgin Islands of the United States in accordance with this section may not be commingled in the same sealed container with articles that are intended for entry and distribution in the continental United States. The fruits and vegetables must be kept in sealed containers from the time the limited permit required by paragraph (b) of this section is issued, until the fruits and vegetables exit the continental United States, except as otherwise provided in the regulations in this section. Transloading must be carried out in accordance with the requirements of paragraphs (a), (g), and (h) of this section.

(e) *Area of movement.* The port of arrival, the port of export, ports for air stops, and overland movement within the continental United States of fruits and vegetables shipped under this section is limited to a corridor that includes all States of the continental United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia, except that movement is allowed through

[2] Applications for transit permits should be submitted to the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that subsequently transloaded into trucks for overland movement from Dallas/Forth Worth into the designated corridor by the shortest route.

Movement through the continental United States must begin and end at locations staffed by APHIS inspectors.[3]

(f) *Movement of fruits and vegetables.* Transportation through the continental United States shall be by the most direct route to the final destination of the shipment in the country to which it is exported, as determined by APHIS based on commercial shipping routes and timetables an set forth in the transit permit. No change in the quantity of the original shipment from that described in the limited permit is allowed. No remarking is allowed. No diversion or delay of the shipment from the itinerary described in the transit permit and limited permit is allowed unless authorized by an APHIS inspector upon determination by the inspector the change will not significantly increase the risk of plant pests or diseases in the United States, and unless each port to which the shipment is diverted is staffed by APHIS inspectors.

(g) *Shipments by sea.* Except as authorized by this paragraph, shipments arriving in the continental United States by sea from Puerto Rico or the Virgin Islands of the United States may be transloaded once from a ship to another ship or, alternatively, once to a truck or railcar at the port of arrival and once from a truck or railcar to a ship at the port of export, and must remain in the original sealed container, except under extenuating circumstances and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(h) *Shipments by air.* (1) Shipments arriving in the continental United States by air from Puerto Rico or the Virgin Islands of the United States may be transloaded only once in the continental United States. Transloading of air shipments must be carried out in the presence of an APHIS inspector. Shipments arriving by air that are transloaded may be transloaded either into another aircraft or into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second air stop within the designated corridor, as authorized in the transit permit and as provided in paragraph (h)(2) of this section. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. Transloading of air shipments will be authorized only if the following conditions are met:

(i) The transloading is done into sealable containers;

(ii) The transloading is carried out within the secure area of the airport—*i.e.,* that area of the airport that is open only to personnel authorized by the airport security authorities;

(iii) The area used for any storage is within a permanent building, and the cargo is completely surrounded by a fence or wall that is closed and locked or guarded so as to prevent access by persons other than those who need to handle the cargo under the conditions of the transit permit; and

(iv) APHIS inspectors are available to provide the supervision required by paragraph (h)(1) of this section.

(2) Except as authorized by paragraph (f) of this section, shipments that continue by air from the port of arrival in the continental United States may be authorized by APHIS for only one additional stop in the continental United States, provided the second stop is within the designated corridor set forth in paragraph (e) of this section and is staffed by APHIS inspectors. As an alternative to transloading a shipment arriving in the United States into another aircraft, shipments that arrive by air may be transloaded into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second authorized air stop within the designated corridor. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(i) *Duration and location of storage.* Any storage in the continental United States of fruits and vegetables shipped under this section must be for a duration and in a location authorized in the transit permit required by paragraph (a) of this section. Areas where such fruits and vegetables are stored must be either locked or guarded at all times the fruits and vegetables are present.

(j) *Temperature requirement.* Except for time spent on aircraft, and except for up to 24 hours for transloading, fruits and vegetables moved into or through the continental United States under this section must, from the time they leave Puerto Rico or the Virgin Islands of the United States, be kept in sealed containers, or the sealed container kept in facilities, in which the temperature is 60°F or lower.

(k) *Prohibited materials.* (1) The person in charge of or in possession of a sealed container used for movement into or through the continental United States under this section must ensure that the sealed container is carrying only those fruits and vegetables authorized by the transit permit required under paragraph (a) of this section; and

(2) The person in charge of or in possession of any means of conveyance or container returned to the United States without being reloaded after being used to export fruits and vegetables from the United States under this section must ensure that the means of conveyance or container is free of materials prohibited importation into the United States under this chapter.

(l) Authorization by APHIS of the movement of fruits and vegetables into or through the continental United States under this section does not imply that the fruits and vegetables are enterable into the destination country. Shipments returned to the United States from the destination country shall be subject to all applicable regulations, including

[3] For a list of ports staffed by APHIS inspectors, contact the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

"Subpart—Fruits and Vegetables" of part 319 of this chapter, and part 352 of this chapter.

(m) Any restrictions and requirements with respect to the arrival, temporary stay, unloading, transloading, transiting, exportation, or other movement or possession in the United States of any fruits or vegetables under this section shall apply to any person who, respectively, brings into, maintains, unloads, transloads, transports, exports, or otherwise moves or possesses in the United States such fruits or vegetables, whether or not that person is the one who was required to have a transit permit or limited permit for the fruits or vegetables or is a subsequent custodian of the fruits or vegetables. Failure to comply with all applicable restrictions and requirements under the proposed regulations by such a person shall be deemed to be a violation of the proposed provisions.

§ 318.58–16 [Amended]

21. In § 318.58–16, the section heading would be revised to read "Cancellation of certificates, transit permits, or limited permits."

22. In § 318.58–16, the words ", transit permit, or limited permit" would be added immediately following the word "certificate" in the following places:

a. The first sentence;

b. The third sentence; and

c. The fourth sentence.

Done in Washington, DC, this 6th day of July 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–16149 Filed 7–9–92; 4:48 pm]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV–92–070PR]

Proposed 1992–93 Fiscal Year Expenses and Assessment Rate for the Marketing Order Covering Papayas Grown in Hawaii

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenses and establish an assessment rate for the 1992–93 fiscal year (July 1–June 30) under Marketing Order No. 928. The proposed expenses and assessment rate are needed by the Papaya Administrative Committee (committee) established under this marketing order to pay its expenses and collect assessments from handlers to pay those expenses. The proposed action would enable the committee to perform its duties and the marketing order to operate.

DATES: Comments must be received by July 24, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 928 (7 CFR part 928) regulating the handling of papayas grown in Hawaii, hereinafter referred to as the marketing order. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable papayas during the 1992–93 fiscal year, beginning July 1, 1992, through June 30, 1993. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 120 handlers of Hawaiian papayas subject to regulations under the marketing order covering papayas grown in Hawaii and about 345 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural services firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable papayas handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The committee members are handlers and producers of Hawaiian papayas. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected pounds of assessable papayas shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The annual budget and assessment rate are usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The Papaya Administrative Committee (committee) met on April 30, 1992, and recommended a 1992–93 budget with expenses of $823,450 and an assessment rate of $0.0085 per pound of assessable papayas shipped. Eight members voted in favor of the proposed 1992–93 expenses and assessment rate, while one member voted "no" and one member abstained, because they favored a lower assessment rate. The proposed 1992–93 budget is similar in scope to the one approved for 1991–92. Budgeted expenses for 1991–92 totaled $746,650, while the assessment rate was $0.0085.

The proposed 1992–93 budget contains $368,450 for program administration, $410,000 for advertising and promotion, and $45,000 for research and development. In comparison, budgeted expenses for 1991–92 were $336,650 for program administration, $400,000 for advertising and promotion, and $10,000 for research and development. The 1992–93 advertising, promotion, and research projects will be submitted for approval as soon as the 1992–93 budget is approved.

Program income for 1992–93 is expected to total $831,660, with assessment income estimated at $552,500, based on projected shipments of 65,000,000 pounds of assessable papayas. Other income includes $200,000 in promotional grants from the Hawaii Department of Agriculture, $63,360 from the USDA's Foreign Agricultural Service, $7,800 from the Japan Inspection Program, and $8,000 from miscellaneous sources including interest. Projected 1992–93 income over expenses ($8,210) would be placed in the committee's operational reserve. This reserve is projected at $72,301 on June 30, 1993, an amount well within the maximum authorized under the marketing order.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers.

However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 fiscal year for the program begins on July 1, 1992, and marketing order requires that the rate of assessment for the fiscal year apply to all assessable Hawaiian papayas during the fiscal year. In addition, handlers are aware of this action which was unanimously recommended by the committee. Therefore, it is found and determined that comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 928 be amended as follows:

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 928.22 is added to read as follows:

PART 928–PAPAYAS GROWN IN HAWAII

§ 928.222 Expenses and assessment rate.

Expenses of $823,450 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.0085 per pound of assessable papayas is established for the fiscal year ending June 30, 1993. Any unexpended funds from the 1992–93 fiscal year may be carried over as a reserve.

Dated: July 8, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–16390 Filed 7–13–92; 8:45 am]

BILLING CODE 3410–02–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1706

[Docket No. RM–92–1]

Rules Governing Organization and Consultant Conflicts of Interest

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) proposes the guidelines, requirements, and procedures set forth in this NPRM to avoid conflicts of interests and potential conflicts of interests by those providing assistance to the Board under contracts with the Board. Organizational and consultant conflicts of interest should be avoided and, if they cannot be avoided, should be mitigated. The rules also cover arrangements for obtaining the expert services of personnel working for the National Laboratories under the cognizance of the Department of Energy. The Board invites comments from persons contracting with or who may seek to contract with the Board, other interested members of the public, and other federal agencies.

DATES: To be considered, comments must be mailed or delivered to the address listed below by 5 p.m. on August 13, 1992.

ADDRESSES: Comments on the proposed rule should be mailed or delivered to the Office of the General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. All comments will be placed in the Board's public files and will be available for inspection between 8:30 a.m. and 4:30 p.m., Mondays through Fridays (except on legal holidays), in the Board's Public Reading Room at the same address. Comments should state prominently that they are being filed in Docket No. RM–92–1.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, telephone (202) 208–6387.

SUPPLEMENTARY INFORMATION:

I. Background

By this NPRM, the Board proposes to issue rules, procedures, and guidelines for identifying, evaluating, and resolving organizational and consultant conflicts of interest. The Board is comprised of "* * * respected experts in the field of

nuclear safety with a demonstrated competence and knowledge relevant to the independent investigative and oversight functions of the Board." (42 U.S.C. 2286(b)(1).) In fulfilling its statutory responsibilities, the Board utilizes the expert judgment of its members in making determinations related to public health and safety at defense nuclear facilities. The statute also allows the Board to hire a staff to assist the Board in its work. Additionally, the Board finds it necessary, from time to time, to seek assistance from outside sources, particularly where expertise in specialized technical fields is involved. The independent technical capability inherent in the Board provides an important check against contractor work being improperly influenced by an organizational or consultant conflict of interest (OCI). Nevertheless, it is important for the Board to be aware of and make judgments respecting potential conflicts of interests of its offerors and contractors.

In contracting for such assistance the Board has considered it prudent to attempt to identify and avoid conflicts of interests and potential conflicts of interests. Where such conflicts could not be avoided, the Board has heretofore not entered into the proposed agreements or has terminated performance under the contracts, or, where the Board determined it to be in the Government's best interests, possible conflicts were sufficiently mitigated through additional contract stipulations.

Also, from time to time, the Board has found it advantageous to enlist the assistance of certain individuals employed by National Laboratories under the cognizance of the Department of Energy (DOE). These persons were and are selected because of their special competence in particular areas of concern to the Board. An administrative mechanism such as an interagency agreement, rather than a contract, is normally utilized to obtain their services. Nevertheless, before each use of National Laboratory personnel, the Board determined that such use was in the Government's best interests and that possible conflicts of interests would at least be sufficiently mitigated.

The proposed rules are designed to handle these and a variety of other OCI issues in a reasonable and orderly manner in the future.

II. Summary of the Provisions of the Proposed Rule

The following is a basic outline of key aspects of the rule proposed by the Board.

- Anyone proposing to provide assistance to the Board under a contract with the Board will be required to inform the Board of any role, current or proposed activity, or relationship that could interfere with its ability or inclination to perform in an impartial, objective, and technically sound manner, unaffected by any conflicting interests. If the Board becomes aware that such problems exist, or that the proposer would be given an unfair advantage, it ordinarily will not enter into a contract with the proposer, or the Board will seek to avoid or sufficiently mitigate the problem through contract terms or other administrative action before entering into the contract. In exceptional circumstances, the Board reserves the right to waive the conflict of interest, even if it cannot be mitigated, if such action is in the best interests of the Government.

- Contracts with the Board will contain provisions requiring prompt advance notification to the Board of any change or contemplated change in the contractor's situation that could create a conflict of interest problem. If such a problem becomes apparent to the Board, the affected contract ordinarily will be terminated unless the conflict of interest or potential conflict of interest is avoided, or a waiver is issued in the best interests of the Government with such mitigating measures as the Board deems appropriate.

- Anyone engaged in performing work or services under a DOE contract or subcontract, particularly one relating to a defense nuclear facility, will be assumed to have a potential conflict of interest in regard to possible assistance to the Board. Unless the Board determines after further evaluation that there is no actual conflict, or that a conflict can be avoided, or that the conflict should be waived in the best interests of the Government (with mitigating measures when determined appropriate by the Board), the Board will normally not enter into contracts for assistance by such party. The same determination would have to precede any assistance by personnel of DOE's National Laboratories, normally secured by administrative arrangement rather than by contract; such assistance will be the subject of a notice published in the Federal Register.

- Subcontractors and consultants to prime contractors with the Board would also be evaluated for conflicts of interest and potential conflicts of interest.

- The rule would state the general Board policy of avoiding or mitigating OCIs in contract awards and contract performance.

- Waivers of OCIs would be granted only where such action would be in the best interests of the Government. If an OCI could be avoided, no waiver would be necessary. A waiver of an OCI would, however, be necessary where Board actions or instructions would be required in order to mitigate the OCI. In addition, any provision of the rule could be waived where the Board determines that such action would be in the best interests of the Government.

- A contract that would result in the offeror evaluating its own product or services provided directly or indirectly to the Board or to DOE, or evaluating products or services with which it had been, was then, or would be substantially involved, would normally not be awarded.

- Contractors would normally be barred from performing work under contract to the Board that stemmed directly from the contractor's performance of work under a previous Board contract in such a way as to pose an OCI.

- For task order contracts,[1] the Board could determine whether a contractor had an OCI with respect to a particular task at the time of consideration of issuance of the related task order.[2] Task order contractors would be required to disclose to the Board any proposed work for others that might pose an OCI, to allow the Board to take further appropriate action.

- In several areas relevant to the Board's review and analysis of design and operational data, it may be in the best interests of the Government to utilize the services of certain highly skilled individuals at the DOE National Laboratories. By their very nature, the DOE National Laboratories have developed a skill base which often does not exist elsewhere in research and technology associated with nuclear material such as plutonium, thorium, transuranics, and other fission productions. In order for the Board to provide proper oversight, it must have access to technical talent comparable to or better than that available to the DOE. Therefore, the Board sees a need to obtain consulting services from certain scientists and engineers who are

[1] Task order contracts are contracts that contain a broad scope of work but do not authorize performance of specific tasks within that broad scope until the contracting officer issues task orders.

[2] Nevertheless, the Board would not be precluded from disqualifying an offeror, based upon OCI considerations, at the pre-award stage, if the facts so justified.

conducting research and development at the National Laboratories. However, the Board would intend to avoid OCIs on specific projects by ordinarily not utilizing national laboratory professionals directly involved in the same defense nuclear facilities projects for DOE.

• During the term of any Board contract, the contractor would be prohibited from entering into consulting or other contractual arrangements with other entities that could create an OCI. Whenever a contractor or the Board had reason to believe that a proposed contract with others might create an OCI, the contractor would be required to disclose the proposed contract to the Board to allow the Board to take further appropriate action.

• The regulations would contain the following provisions to preclude unfair competitive advantage arising from access to non-public information, as described in the regulation, obtained through performance under a Board contract:

Such information could not be used for private purposes until publicly released;

Contractors could not use such information to compete for other Board contracts for six months after completion of the contract or after public release of the information, whichever first occurred, or to file an unsolicited proposal for a Board contract for one year after public release of such information, unless it were determined by the Board that it was in the best interests of the Government to permit such actions; and

Contractors could not release such information without prior Board approval, unless it had already been publicly released.

• The rule would require certificates from apparent successful offerors and disclosures by contractors in order to assure that the Board received necessary information regarding actual or potential OCIs. The Board would reserve the option of requiring such certificates in other circumstances, as appropriate. The rule would also specify the actions that could be taken when an OCI was identified and the process for Board determination of the appropriate actions.

Paperwork Reduction Act

This proposed rule would require "collections of information" within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* In accordance with that Act and the OMB implementing regulations set forth in 5 CFR part 1320, the Board has performed an analysis of the burdens on offerors that would be imposed by the proposed regulations. There would not be any additional recordkeeping burden on the offerors pursuant to Board competitive solicitations since offerors are already subject to conflicts of interests requirements under other laws and should have anticipated the need to maintain conflicts-related information in the event they were the apparent successful offeror. The Board reserves the right to require submittals or certificates from all offerors.[3] The Board estimates that two hours per offeror would be expended in preparation and filing of the certificate.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the Board certifies that this rule would not have a significant economic impact upon a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared. Although some of the offerors to the Board may qualify as small entities, the proposed regulations would impose little, if any, additional burdens beyond those established by other applicable laws and regulations and would have a very minimal impact upon such entities.

Executive Order 12291

As required by Executive Order 12291 (February 17, 1981), the Board certifies that this proposal does not constitute a "major rule" because it is not likely to result in:

• An annual effect on the economy of $100 million or more;

• A major increment in costs; or

• A significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This conclusion is based on the very minimal burdens that would be imposed by the proposed rule.

List of Subjects in 10 CFR Part 1706

Government procurement.

The Proposed Regulations

Accordingly, chapter XVII of title 10 of the Code of Federal Regulations is proposed to be amended by adding a new part 1706 to read as follows:

[3] One of the offerors on each solicitation would presumably be selected for award and would, therefore, have to submit the certificate in any event. The only impact on it would be that it would have to submit the certificate earlier than would otherwise be required.

PART 1706—ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTERESTS

Sec.

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1706.11 Organizational conflicts of interest certificate—Advisory or assistance services.

Authority: 42 U.S.C. 2286b(c).

§ 1706.1 Scope; statement of policy.

(a) *Scope.* This subpart sets forth the guidelines, requirements, and procedures the Defense Nuclear Facilities Safety Board will follow in determining whether a contractor or offeror has an organizational or consultant conflict of interest (OCI) and in avoiding, neutralizing, or mitigating OCIs.

(b) *Policy.* It is the policy of the Board to identify and then avoid or mitigate organizational and consultant conflicts of interest. Normally, the Board will not award contracts to offerors who have OCIs and will terminate contracts where OCIs are identified following contract award. In exceptional circumstances, the Board reserves the right to waive conflicts of interest if it determines that such action is in the best interests of the Government, pursuant to § 1706.8, and to take such mitigating measures as it deems appropriate pursuant to such section.

§ 1706.2 Definitions.

Advisory or assistance services means services acquired by contract to advise or assist the Board, whether with respect to its internal functions or its oversight of defense nuclear facilities, or otherwise to support or improve policy development or decision-making by the Board, or management or administration of the Board, or to support or improve the operation of the Board's management systems. Such services may take the form of the provision of information, advice, reports, opinions, alternatives, conclusions, recommendations, training, direct assistance, or performance of site visits, technical reviews, investigation of health and safety practices or other appropriate services.

Affiliates means associated business concerns or individuals if, directly or indirectly, either one controls or can

control the other or a third party controls or can control both.

Board means, as the context requires, the Defense Nuclear Facilities Safety Board, its Chairman, or any other officer of the Defense Nuclear Facilities Safety Board to whom the appropriate delegation has been made under 42 U.S.C. 2286(c)(3).

Contract means any contract, agreement, or other arrangement with the Board, except as provided in § 1706.3.

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or other entity, or any group of one or more of the foregoing, which is a party to a contract with the Board, and the affiliates and successors in interest of such party. The term "contractor" also includes the chief executive and directors of a party to a contract with the Board, the key personnel of such party identified in the contract, and current or proposed consultants or subcontractors to such party. The term "contractor" shall also include consultants engaged directly by the Board through the use of a contract.

Defense nuclear facility means any United States Department of Energy (DOE) defense nuclear facility, as defined in 42 U.S.C. 2286g, subject to the Board's oversight.

Evaluation activities means activities that involve evaluation of some aspect of defense nuclear facilities.

Mitigating means, with respect to an organizational or consultant conflict of interest, reducing or counteracting the effects of such a conflict of interest on the Board, but without eliminating or avoiding the conflict of interest.

National Laboratories means laboratories operated by educational institutions or business entities under management and operating contracts with DOE.

Offeror means any person, firm, unincorporated association, joint venture, partnership, corporation, or other entity, or any group of one or more of the foregoing, submitting a bid or proposal to the Board, solicited, unsolicited or otherwise invited by the Board, to obtain a contract, and the affiliates and successors in interest of such a bidder or proposer. The term "offeror" also includes the chief executive and directors of such a bidder or proposer, the key personnel of a bidder or proposer identified in the bid or proposal, and proposed consultants or subcontractors to such bidder or proposer.

Organizational or consultant conflict of interest means that, because of other past, present, or future planned activities or relationships, an offeror or contractor is unable, or potentially unable, to render impartial assistance or advice to the Board, or the objectivity of such offeror or contractor in performing contract work for the Board is or might be otherwise impaired, or such offeror or contractor has or would have an unfair competitive advantage. The term "organizational or consultant conflict of interest" shall include, but not be limited to, actions or situations that would preclude the award or extension of a contract under, or would be prohibited by, § 1706.5.

Potential organizational or consultant conflict of interest means a factual situation that indicates or suggests that an actual organizational or consultant conflict of interest may exist or arise from award of a proposed contract or from continuation of an existing contract. The term is used to signify those situations that merit conflicts review prior to contract award or that must be reported to the contracting officer for conflicts review if they arise during contract performance.

Research means any scientific, engineering, or other technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier which performs work under a prime contract with the Board.

Task order contract means a Board contract that contains a broad scope of work but does not authorize the contractor to perform specific tasks within that broad scope until the contracting officer issues task orders.

Unfair competitive advantage means an advantage obtained by an offeror or contractor to the Board by virtue of the relationship of the offeror or contractor with the Board or access to information not available to other offerors or contractors, and recognized in appropriate legal precedent as unfair.

In determining the meaning of any provision of this subpart, unless the context indicates otherwise, the singular includes the plural; the plural includes the singular; the present tense includes the future tense; and words of one gender include the other gender.

§ 1706.3 Applicability.

(a) *General applicability.* This subpart applies to contractors and offerors only, except as otherwise herein provided. This subpart shall be incorporated by reference and made a part of all Board contracts in excess of the small purchases threshold, except as provided in the last sentence of this § 1706.3(a). In addition, if determined appropriate by the contracting officer for the Board, this subpart may be incorporated by reference and made a part of Board contracts below the small purchases threshold, except as provided in the last sentence of this § 1706.3(a). This subpart does not apply to the acquisition of services, including, without limitation, consulting services, through the personnel appointment process or to Board agreements with other federal government agencies, but shall apply to Board agreements with the management and operating contractors (and subcontractors and consultants thereto) of the National Laboratories.

(b) *Subcontractors and consultants.* The requirements of this subpart shall also apply to subcontractors and consultants proposed for, or working on, a Board contact, in each case where the amount of the subcontract or consultant agreement under which such subcontractor or consultant is or will be working is expected to exceed $10,000, and in each other case where the contracting officer for the Board deems it appropriate to make the requirements of this subpart applicable to a subcontractor or consultant proposed for, or working on, a Board contract. The certificates or disclosures submitted by offerors or contractors pursuant to this subpart shall include certificates or disclosures from all subcontractors and consultants to contractor or offerors in those cases where this subpart applies by its terms to such subcontractors or consultants or has been applied to such persons by the contracting officer. Contractors and offerors shall assure that contract causes giving effect to this § 1706.3(b), satisfactory to the contracting officer, are included in subcontracts and consultant agreements of any tier involving performance of work under a prime contract covered by this subpart.

§ 1706.4 Head of the contracting activity.

The head of the contracting activity for the Board shall be the General Manager.

§ 1706.5 General rules.

(a) *Evaluation of offeror's own products or services.* Contracts shall generally not be awarded to an offeror:

(1) For any services where the award would result in the offeror evaluating products or services it has provided to the Board, is currently providing to the Board, or is currently offering to provide for the Board; or

(2) For evaluation activities or research related to the Board's oversight of defense nuclear facilities, where the award would result in the offeror evaluating products or services it has

provided, is providing, or is offering to provide to DOE or to contractors or subcontractors for defense nuclear facilities.

Paragraph (a) of this section also applies when award would result in evaluation of products or services of another entity where the offeror has been, is, or would be substantially involved in the development of the product or performance of the service, or has other substantial involvement regarding the product or services.

(b) *Subsequent related contracts.* (1) A Board contractor under a Board contract shall normally be ineligible to participate in Board contracts or subcontracts that stem directly from the contractor's performance of work under a previous Board contract, where the Board determines that an OCI would exist because:

(i) The expectation of receiving the subsequent contract is likely to diminish the contractor's capacity to give impartial assistance and advice, or otherwise result in a biased work product; or

(ii) An offeror on the subsequent contract would have an unfair competitive advantage by virtue of having performed the first contract.

(2) If a contractor under a Board contract prepares a complete or essentially complete statement of work or specifications in the performance of a contract, the contractor shall be ineligible to perform or participate in the initial contractural effort that is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications.

(c) *National Laboratory personnel.* The Board may engage personnel of the National Laboratories who have expertise needed by the Board in the performance of its oversight responsibilities, provided that prior to each such engagement, the Board determines either:

(1) That the nature of work performed by such personnel for DOE does not pose actual or potential OCIs with respect to the particular work covered by the Board contract, or

(2) That such engagement is in the Government's best interests and that a waiver should be granted pursuant to § 1706.8.

In all cases involving National Laboratory personnel, notice of the circumstances of the contract, stating the rationale for use of the personnel, shall be published in the **Federal Register.**

(d) *Work for others.* During the term of any Board contract, the contractor may not enter into consulting or other contractual arrangements with other persons or entities, the result of which could give rise to an OCI with respect to the work being performed under the contract. The prime contractor shall ensure that all of its employees, subcontractors, and consultants under the contract abide by this paragraph. If the contractor has reason to believe that any proposed arrangement with other persons or entities may involve an actual or potential OCI, it shall promptly inform the Board in writing of all pertinent facts regarding such proposed arrangement. In the case of task order contracts, this paragraph applies, subject to § 1706.7(c), only to specific ongoing tasks that the contracting officer authorizes the contractor to perform.

(e) *Contractor protection of Board information that is not publicly available.* If the contractor in the performance of a Board contract obtains access to information, such as Board plans, policies, reports, studies, or financial plans, or internal data protected by the Privacy Act (5 U.S.C. 552a), proprietary information, or any other data which has not been released to the public, the contractor shall not:

(1) Use such information for any private purpose until the information has been released or is otherwise made available to the public;

(2) Compete for work for the Board based on such information for a period of six months after either the contract has been completed or such information has been released or otherwise made available to the public, whichever occurs first, or submit an unsolicited proposal to the Government based on such information until one year after such information is released or otherwise made available to the public, unless a waiver permitting such action has been granted pursuant to § 1706.8; or

(3) Release the information without prior written approval of the contracting officer, unless such information has previously been released or otherwise made available to the public by the Board.

§ 1706.6 Solicitation provisions.

(a) *Advisory or assistance services.* There shall be included in all formal Board solicitations for advisory or assistance services where the contract amount is expected to exceed $25,000 (or the then applicable small purchases threshold), a provision requiring a certificate representing whether award of the contract to the offeror would present actual or potential OCIs. Apparent successful offerors will be required to submit such certificates, but the Board may also require such a certificate to be submitted in other circumstances, such as:

(1) Where the contracting officer has identified certain offerors who have passed an initial screening and has determined that it is appropriate to request the identified offerors to file the certificate in order to expedite the award process; or

(2) In the case of modification for additional effort under Board contracts, except those issued under the "changes" clause. If a certificate has been previously submitted with regard to the contract being modified, only an updating of such statement shall be required for a contract modification.

In addition, if determined appropriate by the contracting officer for the Board, such certificates may be required in connection with any other contracts subject to this subpart or in which this subpart has been incorporated by reference.

(b) *Marketing consultant services.* There shall further be included in all Board solicitations, except sealed bids, where the contract amount is expected to exceed $200,000, a provision requiring an organizational conflicts of interest certificate from any marketing consultants engaged by an offeror in support of the preparation or submission of an offer for a Board contract by that offeror.

§ 1706.7 Procedures.

(a) *Pre-award disclosure and resolution of OCIs.* If a certificate under § 1706.6 indicates, or the Board otherwise learns, that actual or potential OCIs could be, or would appear to be, created by contract award to a particular offeror, the Board shall afford the affected offeror an opportunity to provide in writing all relevant facts bearing on the certificate. If the Board thereafter determines that an actual or potential OCI exists, one of the following actions shall ultimately be taken:

(1) Disqualify the offeror;

(2) Include in the contract appropriate terms and conditions which avoid the conflict, in which case no waiver is required; or

(3) Make a finding that it is in the best interest of the Government to seek award of the contract under the waiver provisions of § 1706.8, and, where reasonably possible, include contract terms and conditions or take other measures which mitigate such conflicts.

(b) *Post-award disclosure and resolution of OCIs.* (1) If, after contract

award, the contractor discovers actual or potential OCIs with respect to the contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement shall include a description of the action that the contractor has taken or proposes to take to avoid or mitigate such conflicts.

(2) If a disclosure under this section indicates, or the Board otherwise learns, that actual or potential OCIs exist, the Board may afford the contractor an opportunity to provide all relevant facts bearing upon the problem. If at any time the Board determines that an actual or potential OCI exists, one of the following actions shall ultimately be taken:

(i) Terminate the contract, or, in the case of a task order contract, terminate the particular task;

(ii) Insist on appropriate contract terms and conditions which avoid the OCIs, in which case no waiver is required; or

(iii) Make a finding that it is in the best interests of the Government to permit the contractor to continue to perform the contract (or task) under the waiver provisions of § 1706.8, and, where reasonably possible, insist on appropriate contract terms and conditions or take other measures which mitigate the OCIs.

(c) *Task order contracts.* (1) Because a task order contract generally entails a broad scope of work, apparent successful offerors shall be required to identify in their certificates filed in accordance with § 1706.6 any actual or potential OCIs that come within the full scope of the contract. The Board may decline to award a task order contract to an offeror based upon such information or it may decline to approve performance of a particular task by the contractor if an actual or potential OCI is subsequently identified with respect to that particular task. The Board may also take the other actions identified in § 1706.7(a) to avoid or mitigate such conflicts.

(2) Contractors performing task order contracts for the Board shall disclose to the contracting officer any new work for others they propose to undertake that may present an actual or potential OCI with regard to the performance of any work under the full scope of the Board contract. Such disclosure shall be made at least 15 days prior to the submission of a bid or proposal for the new work. The disclosure shall include the statement of work and any other information necessary to describe fully the proposed work and contemplated relationship.

(3) If the Board has issued a task order or a letter request for proposal under the contract with a contractor who has disclosed to the contracting officer that it proposes to undertake new work for persons other than the Board as described in § 1706.7(c)(2), for services in the same technical area and/or at the same defense nuclear facility that is the subject of the proposed new work (including overlap based upon generic work performed for others by the contractor), the Board shall inform the contractor that entering into a contract for the new work may result in termination by the Board of the task order contract, if the Board determines that such work would give rise to an OCI and the Board does not grant a waiver.

(d) *Decisions on OCIs.* The contracting officer shall make recommendations to the General Manager regarding disqualification or actions to be taken by the Board to avoid or mitigate any actual or potential OCI.

(1) The General Manager shall have the authority to approve, modify, or disapprove such recommendations regarding avoidance of an actual or potential OCI. If an offeror or contractor disagrees with the actions approved by the General Manager and requests review of the action, the Chairman shall make the decision on the actions to be taken by the Board.

(2) Any recommended action respecting the best interests of the Government and mitigation measures to be taken with respect to an actual or potential OCI must be approved by the Chairman in conjunction with the decision to grant a waiver pursuant to § 1706.8, and any recommended action to terminate a contract or a particular task on account of an actual or potential OCI must be approved by the Chairman.

(3) Decisions on OCIs by the General Manager or the Chairman shall be made with the advice of the Office of the General Counsel.

§ 1706.8 Waiver.

(a) *Waiver of OCIs.* The need for a waiver of any OCI in connection with the award or continuation of specific contracts may be identified either by the contracting officer for the Board or other Board employee or by a written request filed by an offeror or contractor with the contracting officer. The request may be combined with the certificate or disclosure required under §§ 1706.6 or 1706.7, or with additional statements filed under § 1706.7 regarding matters raised in the certificate or disclosure. The contracting officer shall review all of the relevant facts brought to his attention and shall bring the matter to the General Manager, who shall make a written recommendation to the Chairman of the Board regarding whether a waiver should be granted for a contract award or for continuation of an existing contract.

(b) *Criteria for Waiver of OCIs.* (1) The Chairman is authorized to waive any OCI (and the corresponding provision of § 1706.5 where applicable) upon a determination that awarding or extending the particular contract, or not terminating the particular contract, would be in the best interests of the Government. Issuance of a waiver shall ordinarily be limited to those situations in which:

(i) The work to be performed under contract is vital to the Board program;

(ii) The work cannot be satisfactorily performed except by a contractor or offeror whose interests give rise to a question of OCI; and

(iii) Contractual and/or technical review and supervision methods can be employed by the Board to mitigate the conflict.

(2) The Chairman is also authorized to waive any OCI (and the corresponding provision of § 1706.5 where applicable), without regard to the foregoing factors, if the Chairman determines, notwithstanding the existence of the OCI, that it is in the best interests of the Government to award or extend the particular contract, or not to terminate, without compliance with § 1706.8(b)(1).

(c) *Waiver of Rules or Procedures.* The Chairman is also authorized to waive any rules or procedures contained in this subpart upon a determination that application of the rules of procedures in a particular situation would not be in the best interests of the Government. Any request for such a waiver must be in writing and shall describe the basis for the waiver.

(d) *Office of General Counsel.* Waivers of OCIs or of any rule or procedure contained in this subpart shall be made after consultation with the Office of General Counsel.

(e) *Federal Register.* Except as otherwise provided in § 1706.8(c), notice of each waiver granted under this section shall be published in the **Federal Register** with an explanation of the basis for the waiver. In the discretion of the Board, notices of instances of avoidance of OCIs may also be published in the **Federal Register**.

§ 1706.9 Examples.

The examples in this section illustrate situations in which questions concerning OCIs may arise. The examples are not all inclusive, but are intended to provide offerors and contractors with guidance on how this subpart will be applied.

(a) *Circumstances*—(1) *Facts.* A Board contractor for technical assistance in the review of a safety aspect of a particular defense nuclear facility proposes to use the services of an expert who also serves on an oversight committee for a contractor of other defense nuclear facilities.

(2) *Guidance.* Assuming the work of the oversight committee has no direct or indirect relationship with the work at the facility that is the subject of the Board's contract, there would not be an OCI associated with the use of this expert in the performance of the Board contract.

(b) *Circumstances*—(1) *Facts.* A Board contractor studying the potential for a chemical explosion in waste tanks at a defense nuclear facility advises the Board that it has been offered a contract with DOE to study the chemical composition of the waste in the same tanks.

(2) *Guidance.* The contractor would be advised that accepting the DOE contract would result in termination of its performance under its contract with the Board.

(c) *Circumstances*—(1) *Facts.* The Board issues a task order under an existing contract for the evaluation of the adequacy of fire protection systems at a defense nuclear facility. The contractor then advises the Board that it is considering making an offer on a solicitation by DOE to evaluate the same matter.

(2) *Guidance.* The contractor would be advised that entering into a contract with DOE on that solicitation could result in the contract with the Board being terminated.

(d) *Circumstances*—(1) *Facts.* A firm responding to a formal Board solicitation for technical assistance provides information regarding a contract it currently has with DOE. The effort under the DOE contract is for technical assistance work at DOE facilities not subject to Board oversight and outside its jurisdiction.

(2) *Guidance.* The Board would analyze the work being performed for DOE to ensure no potential or actual conflict of interest would be created through award of the Board contract. Should the Board determine that no potential or actual conflict of interest exists, the contractor would be eligible for award. If the Board determines that a potential or actual conflict of interest would arise through a contract award, it may disqualify the firm or, if the Board determines that such action is in the best interests of the Government, the Board may waive the conflict or the rules and procedures and proceed with the award.

(e) *Circumstances*—(1) *Facts.* The Board discovers that a firm competing for a contract has a number of existing agreements with DOE in technical areas which are unrelated to the Board's oversight authority. While these contracts may not represent a potential or actual conflict of interest regarding the substance of the technical effort, their total value constitutes a significant portion of the firm's gross revenues.

(2) *Guidance.* A conflict of interest may exist due to the firm's substantial pecuniary dependence upon DOE. Consequently, the Board may question the likelihood that the contractor would provide unbiased opinions, conclusions, and work products because of this extensive financial relationship. The Board will review and consider the extent of the firm's financial dependence on DOE, the nature of the proposed Board contract, the need by the Board for the services and expertise to be provided by the firm and the availability of such services and expertise elsewhere, and whether the likelihood of the firm's providing objective technical evaluations and opinions to the Board could be influenced in view of its DOE relationship. Based on this analysis, the Board may either determine that there is no conflict and make the award, waive the conflict if one is identified and establish procedures to mitigate it where possible, or disqualify the offeror.

(f) *Circumstances*—(1) *Facts.* The Board discovers that a firm competing for a contract has a substantial business relationship in technical areas unrelated to the Board's oversight authority with a contractor operating a defense nuclear facility under a DOE contract. Similar to the situation described in paragraph (e) of this section, the total value of the contracts with the DOE contractor constitutes more than half of the firm's gross revenues, even though those contracts do not represent a potential or actual conflict of interest regarding any of the particular matters to be covered by the contract with the Board.

(2) *Guidance.* The firm's substantial financial and business dependence upon the DOE contractor may give rise to a conflict of interest, in that the likelihood of the firm's rendering impartial, objective assistance or advice to the Board may be impaired by its extensive financial relationship with the DOE contractor. In this situation, the Board will review and consider the nature of the proposed Board contract, the need by the Board for the services and expertise to be provided by the firm and the availability of such services and expertise elsewhere. The Board will also review and consider the extent of the firm's financial dependence on the DOE contractor and whether the firm would be impartial and objective in providing technical evaluation and opinions to the Board, especially on matters in which the DOE contractor is involved, notwithstanding the relationship with the DOE contractor. Based on this analysis, the Board may determine that there is no actual conflict of interest and make the award. Alternatively, if the Board identifies a conflict that cannot be avoided, the Board may determine to waive the conflict in the best interests of the United States, with or without the establishment of procedures to mitigate the conflict, or it may disqualify the offeror.

§ 1706.10 Remedies.

The refusal to provide the certificate, or upon request of the contracting officer the additional written statement, required by §§ 1706.6 and 1706.7 in connection with an award shall result in disqualification of the offeror for that award. The nondisclosure or misrepresentation of any relevant information may also result in the disqualification of the offeror for that award. If such nondisclosure or misrepresentation by an offeror or contractor is discovered or occurs after award, or in the event of breach of any of the restrictions contained in this subpart, the Board may terminate the contract for convenience or default, and the offeror or contractor may also be disqualified by the Board from consideration for subsequent Board contracts and be subject to such other remedial actions as provided by law or the contract.

§ 1706.11 Organizational conflicts of interest certification-Advisory or assistance services.

As prescribed in or permitted by § 1706.6(a), insert the following provision in Board solicitations for advisory or assistance services:

Organizaitonal and Consultant Conflicts of Interest Certificate—Advisory and Assistance Services (Oct. 1990)

(a) An organizational or consultant conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) In order to comply with the Office of Federal Procurement Policy Letter 89–1, Conflict of Interest Policies Applicable to Consultants, the offeror shall provide the certificate described in paragraph (c) of this provision.

(c) The certificate must contain the following:

(1) Name of the agency number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the offeror.

(3) A description of the nature of the services rendered by or to be rendered on the instant contract.

(4) The name, address, and telephone number of the client or clients, a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12* months preceding the date of the certification, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter as the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable.

(5) A statement that the person who signs the certificate has made inquiry and that, to the best of his or her knowledge and belief, no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory or assistance services to be provided in connection with the instant contract, or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated in writing to the contracting officer or his or her representative; and

(6) The signature, name, employer's name, address, and telephone number of the person who signed the certificate.

(d) Persons required to certify but who fail to do so may be determined to be nonresponsible. Misrepresentation of any fact may result in suspension or debarment, as well as penalties associated with false certifications or such other provisions provided for by law or regulation.

[End of provision]

If approved by the head of the contracting activity, this period may be increased up to 36 months.

Dated: July 8, 1992.

John T. Conway,

Chairman.

[FR Doc. 92–16349 Filed 7–13–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 920134–2034]

National Marine Sanctuary Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), NOAA, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: Public Law No. 100–627, the National Marine Sanctuaries Program Amendments and Authorization of 1988 (MPRSA Amendments), amended Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA), by: (1) Modifying the sanctuary designation procedures to reduce the length of the process to two and one-half years, (2) requiring the Secretary of Commerce to promote and coordinate the use of marine sanctuaries for marine research by NOAA and other Federal and state agencies, (3) authorizing the Secretary of Commerce to issue special use permits for conducting specific activities in national marine sanctuaries and to assess fees for conducting activities under such permits, (4) allowing the Secretary of Commerce to enter into cooperative agreements with nonprofit organizations for the promotion of, and the solicitation of private donations for, education and scientific activities, and to accept donations for use in designating and administering marine sanctuaries, (5) making any person who destroys, causes the loss of, or injures any sanctuary resource liable to the United States for response costs and damages, and making recovered funds available for the restoration, replacement, or acquisition of, equivalent resources and for other sanctuary management purposes, and (6) expanding enforcement authority.

By this notice, NOAA is proposing revisions to its national marine sanctuary program regulations (15 CFR part 922) to implement the statutory amendments. Interested persons are invited to submit written comments.

DATES: Comments must be received by August 28, 1992.

ADDRESSES: Submit comments to: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., suite 701, Washington, DC 20235 (202–606–4100).

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division (202–606–4100).

SUPPLEMENTARY INFORMATION:

I. Authority

This notice of proposed rulemaking is issued under the authority of title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*

II. Availability of Comments

All comments submitted in response to this notice of proposed rulemaking will be available for examination during normal business hours in Suite 701, Universal South Building, 1825 Connecticut Avenue, NW., Washington, DC 20235.

III. General Background

A. Time Limit on Sanctuary Designation

Public Law No. 100–627 amended paragraph (1) of section 304(b) of the MPRSA (16 U.S.C. 1434(b)(1)) to require the Secretary of Commerce to either issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the **Federal Register** or publish a notice, by such date, as to why such designation notice has not been published.

The proposed regulations would revise existing 15 CFR 922.34(a) to incorporate this requirement.

B. Promotion and Coordination of Research

Public Law No. 100–627 added a new Section 309 to MPRSA. This Section states:

> The Secretary shall take such action as is necessary to promote and coordinate the use of national marine sanctuaries for research purposes, including—
>
> (1) requiring that the National Oceanic and Atmospheric Administration, in conducting or supporting marine research, give priority to research involving national marine sanctuaries; and
>
> (2) consulting with other Federal and State agencies to promote use by such agencies of one or more sanctuaries for marine research.

Since this language is nearly identical to Section 315(d) of the Coastal Zone Management Act of 1972, as amended, which directs the Secretary to promote and coordinate the use of national estuarine research reserves for research purposes, and since the two sections serve the same purpose, for uniformity NOAA believes the same regulations should apply. Therefore, NOAA is proposing regulatory language similar to the language at 15 CFR 921.52, except for necessary changes to program references.

C. Special Use Permits

Public Law No. 100–627 added a new Section 310 to MPRSA which authorizes NOAA to issue special use permits for the conduct of specific activities in national marine sanctuaries if NOAA determines such permits are necessary to: (1) Establish conditions of access to and use of any sanctuary resource, or (2) to promote public use and

understanding of a particular sanctuary resource. The legislative history indicates this authority is intended to complement and not to supplant existing regulations and permitting procedures. NOAA may issue guidance or regulations on the implementation of this provision if the need arises.

D. Cooperative Agreements and Donations

Public Law No. 100–627 added a new Section 311 to MPRSA which authorizes the Secretary to enter into cooperative agreements with any nonprofit organization: (1) To aid and promote interpretive, historical, scientific and educational activities; and (2) for the solicitation of private donations for the support of such activities. Section 311 also authorizes the Secretary to accept donations of funds, property, and services for use in designating and administering national marine sanctuaries.

The Report of the Merchant Marine and Fisheries Committee of the House of Representatives explained these new provisions as follows:

> Section 311 * * * provides the Secretary of Commerce with explicit authority * * * to accept donations. Subsection (a) authorizes the Secretary to enter into cooperative agreements with any nonprofit organization to aid and promote certain sanctuary activities, and to allow a nonprofit organization to raise private contributions for the support of these activities. This provision confirms that the Secretary may authorize a nonprofit organization to assist the Secretary in the promotion of national marine sanctuaries and to solicit, with private money, private donations for the support of such activities. Under subsection (b), the Secretary is also authorized to accept donations of funds, property, and services for use in designating and administering national marine sanctuaries. This authority is not limited to donations provided by cooperating organizations, and includes the inherent authority to expend those donations on sanctuary purposes. H.R. Rep. 624, 100th Cong., 2d Sess. 21 (1988).

NOAA has concluded that existing guidance in the form of OMB Circular No. A–110 entitled "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations: Uniform Administrative Requirements (41 FR 32016) (July 30, 1976) is sufficient for administration of section 311(a). NOAA may issue guidance on the administration of these provisions.

E. Destruction, Loss or Injury to Sanctuary Resources

Public Law No. 100–627 added a new section 312 to MPRSA which makes any person who destroys, causes the loss of, or injures any sanctuary resource, with certain exceptions (defenses) liable to the United States for response costs and damages. The Section authorizes the Secretary of Commerce to take all necessary action to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss or injury. The Secretary is authorized to assess damages for injury to sanctuary resources and to request that the Attorney General commence civil actions in United States district court to recover response costs and damages. Recovered amounts may be retained by the Secretary in separate accounts and are available without further appropriation as follows:

(1) Twenty percent, up to a maximum balance of $750,000, to finance response actions and damage assessments;

(2) Any remaining amounts, to be used first, to restore, replace or acquire the equivalent of injured sanctuary resources, second, to manage and improve the sanctuary where the injured resources are located, and third, to manage and improve any other sanctuary.

The liability regime established by section 312 is similar to the liability regimes established by the Oil Pollution Act of 1990 (OPA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). It is likely that some incidents resulting in injury to or loss of sanctuary resources will fall within the scope of both Title III of the MPRSA and some other statutory regime.

It is NOAA's practice to seek redress under all available authorities. Therefore, the proposed regulations state that they are not intended to limit NOAA's action or recourse under other applicable law.

The Report of the Committee on Merchant Marine and Fisheries of the House of Representatives states that where the liability provisions are inconsistent, the MPRSA provisions shall control. H.R. Rep. No. 739, 100th Cong., 2d Sess., pt. 1, at 22 (1988). Accordingly, the proposed regulations state that where the liability provisions are inconsistent, the MPRSA provisions control.

Section 312 makes a person not liable if the person establishes that: (1) The destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care; (2) The destruction, loss, or injury was negligible; or (3) The destruction, loss, or injury was caused by an activity authorized by Federal or State law.

Regarding the third defense, as recognized in the Congressional debate on this provision, if read broadly, practically any activity likely to cause injury to sanctuary resources—navigation, fishing or diving, for instance—could be said to be authorized by Federal or state law. The Report of the Merchant Marine and Fisheries Committee of the House of Representatives stated that the purpose of this defense is

> * * * to preserve a simple sense of fairness for those who have been given permission explicitly by Federal or state authorities to undertake an activity which causes the damage. Where such permission is granted—most usually in the form of a license or permit—it would be unfair to impose liability upon the person where that person was acting in full compliance with the terms and conditions of the permit or license. H.R. Rep. 624, 100th Cong., 2d Sess. 21 (1988).

However, the Report goes on to state:

> This defense is intended to be construed narrowly, and the authorization giving rise to the defense must be for the specific activity giving rise to the damage. Thus, where a vessel runs aground within a sanctuary, it cannot use this provision to assert that the license to operate within the territorial waters of the United States entitles it to a defense because the authority to operate within territorial waters does not constitute the authority to run aground in a marine sanctuary. *Id.* at 22.

Relying on Congressional direction to construe this provision narrowly, NOAA's proposed regulations place the burden on anyone who destroys or injures sanctuary resources, and who asserts the defense of a Federal or state license or permit, to show that the license or permit specifically authorized the act that caused the injury. In addition, NOAA's proposed regulations define the scope of "activity authorized by Federal or state law" to exclude as a defense response actions or activities undertaken by or at the direction of NOAA or other authorized state or Federal entity, as long as that entity does not act in a negligent manner. Some necessary response actions, such as removing a vessel that is grounded on a coral reef, may result in some injury to sanctuary resources. The responsible party should be held fully accountable for that injury, as long as the response actions are conducted with due care.

Similarly, the Act does not define damage, loss or injury of a "de minimis" nature, but the Report of the Committee on Merchant Marine and Fisheries of the House of Representatives provides the general direction that the provision should be construed narrowly. *Id.* at 23. Under NOAA's proposed regulations,

the Secretary will determine if the injuries are of a de minimis nature based upon the results of early field sampling and data collection.

Concerning the process of conducting damage assessments, NOAA proposes a three-phased approach. In Phase 1, NOAA would determine whether destruction, loss or injury to sanctuary resources occurred and assess and document the physical and other injury to the affected resources. In Phase 2, NOAA would develop the value of its claim for compensation for the injury to sanctuary resources. The claim would be based on: (a) Response costs incurred by the Secretary, (b) the costs of restoring, replacing or acquiring the equivalent of injured sanctuary resources, (c) the value of lost use of injured sanctuary resources from the time of injury to the time of restoration or replacement, and (d) the cost of the damage assessment. If the sanctuary resources cannot be restored or replaced, or the equivalent acquired, the value of the sanctuary resources in their pre-injury state and the cost of the damage assessment would be determined in Phase 2. In Phase 3, NOAA would define how it will use recovered amounts for the purposes defined and in the priority order enumerated in the statute.

Although these steps are similar to the process set forth in the Department of the Interior's (DOI's) damage assessment regulations under CERCLA, they are simpler and less detailed. In addition, the use of the term "phase" does not imply that one phase must be completed before the next phase begins. This approach is intended to retain agency discretion and flexibility regarding emergency restoration, sampling and data collection, assessment methodologies, the definition of natural resource values, and the use of recovered amounts.

Section 312 does not contain provisions requiring that the public be afforded an opportunity to participate in the damage assessment process. However, section 312(d)(4) does call for Federal/state coordination on the use of amounts recovered to restore sanctuary resources lying within the state's jurisdiction. Therefore, NOAA's proposed regulations require notification to affected states, Federal agencies and potentially responsible persons in order to coordinate response and damage assessment actions, and provide the option for NOAA to seek public comment and/or hold public meetings during the assessment process.

The proposed regulations would allow NOAA to coordinate the planning and undertaking of the damage assessment with other trustees or with states for sanctuary resources lying within their jurisdiction. If this is done, the proposed regulations would require NOAA and the state to enter into a written agreement specifying responsibilities and procedures for assessing damage to sanctuary resources.

Concerning the handling of recovered funds in cases where injured sanctuary resources lie within a state's jurisdiction, the proposed regulations would require NOAA and the state to develop a written agreement for use of the funds in accordance with the requirements of section 312(d)(2) (A) and (B).

F. Enforcement

The MPRSA Amendments expanded substantially NOAA's enforcement authority. The changes represent a movement toward a uniform enforcement authority for NOAA under all of its various marine resource protection statutes. The enforcement provisions of the Magnuson Fishery Conservation and Management Act were used as the model for MPRSA Amendments. The Report of the Merchant Marine and Fisheries Committee of the House of Representatives states,

> By having uniform enforcement standards, the Committee intends to avoid confusion by marine law enforcement agents when enforcing laws such as Title III [of the Marine Protection, Research, and Sanctuaries Act], the Lacey Act Amendments of 1981, the Marine Mammal Protection Act, and the Endangered Species Act. Standard enforcement provisions should also simplify the work of the Federal courts and reduce disparate treatment of violators. H.R. Rep. 624, 100th Cong., 2d Sess. 29 (1988).

Since NOAA's current marine sanctuary regulations refer to NOAA's consolidated civil procedures at 15 CFR part 904, which incorporate all of these new provisions, no change to the regulations is needed.

IV. Other Actions Associated with the Rulemaking

A. Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These proposed regulations would amend existing procedures for designating and managing national marine sanctuaries in accordance with the National Marine Sanctuaries Program Amendments and Authorization of 1988. They will not result in any direct or indirect economic or environmental impacts.

B. Regulatory Flexibility Act Analysis

A Regulatory Flexibility Analysis is not required for this notice of proposed rulemaking. The regulations set forth procedures for designating and managing national marine sanctuaries. These rules do not directly affect "small government jurisdictions" as defined by Public Law No. 96–354, the Regulatory Flexibility Act.

C. Paperwork Reduction Act of 1980

These regulations will impose no information collection requirements of the type covered by Public Law No. 96–511, the Paperwork Reduction Act of 1980.

D. Executive Order 12612

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

E. National Environmental Policy Act

NOAA has concluded that publication of this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, preparation an environmental impact statement is not required.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Environmental protection, Marine resources, Natural resources.

Dated: July 2, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

Accordingly, NOAA proposes to amend 15 CFR part 922 as set forth below.

1. The authority citation for part 922 is revised to read as follows:

Authority: Title III of the Marine Protection, Research, and Sanctuaries Act, as amended (16 U.S.C. 1431–1445).

2. Section 922.2 is amended by redesignating paragraphs (c) through (h) as paragraphs (d) through (i), redesignating paragraphs (i) through (l) as paragraphs (l) through (o), and adding new paragraphs (c), (j) and (k) as follows:

§ 922.2 Definitions

* * * * *

(c) *Damages* includes: (1) Compensation for (i) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or (ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired; and

(2) The cost of damage assessments conducted in accordance with Section 312(b)(2) of the Act.

* * * * *

(j) *Response costs* means the costs of actions taken by the Secretary to minimize destruction or loss of, or injury to sanctuary resources, or to minimize the imminent risks of such destruction, loss or injury.

(k) *Sanctuary resource* means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the sanctuary.

* * * * *

3. Section 922.31(e) is revised to read as follows:

§ 922.31 Development of designation materials.

* * * * *

(e) The draft management plan and the DEIS shall be prepared as quickly as possible to allow for maximum public input and compliance with statutory timelines for designation.

* * * * *

4. Section 922.34(a) is revised to read:

§ 922.34 Designation.

(a) In designating an area as a National Marine Sanctuary, the Secretary shall publish a notice of the designation in the **Federal Register** not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the **Federal Register** pursuant to 15 CFR 922.30(b), or shall publish not later than such date in the **Federal Register** findings regarding why such notice has not been published. The notice of designation shall include the text of the final implementing regulations and shall also advise the public of the availability of the final management plan and the final EIS.

* * * * *

5. A new § 922.42 is added to read as follows:

§ 922.42 Promotion and Coordination of Marine Research.

(a) NOAA will promote and coordinate the use of National Marine Sanctuaries for marine research purposes.

(b) NOAA, will, in conducting or supporting marine research other than that authorized under Title III of the Marine Protection, Research, and Sanctuaries Act, give priority consideration to research that uses the National Marine Sanctuaries.

(c) NOAA will consult with other Federal and state agencies to promote the use of National Marine Sanctuaries when such agencies conduct marine research projects.

6. A new subpart E is added to read as follows:

Subpart E—Destruction, Loss or Injury to Sanctuary Resources

Sec.

922.50 General.
922.51 Response costs and damage assessment costs.
922.52 Defenses to liability.
922.53 Response actions.
922.54 Damage assessment—general.
922.55 Sampling, resource surveys, data collection and testing.
922.56 Determination of injury.
922.57 Quantification of injury.
922.58 Feasibility of restoration or mitigation.
922.59 Determination of response costs and damages.
922.60 Use of recovered amounts.

Subpart E—Destruction, Loss or Injury to Sanctuary Resources

§ 922.50 General.

(a) The Secretary, acting as trustee for Sanctuary resources, shall assess damages for the destruction, loss or injury to sanctuary resources.

(b) Subject to the statutory defenses to liability and § 922.52, any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury.

(c) Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury.

(d) Nothing in this Subpart is intended to limit the Secretary's action or recourse under other applicable law for injuries to sanctuary resources falling within the scope of that law. However, if there are inconsistencies between other applicable Federal law and its implementing regulations and this Act and its implementing regulations, the provisions of this Act and regulations shall control.

§ 922.51 Response costs and damage assessment costs.

The Secretary, acting as trustee for sanctuary resources, may recover the following:

(a) Damages as defined in § 922.2(c). This includes compensation for the costs of planning, implementing (including permitting) and monitoring the restored, replaced or newly acquired resources.

(b) Response costs, as defined in § 922.2(j). This includes personnel and administrative costs and expenses, including indirect costs and expenses, necessary to plan for and undertake the response actions.

(c) The costs of conducting the damage assessment, including but not limited to:

(1) Costs of field sampling, resource surveys, data collection and testing necessary to conduct the damage assessment pursuant to § 922.55 and

(2) Personnel and administrative costs and expenses, including indirect costs and expenses, necessary to plan for and conduct the damage assessment.

§ 922.52 Defenses to Liability.

In determining whether to initiate civil action for injuries to sanctuary resources, the Secretary shall consider the applicable defenses to liability provided for in section 312(a)(3) of the Act.

(a) In considering the applicability of the defense provided for in section 312(a)(3)(B) of the Act for activities authorized by Federal or state law, it shall be the responsibility of the person causing the injury to show that the injury was caused by an activity specifically authorized by Federal or state law. A general permission, such as authorization to navigate through the sanctuary or to fish within the sanctuary, shall not satisfy the specific authorization requirement of section 312(a)(3)(B). A person cannot rely on this defense to liability for response actions or activities conducted by, or on behalf of, the Secretary or other authorized state or Federal entity, provided that the response actions were conducted with due care.

(b) In considering the applicability of the defense provided for in section 312(a)(3)(C) of the Act for destruction, loss or injury of a de minimis nature, the

Secretary shall determine, based on the results of early field sampling and data collection pursuant to § 922.55(a), whether there is, in fact, no injury to sanctuary resources or whether the injury is so slight as to be de minimis. Where the Secretary determines that there is no injury or de minimis injury to sanctuary resources, the Secretary may not recover damages.

§ 922.53 Response actions.

(a) The Secretary may undertake all necessary response actions, inside or outside sanctuary boundaries, to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss or injury.

(b) If the actual or threatened destruction, loss or injury to sanctuary resources involves a discharge of oil or a release of a hazardous substance (as defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)), the Secretary shall immediately contact the National Response Center to report the actual or threatened discharge or release and to request that immediate response action be taken.

(c) The Secretary may undertake response actions alone, in cooperation with Federal, state or local government agencies, or through the use of the injunctive authority contained in section 307(i) of the Act.

(d) Response actions may include field sampling, data collection and testing necessary to facilitate the response.

(e) If the Secretary identifies or is informed of the destruction, loss or injury to sanctuary resources that appears to be the result of a previously unidentified or unreported incident, he/she shall make reasonable efforts to determine whether the incident in fact occurred. If the incident involves a discharge of oil or a hazardous substance, not yet reported or being investigated under the National Contingency Plan (NCP) under CERCLA and other applicable law, the Secretary shall report the discharge or release to the appropriate authority as designated in the NCP. The Secretary may take all necessary action to avoid or minimize actual or threatened destruction, loss or injury to sanctuary resources.

§ 922.54 Damage assessment—general.

(a) The Secretary shall assess damages to sanctuary resources in accordance with § 922.2(c).

(b) The objectives of the damage assessment are to:

(1) Determine whether destruction, loss or injury to sanctuary resources has occurred;

(2) Determine the nature and extent of the destruction, loss or injury and the person(s) responsible for that destruction, loss or injury;

(3) Determine the feasibility of restoring injured sanctuary resources or of replacing or acquiring the equivalent of destroyed or lost sanctuary resources; and

(4) Determine damages as that term is defined at § 922.2(c).

(c) Coordination with Other Trustees. With respect to natural resources for which other entities hold trustee responsibilities, the Secretary shall coordinate the planning and undertaking of the damage assessment with those entities. If the entities agree to coordinate the planning and implementation of the damage assessment, they shall enter into a written agreement specifying responsibilities and procedures for assessing the damages to sanctuary resources.

(d) The Secretary may hold one or more public meetings or hearings, or may otherwise solicit public comment during the conduct of the damage assessment, if the Secretary determines such public comment will assist the damage assessment process.

§ 922.55 Sampling, resource surveys, data collection and testing.

(a) The Secretary may conduct field sampling and data collection or coordinate with persons engaged in field sampling, data collection and response actions, prior to initiating the damage assessment in order to preserve data and materials that are likely to be lost if not collected at that time.

(b) The Secretary shall consider information contained in designation documents on the physical, chemical and biological conditions of sanctuary resources, including their quality and quantity, the productive capacity of sanctuary habitat, and other factors that give sanctuary resources the conservation, recreational, ecological, historic, research, educational and aesthetic values (sanctuary resource values) for which the sanctuary was designated.

(c) The Secretary may conduct all field sampling, resource surveys, data collection and testing he/she determines necessary for the damage assessment. Such sampling and testing should consider existing data and information from sanctuary research and monitoring activities. If necessary, the Secretary may establish a control area in a similar, but uninjured, part of the sanctuary, and may conduct necessary sampling, resource surveys, data collection and testing to supplement information on conditions of injured sanctuary resources.

§ 922.56 Determination of injury.

(a) The Secretary may determine that a person has caused the destruction, loss or injury to a sanctuary resource if the Secretary determines that the actions of that person resulted in a change in the sanctuary resource values, as established according to § 922.55.

(b) Criteria at 43 CFR 11.62 and criteria adopted by NOAA pursuant to Public Law No. 101–380 (the Oil Pollution Act of 1990), may be used as a guide in determining destruction, loss or injury to sanctuary resources caused by exposure to a discharge of oil or a hazardous substance, or exposure to a degradation product or a reaction product resulting from such discharge.

§ 922.57 Quantification of injury.

(a) For each sanctuary resource determined to be destroyed, lost or injured according to § 922.56, the Secretary should document the nature and the extent of the injury by measuring the total area, volume or numbers of affected resources; by considering how the contribution of the injured resources to sanctuary resource values has been reduced; and by assessing the ability of the injured resources to recover, expressed as the time required to restore the resource to its pre-injury condition, including the quantity and quality of the resource, the productive capacity of the affected habitat, and the full functioning of the sanctuary ecosystem, including its sanctuary resource values.

(b) Criteria at 43 CFR 11.71 and criteria adopted by NOAA pursuant to Public Law No. 101–380 (the Oil Pollution Act of 1990), may be used as a guide in quantifying the destruction, loss or injury to sanctuary resources caused by exposure to a discharge of oil or a hazardous substance, or exposure to a degradation product or a reaction product resulting from such discharge.

§ 922.58 Feasibility of restoration or mitigation.

(a) The damage assessment should evaluate the feasibility of restoring injured sanctuary resources and of replacing or acquiring the equivalent of injured, destroyed or lost sanctuary resources. The evaluation of feasibility may include field testing to determine whether or not a particular restoration technique is feasible at a particular site.

(b) Where restoration, replacement or acquisition are determined to be feasible, the damage assessment should consider alternatives (if they exist) for achieving such restoration, replacement or acquisition and the associated costs of each alternative. These costs must include the costs of planning, permitting and monitoring during and after implementation to determine if restoration, replacement or acquisition goals are being met and to make any needed adjustments.

(c) The damage assessment should identify the preferred alternative or combination of alternatives based on the method of achieving the most effective restoration, replacement or acquisition of lost or injured resources that will restore the quantity and quality of the resource, the productive capacity of the affected habitat, and the full functioning of the sanctuary ecosystem, including its sanctuary resource values.

§ 922.59 Determination of response costs and damages.

(a) The Secretary shall determine the cost of response actions in accordance with § 922.51(b).

(b) The Secretary shall determine the cost of replacing, restoring or acquiring the equivalent of sanctuary resources in accordance with § 922.58.

(c) The Secretary shall determine the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource using generally accepted and documented economic methodologies and other methods necessary to assess the full contribution of the resource to the sanctuary ecosystem. To the extent practicable, the determination of value shall include use and non-use values necessary to reflect the full value of the sanctuary resources, including but not limited to, the sum of the current and future values of their conservation, recreational, ecological, historic, research, educational and aesthetic functions.

(d) The Secretary shall determine the value of sanctuary resources that cannot be restored or replaced or where the equivalent of the resource cannot be acquired in the same manner as described in paragraph (c) of this section.

(e) The sum of paragraphs (a), (b) and (c) or (d) and the cost of conducting the damage assessment pursuant to § 922.51(c) shall be used to determine the appropriate amount of compensation for destruction, loss or injury to sanctuary resources in accordance with § 922.2(c).

§ 922.60 Use of recovered amounts.

(a) Twenty percent, up to a maximum balance of $750,000, of amounts recovered pursuant to these regulations shall be used to finance response actions and the damage assessment.

(b) Amounts remaining after compliance with § 922.59(a), shall be used, in order of priority, to:

(1) Restore, replace or acquire the equivalent of the sanctuary resources which were the subject of the damage assessment;

(2) Manage and improve the national marine sanctuary within which are located the sanctuary resources which were the subject of the damage assessment; and

(3) Manage and improve any other national marine sanctuary.

(c) Any civil penalties recovered in connection with this damage assessment pursuant to section 307 of the Marine Protection, Research and Sanctuaries Act shall be used to pay for the temporary storage, care and maintenance of any sanctuary resources or property and to reward any person who furnishes information leading to an assessment of a civil penalty or forfeiture of property for a violation of this title. Any remaining amounts recovered pursuant to § 307 shall be used for the purposes of paragraphs (b)(2) and (b)(3) of this section.

(d) Coordination with Other Trustees:

(1) Amounts recovered with respect to sanctuary resources lying within the jurisdiction of a state shall be used for the purposes of paragraphs (b)(1) and (b)(2) of this section in accordance with a written agreement entered into between the Secretary and the Governor of the State. The Secretary may also enter into written agreements with other trustee entities, if appropriate.

(2) Trustee entities and the Secretary may agree, and the written agreement may specify, that other trustees may perform the restoration, replacement, management or improvement for specified sanctuary resources. In that case, the agreement shall specify the respective roles of the trustee entities and the actions to be performed by each entity.

(3) The agreement may provide for the establishment of an account to contain recovered amounts that will be used pursuant to section 312(d)(2) of the Act and paragraph (b) of this section.

[FR Doc. 92–16100 Filed 7–13–92; 8:45 am]

BILLING CODE 3510–08–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1205

Regulatory Flexibility Act; Review of Existing Rules

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of review of rules and availability of report.

SUMMARY: The Commission has completed its review of the performance requirements of the Safety Standard for Walk-Behind Power Mowers in accordance with provisions of the Regulatory Flexibility Act. The purpose of this review was to determine if those rules should be modified or revoked to minimize any significant economic impact they may have on small businesses.

The Commission has considered the provisions of these rules, their economic impact on the firms and organizations subject to the rules, and other relevant information. The Commission has determined that no further action with respect to any of these rules is warranted by the Regulatory Flexibility Act. A report on this rule review, entitled "Regulatory Flexibility Act Review, Performance Requirements for Walk-Behind Power Mowers," is available on request.

ADDRESSES: Requests for copies of the report should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Anthony C. Homan, Directorate for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207, telephone: (301) 504–0962; or Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone: (301) 504–0980.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) became effective on January 1, 1981, and generally requires Federal agencies to evaluate the economic impact of their rules on small entities. The term "small entity" is defined by the RFA to include small businesses, small not-for-profit organizations, and small counties, cities, and other local governmental jurisdictions. Section 610 of the RFA (5 U.S.C. 610) requires agencies to review all rules in existence on January 1, 1981, which have a significant economic impact on a substantial number of small entities. Section 610 of the RFA also

requires agencies to review periodically those rules issued after the effective date of the RFA. The purpose of this review is to determine whether the rules under consideration should be continued without change, amended, or revoked, consistent with the purposes of the statutes which they implement, to minimize any significant economic impact which they may have on small entities. Section 610 of the RFA requires agencies to consider the following factors with respect to each of the rules under review:

(1) The continued need for the rule.

(2) The nature of complaints or comments about the rule received from the public.

(3) The complexity of the rule.

(4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and to the extent feasible, with rules of state and local governments.

(5) The length of time since the rule has been evaluated, or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

In the **Federal Register** of January 28, 1992 (57 FR 3147), the Commission announced that it would review the performance requirements of the Safety Standard for Walk-Behind Power Mowers in accordance with provisions of section 610 of the RFA. Those rules were issued under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) and are codified at 16 CFR 1205.4 and 1205.5. The Commission reviewed the labeling provisions of the power mower standard in 1986 as part of a review of 17 rules issued before 1981 under provisions of the CPSA.

The notice of January 28, 1992, gave a brief description of the provisions of the rules establishing performance requirements for walk-behind mowers, the need for those rules, and their legal basis. The notice also invited written comments on the rules under consideration. One comment was received.

After considering the provisions of the rules establishing performance requirements for walk-behind mowers, the comment submitted concerning those rules, and relevant information about their economic effect on the regulated industry, the Commission finds that they have not had a significant economic impact on a substantial number of small entities, including small businesses. For that reason, the Commission concludes that no further action with regard to the rules is warranted by section 610 of the RFA.

The Commission has prepared a report of this RFA rule review. This report, entitled "Regulatory Flexibility Act Review, Performance Requirements for Walk-Behind Mowers," is available without charge by writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or by calling (301) 504–0800.

Dated: July 8, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–16501 Filed 7–13–92; 8:45 am]

BILLING CODE 6355–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 229

[Release Nos. 33–6941; 34–30914; File No. S7–16–92]

RIN 3235–AF34

Executive Compensation Disclosure; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to proposed rules.

SUMMARY: This document contains a correction to the executive compensation disclosure proposed rules which were published on July 2, 1992 (57 FR 29582).

FOR FURTHER INFORMATION CONTACT: Catherine T. Dixon at (202) 272–2589 or Eric D. Kline at (202) 272–3097, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission proposed revised executive compensation disclosure rules on July 2, 1992. As published, the proposed rules inadvertently eliminated reference to disclosure of termination of employment and change of control arrangements that are in current Item 402(e) of Regulation S–K[1].

Accordingly, the proposed rules relating to executive compensation disclosure which were the subject of FR Doc 92–15250 are corrected as follows:

PART 229—[CORRECTED]

On page 29607, in the third column, paragraph (l) is added to § 229.402 (Item 402 of Regulation S–K) after "Instructions to Item 402(k)" and immediately preceding "General Instructions to Item 402" to read as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

Instructions to Item 402(k)

* * * * *

(l) Termination of employment and change of control arrangement. Describe any compensatory plan or arrangement, including payments to be received from the registrant, with respect to any named executive officers designated under paragraph (a)(3) of this section for the latest or then next preceding fiscal year, if such a plan or arrangement results or will result from the resignation, retirement or any other termination of such individual's employment with the registrant and its subsidiaries or from a change in control of the registrant or a change in the individual's responsibilities following a change in control and the amount involved, including all periodic payments or installments, exceeds $60,000.

* * * * *

Dated: July 10, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–16630 Filed 7–10–92; 3:18 pm]

BILLING CODE 8010–01–M

17 CFR Part 250

[Release No. 35–25574; File No. S7–17–92]

RIN 3235–AF49

Exemption of Issuance and Sale of Certain Securities by Public-Utility and Nonutility Subsidiary Companies of Registered Public-Utility Holding Companies

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Proposed rules.

SUMMARY: The Commission, which today amended rule 52 under the Public Utility Holding Company Act of 1935 ("Act") in a companion release, is requesting comment upon a further amendment to the rule that would exempt certain other types of securities, and expand the rule to include certain financing transactions by nonutility subsidiary companies of registered holding companies. The Commission is also requesting comment on a proposed

[1] 17 CFR 229.402(e).

amendment to rule 45(b)(4) to remove the present dollar limitation of the rule. Rule 45(b)(4) provides an exemption from the requirement of prior Commission authorization under section 12(b) of the Act and rule 45(a) for certain capital contributions and open account advances by a parent company to its subsidiary company. The amendments are intended to further ease the regulatory and paperwork burdens associated with seeking Commission approval for routine financings by registered holding companies and their subsidiary companies.

DATES: Comments must be submitted on or before October 13, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–17–92. All comment letters received should refer to File No. S7–17–92. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Assistant Director, (202) 272–7676, Sidney L. Cimmet, Senior Special Counsel, (202) 272–7676, Joanne C. Rutkowski, Senior Special Counsel (202) 504–2267, or Brian P. Spires, Staff Attorney, (202) 272–7688, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting comment on proposed amendments to rules 52 and 45(b)(4) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*). Rule 52 exempts from the requirement of prior Commission approval under section 6(a) the issuance and sale of certain securities by a public-utility subsidiary company of a registered holding company, in accordance with the terms and conditions of the rule. Rule 52 also exempts from the requirement of prior Commission authorization under section 9(a) the acquisition by a parent holding company of the securities issued by an existing public-utility subsidiary company pursuant to the rule. The proposed amendment would broaden the rule to exempt certain other types of securities issued and sold by system public-utility subsidiary companies and would extend the exemption to certain financing transactions by system nonutility subsidiary companies.

Rule 45(b)(4) provides an exemption from the requirement of rule 45(a) under section 12(b) of prior Commission approval for capital contributions and loans by a registered holding company to its subsidiary companies. Present rule 45(b)(4) exempts up to $50,000 in capital contributions and open account advances, without interest, made to any subsidiary during a calendar year. The proposed amendment would delete the dollar limitation.

Discussion

Rule 52 exempts from the requirement of prior Commission authorization under section 6(a) the issue and sale of certain securities by public-utility subsidiary companies of registered public-utility holding companies.[1] Rule 52 also exempts from the requirement of prior Commission authorization under section 9(a)(1) the acquisition by a parent holding company of the securities issued by an existing public-utility subsidiary company pursuant to the rules.[2]

The rule as adopted was limited to specified types of securities, and subject to eight conditions. The Commission has today amended the rule to delete the six nonstatutory conditions, and to expand the types of securities within the exemption.[3]

The Commission is proposing a further amendment of the rule to exempt a broad range of common intrasystem financing arrangements. The exemption would extend to both utility and nonutility subsidiary companies in a registered holding company system.

In addition, the Commission is proposing an amendment to rule 45(b)(4) to exempt certain other intrasystem financings not encompassed by rule 52.

1. Issue and Sale of Other Securities by Public-Utility Subsidiaries

With respect to intrasystem financings, the present rule exempts notes issued to a parent holding company with interest rates and maturity dates that parallel those of the holding company's debentures or preferred stock. However, other forms of indebtedness are commonly used in intrasystem financings. The Commission believes that the rule is unduly restrictive, and proposes to amend the rule to broaden the range of exempted financing transactions to include securities with interest rates and maturities that are designed to parallel the effective cost of capital of the purchaser.[4] The Commission has permitted numerous declarations to become effective for the issuance and sale of such securities.[5] The Commission believes that this proposed expansion of the exemption is appropriate in view of the continuing requirement of prior state approval. The effective cost of capital would be the coupon rate of interest on debt plus all expenses, including, but not limited to, underwriters' compensation, discounts, fees and commissions associated with

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[1] Section 6(a) requires Commission approval under the standards of section 7 for the issue and sale of any security of a registered holding company or its subsidiary company.

Section 6(b) authorizes the Commission to exempt from the declaration requirements of section 6(a): the issue or sale of any security by any subsidiary company of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business.

The Congress intended "to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist." H.R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935).

See generally 45 SEC Docket 1577 (Apr. 3, 1990), 55 FR 11362 (Mar. 28, 1990) (adopting rule 52).

[2] Section 9(a)(1) requires prior Commission approval under the standards of section 10 for the acquisition of securities by a registered holding company or its subsidiary company. Section 9(c)(3) provides a limited exception from this requirement for the acquisition of: such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

The exemption under rule 52 does not apply to the issuance of securities to form a new public-utility subsidiary company of a registered holding company. Rule 52.

[3] Rule 52 as amended provides a conditional exemption from the requirement of prior Commission approval for the issue and sale by a public-utility subsidiary company of a registered holding company of common stock, preferred stock, mortgage bonds and any note issued and sold to the parent holding company, the interest rate and maturity date of which note parallel a debenture or preferred stock issued by the parent. To qualify for exemption under the rule, the issue and sale must be solely for the purpose of financing the business of the public-utility company and expressly authorized by the relevant state commission.

[4] The omission of common intrasystem financing transactions is of particular concern to the registered gas systems. Unlike registered electric systems, registered gas systems, with few exceptions, issue and sell debt to the public at the parent company level. The systems fund their subsidiary operations by several methods, including capital contributions, open account advances, money pool arrangements, purchases of common stock, and short- and long-term loans. As proposed to be amended, rules 52 and 45(b)(4) would exempt all of these intrasystem transactions.

[5] See, e.g., *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 25339 (June 28, 1991), 49 SEC Docket 449 (July 16, 1991), and Holding Co. Act Release No. 25110 (June 29, 1990), 46 SEC Docket 1124 (July 17, 1990) (cost to subsidiaries of borrowing from parent registered holding company tied to Federal Funds' rate for short-term debt and published bond index for long-term debt).

the issue and sale of such debt. In the event the purchaser has not recently issued debt securities, the purchaser's effective cost of capital may be tied to an appropriate index such as, but not limited to, the Federal Funds' rate or a published bond index. The Commission specifically requests comment on whether other factors may be appropriately considered in determining the effective cost of capital.

2. Issue and Sale of Securities by Nonutility Subsidiaries

In 1991, the Commission authorized the nonutility subsidiaries of the registered holding companies to sell debt securities totalling $739 million to nonassociates. The present rule, however, exempts only transactions involving securities of public-utility subsidiaries. The Commission believes the rule should encompass nonutility subsidiaries as well.[6]

Section 6(b) provides that the Commission shall exempt the issue and sale of a security of a nonutility subsidiary of a registered holding company for the purpose of financing the subsidiary's business, subject to such terms and conditions as the Commission deems appropriate in the public interest or for the protection of investors or consumers. In enacting section 6(b), Congress inended the Commission "to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist."[7]

In the past, the Commission has granted exemptions for nonutility financings by order on a case-by-case basis. The Commission, in 1989, also considered an exemption by rule for such financings. In the release proposing the original rule 52, the Commission deferred action, citing its concern "with the adverse consequences that potential growth of debt in the non-utility subsidiary companies could have for the holding-company system and the public-utility subsidiaries."[8]

Upon further consideration, however, the Commission is proposing to amend the rule to exempt unconditionally the issue and sale of certain securities by nonutility subsidiaries.[9] Because of the extensive reporting requirements imposed by the Act and other federal securities laws, and the far greater scrutiny of reporting companies generally since the passage of the Act fifty-seven years ago, the Commission believes that it may be appropriate to exempt unconditionally certain nonutility financings.

The Commission notes that the twelve registered holding companies that proposed original rule 52 suggested that a security issuance should not cause the holding company system to exceed a consolidated debt/equity ratio of 65%/30%.[10] The Commission thus requests comment as to whether this or any other condition is necessary to prevent excessive leveraging at the nonutility subsidiary or holding company level, which could affect utility subsidiaries and thus consumers.

Because the rule currently exempts only acquisitions of securities issued and sold by a public-utility subsidiary, the Commission further proposes to amend rule 52 to exempt from section 9 the acquisition of securities of a nonutility subsidiary exempted pursuant to the rule.

3. Capital Contributions and Open Account Advances, Without Interest, to Subsidiary Companies

Rule 52, as proposed to be amended, will not exempt certain other common intrasystem financing transactions. For example, capital contributions from a registered holding company to its subsidiary are regulated as intercompany loans under section 12(b) and rule 45.[11] Open account advances that do not bear interest are also subject to these provisions.

There is at present a limited exemption for these transactions. Rule 45(b)(4) exempts up to $50,000 in capital contributions and open account advances, without interest, made to any subsidiary during a calendar year.[12] The Commission proposes to remove the dollar limit from rule 45(b)(4).

The legislative history of the Act makes clear that the Congress, while concerned with holding company abuses, recognized that "[d]own-stream loans * * * may be legitimate sources of credit * * *," and concluded that "the subject is one in which the rule-making power of the Commission is required to meet a host of varying circumstances."[13] Capital contributions and open account advances, without interest, are routine transactions which serve to transfer funds from the parent to its subsidiary. Because the Commission will retain authority over the issue and sale of securities by the registered holding company, it no longer appears necessary to include a dollar limitation in the rule.

4. Issuance of Other Securities

Finally, the Commission requests comment on whether the amendments to rules 45 and 52 should be extended to exempt financing transactions involving other securities, in particular, guaranties of debt securities issued by other subsidiary companies.[14] Because guaranties are securities under the Act,[15] their issuance and sale are subject to the declaration requirement of section 6, unless exempted under section 6(b). At present, rule 52 does not extend to the issuance and sale of guaranties.

In addition, the guaranty by a subsidiary company of debt securities issued by another subsidiary company is subject to section 12(b) and rule 45 thereunder. Rule 45, with exceptions not

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[6] We have considered, in particular, that, absent further amendment of rule 52, routine gas intrasystem financings will remain subject to the requirement of prior approval. The nonutility operations of registered gas holding companies rival in size the utility operations, largely because the Act does not include transmission assets in the definition of a gas utility company.

[7] H.R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935).

[8] Holding Co. Act Release No. 24891, 43 SEC Docket 1667, 1668 (May 30, 1989), 54 FR 22314 (May 23, 1989) (proposing rule 52).

[9] The proposed rule would exempt financings by means of common stock, preferred stock, bonds, notes and other forms of indebtedness. The interest rates and maturity dates of any debt security issued to an associate company would be required to parallel the effective cost of capital of that associate company. See the textual discussion requesting comment on the definition of "effective cost of capital" found in section 1 above.

[10] This condition is drawn from section 7(d)(1) which requires the Commission, in reviewing an issuance of securities, to consider whether the security is reasonably adapted to the security structure of the company issuing the security and the other companies in the registered holding company system. Under that section, the Commission generally has required a registered holding company system and its public-utility subsidiaries to maintain a 65%/30% debt/common equity ratio, the balance generally being preferred equity. See e.g., *Columbia Gas Sys., Inc.*, Holding Co. Act Release No. 23971, 34 SEC Docket 1542 (Jan. 14, 1986), *aff'd sub nom. Garsham* v. *SEC*, 804 F.2d 1248 (3d Cir. 1986); *Georgia Power Co.*, 45 S.E.C. 610, 615 (1974) (citing *Eastern Utils. Assoc.*, 34 S.E.C. 390, 444–45 (1952), and *Kentucky Power Co.*, 41 S.E.C. 39 (1961)).

[11] Section 12(b) and rule 45(a) generally require prior Commission approval for a registered holding company or its subsidiary company to "lend or in any manner extend its credit to or indemnify any company in the same holding-company system."

[12] Rule 45(b)(4) exempts:

[c]apital contributions or open account advances, without interest, to any subsidiary: *Provided*, That after giving effect to the transaction the total net amount which such subsidiary will have received during the calendar year as a result of such transactions will not exceed $50,000 (after deducting payments during the year regardless of the date of the advances).

The rule contained the $50,000 limitation when adopted in 1941. Holding Co. Act Release No. 2694 (Apr. 21, 1941).

[13] S. Rep. No. 621, 74th Cong., 1st Sess. 34–5 (1935).

[14] Section 12(a) prohibits the guaranty by subsidiary companies of debt issued by a registered holding company.

[15] See section 2(a)(16) (definition of security).

relevant here, prohibits the issuance of guaranties by a subsidiary company without the filing of a declaration.[16]

Guaranties of debt are commonly used today. Accordingly, the Commission believes it may be appropriate to amend rules 45 and 52 to permit the issuance of guaranties by subsidiary companies. Of course, for a guaranty to be exempted, the Act requires that the guaranty be solely for the purpose of financing the business of the subsidiary company and, if the subsidiary is a public-utility company, that the relevant state commission has authorized the guaranty. The Commission requests comment on whether any further conditions are appropriate to ensure the protection of investors and consumers. Commenters are specifically asked to address whether it may be appropriate to require the disclosure of aggregate intrasystem guaranties in Form U–6B–2.

Conclusion

The Commission believes that the registered holding-company systems should have a greater ability to engage in routine financings without the regulatory burden of prior Commission authorization, and that this may be done without jeopardizing the interests the Act is designed to protect. The rule amendments proposed today are intended to accomplish this purpose.

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended rules will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as exhibit A.

Costs and Benefits

Rule 52, as proposed to be amended, will substantially decrease regulatory compliance costs for the registered holding companies. In fiscal year 1991, for example, 17 applications would not have been filed, and an additional 16 applications would have been abbreviated, had the proposed amended rule 52 been in place. Estimated savings per application would have been approximately $20,909 including the $2,000 filing fee per application, and related legal, accounting, and management costs. Thus, for 33 applications filed in fiscal year 1991 the aggregate savings would have been approximately $724,000. Moreover, the reduction in Commission staff hours associated with reviewing and analyzing these applications would have been approximately 3,212 hours. The only cost to the registered holding companies in complying with the amended rule will be the cost of completing a Form U–6B–2 after the issue or sale of any security. It is estimated that approximately one hour will be required to complete such a form.

[16] At present, rule 45(b)(6) exempts certain guaranties "in the ordinary course of business." The rule by its terms does not apply to a guaranty of a subsidiary's indebtedness for borrowed money.

Paperwork Reduction Act

The proposed amended rules are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget for use through July 31, 1995.

List of Subjects in 17 CFR Part 250

Utilities.

Text of Proposed Rules

Part 250 of chapter II, title 17, of the Code of Federal Regulations is proposed to be amended as follows:

PART 250—[AMENDED]

1. The authority citation for part 250 is amended by adding the following citation.

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

Section 250.45(b)(4) also issued under 15 U.S.C. 79*l*(b).

* * * * *

2. Section 250.45 is amended by revising paragraph (b)(4) to read as follows:

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

* * * * *

(b) *Exceptions.* * * *

(4) Capital contributions or open account advances, without interest, by a company to its subsidiary company.

* * * * *

3. Section 250.52 is revised to read as follows:

§ 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act and rules thereunder with respect to the issue and sale of any common stock, preferred stock, bond, note or other form of indebtedness, of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the business of such public-utility subsidiary company;

(2) The issue and sale of such security have been expressly authorized by the state commission of the state in which such subsidiary company is organized and doing business; and

(3) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act and rules thereunder with respect to the issue and sale of any common stock, preferred stock, bond, note or other form of indebtedness, of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the existing business of such subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(c) Within ten days after the issue or sale of any security exempt under this section, the issuer or seller shall file with the Commission a Certificate of Notification on Form U–6B–2 containing the information prescribed by that form. However, with respect to exempt financing transactions between associate companies which involve the repetitive issue or sale of securities or are part of an intrasystem financing program involving the issuance and sale of securities not exempted by this section, the filing of information on Form U–6B–2 may be done on a calendar quarterly basis.

(d) The acquisition by a company in a registered holding company system of any security issued and sold by an associate company, pursuant to this section, is exempt from the requirements of section 9(a) of the Act; provided that the exemption granted by this paragraph (d) shall not apply to any transaction involving the issue and sale of securities to form a new subsidiary company of a registered holding company.

Dated: July 7, 1992.

By the Commission.

Jonathan G. Katz,

Secretary.

Exhibit A

Regulatory Flexibility Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to rules 45 and 52 under the Public Utility Holding Company Act, [15 U.S.C. 79 *et seq.*], concerning exemptions for certain financings by subsidiaries of registered holding companies, will not, if promulgated, have a significant impact on a substantial number of small entities. The reason for this certification is that it does not appear that any small entities would be affected by the proposed rule amendments.

Dated: June 3, 1992.

Richard C. Breeden,

Chairman.

[FR Doc. 92-16503 Filed 7-13-92; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Chapter III

Mandatory Declassification Review Program

AGENCY: Office of National Drug Control Policy.

ACTION: Proposed rule and request for comments.

SUMMARY: Section 5.3(b) of Executive Order 12356 (April 2, 1982) requires agencies that originate or handle classified information to promulgate implementing regulations to carry out the Executive Order, and to publish those portions of the implementing regulations in the **Federal Register** that affect members of the public. The portions of an agency's security regulations that affect members of the public include, at a minimum, information relating to the agency's mandatory declassification review program and instructions for submitting suggestions or complaints regarding the agency's information security program.

On May 4, 1990, the President delegated to the Director of the Office of National Drug Control Policy (ONDCP) the authority to originally classify documents as Top Secret, Secret, or Confidential. The proposed regulations will fulfill the requirement that ONDCP, as an agency that originates classified information, publish the portion of its implementing regulations that affects the public. The proposed regulations describe how members of the public may request to have classified information reviewed for possible declassification, and how denials of requests for declassification may be appealed.

DATES: Comments must be submitted on or before September 14, 1992.

ADDRESSES: Written comments should be sent to the Office of the General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500.

FOR FURTHER INFORMATION CONTACT: Paul Cellupica, Office of the General Counsel, Office of National Drug Control Policy, Washington, DC 20500, (202) 467-9840.

SUPPLEMENTARY INFORMATION: The Office of National Drug Control Policy (ONDCP) was created by the Anti-Drug Abuse Act of 1988, Public Law 100-690, 21 U.S.C. 1501 *et seq.*, and was charged with the development and coordination of national policy toward illegal drugs. On May 4, 1990, the President delegated to the Director of ONDCP the authority to originally classify documents as Top Secret, Secret, or Confidential (55 FR 19235).

List of Subjects in 21 CFR Part 1402

Classified information.

For the reasons set out in the preamble, title 21 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. A new chapter III consisting of parts 1400 to 1499 is established in title 21 of the Code of Federal Regulations to read as follows:

CHAPTER III—OFFICE OF NATIONAL DRUG CONTROL POLICY

Part

1400–1401 [Reserved]

1402 Mandatory declassification review

1403–1499 [Reserved]

2. A new part 1402 is added to newly established chapter III to read as follows:

PART 1402—MANDATORY DECLASSIFICATION REVIEW

Sec.

1402.1 Purpose.

1402.2 Responsibility.

1402.3 Information in the custody of ONDCP.

1402.4 Information classified by another agency.

1402.5 Appeal procedure.

1402.6 Fees.

1402.7 Suggestions and complaints.

Authority: Section 3.4, E.O. 12356 (3 CFR, 1982 Comp., p. 166), and Information Security Oversight Office Directive No. 1 (32 CFR 2001.32).

§ 1401.1 Purpose.

Other government agencies, U.S. citizens or permanent resident aliens may request that classified information in files of the Office of National Drug Control Policy (ONDCP) be reviewed for possible declassification and release. This part prescribes the procedures for such review and subsequent release or denial.

§ 1402.2 Responsibility.

All requests for the mandatory declassification review of classified information in ONDCP files should be addressed to the Security Officer, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500, who will acknowledge receipt of the request. When a request does not reasonably describe the information sought, the requester shall be notified that unless additional information is provided, or the scope of the request is narrowed, no further action will be taken.

§ 1402.3 Information in the custody of ONDCP.

Information contained on ONDCP files and under the exclusive declassification jurisdiction of ONDCP will be reviewed by the Director of the Office of Planning, Budget, and Administration of ONDCP and/or the office of primary interest to determine whether, under the declassification provisions of Section 3.1 of Executive Order 12356 (3 CFR, 1982 Comp., p. 166), the requested information may be declassified. If so, the information may not be released, in whole or in part, the requester shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to the Director of ONDCP, and a notice that such an appeal must be filed within 60 days in order to be considered.

§ 1402.4 Information classified by another agency.

When a request is received for information that was classified by another agency, the Director of the Office of Planning, Budget, and Administration of ONDCP will forward the request and a copy of the document(s) along with any other related materials, to the appropriate agency for review and determination as to release. Recommendations as to release or denial may be made if appropriate. The requester will be notified of the referral, unless the receiving agency objects on the grounds that its association with the information requires protection.

§ 1402.5 Appeal procedure.

Appeals reviewed as a result of a denial will be routed to the Director of ONDCP, who will take action as necessary to determine whether any part of the information may be declassified. If so, the Director shall notify the requester of this determination and shall make any information available that is declassified and is otherwise releasable. If continued classification is required, the requester shall be notified by the Director of ONDCP of the reasons therefore.

§ 1402.6 Fees.

There will normally be no fees charged for the mandatory review of classified material for declassification under this part.

§ 1402.7 Suggestions and complaints.

Suggestions and complaints regarding the information security program of ONDCP should be submitted, in writing, to the Security Officer, Office of National Drug Control Policy, Washington, DC 20500.

Bob Martinez,

Director.

[FR Doc. 92–16319 Filed 7–13–92; 8:45 am]

BILLING CODE 3180–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of proposed changes to the Indiana Surface Mining Rules concerning ownership and control. The amendment defines what constitutes ownership and control of a surface mining operation; establishes actions to be taken to identify and correct improvidently issued permits; and resolves outstanding violations. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August 13, 1992; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on August 10, 1992; and, requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 29, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Roger W. Calhoun, Acting Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Acting Director, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendment

By letter dated May 11, 1989 (Administrative Record No. IND–0644), OSM informed Indiana of changes to the Federal regulations concerning ownership and control which may necessitate changes in the Indiana program.

By letter dated May 11, 1992, (Administrative Record No. IND–1080), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at 310 Indiana Administrative Code (IAC) 12–0.5, 12–3, and 12–6. The proposed amendment includes changes to the following Indiana rules;

Rule Number and Subject (Intended Action)

310 IAC 12–0.5–80.5 Definition of "owned or controlled". (New)

310 IAC 12–3–19 (Repeal)

310 IAC 12–3–19.1 Surface mining permit applications; identification of interests. (Replace; new)

310 IAC 12–3–20 Surface mining permit applications; compliance information. (Amend)

310 IAC 12–3–111 (Repeal)

310 IAC 12–3–111.1 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; review of permit applications. (New)

310 IAC 12–3–112 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit approval or denial. (Amend)

310 IAC 12–3–119.5 Administrative and judicial review of decisions by the director on permit applications; improvidently issued permits; general procedures. (New)

310 IAC 12–3–119.6 Administrative and judicial review of decisions by the director on permit applications; judicial review; improvidently issued permits; rescission procedures. (New)

310 IAC 12–6–5 State enforcement; cessation orders. (Amend)

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking

comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on July 29, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in Section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of * * *

* * * * *

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "**ADDRESSES**." A summary of the meeting will be included in the Administrative Record.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–16438 Filed 7–13–92; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 914

Indiana Regulatory Program Amendment

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of proposed changes to the Indian Surface Mining rules concerning the reclamation fee. The amendment is intended to set forth the requirements for payment of the reclamation fee established by Indiana Code (IC) 13–4.1–3–2.

This document sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August 13, 1992; if requested, a public hearing on the proposed amendment is schedule for 1 p.m. on August 10, 1992; and requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 29, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Roger W. Calhoun, Acting Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Acting Director, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed

explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, Federal Register (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated May 7, 1992, (Administrative Record No. IND–1079), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at 310 Indiana Administrative Code 12. The proposed amendment would repeal 310 IAC 12–3–8, 12–3–9, 12–8–4, and 12–8–8. A new rule would be added at 310 IAC 12–9. The new rule would address the applicability of the fee, fee payment, and production records.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on July 29, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue of the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "**ADDRESSES.**" A summary of the meeting will be included in the Administrative Record.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of * * *

* * * * *

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–16445 Filed 7–13–92; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Adminstrative Rule

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 57 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to revise one rule in the Ohio Administrative Code to change the locations at which applicants must file copies of permit applications, revisions, and renewals in order to allow public inspection of those documents.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August 13, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on August 10, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on July 29, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written

comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holiday. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone (614) 866–0578.

Ohio Department of Natural Resources Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION: .

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated May 12, 1992 (Adminstrative Record No. OH–1698), Ohio submitted proposed Program Amendment Number 57. In this amendment, Ohio is proposing to change the locations at which applicants must file copies of permit applications, revisions, and renewals in order to allow public inspection of those documents. Ohio is revising Ohio Administrative Code (OAC) 1501:13–5–01 paragraph (A)(4)(a) to read:

(a) The applicant shall make a full copy of the complete application for a permit, a significant permit revision, or a permit renewal available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the Chief at the Division of Reclamation district office responsible for inspection of the proposed operation or the office of the Soil Conservation Service of the United States Department of Agriculture located in the county where the mining is proposed to occur. If neither such office is maintained in the county where the mining is proposed to occur, the applicant shall file a copy of the application with the county recorder of that county.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on July 29, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of section 2(a) and 2(b) of Executive Order 12778. Under SMCRA section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 26, 1992.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–16446 Filed 7–13–92; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 25, 260, 261, 262, 264, and 268

[FRL–4153–8]

Extension of Comment Period

AGENCY: Environmental Protection Agency

ACTION: Notice of extension of comment period.

SUMMARY: EPA is formally extending the comment period of the Hazardous Waste Identification Rule (57 FR 21450) from July 20, 1992 until July 24, 1992. The proposed rule contained a number of different options for exempting low-toxicity wastes under Subtitle C of RCRA. This extension will allow interested parties who participated in the four, one-day Roundtable Discussions sponsored by the Agency on the proposed rule, as well as all other interested parties, four extra days to submit comments.

DATES: The formal comment period is extended from July 20, 1992 until July 24, 1992.

ADDRESSES: Consistent with the proposal, the public must send an original and two copies of their comments to: EPA RCRA Docket (S–212) (OS–305), 401 M Street, SW., Washington, DC 20460.

"Docket Number F–92–HWEP–FFFFF" must be placed on the comments. The RCRA Docket is located in room 2427 at the above address, and is open from 9 a.m. until 4 p.m., Monday through Friday, excluding Federal Holidays. The public must make an appointment to review docket materials by calling (202) 260–9327.The public may copy materials from any regulatory docket at a cost of $0.15 per page.

FOR MORE INFORMATION CONTACT: For information on substantive matters, please contact William A. Collins, Jr., of the Waste Identification Branch, at (202) 260–4791.

Dated: July 9, 1992.

Sylvia K. Lowrance,

Director, Office of Solid Wastes.

[FR Doc. 92–16488 Filed 7–13–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 80

[AMS–FRL–4154–1]

Regulation of Fuels and Fuel Additives; Standards for Reformulated and Conventional Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: This document announces the extension of the comment period for the Supplemental Notice of Proposed Rulemaking (SNPRM) entitled "Regulation of Fuels and Fuel Activities; Standards for Reformulated and Conventional Gasoline" published on April 16, 1992 (57 FR 13416). As indicated in the Notice of Relocation and Rescheduling of Public Hearing and Extension of Comment Period published on May 28, 1992 (57 FR 22449), the comment period for this rule was extended until July 10, 1992. Due to the length of the hearing, the need to receive responses to the issues raised, and the volume of material submitted, the comment period for the Supplemental Notice has been extended to August 14, 1992, to allow interested parties to comment on any specific provisions contained in the SNPRM which were not in the Notice of Proposed Rulemaking (NPRM) for the rule published July 9, 1991 (56 FR 31176), or to submit information to supplement or rebut testimony presented at the hearing. The comment period for the NPRM is also extended until that date.

DATES: Comments on the NPRM and the Supplemental Notice described above will be accepted until August 14, 1992.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–91–02 at the following address: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joanne I. Goldhand, SDSB–12; U.S. EPA, Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, 313/668–4504.

SUPPLEMENTARY INFORMATION: For further information on this matter, please refer to EPA's April 16, 1992 **Federal Register** Supplemental Notice of Proposed Rulemaking at 57 FR 13416.

Dated: July 7, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–16487 Filed 7–13–92; 8:45 am]

BILLING CODE 6560–50–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 15)]

Railroad Consolidation Procedures: Class Exemption for Transactions Subject to the Statutory Consolidation Provision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to expand the "nonconnecting carrier" class exemption to embrace all transactions subject to the statutory consolidation provision, with the exception of transactions falling within any of three readily ascertainable categories. Those categories encompass the following types of transactions: (1) Those involving the merger or control of at least two class I railroads; (2) those involving a reduction in the number of noncommonly-controlled railroads conducting operations between any two points; and (3) those involving a reduction from three to two in the number of noncommonly-controlled railroads serving any interchange point. Establishment of the broader exemption will relieve rail carriers of the burden of filing, and will relieve the Commission of the burden of handling, numerous individual requests.

DATES: Comments must be submitted by August 30, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 282 (Sub-No. 15) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, we are required to examine the impact of a proposed action on small entities. We preliminarily conclude that the action proposed in this proceeding will not have a significant impact on a substantial number of small entities.

But, to the limited extent that the proposed action will have an impact on small entities, that impact will be a positive one. The general purpose of the proposed expansion of the § 1180.2(d)(2) class exemption is to minimize regulatory involvement in private sector rail transactions. The present § 1180.2(d)(2) class exemption has been

invoked, and the proposed new § 1180.2(d)(2) class exemption will be invoked for the most part, by class II and III rail carriers. The lessening of regulatory oversight of the transactions entered into by these carriers should reduce the expenses the carriers must incur to process the transactions.

We invite public comments on the issue of the economic impact of our proposal on small entities.

List of Subjects in 49 CFR Part 1180

Railroads.

Decided: June 23, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Vice Chairman McDonald commented with a separate expression. Commissioner Simmons concurred with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 is proposed to be revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11341, and 11343–11346; 5 U.S.C. 553 and 559; 11 U.S.C. 1172; and 45 U.S.C. 904 and 915.

2. In § 1180.2, paragraph (d)(2) is proposed to be revised to read as follows:

§ 1180.2 Types of transactions.

* * * * *

(d) * * *

(2) Any transaction that requires the approval and authorization of the Commission under 49 U.S.C. 11343, provided that the transaction does not involve:

(i) The merger or control of a least two class I railroads;

(ii) A reduction in the number of noncommonly-controlled railroads conducting operations between any two points; or

(iii) A reduction from three to two in the number of noncommonly-controlled railroads serving any interchange point.

* * * * *

[FR Doc. 92–16490 Filed 7–13–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Four Endemic Puerto Rican Ferns

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine four endemic Puerto Rican ferns, *Adiantum vivesii* (no common name), *Elaphoglossum serpens* (no common name), *Polystichum calderonense* (no common name), and *Tectaria estremerana* (no common name), to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Adiantum vivesii and *Tectaria estremerana* have each been reported from only one locality in the limestone hills of northern Puerto Rico. *Elaphoglossum serpens* is found at a single site in the montane dwarf forest of the summit of Cerro Punta in the central mountains. *Polystichum calderonense* is known from only two localities, Monte Guilarte Commonwealth Forest and Cerrote Peñuelas. These ferns are threatened by destruction and modification of habitat, forest management practices, hurricane damage, and possible collection. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Adiantum vivesii*, *Elaphoglossum serpens*, *Polystichum calderonense*, and *Tectaria estremerana*. The Service seeks data and comments from the pubic on this proposal.

DATES: Comments from all interested parties must be received by September 14, 1992. Public hearing requests must be received by August 28, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera at the Caribbean Field Office address (809/851–7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331–3583 or FTS 242–3583).

SUPPLEMENTARY INFORMATION:

Background

Adiantum vivesii was described by Dr. George R. Proctor in 1985 from specimens collected by Mr. Miguel Vives and Mr. William Estremera at Barrio San Antonio in the municipality of Quebradillas (Proctor 1989). At present, the species is only known from this locality. A single colony of an estimated 1000 plants, or growing species, has been reported from the locality (Proctor 1991). This species occurs in a deeply shaded hollow at the base of north-facing limestone cliffs at a lower to middle elevation of approximately 250 meters.

Adiantum vivesil is a gregarious colonial fern with creeping, nodose, and 2.5–3.0 mm thick rhizomes. The fronds are distichous and erect-spreading, approximately 0.5 cm apart and 45–71 cm long. The stipes or stalks are lustrous purple-black, 25–46 cm long, irregularly branched and have hairlike scales. The frond's blades are broad and irregular, 20–28 cm long, and 23–35 cm broad. The rachis and costae are more densely covered with hairlike scales than the stipe. The blades have 2 or 3 alternate or sometimes subopposite pinnae, with a larger terminal one. These are lance-oblong, 13–20 cm long, and 3.5–5 cm broad. The terminal pinna may be up to 7 cm broad, stalked, and is often somewhat inequilateral. Each pinna has 10–13 pairs of alternate, narrowly oblong-falcate pinnules, which are unequally cuneate at the base. The outer sterile margins of the pinna are irregularly serrulate and the tissue is dull green on both sides. Five elliptic to linear sori are borne along the basal half of acroscopic margin and they are close or contiguous but distinct. The indusioid is gray-brown, turgid, with an erose margin (Proctor 1989).

A. vivesil occurs on privately-owned land, and is known from only a single locality (Proctor 1991). Clearing or development of this area would result in elimination of the only known population. Also, this species could be an attractive item for collectors.

Elaphoglossum serpens was described by Maxon in 1947 from specimens on tree trunks at Monte Jayuya (Liogier and Martorell 1982), but the fern is now extirpated from this site due to construction of a communication facility. It was later found by Roy O. Woodbury and others on the summit of Cerro Punta (Proctor 1991). Most of the plants at the Cerro Punta site have been

destroyed by the construction of telecommunication towers (Proctor 1991). At present, 22 plants are known from the summit area, all occurring on the mossy trunks of only 6 trees (Proctor 1991). These trees are found in a patch of a montane dwarf forest at an elevation of about 1300 meters. This patch of forest is all that has survived the encroachment of telecommunication towers, and was badly damaged in 1989 by Hurricane Hugo (Proctor 1991).

Elaphoglossum serpens is an epiphytic fern with a wide-creeping, 1.5-2 mm thick rhizome. The apex and nodes bear lustrous reddish-brown scales with ciliate margins which are lanceolate to attenuate and 3–4 mm long. This species has only a few, distant, and erect fronds. Sterile fronds are 7–19 cm long and the stipes, from 3.5–11 cm in length, are usually as long or longer than the blades. The blades are ovate, 3.5–8 cm long and 2–3.5 cm broad, obtuse at the apex, cuneate at the base. The veins are free, reaching the margins of the blades. The coriaceous tissue is opaque with only scattered scales on the abaxial side. The fertile fronds are 8.5–18 cm long, and in contrast to the sterile fronds the stipes are about three times longer than the blades. The blades are lanceolate to elliptic-oblong with rounded or blunt apex, 2.5–4.5 cm long and 1–1.5 cm broad.

Polystichum calderonense was described by Dr. George Proctor in 1985 from specimens collected from the summit of La Silla de Calderón, Monte Guilarte Commonwealth Forest, in the municipality of Adjuntas (Proctor 1989). A second population was found in 1987 on Cerrote de Peñuelas, in the municipality of Peñuelas, by Dr. Proctor with Dr. Haneke (Proctor 1991). At present this species is known to occur only at these two localities. The plants grow on moist, shaded, non-calcareous ledges on mountain tops at elevations of 1000–1150 meters. Fifty-seven individual plants are known from the two localities: 45 (including juveniles) on La Silla de Calderón and 12 on Cerrote Peñuelas (Proctor 1991).

Both sites were identified by Proctor (1991) as vulnerable to indiscriminate cutting or fires. In Peñuelas, the plants are on private land which may be affected by industrial or residential development.

Polystichum calderonese is an evergreen terrestrial fern. It has a curved-ascending, 7 mm thick rhizome which is clothed at the apex with lanceolate to oblong, curved, shining black, marginate scales up to 10 mm long. Its fronds are erect to spreading and may reach 60 cm in length. The twice-pinnate blades are lanceolate, 25–40 cm long, 6–14 cm broad, and narrowed and truncate at the apex. Blades terminate in a scaly proliferous bud which is somewhat narrowed toward the base. This species has 30–36 pairs of oblique, short-stalked pinnae. It has a characteristic 4–7 cm long and 0.9–1.3 cm broad middle pinnae, with 8–10 pairs of free pinnules. The tissue is dark green, rigid, and opaque. From 1 to 5 sori are found dorsally on the veins of each pinnule, but are not clearly arranged in rows. The sori are covered by a light brown, deciduous, thin indusium.

Tectaria estremerana was described by Proctor and Evans in 1984 from specimens collected by William Estremera at Barrio Esperanza, Arecibo, in the vicinity of the Arecibo Radio Telescope (Proctor 1988). This species is found in moist shaded humus on and among limestone boulders on a wooded rocky hillside at an elevation of 250–300 meters (Proctor 1989). This fern is known only from this site, where a total of 23 individual plants were found. The site is about 200 meters south of the Arecibo Radio Telescope, and any expansion or development of the facilities may adversely affect the habitat of this endemic fern (Proctor 1991).

Tectaria estremerana has a woody, erect, 10–15 mm thick rhizome. The rhizome's apex bears a dense tuft of erect, brown, glabrous, narrowly deltate-at-tenuate scales about 15 mm long and 0.5–0.8 mm wide at the base. This fern has several loosely fasciculate, 65–80 cm long fronds. The light orange-brown stripes are shorter or nearly as long as the blades and are covered with pale jointed hairs. Scales up to 12 mm long clothe the base. The blades are oblong-ovate, 35–41 cm long, 20–25 cm broad below the middle, and acuminate at the pinnatifid apex. The rachis, the costae, and the costules are softly puberulous with articulate hairs on both sides. This fern has 3–4 pairs of free pinnae, and has several distal divisions which more or less adnate. The basal pair of pinnae is deltate-oblong, strongly inequilateral, 12–13 cm long, coarsely lobate or subpinnatifid. The lobes are from 9 to 13 mm broad except for the larger basal basiocopic ones. Its tissue is firmly herbaceous, glabrous, but the margins are ciliate. The sori are located nearer to the midvein than the margin of the pinna-lobes.

Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense, and *Tectaria estremerana* were recommended for Federal listing in an interagency workshop held to discuss candidate plants in September 1988.

The species were subsequently included as category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the February 21, 1990 (55 FR 6184) notice of review.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) 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 lists. 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 *Adiantum vivesii* Proctor, *Elaphoglossum serpens* Maxon & Maxon ex Maxon, *Polystichum calderonense* Proctor, and *Tectaria estremerana* Proctor & Evans, are as follows:

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

Destruction and modification of habitat may be the most significant factors affecting the numbers and distribution of these four endemic ferns. Three of the species (*Adiantum vivesii, Elaphoglossum serpens,* and *Tectaria estremerana*) are each known from only one site, all of which are privately-owned lands. The construction of communication facilities at Monte Jayuya destroyed the only other known population at *Elaphoglossum serpens* and such facilities encroach upon the population at Cerro Punta. It appears that this species is in extreme danger of extinction. Although one small population at *Polystichum calderonense* occurs within the Guilarte Commonwealth Forest, this population may be affected by forest management practices. These four fern species are rare, extremely restricted in distribution, and very vulnerable to habitat destruction or modification. The extreme rarity of these species makes the loss of any one individual even more critical.

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

Taking for these purposes has not been a documented factor in the decline of these fern species. However, these four species may be very attractive for collectors.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of these species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, enhance their protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Probably the most important factor affecting *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense, and Tectaria estremerana* is their limited distribution. The patch of forest where *Elaphoglossum serpens* is found was badly damaged in 1989 by Hurricane Hugo.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana* as endangered. Only one population each of *Adiantum vivesii, Elaphoglossum serpens,* and *Tectaria estremerana* is known. Only two populations of *Polystichum calderonense* are known to occur. Collecting may severely impact these populations. Habitat modification, including indirect effects that alter microclimatic conditions, may dramatically affect these four endemic fern species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. The number of populations of *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana* is sufficiently small that vandalism and collection could seriously affect the survival of these species. Taking is an activity that is difficult to control, and it is only regulated by the Act with respect to endangered plants in cases of (1) removal and reduction to possession of these plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying these plants in knowing violation of any State law or regulation, including State criminal trespass law. Publication of critical habitat descriptions and maps in the **Federal Register** would only increase the likelihood of such activities and would not provide offsetting benefits. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitats. Protection of these species' habitats will also be addressed through the recovery process and through the Section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for these four fern species, as discussed above. Federal involvement is not anticipated where the species are known to occur.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for these four species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Request for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as

possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of 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 *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana;*

(2) The location of any aditional populations of these four fern 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 and distribution of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on any of these four species.

Final promulgation of the regulations on *Adiantum vivesii, Elaphoglossum serpens, Polystichum calderonense,* and *Tectaria estremerana* will take into consideration the comments and any additional information received by the Service, and such communcations may lead to adoption of a final regulation that differs from this proposal.

The Endangered Spices Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean field Office, U.S. Fish and Wildlife Service, P.O. bOX 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the 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).

References Cited

Liogier, H.A., and L.F. Martorell. 1982. Flora of Puerto Rico and adjacent islands: a systematic synopsis. University of Puerto Rico, Rio Piedas, Puerto Rico. 342pp.

Proctor G.R.1988. Status of Puerto Rican Endemic Ferns. List presented in the Interagency Workshop on candidate plant species. Caribbean Islands National Wildlife Refuge, Boquerón, Puerto Rico.

Proctor, G.R. 1989. Ferns of Puerto Rico and the Virgin Islands. The New York Botanical Garden, Bronx, New York. 389pp.

Proctor, G.R. 1991. Puerto Rican Plant Species of Special Concern; Status and Recommendations. Publication Cientifica Miscelánea No. 2, Departamento de Recursos Naturales, San Juan, Puerto Rico. 196 pp.

Author

The primary author of this proposed rule is Ms. Marelisa Rivera, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed 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. Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding in alphabetical order the family Dryopteridaceae, the family Lomariopsidaceae, the family Sinopteridaceae, and the following entries to the List of Endangered and Threatened Plants:

§ 17.2 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * *	* * *	* * *	*	*		
Dryopteridaceae—Wood-fern family:						
Tectaria estremerana	None	U.S.A. (PR)	E		NA	NA
* * *	* * *	* * *	*	*		
Lomariopsidaceae—Vine-fern family:						
* * *	* * *	* * *	*	*		
Elaphoglossum serpens	None	U.S.A. (PR)	E		NA	NA
* * *	* * *	* * *	*	*		
Polystichum calderonense	None	U.S.A. (PR)	E		NA	NA
* * *	* * *	* * *	*	*		
Sinopteridaceae Maiden-hair family:						
* * *	* * *	* * *	*	*		
Adiantum vivesii	None	U.S.A. (PR)	E		NA	NA
* * *	* * *	* * *	*	*		

Dated: June 26, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–16372 Filed 7–13–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 135
Tuesday, July 14, 1992

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

Animal and Plant Health Inspection Service

[Docket No. 92-087-1]

Proposed Interpretive Ruling in Connection with Calgene, Inc. Petition for Determination of Regulatory Status of FLAVR SAVR™ Tomato

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of proposed interpretive ruling.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from Calgene, Inc., seeking a determination regarding the regulatory status of its FLAVR SAVR™ tomato. APHIS is requesting comments on its proposal to issue an interpretive ruling that the FLAVR SAVR™ tomato does not present a plant pest risk, and therefore, would no longer be considered a regulated article under its regulations.

DATES: Consideration will be given only to written comments that are received on or before August 28, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-087-1. A copy of the Calgene submission and any written comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of the Calgene petition may be obtained by contacting Ms. Kay Peterson at 301-436-7601.

FOR FURTHER INFORMATION CONTACT: Michael A. Lidsky, Deputy Director, or Sally L. McCammon, Chief, Domestic Programs Branch, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7601.

SUPPLEMENTARY INFORMATION: On June 2, 1992, the Animal and Plant Health Inspection Service (APHIS) received a "Petition for Determination of Regulatory Status" from Calgene, Inc. (Calgene), of Davis, CA. The Calgene petition seeks a determination from APHIS that its FLAVR SAVR™ tomato no longer be considered a "regulated article" under regulations in 7 CFR part 340 (the regulations).

The FLAVR SAVR™ tomato has been described by Calgene as a tomato cultivar or progeny of a tomato line which contains an antisense copy of the constituent polyglacturonase gene which, when transcribed, results in delayed ripening of the tomato fruit.

The Calgene petition states that the FLAVR SAVR™ tomato should no longer be regulated by APHIS because it does not present a plant pest risk. The FLAVR SAVR™ tomato is currently considered a regulated article under the regulations because it was developed through the use of vectors, promoters, and terminators from plant pathogenic sources. However, as indicated in the petition, the vectors used in producing the FLAVR SAVR™ tomato were disarmed, and the other plant pathogen derived elements did not present a risk of plant pest introduction or dissemination. The field testing of the FLAVR SAVR™ tomato indicates that it does not present a plant pest risk.

Under the regulations, a genetically engineered plant or other organism is a regulated article, subject to regulatory oversight by APHIS, if it is a plant pest or it is unclassified or the Deputy Administrator has reason to believe it is a plant pest. Based on reviews for a number of field tests of the FLAVR SAVR™ tomato and the information in the petition submitted by Calgene, APHIS believes that the FLAVR SAVR™ tomato is not a plant test, and that there is no reason to believe that it may be a plant pest or otherwise presents any plant pest risk. Therefore, APHIS is proposing to issue a ruling that the FLAVR SAVR™ tomato is not a regulated article under its regulations. APHIS is requesting comments on the petition and the proposed ruling.

After reviewing the data submitted by the petitioner, written comments received during the comment period, as well as other relevant literature, and interpreting the application of statutes and regulations to these data and comments, APHIS will issue its interpretive ruling regarding the regulatory status of the FLAVR SAVR™ tomato. A notice of the ruling and its availability will be published in the **Federal Register.**

Done at Washington, DC, this 8th day of July 1992.

Robert Melland,

Administration, Animal and Plant Health Inspection Service.

[FR Doc. 92-16348 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Katka Peak Timber Sales; Idaho Panhandle National Forests; Boundary County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: On April 3, 1989, notice was published in the **Federal Register** (FR 13395) that an environmental impact statement would be prepared to assess the effects of timber harvest and road construction within the Katka Peak roadless area on the Bonners Ferry Ranger District, Idaho Panhandle National Forests.

That notice is hereby cancelled.

Analysis of this project began on schedule, but was delayed due to budgetary constraints. Further data collection and analysis after that date indicated that the scope of the proposed action would significantly change. A new Notice of Intent to prepare an environmental impact statement will appear in the **Federal Register** later this month.

DATE: This action is effective on July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Mike Grant, NEPA Coordinator, Bonners Ferry Ranger District, Route 4 Box 4860, Bonners Ferry, Idaho 83805, (208) 267-5561.

Dated: July 6, 1992.

Debbie Henderson-Norton,

District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forests.

[FR Doc. 92-16429 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-11-M

Revised Land and Resource Management Plan for the National Forests in Florida; Baker, Columbia, Franklin, Lake, Leon, Liberty, Marion, Okaloosa, Putnam, Wakulla, and Walton Counties, Florida

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement for a proposed action to revise the National Forests in Florida Land and Resource Management Plan pursuant to 16 U.S.C. 1604(f)(5) and 36 CFR 219.12.

The agency invites written comments and suggestions within the scope of the analysis. In addition, the agency gives notice that a full environmental analysis and decision-making process will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

In accordance with 40 CFR 1501.6, the Bureau of Land Management will be a cooperating agency.

DATES: Comments concerning the analysis should be received by August 28, 1992, to ensure timely consideration.

ADDRESSES: Submit written comments and suggestions to: Steve Fitch, Forest Supervisor; National Forests in Florida, Suite 4061, 227 N. Bronough St., Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Mark Warren, Planning Staff Officer, (904) 681-7265.

SUPPLEMENTARY INFORMATION: The Record of Decision for the current National Forests in Florida Land and Resource Management Plan (Forest Plan) was approved on January 6, 1986. That decision was appealed.

One appeal was dismissed. The Regional Forester entered into a period of negotiation with the other two appellants in an effort to reach a settlement agreement with them. It became evident that an agreement on all issues would not be reached. As a result, the Regional Forester directed the Forest Supervisor to prepare a supplement to the final environmental impact statement for the Forest Plan that would address issues discussed during the settlement negotiations and to accommodate other changes that were needed to reflect current conditions.

In 1990, while the Forest process was underway, the Regional Forester initiated a process to develop long-term direction for management of the red-cockaded woodpecker. It became apparent that the results of the latter process would have a major impact on management of large parts of the National Forests in Florida. Since one of the issues being addressed in the Florida supplement was red-cockaded woodpecker management, the Florida process was synchronized with the Regional process to avoid preemption of the decisions to be made in the Regional process.

The National Forests in Florida were scheduled to begin review and revision of the Forest Plan in 1993, with the goal of completing the revision process within ten years of the date of the current Forest Plan (1986). Because completion of the supplement to the final environmental impact statement would likely occur near the scheduled initiation of the revision, the Regional Forester has concluded that this current process of reevaluation of the Plan should be conducted within the context of a revision rather than as an amendment. Doing so will make better use of the public involvement and reassessment accomplished to date. Accordingly, on April 23, 1992, the Chief of the Forest Service authorized the Forest to revise the Forest Plan and directed that the current Forest Plan, as amended, will remain in effect and continue to be implemented during the re-analysis and preparation of the environmental impact statement.

The scope of the revision and decisions to be made include:

(1) Establishment of multiple-use goals and objectives;

(2) Establishment of forest-wide management requirements (standards and guidelines);

(3) Establishment of management areas and management area direction (management area prescriptions), which will include development of desired future condition statements for the management areas;

(4) Determination of land that is suitable for timber production;

(5) Establishment of allowable sale quantity for timber;

(6) Nonwilderness allocations or wilderness recommendations of roadless areas;

(7) Recommendations for Wild and Scenic River designations;

(8) Determination of lands that will be available for gas and oil leasing, specific lands for which consent to lease will be permitted, and stipulations for areas where surface occupancy will be restricted or prohibited; and

(9) Establishment of monitoring and evaluation requirements.

Preliminary issues have been identified as a result of the two appeals of the Forest Plan; the 5-year Review of the Forest Plan; and monitoring and evaluation of implementation of the Forest Plan. In order to address the preliminary issues that have been identified, the Forest will:

(1) Describe various acreages and criteria for locations where the native pine/wiregrass community will be managed, and the mixes of timber harvest, site preparation, reforestation and prescribed burning methods to be used in managing the community;

(2) Analyze different mixes of timber harvest, regeneration, and timber stand improvement on land suitable for timber harvest within forested communities including, among others, longleaf pine, slash pine, loblolly pine, sand pine, and hardwoods;

(3) Analyze different strategies for implementation of the Region 8 red-cockaded woodpecker management direction as will be described in a future decision by the Regional Forester (new information that becomes available after publication of that decision may also need to be considered);

(4) Examine various amounts of hardwood mast areas;

(5) Look at different levels of pine restoration on titi-encroached areas and the procedures for doing it;

(6) Analyze different methods for managing savannahs;

(7) Propose different procedures and mitigating measures for plowing firelines;

(8) Examine different combinations of areas where off-highway vehicle use would be regulated to various degrees; and

(9) Analyze different recreation experience levels for the developed recreation sites and dispersed recreation areas on the National Forests in Florida. Any additional significant issues identified during the scoping process will also be addressed.

In preparing the environmental impact statement, the Forest Service will develop, as a minimum, the following range of alternatives:

(1) The current program (no action);

(2) One that emphasized market opportunities;

(3) One that emphasizes nonmarket opportunities;

(4) One that emphasizes meeting the most recent RPA Program; and

(5) Other alternatives necessary to respond to the full range of public issues, management concerns, and resource use and development opportunities.

Public participation will be especially important at several points during the project analysis process. The first point in the analysis is the scoping process (40 CFR 1501.7). The scoping process includes:

(1) Identifying potential issues (other than those previously described),

(2) From these, identifying significant issues to be analyzed in depth,

(3) Eliminating from detailed study insignificant issues or those which have been covered by prior environmental review,

(4) Exploring additional alternatives, and

(5) Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be utilized in the preparation of the draft environmental impact statement. Public participation will be solicited by notifying in person and/or by mail known interested and affected publics and key contacts, news releases will be used to give the public general notice, and scoping meetings will be conducted. The public will be notified of the time and location of the meetings at some time in the future.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency and to be available for public review by March 1993. At that time, the Environmental Protection Agency will publish a notice of availability of the draft environmental impact statement in the **Federal Register.**

The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the draft environmental impact statement, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by August 1993. The responsible official will consider the comments, responses, environmental consequences discussed in the final environmental impact statement, and applicable laws, regulations, and policies in making a decision regarding this revision. The responsible official will document the decision and reasons for the decision in the Record of Decision. The decision will be subject to appeal in accordance with 36 CFR part 217.

The responsible official is John E. Alcock, Regional Forester, Southern Region, 1720 Peachtreee Road, NW., Atlanta, Georgia 30367.

Dated: July 8, 1992.

Marvin C. Meier,

Deputy Regional Forester.

[FR Doc. 92-16461 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-11-M

Land and Resource Management Plan for the National Forests in Florida, Baker, Columbia, Franklin, Lake, Leon, Liberty, Marion, Okaloosa, Putnam, Wakulla and Walton Counties in Florida

AGENCY: Forest Service, USDA.

ACTION: Notice; Cancellation of intent to supplement an environmental impact statement.

SUMMARY: The Forest Service has withdrawn its Notice of Intent to supplement an environmental impact statement to amend the National Forests in Florida Land and Resource Management Plan.

The Notices of Intent, published in the **Federal Register** of March 21, 1990; and February 5, 1991; are hereby rescinded (55 FR 10476-10477, 56 FR 4594).

FOR FURTHER INFORMATION CONTACT: Mark Warren, Planning Staff Officer, National Forests in Florida, Suite 4061, 227 N. Bronough St., Tallahassee, Florida 32301; (904) 681-7265.

SUPPLEMENTARY INFORMATION: The Record of Decision for the current National Forests in Florida Land and Resource Management Plan (Forest Plan) was approved on January 6, 1986. That decision was appealed.

One appeal was dismissed. The Regional Forester entered into a period of negotiation with the other two appellants in an effort to reach a settlement agreement with them. It became evident that an agreement on all issues would not be reached. As a result, the Regional Forester directed the Forest Supervisor to prepare a supplement to the final environmental impact statement (FEIS) for the Forest Plan that would address issues discussed during the settlement negotiations and to accommodate other changes that were needed to reflect current conditions.

In 1990, while the Forest process was underway, the Regional Forester initiated a process to develop long-term direction for management of the red-cockaded woodpecker. It became apparent that the results of the latter process would have a major impact on management of large parts of the National Forests in Florida. Since one of the issues being addressed in the Florida supplement was red-cockaded woodpecker management, the Florida process was synchronized with the Regional process to avoid preemption of the decisions to be made in the Regional process.

The National Forests in Florida were scheduled to begin review and revision of the Forest Plan in 1993, with the goal

of completing the revision process within ten years of the date of the current Forest Plan (1986). Because completion of the supplement to FEIS would likely occur near the scheduled initiation of the revision, the Regional Forester has concluded that this current process of reevaluation of the Plan should be conducted within the context of a revision rather than as an amendment. Doing so will make better use of the public involvement and reassessment accomplished to date. Accordingly, on April 23, 1992, the Chief of the Forest Service authorized the Forest to revise the Forest Plan.

A notice will appear in the **Federal Register** announcing the Notice of Intent to prepare an environmental impact statement for a revision of the National Forests in Florida Land and Resource Management Plan.

Dated: July 8, 1992.

Marvin C. Meier,

Deputy Regional Forester.

[FR Doc. 92-16460 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Public Meeting on Lien Accommodations; Official Record Held Open Until July 17, 1992

AGENCY: Rural Electrification Administration, USDA.

ACTION: Extension of official record to July 17, 1992, for public meeting on lien accommodations.

SUMMARY: This is to notify electric systems financed by the Rural Electrification Administration (REA), lenders, and other interested persons that the official record of the public meeting on lien accommodations held on June 30, 1992, will be kept open until July 17, 1992.

DATES: Anyone, whether or not they made a presentation at the public meeting, wishing to submit written comments or other written materials for inclusion in the official record must do so by July 17, 1992. Such materials must be received by REA as of that date, in order to be included in the official record of the meeting.

ADDRESSES: Written comments and other written materials should be sent to Blaine D. Stockton Jr., Assistant Administrator, Economic Development and Technical Services, Rural Electrification Administration, room 4025-S, 14th & Independence Avenue, SW., Washington, DC 20250-1500.

FOR FURTHER INFORMATION CONTACT: John H. Arnesen, Assistant Administrator—Electric, Rural Electrification Administration, room 4037-S, 14th & Independence Avenue, SW., Washington, DC 20250-1500. Telephone (202) 720-9545.

SUPPLEMENTARY INFORMATION: For further information, consult the notice of the meeting published in the **Federal Register** on June 1, 1992 (57 FR 23076). Beginning approximately July 9, 1992, a transcript of the meeting will be available for public inspection in room 2234-S at REA, 14th & Independence Avenue, SW., Washington, DC, during regular business hours.

Authority: 7 U.S.C. 901 *et seq.*

Dated: July 8, 1992.

Administrator.

James B. Huff, Sr.,

[FR Doc. 92-16477 Filed 7-13-92; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1993 New York City Housing and Vacancy Survey.

Form Number(s): H-100, H-105, H-108.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 9,014 hours.

Number of Respondents: 18,300.

Avg Hours Per Response: 26 minutes.

Needs and Uses: The Census Bureau will conduct this survey for the New York City Department of Housing Preservation and Development. New York Law requires a survey every three years to determine the supply, condition, and vacancy rate of housing in the city. The city will use the results of the survey to develop programs and policies that aim to improve housing conditions.

Affected Public: Individuals or households.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 8, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-16466 Filed 7-13-92; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Assets and Expenditures Survey.

Form Number(s): Various.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 93,200 hours.

Number of Respondents: 52,500.

Avg Hours Per Response: 1 hour and 48 minutes.

Needs and Uses: The Census Bureau will conduct the 1992 Assets and Expenditures Survey as part of the 1992 Economic Censuses which are the primary source of facts about the structure and functioning of the Nation's economy. In this survey, Census will collect information on assets and expenditures from a sample of business units that represent one or more domestic establishments in the wholesale, retail, and service industries. The survey will supplement the basic economic statistics produced by the 1992 Censuses of Wholesale Trade, Retail Trade, and Service Industries with estimates for value of depreciable assets, capital expenditures, and operating expenses. Further, it will provide measures of value produced for wholesale and retail trade. A more specific objective of this survey is to implement recommendations made by the Advisory Committee on Gross National Product Data Improvement (under the auspices of OMB) in their *Gross National Product Data Improvement Project Report*, 1977. This survey fills important gaps in underlying data for the national economic accounts, as identified by that report.

Affected Public: State or local governments, Businesses or other for-profit organizations, Non-profit

institutions, Small businesses or organizations.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 8, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–16467 Filed 7–13–92; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held August 6, 1992, 9:30 a.m., Herbert C. Hoover Building, room 1617–M, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda: General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Review of Recent EAR Revisions Including General License GATS.
5. Review of Recent Jurisdictional Changes, Including Developmental Aircraft/Components, and Communicating Satellites.
6. Review of Revisions to the Missile Technology Control Regime.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: U.S. Department of Commerce/BXA, Office of Deputy Assistant Secretary for Export Administration, 14th & Constitution Avenue, NW., room 1621, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 28, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call 202–377–4959.

Dated: July 9, 1992.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit Office of the Deputy Assistant Secretary for Export Administration.

[FR Doc. 92–16468 Filed 7–13–92; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[C–333–502]

Deformed Steel Concrete Reinforcing Bar From Peru; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: On December 23, 1991, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on deformed steel concrete reinforcing bar from Peru for the period January 1, 1990 through December 31, 1990. The Department has now decided to terminate this review.

EFFECTIVE DATE: July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786 or 377–0983.

BACKGROUND: On December 2, 1991, the Department received a request for an administrative review of this countervailing duty order from the Government of Peru, for the period January 1, 1990 through December 31, 1990. On December 23, 1991, we published a notice initiating that administrative review (56 FR 66429). On May 6, 1992, the Government of Peru withdrew its request.

Section 355.22(a)(3) of the Department's Countervailing Duty Regulations (19 CFR 355.22(a)(3)) stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. This regulation also provides that the Secretary may extend the time limit for withdrawal of a request if it is reasonable to do so.

Because the Government of Peru's request does not unduly burden the Department under the circumstances presented in this review, we are waiving the 90-day requirement in 19 CFR 355.22(a)(3). Accordingly, we are terminating this review.

This notice is published pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(1)), and 29 CFR 355.22.

Dated: July 6, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–16507 Filed 7–13–92; 8:45 am]

BILLING CODE 3510–DS–M

[C–559–001]

Certain Refrigeration Compressors From the Republic of Singapore; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. We preliminarily determine that the signatories have complied with the terms of the suspension agreement during the period April 1, 1990 through March 31, 1991. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Megan Pilaroscia or Jean Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1991, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (56 FR 56982) of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore (48 FR 51167, November 7, 1983). On November 27, 1991, the petitioner, Tecumseh Products Company, requested an administrative review of the suspension agreement. We initiated the review, covering April 1, 1990 through March 31, 1991, on December 23, 1991 (56 FR 66429). The Department has conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review in this case were published on December 5, 1991 (56 FR 63713).

Scope of Review

Imports covered by this review are shipments of hermetic refrigeration compressors rated not over one-quarter horsepower from Singapore. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 8414.30.40. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one producer and one exporter of the subject merchandise, Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS) and Asia Matsushita Electric (Singapore) Pte. Ltd. (AMS), respectively. These two companies, along with the Government of Singapore, are the signatories to the suspension agreement. The review covers the period April 1, 1990 through March 31, 1991, and three programs.

Analysis of Programs

(1) The Economic Expansion Incentives Act—Part VI The Production for Export Programme under part VI of the Economic Expansion Incentives Act allows a 90 percent tax exemption on a company' export profit if the company is designated as an export enterprise. MARIS is so designated and used this tax exemption during the period of review.

MARIS receives this benefit on the production of refrigeration compressors and compressor parts, as well as other non-compressor related products. To calculate the benefit, we divided the tax savings under this program by the f.o.b. value of total exports of products receiving the benefit, for the period of review. On this basis, we preliminarily determine the benefit from this program during the review period to be 5.52 percent of the f.o.b. value of the merchandise.

MARIS' response to the Department's countervailing duty questionnaire indicated that MARIS deducted export charges in calculating exempt export profit for the review period. The deduction of export charges reduces the amount of MARIS' profit, and consequently the amount of the benefit. As a result, an export charge rate based on the reduced exempt export profit figure does not completely offset the amount of the net benefit from the Production for Export Programme. Under the terms of the suspension agreement, the amount of the net bounty or grant determined by the Department to exist with respect to the subject product is to be offset completely. Therefore, we added the amount of the export charge deduction back to MARIS' export profit in calculating MARIS' tax savings in order to offset the deduction of the export charges in the review period.

(2) Financing through the Monetary Authority of Singapore The suspension agreement prohibits MARIS and AMS from applying for or receiving any financing provided by the rediscount facility of the Monetary Authority of Singapore for shipments of the subject merchandise to the United States. We determined during the review that neither the signatory producer nor exporter received any financing through the Monetary Authority of Singapore on the subject merchandise exported to the United States during the review period. Therefore, we preliminarily determine that both companies have complied with this clause of the agreement.

(3) Operational Headquarters Program. Petitioner submitted comments after submission of the questionnaire response alleging that AMS receives a countervailable benefit from the Operational Headquarters (OHQ) program. In the last review, the Department examined this program, and verified that no benefits are conferred in connection with the subject merchandise (56 FR 42595, August 28, 1991; 56 FR 63713, December 5, 1991). Petitioner has not made any new allegations that are different from those made in the previous review. Therefore, we preliminarily determine that AMS does not receive any benefits under the OHQ program.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement, including the payment of the provisional export charges in effect of the period April 1, 1990 through March 31, 1991. From April 1, 1990 through December 25, 1990, a provisional export charge rate of 4.95 percent was in effect, and from December 26, 1990 through March 31, 1991, a provisional export charge rate of 2.23 percent was in effect. We also preliminarily determine the net bounty or grant to be 5.52 percent of the f.o.b. value of the merchandise for the April 1, 1990 through March 31, 1991 review period. The suspension agreement states that the Government of Singapore will offset completely with an export charge the net bounty or grant calculated by the Department.

Following the methodology outlined in section B.4 of the agreement, the Department preliminary determines that, for the April 1, 1990 through December 25, 1990 portion of the review period, and for the December 26, 1990 through March 31, 1991 portion of the review period, positive adjustments must be made to the provisional export charge rates in effect. The positive adjustments will equal the difference between the provisional rates in effect during the review period and the rate determined in this review, plus interest. These rates, established in the notices of the final results of the third and fifth administrative reviews of the suspension agreement (53 FR 25647, July 8, 1988; 55 FR 53028, December 26, 1990) are 4.95 and 2.23 percent, respectively. The Government of Singapore shall collect, in accordance with section B.4.c of the agreement, the difference, plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department. The Department will notify the Government of Singapore of these

adjustments after publication of the final results of this review.

The Department intends to notify the Government of Singapore that the provisional export charge rate on all exports to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 5.52 percent of the f.o.b. value of the merchandise.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject refrigeration compressors into the United States. Our information indicates that the two signatory companies accounted for 100 percent of imports into the United States of this merchandise during the review period.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication.

Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case briefs. Any hearing, if request, will be held seven days after the scheduled date for submission of rebuttal briefs. The hearing will be limited to arguments raised in the case and rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 355.38(e) of the Commerce regulations. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing. This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Department's regulations (19 CFR 355.22(1991)).

Dated: July 8, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-16508 Filed 7-13-92; 8:45 am]

BILLING CODE 3510-05-M

Exemption of Foreign Air Carriers From Customs Duties and Taxes; Request for Finding of Reciprocity (Singapore)

Notice is hereby given that the Department of Commerce is undertaking to determine, pursuant to sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), whether the Government of Singapore allows customs duties and tax exemptions to aircraft of U.S. registry in connection with international commercial operations substantially reciprocal to those exemptions granted in the United States to aircraft of foreign registry. The basis of this undertaking is the request of Singapore Airlines Limited (SIA) for a finding of such reciprocity effective June 1, 1992.

The Tariff Act of 1930, as amended, provides exemptions for aircraft of foreign registry from payment of import duties and certain internal revenue taxes on the import or purchase of supplies into the United States for such aircraft in connection with their international commercial operations. "Supplies" as used in this context covers a wide range of articles used by aircraft in international operations, including fuel and lubricants, spare parts, consumable supplies, and ground handling and support equipment. These exemptions are allowed upon a finding by the Secretary of Commerce, or her designee, and communicated to the Secretary of the Treasury, that such country allows, or will allow, "substantially reciprocal privileges" to aircraft of U.S. registry with respect to imports of supplies into that country.

Interested parties are invited to submit their views and comments concerning this matter in writing to Ms. Linda F. Powers, Deputy Assistant Secretary for Service Industries and Finance, room 1128, U.S. Department of Commerce, Washington, DC 20230. All submissions should be made in five copies and should be received no later than thirty (30) days following the publication of this notice.

Copies of all written comments received will be available for public inspection between the hours of 8:30 a.m. and 5 p.m. Monday through Friday in the Freedom of Information Records Inspection Facility, International Trade Administration, room 4102, U.S. Department of Commerce, Washington, DC.

FOR FURTHER INFORMATION CONTACT: C. William Johnson, Office of Service Industries, International Trade Administration, room 1120, U.S. Department of Commerce, Washington, DC 20230, or telephone (202) 377-5071.

Dated: July 7, 1992.

Linda F. Powers,

Deputy Assistant Secretary for Service Industries and Finance.

[FR Doc. 92-16469 Filed 7-13-92; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Squid, Mackerel, and Butterfish Committee will hold a meeting on July 21, 1992, at the Ramada Inn, 76 Industrial Highway, Essington, PA. The meeting will begin at 10 a.m., to develop the Atlantic mackerel, Loligo, Illex, and butterfish specifications for 1993.

For more information, contact John Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: July 8, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-16443 Filed 7-13-92; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council (Council) will hold a public meeting on August 4-5, 1992, at the Baranof Hotel, Juneau, AK. The meeting will begin on August 4 at 8 a.m. The Council will review public comments received on a draft supplementary analysis of revised Amendment #18 to the Bering Sea/Aleutian Islands Groundfish Fishery Management Plan for allocation of pollock in the Bering Sea/Aleutian Islands between onshore and offshore industry segments.

The Council is scheduled to select a preferred alternative and approve the proposed amendment for resubmission to the Secretary of Commerce for review. The Council's Advisory Panel and Scientific and Statistical Committee are scheduled to meet at the same location August 3-4, 1992, beginning at 10 a.m. on August 3, to prepare recommendations for the Council on the proposed amendment.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: July 6, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-16444 Filed 7-13-92; 8:45 am]

BILLING CODE 3510-22-M

Public Meeting on Final Management Plan for the North Inlet/Winyah Bay (NI/WB) National Estuarine Research Reserve (SC)

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Public meeting notice.

SUMMARY: Notice is hereby given that the South Carolina Coastal Council and the Belle W. Baruch Institute, University of South Carolina, will hold a public meeting to present and discuss the Final Management Plan for the proposed North Inlet/Winyah Bay National Estuarine Research Reserve. The purpose of the meeting is to receive the comments of interested parties on the Final Management Plan. As part of the procedures leading to the designation of the Reserve, the State of South Carolina must submit the proposed Final Management Plan to NOAA for its review and approval. This notice is given pursuant to 15 CFR 921.21(h).

DATES: The public meeting will take place at 7 p.m. on Thursday, July 30, 1992, at the Georgetown County Public Library, Waccamaw Neck Branch, 15 Library Lane, Pawleys Island, South Carolina, 29448.

Copies of the Plan will be made available for review before the meeting by Wednesday, July 15, 1992, at the following libraries: Georgetown County Libraries in Georgetown, Pawleys Island, and Andrews, SC; and Charleston County Library in Charleston, SC.

FOR FURTHER INFORMATION CONTACT: Ms. Dolores A. Washington, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOAA/NOS, 1825 Connecticut Avenue, NW., Washington, DC 20235 (202) 606-4122 or Dr. F. John Vernberg, Belle W. Baruch Institute for Marine Biology and Coastal Research, University of South Carolina, Columbia, SC 29405 (803) 777-5288.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Estuarine Sanctuaries.

Dated: July 8, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92-16476 Filed 7-13-92; 8:45 am]

BILLING CODE 3510-08-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 92-4]

Multi-Function Waste Tank Facility at the Hanford Site

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning the Multi-Function Waste Tank Facility at the Hanford Site. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before August 13, 1992.

ADDRESSES: Send comments, data, views or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208-6400.

Dated: July 8, 1992.

John T. Conway,

Chairman.

Multi-Function Waste Tank Facility at the Hanford Site.

Dated: July 6, 1992.

As required by the Atomic Energy Act, the Defense Nuclear Facilities Safety Board (DNFSB), conducts reviews and evaluations of the design of new Department of Energy defense nuclear facilities before and during their construction. Under this statute, the DNFSB is also required to recommend to the Secretary of Energy, within a reasonable time, such modifications of the design as the DNFSB considers necessary to ensure adequate protection of public health and safety.

The Board has performed reviews of the Multi-Function Waste Tank Facility (MWTF) project to be located at the Hanford Site in the State of Washington. The MWTF is an element of the Hanford Tank Waste Remedial System (TWRS) Program which eventually will provide for the ultimate treatment and disposal of the Hanford Site tank waste. We have reviewed information received in the form of briefings and presentations by DOE Headquarters personnel, DOE Richland personnel, Westinghouse Hanford Company personnel, and Kaiser Engineers Hanford personnel as well as analysis of relevant documents. The Board's reviews to date have been concerned with such matters as the application of standards, including DOE orders and directives, and commercial nuclear industry practices as well as other aspects of the project which relate to ensuring adequate protection of the health and safety of the public.

The conceptual design of the MWTF project is now nearing completion. The Board believes that it is appropriate at this time to assure that the design of the MWTF and other new defense nuclear facilities incorporates engineering principles and approaches, detailed engineering criteria, and practices that are essential to ensure adequate protection of public health and safety. These include:

- The design needs to be appropriately conservative with respect to safety.
- The design bases (criteria) need to be clearly defined, coherent, and compatible with the facilities' perceived lifetime functions (i.e., Functional Design Criteria) and documented.
- The design bases the resulting facility design need to reflect and incorporate the requirements of appropriate standards as that term is used in the Board's enabling statute and thus including DOE orders and directives and commercial nuclear practices, as well as any other factors that may be required for the safe and reliable operation of the facility throughout its entire life.
- The design, construction, and start-up activities need to be performed by those who will ensure the completed project is of the quality necessary to provide adequate protection of public health and safety.
- The design effort needs to be organized such that there is continuity through all phases (conceptual design, preliminary design, final design, construction, testing) so that all aspects of the process that affect safety are clearly delineated and that line responsibility is clear.
- The DOE organization responsible for the project needs to have technically qualified personnel in numbers sufficient to provide direction and guidance to contractors performing all

phases of the effort and to assess the effectiveness of contractor efforts.

• The project organization and operations need to reflect a clear and effective chain of command with responsibility, authority, and accountability clearly defined and assigned to individuals within the respective project organizations.

• The functions and responsibilities of all DOE and contractor organizations involved in the project need to be delineated in writing in a single document.

The Board's view of the Hanford MWTF's conceptual design performed to date is that the design does not clearly present and delineate those aspects that ensure that the public health and safety can adequately be protected. In particular, the MWTF appears to be a project (1) without a well-defined mission or functional requirements (e.g., waste treatment or storage), (2) predetermined to consist of four one-million-gallon tanks regardless of their intended uses, and (3) managed without sufficient regard for technical issues and engineering involvement. The continuing phases of the design and construction are about to begin and the Board seeks to be assured that the design of the tanks as they are built incorporates the appropriate levels of nuclear safety. Further, the Board recognizes that many of the nuclear safety concepts and assurances would normally be provided in the series of facility Safety Analysis Reports and would include design bases, safety system analyses, analysis methods and accident analyses. However, to ensure that appropriate nuclear safety characteristics are included in the design efforts, the Board recommends the following to the Secretary of Energy:

1. Establish a plan and methodology that results in a project management organization for the MWTF project team that assures that both DOE and the contractor organization have personnel of the technical and managerial competence to ensure effective project execution. This should emphasize management aspects of the project necessary to ensure adequate protection of public health and safety and should include the integration of professional engineering and quality assurance as necessary into the project, the application of appropriate standards and approved Department of Energy requirements, and the establishment of clear lines of responsibility and accountability.

2. Identify the design bases and engineering principles and approaches for the MWTF project that provide the data and rationale to show that the design for the MWTF conservatively meets the quantitative safety goals described in the Departments' Nuclear Safety Policy (SEN–35–91). The Board believes that would include items related to standards, identification of safety related items, detailed design bases, functional design criteria, and safety analyses.

John T. Conway,
Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

July 6, 1992.

The Honorable James H. Watkins,
Secretary of Energy, Washington, DC 20585

Dear Mr. Secretary: On July 1, 1992, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 92–4 which is enclosed for your consideration. Recommendation 92–4 deals with the Multi-Function Waste Tank Facility at the Hanford Site.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register.**

Sincerely,

John T. Conway,
Chairman.

[FR Doc. 92–16465 Filed 7–13–92; 8:45 am]
BILLING CODE 6820–KD–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 13, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to preform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: July 8, 1992.

Cary Green,
Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Revision.
Title: Student Aid Report (SAR).
Frequency: Annually.
Affected Public: Individuals or households; non-profit institutions, business or other for-profit.

Reporting Burden

Responses: 13,103,260
Burden Hours: 2,331,273

Recordkeeping Burden

Recordkeepers: 7,300
Burden Hours: 599,486

Abstract: The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal financial

aid. The form is submitted by eligible students to the participating institution of their choice. The institution submits part 3 of the SAR to the Department to receive funds for the applicant.

Office of Postsecondary Education

Type of Review: Revision.
Title: Guaranteed Student Loan (GSL) Tape Dump Procedures (ED Form 1070) and PLUS/SLS Loan Tape Dump Procedures (ED Form 1071).
Frequency: Annually.
Affected Public: State or local government, non-profit institutions.

Reporting Burden

Responses: 67
Burden Hours: 3633

Recordkeeping Burden

Recordkeepers: 0
Burden Hours: 0
Abstract: The information is collected to describe the specific data of borrowers under the Guaranteed Student Loan (GSL) and PLUS/SLS programs. The data is used to describe the characteristics of the borrowers, monitors borrowers fraud and waste abuse; and to impact of various legislative, regulatory, and budgetary proposals. The Department uses this information to report to Congress.

Office of Postsecondary Education

Type of Review: Extension.
Title: Performance Report for the State Student Incentive Grant Program.
Frequency: Annually.
Affected Public: State or local government.

Reporting Burden

Responses: 57
Burden Hours: 313.5

Recordkeeping Burden

Recordkeepers: 57
Burden Hours: 85.5
Abstract: State Scholarship agencies use this performance report to account for yearly program performance under the State Student Incentive Grant Program. The Department uses the information collected to assess the accomplishment of the program goals and objectives.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Performance Report for Part B of the Individuals with Disabilities Education Act and Chapter 1—State Operated or Supported Programs for Handicapped Children.
Frequency: Annually.
Affected Public: State or local governments.

Reporting Burden

Responses: 58
Burden Hours: 261

Recordkeeping Burden

Recordkeepers: 0
Burden Hours: 0
Abstract: These performance reports are needed in order to determine whether States have used Federal program funds to meet the goals which Congress outlined in the statutes which authorize the issuance of grant funds.

Office of Policy and Planning

Type of Review: New.
Title: Evaluation of Upward Bound.
Frequency: Biennially.
Affected Public: Individuals or households, non-profit institutions.

Reporting Burden

Responses: 4,000
Burden Hours: 2,333

Recordkeeping Burden

Recordkeepers: 0
Burden Hours: 0
Abstract: Students and staff of the Upward Bound programs will complete the questionnaires for this study. The Department will use this information to evaluate the effectiveness of the Upward Bound programs.

[FR Doc. 92-16448 Filed 7-13-92; 8:45 am]
BILLING CODE 4000-1-M

[CFDA No.: 84.214A-3]

Migrant Education Even Start Program; Notice Inviting Applications For New Awards For Fiscal Year (FY) 1992

Purpose of Program: The Migrant Education Even Start Program supports grants to eligible SEAs for the cost of providing family-centered education projects to help parents of currently migratory children (as defined in 34 CFR 201.3) become full partners in the education of their children, to assist currently migratory children in reaching their full potential as learners, and to provide literacy training for their parents. This program supports efforts to address National Education Goals one and five.

Eligible Applicants: A State educational agency (SEA) or consortium of SEAs is eligible to receive a grant under the program for interstate or intrastate projects that serve migrant families who have children from birth through age seven.

Deadline for Transmittal of Applications: August 24, 1992.

Deadline for Intergovernmental Review: October 24, 1992.

Applications Available: July 15, 1992.

Available Funds: The Department estimates that about $600,000 will be available for new projects after continuation award have been made.

Estimated Range of Awards: $85,000–$210,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 212, as published in the Federal Register on June 19, 1992 (57 FR 27556).

SUPPLEMENTARY INFORMATION: The Department is conducting a national evaluation of projects under Even Start, and successful projects are considered for dissemination through the National Diffusion Network. Grantees shall cooperate with the Department's efforts by adopting an evaluation plan that is consistent with the Department's national evaluation and with the grantee's responsibilities under § 75.590 of EDGAR. It is not expected that the application will include a complete evaluation plan because grantees will be asked to cooperate with the national evaluation of Even Start to be conducted by an independent contractor. Grantees may be required to amend their plans to conform with the national evaluation. However, the review panel's examination of the applicant's potential as a model, under 34 CFR 212.21(e) of the program regulations, will include an analysis of the approach the applicant expects to use to evaluate its project.

Each applicant should budget for evaluation activities as follows: a project with an estimated cost of up to $120,000 should designate $5,000 for this purpose; a project with estimated cost of over $120,000 should designate $10,000 for these activities. These funds will be used for expenditures related to the collection and aggregation of data required for the Department's national evaluation. Applicants must also budget for the cost of travel to Washington, DC, and two nights' lodging for the project director and project evaluator, for their participation in annual evaluation meetings.

FOR APPLICATIONS OR INFORMATION CONTACT: Regina Kinnard, U.S. Department of Education, 400 Maryland Avenue, SW., room 2155, Washington, DC 20202–6134. Telephone: (202) 401–0742. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2741–2749

Dated: July 8, 1992.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 92–16449 Filed 7–13–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent to Award a Grant to The Combustion Institute

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(6), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.7(b)(2)(i)(B). This award will be made under Grant Number DE–FG01–92FE62588 to The Combustion Institute. The financial assistance will provide partial support of the Twenty-Fourth International Symposium on Combustion. The symposium will benefit the public by bringing together scientific researchers and practical engineers to explore a breadth of established disciplines in the combustion field. Knowledge gathered at this conference will provide valuable information for DOE's Combustion Program.

SCOPE: The grant will provide $20,000 in co-funding to The Combustion Institute to support the costs of conducting the conference. Other Federal Agencies and private industry are also providing funding.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to The Combustion Institute. DOE support of this activity would enhance the public benefits to be derived.

The term of the grant shall be until November 1, 1992.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: James F. Thompson, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 92–16511 Filed 7–13–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–659–000, et al.]

Pennsylvania Power Company, et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power Company

[Docket No. ER–92–659–000]

July 1, 1992.

Take notice that on June 18, 1992, Pennsylvania Power Company (Penn Power) pursuant to 18 CFR 35.13 tendered for filing four proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs (Boroughs) of New Wilmington, Wampum, Wampum, Zelienople, Ellwood City and Grove City, respectively. The filing proposes a decrease in the State Tax Adjustment Surcharge (Rider I) from 3.21% to 1.99% effective April 16, 1992. The second change is an increase in the Energy Cost Rate (ECR or Rider II) from $.001408/kWh to $.002358/kWh effective May 4, 1992. The third change are revisions to the language in Rider II to comply with FERC Accounting Release No. 14. The last change is the cancellation of Rider IV, Deferred Revenue Collection Rider. The revenue effect of these changes is to decrease revenues from the municipal resale class by $1,569,985.40 or 17.49% for the test year ending April, 1993.

The five municipal resale customers served by Penn Power entered into settlement agreements effective as of September 1, 1984. These agreements provide that these customers will be charged applicable retail rates as may be in effect during the terms of the agreements. Changes in rates were agreed to become effective as to these customers simultaneously with changes approved by the Pennsylvania Public Utility Commission (Pa. PUC). The proposed changes have been implemented as to Penn Power's retail customers pursuant to Pa. PUC orders and regulations. These settlement agreements were approved by the Federal Energy Regulatory Commission through a Secretarial letter dated December 14, 1984 in Docket Nos. ER77–277–007 and ER81–779–000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement agreements.

Copies of the filing were served upon Penn Power's jurisdictional customer and the Pa. PUC.

Comment date: July 14, 1992, in accordance with Standard Paragraph E at the end of this notice

2. PSI Energy, Inc.

[Docket No. ER92–653–000]

July 1, 1992.

Take notice that PSI Energy, Inc. (PSI) formerly named Public Service Company of Indiana, Inc., on June 22, 1992, tendered for filing the Ninth Supplemental Agreement, dated May 1, 1992, (1992 Agreement) to the Interconnection Agreement, dated May 1, 1962, between PSI and Indianapolis Power and Light Company (IPL).

The 1992 Agreement replaces the 1962 Agreement and provides for the following interchange service between IPL and PSI:

1. Service Schedule A—Emergency Service.

2. Service Schedule B—Interchange Energy.

3. Service Schedule C—Short Term Power and Energy

4. Service Schedule D—Carmel Southeast Tap Power and Energy Transfer.

In addition, 138 kV Facilities Agreement, dated May 1, 1992, and a Amendment No. 3, dated June 1, 1992, to a Facilities Agreement, dated August 16, 1977, between PSI and IPL were filed. The 1977 Agreement and the first two amendments were filed as contracts relating to Amendment No. 3.

IPL and PSI have requested waiver of the Commission's notice requirements to permit an effective date of July 1, 1992.

Copies of the filing were served on Indianapolis Power and Light Company and the Indiana Utility Regulatory Commission.

Comment date: July 15, 1992, in accordance with Standard Paragraph E at the end of this notice

3. Ohio Valley Electric Corp.

[Docket No. ER92–666–000]

July 1, 1992.

Take notice that on June 26, 1992, Ohio Valley Electric Corporation (OVEC) tendered for filing Modification No. 7, dated as of January 15, 1992, to the Inter-Company Power Agreement dated July 10, 1953 among OVEC and certain other utilities (the Inter-Company Power Agreement). The Inter-

Company Power Agreement bears the designation "Ohio Valley Electric Corporation Rate Schedule FPC No. 1–B."

This filing is primarily to provide for changes to the Inter-Company Power Agreement that correlate with the provisions of a modification of the agreement under which OVEC supplies retail electric service to a uranium enrichment plant located in Pike County, Ohio, and operated by the U.S. Department of Energy. The other changes to the Inter-Company Power Agreement contained in this filing include the deletion of a section that no longer has any application on amendments relating to additional facilities, spare parts and replacements.

OVEC has requested an effective date of 60 days after the date OVEC submitted the filing to the Commission.

Copies of the filing were served upon Appalachian Power Company, The Cincinnati Gas & Electric Company, Columbus Southern Power Company, the Dayton Power and Light Company, Indiana Michigan Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Monongahela Power Company, Ohio Edison Company, Ohio Power Company, Pennsylvania Power Company, The Potomac Edison Company, Southern Indiana Gas and Electric Company, The Toledo Edison Company, West Penn Power Company, the Utility Regulatory Commission of Indiana, the Public Service Commission of Kentucky, the Public Service Commission of Maryland, the Public Service Commission of Michigan, the Public Utilities Commission of Ohio, the Public Utility Commission of Pennsylvania, the State Corporation Commission of Virginia and the Public Service Commission of West Virginia.

Comment date: July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Co.

[Docket No. ER92–375–000]

July 1, 1992.

Take notice that June 23, 1992, Northern States Power Company (Wisconsin) (NSPW) tendered for filing an Amendment to the Wholesale Electric Service Agreement, dated February 27, 1992 between NSPW and the city of Rice Lake (City), a municipal corporation in Barron County, Wisconsin.

NSPW states that the City and City and NSPW have executed the Amendment to provide that coordination services (Section 3.06 of the Agreement) are not in effect until such time, if ever, that the City elects to convert to partial requirements service.

NSPW requests waiver and an effective date of May 1, 1992.

A copy of the filing was served upon the City and the Public Service Commission of Wisconsin.

Comment date: July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Philadelphia Electric Co.

[Docket No. ER92–654–000]

July 1, 1992.

Take notice that on June 22, 1992, Philadelphia Electric Company (PE) tendered for filing as an initial rate under Section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between PE and Orange and Rockland Utilities, Inc. (O&R) dated June 5, 1992.

PE states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economic advantages to O&R. In order to optimize the economic advantages to both PE and O&R, PE requests that the Commission waive its customary notice period and allow this Agreement to become effective on June 22, 1992.

PE states that a copy of this filing has been sent to O&R and will be furnished to the Pennsylvania Public Utility Commission and the New York Public Service Commission.

Comment date: July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas Gas and Electric Co.

[Docket No. ER92–656–000]

July 1, 1992.

Take notice that on June 22, 1992, Kansas Gas & Electric Company (KG&E) tendered for filing a Notice of Cancellation for Rate Schedule FERC No. 161 as filed with the Federal Energy Regulatory Commission by KG&E is to be canceled.

Notice of the proposed cancellation has been served upon KEPCO and the Kansas Corporation Commission.

Comment date: July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Co.

[Docket No. ER92–519–000]

July 1, 1992.

Take notice that on June 25, 1992, Florida Power & Light Company submitted an amendment to its filing in the above referenced docket. The filing was amended to submit additional information in response to a request by the Federal Energy Regulatory Commission Staff.

Comment date: July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Co.

[Docket No. ER92–663–000]

July 1, 1992.

Take notice that Carolina Power & Light Company (Company), on June 25, 1992 tendered for changes to appendix A of Company's "Amendment to the Service Agreement Between the City of Fayetteville and Carolina Power & Light Company" (Amendment) dated January 16, 1986. The Company proposes that the filing become effective on July 1, 1992.

Copies of this filing have been sent to the Fayetteville Public Works Commission, North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Electric Power Co., L.P.

[Docket Nos. ER92–668–000 EC92–20–000, and ES92–46–000]

July 1, 1992.

Take notice that on July 1, 1992, Northern Electric Power Co., L.P. ("Northern Electric Power Co.") (c/o Lee M. Goodwin, Ballard Spahr Andrews & Ingersoll, 555 13th Street, NW., suite 900 East, Washington, DC 20004) tendered for filing, pursuant to 18 CFR 35.12, proposed Northern Electric Power Co., L.P. Rate Schedule No. 1, under which Northern Electric Power Co. will sell the power and energy to be produced by the 36.1 MW hydroelectric Project (Project No. 5276) to Niagara Mohawk Power Corporation ("Niagara Mohawk"), a New York utility. The Project is a qualifying small power production facility. The rates set forth in the proposed Rate Scheduled were negotiated.

In connection with its filing, Northern Electric Power Co. requests waiver of the Commission's regulations regarding the filing of cost support information and regarding all or part of the Commission's accounting, reporting, securities, property transfer, and interlocking director regulations and approval of the sale of an ownership interest in the Project. Northern Electric Power Co. requests that the Commission make the Rate Schedule effective on the date on which sales under the Rate Schedule commence, which is expected to occur in December, 1993.

Comment date: July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Cambridge Electric Light Co.

[Docket No. ER90–283–006]

July 1, 1992.

Take notice that on June 11, 1992, Cambridge Electric Light Comapny tendered for filing its compliance refund report pursuant to the Commission's order issued on December 6, 1990.

Comment date: July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Kansas Gas and Electric Co.

[Docket No. ER92–508–000]

July 1, 1992.

Take notice that on June 22, 1992, Kansas Gas and Electric Company (KG&E) submitted an amendment to its April 20, 1992 filing in this docket. KG&E states that the amendment is necessary in order to insure the succession of two rate schedules previously approved by the Commission but inadvertently omitted from KG&E's original filing. KG&E also removes one rate schedule for which a Notice of Cancellation has been separately filed.

Copies of the filing were served upon the affected KG&E customers and the Kansas Corporation Commission.

Comment date: July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. United Illuminating Co.

[Docket No. ER92–434–000 and ER92–453–000]

July 1, 1992.

Take notice that on June 9, 1992, United Illuminating Company tendered for filing a Notice of Cancellations of Rate Schedules in the above-referenced dockets.

Comment date: July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Tucson Electric Power Co.

[Docket No. ER92–657–000]

July 1, 1992.

Take notice that on June 23, 1992, Tucson Electric Power Company (Tucson) tendered for filing a Notice of Cancellation of its Certificate of Concurrence, Rate Schedule FERC No. 31, "Extension of Letter Agreement with Pacific Power & Light Company."

Comment date: July 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Edison Co.

[Docket No. ER92–45–000]

July 2, 1992.

Take notice that on June 29, 1992, Commonwealth Edison Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $1.4 billion of short-term promissory notes on or before December 31, 1994, with a final maturity date no later than December 31, 1995.

Comment date: July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. C. Calvert Knudsen

[Docket No. ID–2410–001]

July 6, 1992.

Take notice that on May 27, 1992, C. Calvert Knudsen (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions: Director, Seafirst Corporation; Director, Seattle-First National Bank.

Comment date: July 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Donald E. Lasater

[Docket No. ID–2729–000]

July 6, 1992.

Take notice that on June 17, 1992, Donald E. Lasater (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions: Director, Illinois Power Company; Director, A.P. Green Industries, Inc.

Comment date: July 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Interstate Power Co.

[Docket No. ES92–44–000]

July 2, 1992.

Take notice that on June 29, 1992, Interstate Power Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $60 million of short-term promissory notes and/or commercial paper on or before December 31, 1993, with a final maturity date no later than December 31, 1994.

Comment date: July 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Power, Inc.

[Docket No. ER92–674–000]

July 6, 1992.

Take notice that Entergy Services, Inc., as agent for Entergy Power, Inc. (Entergy Power), on June 29, 1992, tendered for filing a capacity sale agreement between Entergy Power and Tennessee Valley Authority. Entergy Power requests an effective date of July 1, 1992, and also requests waiver of the notice requirements under § 35.11 of the Commission's regulations.

Comment date: July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Boston Edison Co.

[Docket No. ER92–470–000]

July 6, 1992.

Take notice that on June 26, 1992, Boston Edison Company (Boston Edison) filed a letter supplementing its original filing in this docket by explaining that the contributions-in-aid-of-construction by the Towns of Concord and Wellesley (the Towns) which are the subject of this docket represent changes in existing rates for service to the Towns and, therefore, are not subject to the policy stated in Central Maine Power Co., 56 FERC ¶ 61,200 (1991).

Comment date: July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Arizona Public Service Co.

[Docket No. ER92–673–000]

July 6, 1992.

Take notice that on June 29, 1992, Arizona Public Service Company (APS) tendered for filing Amendment No. 1 (Amendment) to the Wholesale Power Supply Agreement between APS and United States of America, Bureau of Indian Affairs on Behalf of the Colorado River Indian Irrigation Project (CRIIP) (APS–FPC Rate Schedule No. 65). The Amendment provides for the transfer of CRIIP from APS' load control area to the Western Area Power Administration (Western) load control area due to CRIIP's construction of the Headgate Rock Hydroelectric Project and their request to assign responsibility for load regulation and power scheduling to Western.

Copies of this filing have been served on CRIIP and the Arizona Corporation Commission.

Comment date: July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Donald S. Perkins

[Docket No. ID–2730–000]

July 6, 1992.

Take notice that on June 17, 1992, Donald S. Perkins (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions: Director, Illinois Power Company; Director, TBG, Inc., N.V.; Director, American Telephone and Telegraph Company; Director, Cummins Engine Co., Inc.

Comment date: July 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Crockett Cogeneration, A California Limited Partnership

[Docket No. QF84–429–001]

July 6, 1992.

On June 26, 1992, Crockett Cogeneration, a California limited partnership (Applicant), submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is presently certified for approximately 195.8 MW [29 FERC ¶ 62,044 (1984)]. The instant recertification is requested to reflect changes in the ownership structure, configuration and date of installation of the facility, and an increase in the net electric power production capacity. Under the proposed ownership structure, PacifiCorp, an electric utility, will have an indirect ownership interest in the facility. The facility will now consist of a combustion turbine generator, a supplementary fired heat recovery boiler and a single automatic extraction/condensing steam turbine generator, with a net electric power production capacity of 240 MW. Startup of the facility is expected to begin in December of 1995.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Ag-Energy, L.P.

[Docket No. QF92–172–000]

July 6, 1992.

On June 25, 1992, Ag-Energy, L.P. (Applicant), of 135 East 57th Street, 23rd Floor, New York, New York 10022, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle generation facility will be located at the New York State St. Lawrence Psychiatric Center in Ogdensburg, New York, and will consist of two combustion turbine generators, two supplementally fired heat recovery boilers and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used for space heating and cooling, domestic hot water heating and laundry in the psychiatric center. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 80 MW. Installation of the facility is expected to start in July 1992.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. The Empire District Electric Co.

[Docket No. ER92–672–000]

July 6, 1992.

Take notice that The Empire District Electric Company (EDE), on June 29, 1992, tendered for filing a proposed change in the Agreement between The Southwestern Power Administration (SWPA) and The Empire District Electric Company, Contract Number 14–02–0001–1231.

The amendment provides for the exchange energy to be carried forward and returned the next year at the option of SWPA.

EDE requests an effective date of April 20, 1987 and requests waiver of the Commission's notice requirements. A copy of the filing was served upon the SWPA.

Comment date: July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. Southwestern Public Service Co.

[Docket No. ER92–675–000]

July 6, 1992.

Take notice that Southwestern Public Service Company (Southwestern) on June 29, 1992, tendered for filing a proposed initial rate schedule for partial requirements service to El Paso Electric Company (EPE).

On June 19, 1992, Southwestern and EPE entered into an agreement that provides for the sale of partial requirements electric power and energy from Southwestern EPE beginning July 1, 1992. Since the requested effective date is prior to sixty days from the filing, Southwestern has asked the Commission to grant a waiver of the notice requirement pursuant to § 35.11 of the Commission's rules.

Southwestern is proposing to charge EPE the same rate it currently charges the cities of Brownfield, Floydada and Tulia, Texas, Lubbock Power & Light Co. and Texas New Mexico Power Company for partial requirements service.

Comment date: July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Northern States Power Co.

[Docket No. ER92–652–000]

July 6, 1992.

Take notice that on June 19, 1992, Northern States Power Company, Eau Claire, Wisconsin (NSPW) tendered for filing a new wholesale service agreement, dated June 9, 1992, between NSPW and the City of Barron (Barron), a municipal corporation in Barron County, Wisconsin. The City currently purchases power and energy from NSPW under an agreement dated January 14, 1981 and amended December 11, 1990.

NSPW states that, on the effective date of the new agreement, the January 14, 1981 agreement as amended, will be terminated. NSPW also states that the effect, if any, of the June 9, 1992 agreement will be to reduce the cost of wholesale electric service to the City.

A copy of the filing was served upon the City and the Public Service Commission of Wisconsin.

Comment date: July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. Kansas Gas and Electric Co.

[Docket No. ER92–655–000]

July 6, 1992.

Take notice that on June 22, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing a Notice of Cancellation for Rate Schedule FERC No. 157 as filed with the Federal Energy Regulatory Commission.

Notice of the proposed cancellation has been served upon the City of Girard, Kansas, and the Kansas Corporation Commission.

Comment date: July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. New York State Electric & Gas Corp.

[Docket No. ER92–650–000]

July 6, 1992.

Take notice that New York State Electric & Gas Corporation (NYSEG), on June 17, 1992, tendered for filing Supplement No. 7 to its Agreement with Consolidated Edison Company of New York, Inc. (Con Edison), designated Rate Schedule FERC No. 87. The proposed changes would decrease revenues by $18,640 based on the twelve month period ending March 31, 1993.

This rate filing, Supplement No. 7, is made pursuant to section 1 (e) and (f) and 2 (e), (f) and (g) of Article III of the August 23, 1983 Facilities Agreement—Rate Schedule FERC No. 87. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1991. In addition, Con Edison's pro rata share of the total annual carrying charges associated with the firm supply system is calculated based on the rate of Con Edison's one hour demand at Mohansic plus estimated NYSEG and Con Edison one hour peak input at Wood Street. The levelized annual carrying charges included in the calculation reflect a 11.70 percent return on equity which was approved by the New York State Public Service Commission's Opinion 91-1 in Cases 90-E-0138, 90-E-0139 and 90-6-0140, effective February 1, 1991.

NYSEG requests an effective date of April 1, 1992, and, therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consolidated Edison Company of New York and on the Public Service Commission of the State of New York.

Comment date: July 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. Walter M. Vannoy

[Docket No. ID-2728-000]

July 6, 1992.

Take notice that on June 17, 1992, Walter M. Vannoy (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions: Director, Illinois Power Company; Director, Figgie International, Inc.

Comment date: July 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16392 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER92-316-002, et al.]

Southern Co. Services, Inc., et al.

Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 7, 1992.

Take notice that the following filings have been made with the Commission:

1. Southern Company Services, Inc.

[Docket No. ER92-316-002]

Take notice that on June 29, 1992, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Operating Companies) tendered for filing certain revisions to Service Schedule B of the Interchange Contract between the Operating Companies and Duke Power Company and the Allocation Methodology and Periodic Rate Computation Procedure Manual of the Operating Companies, as required by the Commission's May 29, 1992 order in Docket No. ER92-316-000.

Comment date: July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Washington Water Power Co.

[Docket No. ER92-680-000]

Take notice that on July 1, 1992 The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR part 35, a Capacity Sale Agreement between The Washington Water Power Company (WWP) and Portland General Electric (PGE). WWP requests that the Commission accept the Agreement for filing, effective September 1, 1992, and waive the requirement that agreements cannot be filed more than 120 days prior to the date service is to commence.

A copy of the filing was served upon Portland General Electric, The Washington Utilities and Transportation Commission and the Idaho Public Utilities Commission.

Comment date: July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Pool

[Docket No. ER92-662-000]

Take notice that on June 24, 1992, New England Power Pool tendered for filing a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by the Bozrah Light and Power Company. Bozrah Light and Power Company has its principal office in Bozrah, Connecticut. NEPOOL indicates that the New England Power Pool Agreement has previously been filed with the Commission as a rate schedule (designated NEPOOL FPC No. 1).

NEPOOL states that Bozrah Light and Power Company has joined the over 90 other electric utilities that already participate in the pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Bozrah Light and Power Company a participant in the pool.

Comment date: July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Co.

[Docket No. ER92-651-000]

Take notice that on June 18, 1992, Idaho Power Company (Idaho) tendered for filing a letter and attachments regarding a temporary rate increase for the period May 6, 1992 through May 5, 1993 to the following wholesale contracts:

1. Idaho Power-Sierra Pacific Company Agreement for a supply of Energy & Power, dated March 10, 1960, FERC Rate Schedule No. 30;

2. The City of Weiser-Idaho Power Company Agreement for Supply of Power, dated April 4, 1963, FERC Rate Schedule No. 42;

3. Idaho Power-Utah Associated Municipal Power Systems Agreement for Supply of Power & Energy, dated February 10, 1988, FERC Rate Schedule No. 75; and

4. Idaho Power Company-Washington City, Utah, Agreement for Supply of Power & Energy, dated July 6, 1987, FERC Rate Schedule No. 74.

Comment date: July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Central Power and Light Co.

[Docket No. ER92-679-000]

Take notice that on June 30, 1992, Central Power and Light Company (CPL) tendered for filing the following:

1. Index of purchasers to whom CPL has provided or may provide service under CPL's Electric Reliability Council of Texas (ERCOT) Interchange Sales Tariff (CPL's FERC Electric Tariff No. 4);

2. Unexecuted Service Agreements naming each of the entities listed on such Index of Purchasers as parties to transactions which may be conducted from time to time pursuant to and in accordance with the rates, terms and conditions of CPL's FERC Electric Tariff No. 4;

3. An index of purchasers to whom CPL has provided or may provide service under CPL's ERCOT Transmission Service Tariff For Large Utility Customers (CPL's FERC Electric Tariff No. 5);

4. Unexecuted Service Agreements naming each of the entities listed on such Index of Purchasers as parties to transactions which may be conducted from time to time pursuant to and in accordance with the rates, terms and conditions of CPL's FERC Electric Tariff No. 5;

5. An index of purchasers to whom CPL has provided or may provide service under CPL's ERCOT Transmission Service Tariff (CPL's FERC Electric Tariff No. 3); and

6. Unexecuted Service Agreements naming each of the entities listed on such Index of Purchasers as parties to transactions other than transactions involving Firm Power Transmission Service which may be conducted from time to time pursuant to and in accordance with the rates, terms and conditions of CPL's FERC Electric Tariff No. 3.

CPL has requested that the above listed indices of purchasers and unexecuted service agreements be made effective as of July 1, 1992 and, accordingly, has requested that the Commission waive its notice requirements. Copies of the filing have been posted in conformity with part 35 of the Commission's regulations.

Comment date: July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. West Texas Utilities Co.

[Docket No. ER92-676-000]

Take notice that on June 30, 1992, West Texas Utilities Company (WTU) tendered for filing the following:

1. An index of purchasers to whom WTU has provided or many provide service under WTU's Electric Reliability Council of Texas (ERCOT) Interchange Sales Tariff (WTU's FERC Electric Tariff No. 4);

2. Unexecuted Service Agreements naming each of the entities listed on such Index of Purchasers as parties to transactions which may be conducted from time to time pursuant to and in accordance with the rates, terms and conditions of WTU's FERC Electric Tariff No. 4;

3. An index of purchasers to whom WTU has provided or many provide service under WTU's ERCOT Transmission Service Tariff For Large Utility Customers (WTU's FERC Electric Tariff No. 5);

4. Unexecuted Service Agreements naming each of the entities listed on such Index of Purchasers as parties to transactions which may be conducted from time to time pursuant to and in accordance with the rates, terms and conditions of WTU's FERC Electric Tariff No. 5;

5. An index of purchasers to whom WTU has provided or many provide service under WTU's (ERCOT) Transmission Service Tariff (WTU's FERC Electric Tariff No. 3); and

6. Unexecuted Service Agreements naming each of the entities listed on such Index of Purchasers as parties to transactions other than transactions involving Firm Power Transmission Service which may be conditioned from time to time pursuant to and in accordance with the rates, terms and conditions of WTU's FERC Electric Tariff No. 3.

WTU has requested that the above listed indices of purchasers and unexecuted service agreements be made effective as of July 1, 1992 and, acy, has requested that the Commission waive its notice requirements. Copies of the filing have been posted in conformity with part 35 of the Commission's regulations.

Comment date: July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Central Maine Power Co.

[Docket No. ER92-48-000]

Take notice that on June 30, 1992, Central Maine Power Company (CMP) tendered the following supplemental filing in the above referenced docket:

1. Energy Reservation Charge Rate Schedule (First Revision), effective as of April 26, 1980;

2. Amendment and Consent to Sales Agreement, effective as of May 1, 1984, between CMP and Boston Edison Company (BECO).

3. Amendment and Consent to Sales Agreement, effective as of April 2, 1983, between CMP and Central Vermont Public Service Corporation (CVPS);

4. Amendment and Consent to Sales Agreement, effective as of June 11, 1983, between CMP and Connecticut Municipal Electric Energy Cooperative (CMEEC);

5. Amendment and Consent to Sales Agreement, effective as of January 20, 1983, between CMP and Greene Mountain Power Corporation (GMP);

6. Amendment and Consent to Sales Agreement, effective as of September 17, 1983, between CMP and New England Power Company (NEP);

7. Amendment and Consent to Sales Agreement, effective as of May 1, 1983, between CMP and Massachusetts Municipal Wholesale Electric Company (MMWEC);

8. Amendment and Consent to Sales Agreement, effective as of April 26, 1980, between CMP and Northeast Utilities Company (NU);

9. Amendment and Consent to Sales Agreement, effective as of June 16, 1981, between CMP and Public Service Company of New Hampshire (PSNH); and

10. Amendment and Consent to Sales Agreement, effective as of April 22, 1991, between CMP and Unitil Power Corp. (Unitil).

CMP requests that the Commission waive its notice and filing requirements so as to permit the BECO, Unitil and BHE Agreements and the Energy Reservation Charge Rate Schedule to become effective in accordance with their terms.

CMP has served a copy of the filing on each affected customer and state regulatory commission.

Comment date: July 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragrahs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16430 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-559-000, et al.]

Southern Natural Gas Co., et al.; Natural Gas Certificate Filings Take Notice That the Following Filings Have Been Made With the Commission

1. Southern Natural Gas Co.

[Docket No. CP92-559-000]

July 1, 1992.

Take notice that on June 26, 1992, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP92-559-000 a request pursuant to § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to operate facilities to add a sales tap for delivery of gas to Mississippi Valley Gas Company (Mississippi Valley), under its blanket certificate issued in Docket No. CP82-406-000, pursuant to section 7(c) of the Natural Gas Act, respectively, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that at the request of Southern's existing customer, Mississippi Valley, Southern has agreed to operate a sales tap for delivery of gas to Mississippi Valley so that it may provide a certain end user with natural gas service. Southern states that it intends as use an existing one-inch tap located near mile post 12.5 on Southern's 4-inch Durant Branch Line, Holmes County, Mississippi. Southern states that Mississippi Valley has agreed pursuant to a letter agreement dated June 11, 1992, to reimburse Southern for any costs incurred in the activation or tie in of the sales tap to the metering and regulating facilities to be constructed by Mississippi Valley. Southern estimates average day deliveries of 100 Mcf. Southern states that the service rendered through the proposed facility would be within Southern's currently certificated entitlement to Mississippi Valley.

It is stated that the total contract demand to be delivered to Mississippi Valley after activation of the sales tap would not exceed the total volumes currently authorized. Southern also states that the gas would be sold to Mississippi Valley pursuant to the terms and conditions of the service agreement at the rate specified in Southern's Rate Schedule OCD-1.

Comment date: August 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Co.

[Docket No. CP92-557-000]

July 1, 1992.

Take notice that on June 26, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-557-000 a prior notice request with the Commission pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by reclaim two town border settings used in the sale and delivery of gas to The Kansas Power and Light Company (KPL Gas Service) and one town border setting serving a WNG direct sale customer; replace them with a single setting; and to abandon in place approximately 0.23 miles of 2-inch and 3-inch pipeline and appurtenant facilities, all in Anderson County, Kansas, under the blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

WNG proposes to replace the KPL Gas Service Welda town border setting; abandon by reclaim the KPL Gas Service East Welda town border setting and WNG's Welda School town border setting; transfer the volumes attributable to East Welda and Welda School to the new Welda town border setting; and to abandon in place approximately 0.23 miles of 2-inch and 3-inch pipeline. WNG states that the facilities that it proposes to abandon were originally installed in the 1930s and certificated in Docket No. G-298 (4 FPC 471).

WNG states that natural gas deliveries via the proposed replacement facilities would not exceed the volumes it delivers to its current facilities. WNG estimates that it would cost $3,050 to reclaim the two town border settings with a $2,069 salvage volume. WNG also states that it would pay the estimated $15,460 construction cost for the proposed replacement facilities with funds on hand. WNG states that its existing tariff does not prohibit this change and it has sufficient capacity to accomplish the specified deliveries without detriment or disadvantage to its other customers.

Comment date: August 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corp.

[Docket No. CP92-548-000]

July 1, 1992.

Take notice that on June 22, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP92-548-000 a request pursuant to § § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new meter station (Unocal Lisbon Delviery Meter) in San Juan County, Utah pursuant to its blanket certificates issued in Docket No. CP82-433 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Northwest states that the proposed Unocal Lisbon Delivery Meter will be used to deliver up to 6,000 MMBtu per day of start-up and emergency fuel gas to Unocal Corporation (Unocal) for its Lisbon Gas Processing Plant. Northwest states that the proposed Unocal Lisbon Delivery Meter will be located within the Unocal Lisbon Meter Station in Section 22, Township 30 South, Range 24 East, San Juan County, Utah. Northwest estimates that the cost of the delivery meter will be $143,300. Northwest further states that the Unocal Lisbon Delivery Meter is being installed in conjunction with a new 2.78 mile, eight-inch diameter pipeline and meter station for receipt of up to 25,000 MMBtu per day of natural gas from the Unocal Lisbon Processing Plant. Northwest indicates that it will construct the receipt meter and lateral under automatic blanket authorization. Northwest states that it initially will pay for the installation of the described facilities, including the proposed delivery meter, since the estimated incremental revenues generated by the projected transportation service through the facilities will exceed the estimated incremental cost-of-service for the total project.

Comment date: August 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Co.

[Docket No. CP92-543-000]

July 1, 1992.

Take notice that on June 19, 1992, Panhandle Eastern Pipe Line (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed an application with the Commission in Docket No. CP92-543-000 pursuant to section 7(b) of the Natural Gas Act (NGA) for an order permitting and approving the suspension of service to five farm tap and irrigation customers in Kansas, Missouri, Oklahoma, and Texas, all as more fully set forth in the application which is open to the public for inspection.

Panhandle states that it seeks permission to suspend natural gas service to five customers who have not

paid or made satisfactory arrangements to pay the amount due. Panhandle also states that it sent each customer a "30-day notice" of past due on their accounts and a second letter, "Notice of Intent to Suspend Natural Gas Service." Panhandle alleges that these five customers have made no attempt to contact Panhandle or to make payment arrangements for the $19,000 on their cumulative delinquent accounts. Panhandle, however, states that it would recommence natural gas deliveries to these customers once they have either paid their bills or made satisfactory payment arrangements for the amounts due. Panhandle also states that it does not propose to abandon any facilities herein.

Comment date: July 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Border Pipeline Co.

[Docket No. CP92-561-000]

July 6, 1992.

Take notice that on June 29, 1992, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed a prior-notice request with the Commission in Docket No. CP92-561-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate an existing valve setting as a new delivery point to Northern Natural Gas Company (Northern) in Kossuth County, Iowa, under the blanket certificates issued in Docket Nos. CP84-420-000 and CP86-395-000, all as more fully set forth in the application which is open to the public for inspection.

Northern Border proposes to operate an existing valve setting as a new delivery point to Northern (to be called the Ledyard delivery point). Northern Border would deliver up to 4,000 Mcf per day of natural gas and up to 182,500 Mcf annually at the proposed Ledyard delivery point to Northern. Northern would install measuring and regulating facilities, in addition to reimbursing Northern Border approximately $12,000 needed to install communications equipment at the proposed Ledyard delivery point.[1] Northern Border states that its tariff does not prohibit additional delivery points.

Northern Border states that the natural gas volumes it proposes to deliver to Northern are volumes it currently transports for Northern's account under a long-term firm transportation contract and pursuant to blanket transportation authorization. Northern Border further states that Northern would redeliver the natural gas volumes to Iowa Electric Light and Power Company (Iowa Electric) and Interstate Power Company (Interstate Power). In turn, Iowa Electric would provide natural gas service to the town of Armstrong, Iowa, while Interstate Power would serve the towns of Ledyard and Swea City, Iowa.

Comment date: August 20, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16416 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-563-000, et al.]

Williams Natural Gas Co., et al.; Natural Gas Certificate Filing

July 7, 1992.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Co.

[Docket No. CP92-563-000]

Take notice that on June 29, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 7401, filed in Docket No. CP92-563-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by reclaim the 850 horsepower Ellsworth compressor station located in Ellsworth County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, WNG requests authorization to abandon by reclaim the Ellsworth compressor station consisting of 5-170 horsepower Type 80 compressor units and appurtenant facilities, manifold and yard piping, and all above ground concrete and structures. The estimated cost of the proposed abandonment is $36,942 with an estimated salvage value of $2,000, it is stated.

WNG states that the Ellsworth compressor station was constructed to supply natural gas to local towns and the Superior Cement plant, all located along WNG's Superior line. WNG asserts that the population of the towns has decreased and the Superior Cement plant has decreased production, resulting in reduced demand for natural gas. WNG further asserts that the Ellsworth compressor station has not been used to meet peak day requirements for the past nine years.

[1] Northern filed its application on June 19, 1992, for authorization to install and operate its facilities at the Ledyard delivery point in Docket No. CP92-544-000.

WNG states that all natural gas demands in the area can be met without the Ellsworth compressor station.

Comment date: July 28, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP92–572–000]

Take notice that on July 2, 1992, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP92–572–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the National Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point to permit delivery of natural gas to American Gathering, L.P. (American) under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to install a 2-inch tap and valve assembly and a 2-inch orifice-type meter run, with appurtenances, to be known as the American Andrews Delivery Point. El Paso states that the delivery point would be located in Andrews County, Texas, on its 20-inch Goldsmith-Dumas Line. El Paso further states that American would reimburse it for the cost of the proposed facilities, estimated to be $39,070.

El Paso explains that, although the gas would be transported under a transportation agreement dated April 21, 1992, with Anthem Energy Company, L.P., the gas would be used by American for compressor fuel. El Paso indicates that peak day and annual quantities would amount to approximately 500 Mcf and 109,800 Mcf, respectively.

Comment date: August 21, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corp.

[Docket No. CP92–564–000]

Take notice that on June 30, 1992, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed an application with the Commission in Docket No. CP92–564–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a firm transportation service it provides for Southern Natural Gas Company (Southern) under Transco's FERC Rate Schedule X–240, all as more fully set forth in the application which is open to public inspection.

Transco proposes to abandon, at Southern's request, a firm transportation service under Transco's Rate Schedule X–240 of up to 8,000 Mcf per day of natural gas.[1] Transco also requests a November 22, 1992, effective date for the abandonment, because the transportation agreement's ten-year primary term will expire then. Transco does not propose to abandon any facilities herein.

Comment date: July 28, 1992, in accordance with Standard Paragraph F at the end of this notice.

4. El Paso Natural Gas Co.

[Docket No. CP92–555–000]

Take notice that on June 25, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP92–555–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon, by sale to Southwest Gas Corporation (Southwest), certain delivery facilities, under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, El Paso proposes to abandon, by sale to Southwestern a segment of its Parker Line extending from Valve No. 2 to its interconnection with Southwest's distribution facilities in La Paz County, Arizona. The Parker Line was originally constructed to provide service to Arizona Public Service Company, predecessor-in-interest to Southwest, for resale to the community of Parker, Arizona, it is stated.

El Paso states that the section of line to be abandoned provides a distribution service and not a transportation service. El Paso further states that it attempts to provide its transportation services through facilities not encumbered with duel service functions, *i.e.*, transportation and distribution. Accordingly, El Paso and Southwest have agreed to the abandonment by sale to Southwest by a letter agreement dated April 22, 1992, it is stated.

El Paso asserts that it will continue to provide transportation service to Southwest for service to Parker with deliveries to Southwest at Valve No. 2 El Paso states that no change in measurement facilities will be required since the Parker City Gate Meter Station is located on the portion of the Parker Line to be retained by El Paso.

Comment date: August 21, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corp.

[Docket No. CP92–568–000]

Take notice that on June 29, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP92–568–000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to redesign its PGE Meter Station, authorized in Docket No. CP91–3164–000, under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that it was authorized to construct and operate the PGE Meter Station, in Cowlitz County, Washington, pursuant to the Commission's prior notice procedure in Docket No. CP91–3164–000, effective November 12, 1991. Northwest would utilize the meter station to deliver up to 192,000 MMBtu per day of natural gas to a pipeline to be built by Portland General Electric Company and KB Pipeline Company, it is stated.

Northwest states that the authorized design of the meter station included, among other things, two 8-inch control valves and 700 feet of 12-inch pipeline. Northwest asserts that subsequent to approval of its request, it determined that it could adequately control gas flow to the meter station with one control valve and that the connecting pipeline could be shortened and, that by increasing the diameter of the pipeline, the pressure drop over the pipeline could be reduced by approximately 12 psig.

Northwest now requests authorization to construct the PGE Meter Station using one 8-inch control valve instead of two 8-inch valves, and 600 feet of 16-inch pipeline instead of 700 feet of 12-inch pipeline.

Northwest asserts that the balance of the meter station design and the capacity, functions, environmental impacts and estimated costs of the meter station remain unchanged from the description in the original approved filing.

Comment date: August 21, 1992, in accordance with Standard Paragraph G at the end of this notice.

[1] The Commission order issued February 8, 1982, in Docket No. CP81–83–000, *et al.* (18 FERC ¶61,097), authorized Transco's transportation service for Southern.

6. United Gas Pipe Line Co.

[Docket No. CP92–558–000]

Take notice that on June 26, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP92–558–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by removal approximately 1,631 feet of 6-inch pipeline, located in Vermillion Parish, Louisana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United indicates that the pipeline was installed in 1936 to provide transportation service (authorized in Docket No. CP71–089–000 [2], exclusively for a direct sale to Arcadia/Vermillion Rice Irrigation Company (Arcadia/Vermillion). United contends that it mistakenly removed the segment of pipeline known as Index 205–7, as United believed the segment to be part of the facilities described in its original request for abandonment authorization.[3] Due to the misidentification, United's field personnel, on May 21, 1992, removed Index 205–7. As a result, United requests retroactive abandonment effective, May 21, 1992, to coincide with the erroneous removal of pipeline.

Comment date: July 28, 1992, in accordance with Standard Paragraph F at the end of the notice.

7. Granite State Gas Transmission, Inc.

[Docket No. CP92–552–000]

Take notice that on June 24, 1992, Granite State Gas Transmission, Inc. (Granite State) 300 Friberg Parkway, Westborough, Massachusetts 01581, filed an application for a temporary and permanent certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations thereunder authorizing a new storage service for Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) and a revision in the firm daily contract demands for the sales of gas to Bay State and Northern Utilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

According to Granite State, its proposal is directly related to a provision in the "cosmic" settlement in Tennessee Gas Pipeline Company's (Tennessee) Docket No. RP86–119, *et al.*, pursuant to which Tennessee offered customers, such as Granite State restricted in their purchases of Annual Quantity Limitations (AQL), a one-time election to convert to a storage service to provide for the difference between their average daily entitlement under the AQL and the Maximum Daily Quantity (MDQ) under their firm sales contracts with Tennessee. Tennessee proposes to provide the storage service under Rate Schedule SS-NE and upon the effectiveness of the election offered by Tennessee, the firm daily contract demand for sales of gas by Tennessee would be reduced by a quantity equivalent to the Maximum Daily Quantity of the storage service.

Granite State says that it made the election offered by Tennessee and upon the effectiveness of Tennessee's compliance with the terms of the settlement, its MDQ of 86,103 Dth under the sales contract with Tennessee will be reduced to 70,903 Dth a day and it will receive a storage service from Tennessee under Rate Schedule SS-NE providing for firm daily deliverability of 15,200 Dth and an associated annual storage capacity of 1,435,340 Dth.

According to Granite State, its current MDQ of 86,103 Dth under Tennessee's Rate Schedule CD–6 comprises 63.14 percent of the total firm daily system supply of natural gas supporting its firm daily obligations to Bay State and Northern Utilities. It is further stated that a reduction in the daily firm contract demands deliveries from Tennessee to 70,903 Dth requires Granite State to make proportional adjustments in its firm daily contract reduction in the contract demands for sales to Bay State and Northern Utilities. To offset the reduction in the contract demands for sales to its customers, Granite State says that it will make available to each customer a proportionate quantity of the daily deliverability under Tennessee's Rate Schedule SS-NE to each customer equal to the reduction in the daily contract demands for sales. The result is that neither customer will receive an actual reduction in maximum daily service from Granite State.

To accomplish the foregoing, Granite state requests authorization to change the firm daily contract demand levels for sales to Bay State and Northern Utilities that were established in Docket No. CP91–2373–000 [4] to the following levels:

Bay State	Northern Utilities
95,829 Dth/d	22,970 Dth/d.

In order to provide the storage service to its customers utilizing the storage service that will be rendered by Tennessee, Granite State proposes to establish a new Rate Schedule SS-NE in its FERC Gas Tariff, Second Revised Volume No. 1, which will be a mirror image of Tennessee's Rate Schedule SS-NE. Granite State further proposes to allocate the availability to the storage service to its customers as follows:

	Bay State	Northern Utilities
Firm Daily Deliverability.	12,547 Dth/d	2,653 Dth/d.
Seasonal Capacity	1,184,855 Dth	250,485 Dth.

It is further stated that under the provisions of the "cosmic" settlement, Tennessee will direct bill each customer electing the Rate Schedule SS-NE service its proportionate share of the cost of gas storage inventory in place on the date that the service commences, estimated to be July 1, 1992. Grannite State further requests that it be authorized to passthrough the amount billed to it by Tennessee by direct billing its customers proportionately in relation to their respective entitlements to storage service.

Granite State says that through its Rate Schedule SS–NE, it will track the Tennessee rate for its Rate Schedule SS–NE and, since it will be a billing conduit for providing the service to its customers, it requests waiver of § 154.38(d)(3) and 154.63 of the Regulations in order to track the Tennessee rates. Granite further states that it has a rate settlement in Docket No. RP91–164–000 pending before the Commission. According to Granite State, the settlement proposes a new rate design for all its commodity charges. In establishing the initial rates for its Rate Schedule SS–NE service, Granite State proposes also to include a system handling charge consistent with the provisions of the rate settlement.

According to Granite State, the authorizations requested do not require the construction of any new facilities. It is further stated that the revised services for Bay State and Northern Utilities will result in substantially reduced annual costs for these customers. The conversion of the Tennessee Rate Schedule CD–6 service to the Rate Schedule SS–NE service will provide annual net savings to the distributors of

[2] 9 FERC ¶62,082.

[3] The Commission, in Docket No. CP87–215–000, authorized, among other things, the abandonment of the transportation service and the meter station serving Arcadia/Vermillion (42 FERC ¶61,058).

[4] (57 FERC ¶61,297) 1991.

$624,900 applying the *pro forma* rates in Tennessee's "cosmic" settlement and $1,123,700 applying Tennessee's currently effective rates in Docket No. CP91–203–000. It is further stated that the annual revenue income to Granite State from Rate Schedule SS–NE will be $16,500 under the settlement rate design in Docket No. RP91–164–000 which, according to Granite State is 3/10ths of a percent of the jurisdictional non-gas cost of service established in the settlement.

Because of the imminence of Tennessee's expected compliance with the provisions of the "cosmic" settlement, Granite State further requests a temporary certificate of public convenience and necessity authorizing the proposals in its application pending issuance of a permanent certificate. Granite State requests that the temporary certificate to make effective the changes in service for its customers be coincident with the date that the changes in Tennessee's service for Granite State become effective.

Comment date: July 28, 1992, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessary. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16431 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–199–000]

ANP Pipeline Company; Proposed Changes in FERC Gas Tariff

July 7, 1992.

Take notice that ANR Pipeline Company ("ANR"), on July 2, 1992 tendered for filing as part of its Original Volume Nos. 1, 1–A, 2 and 3 of its FERC Gas Tariff, six copies of the tariff sheets as listed in appendix A attached to the filing.

ANR states that the referenced tariff sheets are being submitted pursuant to § 2.104 of the Commission's Regulations to implement partial recovery of approximately $26.9 million of additional buyout buydown costs, part by a fixed monthly charge applicable to ANR's sales customers and part by a volumetric buyout buydown surcharge of $0.0034 per dth applicable to all throughout. In particular, this filing is being made pursuant to Article II of the Stipulation and Agreement filed by ANR on February 12, 1991 in Docket Nos. RP91–33–000 and RP91–35–000, as approved by the Commission on March 1, 1991. ANR has requested that the Commission accept the tendered tariff sheets to become effective August 2, 1992. ANR states that it intends to commence billing of the proposed fixed monthly charges and volumetric surcharge in October, 1992 for September, 1992 business.

ANR states that all of its Volume Nos. 1, 1–A, 2 and 3 customers and interested State Commissions have been apprised of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 N. Capitol Street, N.E., Washington, DC 20426 by July 14, 1992, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 214. 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 application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–16409 Filed 7–13–91; 8:45 am]

BILLING CODE 6717–01–M

Filing Deadlines for Applications for NGPA Category Determinations and Notices of NGPA Category Determinations

July 7, 1992.

I. Introduction

The Natural Gas Wellhead Decontrol Act of 1989 [1] repealed the authority of the jurisdictional agencies to make and the Commission to review well category determinations under the Natural Gas Policy Act (NGPA) as of January 1, 1993. Therefore, the Commission gives notice that all applications for NGPA category determinations must be filed with the appropriate jurisdictional agencies on or before December 31, 1992, and all notices of NGPA category determinations must be filed with the Commission on or before September 30, 1993, in order for such filings to be processed. These deadlines apply to applications and notices of determination for any NGPA category.

II. Deadlines for Filing Applications for NGPA Category Determinations

In Order Nos. 539 [2] and 539–A,[3] involving tax credits for certain tight

[1] Pub. L. 101–60, 103 Stat. 157 (1989).

[2] Qualifying Certain Tight Formation Gas for Tax Credit, FERC Stats. & Regs., Regulations Preambles ¶ 30,940 (1992).

[3] 59 FERC ¶_____ (1992).

formation gas, the Commission stated that all applications for NGPA category determinations must be received by the jurisdictional agencies on or before December 31, 1992, in order for the applications to be processed. However, the Commission emphasized that the jurisdictional agencies have the discretion to assign a filing date to an application for a NGPA category determination that is substantially complete and specify a post-December 31, 1992 date when a complete application must be filed.

As discussed in Order Nos. 539 and 539–A, the filing deadlines established in those orders apply to all applications and notices of determination for any NGPA category and not just to proceedings for tight formation NGPA category determinations. Therefore, the Commission gives notice that all applications for NGPA category determinations must be received by the jurisdictional agencies on or before December 31, 1992, in order for the applications to be processed.

III. Determinations for Jurisdictional Agencies to File Notices of Determinations

In Order No. 539 the Commission stated that it would continue to process all jurisdictional agency NGPA category determinations received by the Commission on or before June 30, 1993. On rehearing of Order No. 539, the Commission determined to extend until September 30, 1993 the deadline for the Commission to receive from jurisdictional agencies notice of NGPA category determination. Therefore, the Commission gives notice that it will continue to process notices of NGPA category determination only if they are received by the Commission on or before September 30, 1993, and the underlying application is filed on or before December 31, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16385 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–5–1–000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

July 7, 1992.

Take notice that on July 1, 1992, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet with a proposed effective date of July 1, 1992:

32nd Revised Sheet No. 4

Alabama-Tennessee states that the filing is an out-of-cycle purchased gas adjustment (PGA) filing, the purpose of which is to correlate more precisely Alabama-Tennessee's projected gas costs with the rates of its upstream pipeline supplier, Tennessee Gas Pipeline Company (Tennessee).

Alabama-Tennessee states that copies of the filing were mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16414 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–17–20–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 7, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on July 1, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the following revised tariff sheets:

Proposed to be effective June 1, 1992: 10 Rev Sheet No. 41, 10 Rev Sheet No. 42.

Algonquin states that the revised tariff sheets are being filed to flow through changes in Texas Eastern Transmission Corporation's Rate Schedules SS–2 and SS–3, which underlie Algonquin's Rate Schedules STB and SS–III. Pursuant to section 10 of Rate Schedule STB and section 9 of Rate Schedule SS–III in Algonquin's FERC Gas Tariff, Third Revised Volume No. 1, Algonquin is hereby filing the above sheets to track the latest changes filed by Texas Eastern on June 19, 1992 to be effective June 1, 1992.

Algonquin further states that the effect of the filed tariff sheets is to decrease the STB and SS–III demand charges by 0.1¢ per MMBtu.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16411 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR92–7–000]

Bonito Pipe Line Co.; Petition for Declaratory Order

July 8, 1992.

Take notice that on July 1, 1992, Bonito Pipe Line Company (Bonito) tendered for filing a petition for declaratory order pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207.

Bonito requests that the Commission declare that Bonito is not unconditionally required, pursuant to either the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331, *et seq.*, or the Interstate Commerce Act (ICA), 49 U.S.C. 1, *et seq.*, to interconnect with facilities built for, and commence transportation of crude oil for, Shell Oil Company (Shell Oil) upon the demand of the latter. Specifically, Bonito states that it has declined to permit an interconnection for Shell Oil and provide transportation of up to 50,000 barrels per day of anticipated production for sour crude, which if blended in Bonito's common stream will materially disadvantage the shippers (both proprietary and common carrier) on the Bonito system.

If the Commission ultimately determines that Bonito must interconnect with the proposed pipeline facilities of Shell Pipe Line Corporation

(Shell Pipe Line) and commence transportation service for Shell Oil notwithstanding the lack of statutory authority for such a determination, Bonito respectfully submits that the Commission must determine a proper methodology for allocating capacity and the appropriate methodology to compensate Bonito's existing shippers, taking into consideration the material disadvantage to its shippers which would be caused by the receipt of the Shell Oil production. The concerns which are raised by the present controversy involve not only transportation service and a pipeline company's obligation to interconnect to provide such service, but the financial consequences to existing shippers if Bonito is compelled to receive and transport the Shell Oil production. Notwithstanding the unstated motive of Shell Oil for attempting to introduce its sour crude oil into the Bonito common stream, Bonito respectfully requests that the Commission declare that, under the circumstances Bonito is not obligated to interconnect with the facilities built for, and unconditionally commence transportation service, for Shell Oil pursuant to the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331, *et seq.*, and the Interstate Commerce Act (ICA), 49 U.S.C. 1, *et seq.*

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, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16522 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-63-000 and TM92-5-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 8, 1992.

Take notice that on July 2, 1992, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Thirty-Fourth Revised Sheet No. 8,
Thirty-Fourth Revised Sheet No. 9,
Alt Thirty-Fourth Revised Sheet No. 8,
Alt Thirty-Fourth Revised Sheet No. 9.

Carnegie states that this filing is its annual Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") submitted pursuant to § 154.305 of the Commission's regulations and sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff. The proposed effective date of the primary and alternate tariff sheets is September 1, 1992.

Carnegie proposes to adjust its sales rates to reflect changes in its projected purchased gas costs and related Account No. 858 costs for the quarterly PGA period, September 1, 1992 through November 30, 1992. The filing reflects a current estimated average cost of gas of $1.7994 per Dth, based upon total projected commodity costs of $12,002,219 and projected jurisdictional sales of 6,670,000 Dth, all of which Carnegie projects will be interruptible sales under its interruptible sales Rate Schedule SEGSS. Carnegie projects that it will realize zero firm sales during this first quarterly period.

Carnegie states that the base rates reflected on its proposed revised tariff sheets correspond with the respective base rate changes proposed in the primary and alternate tariff sheets filed by Carnegie in Docket No. RP92-190-000 on June 16, 1992. The proposed revised tariff sheets also reflect changes in Carnegie's sales rates as effected through the Current Adjustment and Surcharge Adjustment of the instant PGA filing. With respect to the Current Adjustment, the revised tariff sheets reflect a commodity rate decrease of $0.355 per Dth under Rate Schedules CDS, LVWS, and SEGSS, as compared to the rates established in Carnegie's last fully-supported out-of-cycle PGA filing in Docket No. TQ92-6-63-000. With respect to the Surcharge Adjustment, the revised tariff sheets reflect a demand surcharge of <$0.4098> per Dth, a commodity surcharge of $0.0000 per Dth, and a DCA surcharge of <0.0019> per Dth under Rate Schedules CDS and LVWS.

Carnegie also requests waiver of § 154.305 (d) and (e) of the Commission's regulations and § 23.8 of the General Terms & Conditions of its tariff to permit Carnegie to suspend its PGA commodity surcharge for the duration of the amortization period subject to this annual PGA filing. Carnegie requests such waivers because, in the instant filing, it proposes to transfer from its current deferral subaccount to its refund subaccount of Account No. 191 the full $1,741,745 balance in its current deferral subaccount as of April 30, 1992. As explained more fully in its filing, this request for transfer of the unrecovered commodity costs (and the necessary waivers to permit this transfer) are based on factors involving, among other things, Carnegie's projection that it will make little or no sales under its firm sales rate schedules, the effect of the Gas Supply Inventory Reservation Charges billed to Carnegie by its sole upstream supplier (Texas Eastern Transmission Corporation), anticipated refunds from Texas Eastern, and the Commission's pronouncements in Order No. 636.

Carnegie also requests waiver of § 26.8 of the General Term & Conditions of its FERC Gas Tariff to permit Carnegie to credit its Account No. 191 refund subaccount by transferring to that account $1,1452 in overcollected Account No. 858 costs.

Carnegie's filing also reflects that its actual costs of purchased gas exceed the 103 percent tolerance level established in § 154.306 of the Commission's regulations in three of the applicable four test intervals. As explained in more detail in its filing, Carnegie presents reasons as to why it exceeded the 103 percent test in each of the three test intervals. Based on these reasons, Carnegie requests approval of the Commission pursuant to § 154.306(a) to recover the costs in excess of the 103 percent level.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or protest said filing should file an intervention and/or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.214 and 385.211). All such pleadings should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16517 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-1-22-000, RP92-201-000 and TM92-9-22-000]

CNG Transmission Corp. Proposed Changes in FERC Gas Tariff

July 8, 1992.

Take notice that CNG Transmission Corporation ("CNG"), on July 2, 1992, pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's Regulations, and section 12 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

Twenty-First Revised Sheet No. 31,
Alt Twenty-First Revised Sheet No. 31,
Thirteenth Revised Sheet No. 32,
Seventh Revised Sheet No. 33,
Seventeenth Revised Sheet No. 34,
Alt Seventeenth Revised Sheet No. 34,
Twelfth Revised Sheet No. 35,
Original Sheet No. 201A,
Second Revised Sheet No. 202,
Second Revised Sheet No. 225,
Original Sheet No. 225A.

CNG requests effective dates for these proposed tariff sheets of September 1, 1992.

CNG states that under its primary filing, ACD/CD/RQ commodity rates would decrease by $0.2840 per Dt, and the ACD/CD/RQ D-1 rate would increase by $2.25 per Dt from current levels. CNG states that its TF demand rate will increase by $0.04 per Dt, its TF commodity rate will decrease by $0.0062 per Dt, and its GSS demand rate will decrease by $0.03 per Dt; other rates will change accordingly. CNG states that its proposed annual Transportation Fuel Adjustment would decrease the transportation fuel charge by $0.0046 per Dt, and maintain the fuel retention percentage of 2.28%.

In its primary filing, CNG seeks: (1) Waiver of § 154.305(e) of the regulations, to surcharge approximately $18.5 million of CNG's current commodity deferral balance over the annual period starting September 1, 1992; (2) waiver of § 154.305(h)(3)(ii)(D), to eliminate the "rolling weighted average adjustment" from computation of interest on Account No. 191 balances; and waiver of § 16.8 of CNG's tariff, to exclude a transportation fuel surcharge in this annual PGA.

CNG states that in its alternate filing ACD/CD/RQ commodity rates would increase by $0.2600 per Dt, and its ACD/CD/RQ D-1 rate would increase by $2.25 per Dt from current levels. CNG states that its TF demand rate will increase by $0.04 per Dt, its TF commodity rate will decrease by $0.0062 per Dt, and its GSS demand rate will decrease by $0.03 per Dt; other rates will change accordingly. CNG states that its annual Transportation Fuel Adjustment would be the same as in the primary filing.

In its alternate filing, CNG requests: (1) Waiver of § 154.305(h)(3)(ii)(D) of the regulations, to eliminate the "rolling weighted average adjustment" from computation of interest on CNG's Account No. 191 balance; and (2) waiver of § 16.8 of CNG's tariff, to exclude a transportation fuel surcharge in this annual PGA.

CNG states that its primary and alternate filings reflect demand surcharge recovery of Gas Inventory Charges ("GIC") from Texas Eastern Transmission Corporation ("Texas Eastern").

CNG states that it also proposes to revise the PGA/TCRA refund mechanism of its tariff to better match cost incurrence and cost recovery, by allowing CNG to offset debit balances in Account Nos. 191 and 186 with supplier refunds, as more fully described in CNG's filing.

CNG states that it is also filing an annual Transportation Cost Rate Adjustment surcharge, to reflect amortization of under and overrecoveries between January 10, 1991 and April 30, 1992.

CNG also states that for the period September, 1991 through November, 1991, CNG's actual purchase gas costs exceeded the tolerance amount under the regulations for assessment of past performance, by approximately $3.1 million; CNG seeks Commission approval to recover this amount through its commodity surcharge.

CNG states that documentation provided with this filing also provides information required by orders in Docket Nos. TA90-1-22 and TQ92-3-22, as more fully described in CNG's filing.

CNG states that copies of this filing were served upon CNG's customers as well as interested state commissions. Also, copies of this filing are available during regular business hours at CNG's main offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before July 22, 1992. 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. 92-16516 Filed 7-13-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP91-161-000, et al. and RP91-160-000, et al.]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Informal Settlement Conference

July 8, 1992.

Take notice that an informal conference will be convened in this proceeding on Wednesday, July 22, 1992, for the purpose of exploring the possible settlement of the above-referenced dockets. The conference will be held at the Washington Hilton and Towers, 1919 Connecticut Avenue, NW., Washington, DC immediately following the Prefiling Conference scheduled for July 21 and July 22 in Docket Nos. RS92-5-000 *et al.* and RS92-6-000 *et al.*

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208-0783, Lorna J. Hadlock at (202) 208-0737 or David R. Cain at (202) 208-0917.

Lois D. Cashell,
Secretary.

[FR Doc. 92-16513 Filed 7-13-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TQ92-5-21-000 and TM92-12-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1992

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 1, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective August 1, 1992:

Twentieth Revised Sheet No. 26,
Twelfth Revised Sheet No. 26.1,
Twentieth Revised Sheet No. 26A,
Twelfth Revised Sheet No. 26A.1,
Twentieth Revised Sheet No. 26B,
Eleventh Revised Sheet No. 26B.1,
Nineteenth Revised Sheet No. 26C,
Fifth Revised Sheet No. 26C.1,
Tenth Revised Sheet No. 26D,
Twentieth Revised Sheet No. 163.

This filing represents Columbia's quarterly gas adjustment (PGA) and reflects a current PGA applicable to sales rate schedules; continuation of certain surcharges; a transportation fuel charge adjustment; and a transportation cost recovery adjustment (TCRA).

Columbia states that the sales rates set forth on Twelfth Revised Sheet No. 26.1 reflect an overall decrease of 0.04¢ per Dth in the commodity rate and an overall increase of $0.306 per Dth in the total demand rate when compared with the total CDS rates currently in effect. The TCRA commodity rate is increased by 0.12¢ per Dth and the TCRA demand rate is increased by $0.274 per Dth. Columbia states that the transportation rates set forth on Fifth Revised Sheet No. 26C.1 and Tenth Revised Sheet No. 26D reflect no change in the Fuel Charge component.

Columbia states that copies of the filing were served upon Columbia's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16412 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-195-000]

El Paso Natural Gas Co.; Tariff Filing

July 7, 1992.

Take notice that on July 1, 1992, El Paso Natural Gas Company ("El Paso"), tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in accordance with sections 22 and 21, Take-or-Pay Buyout and Buydown Cost Recovery, of El Paso's First Revised Volume No. 1-A and Second Revised Volume No. 1 FERC Gas Tariffs, respectively, certain tariff sheets to become effective August 1, 1992. Tariff sheets reflect a revision to the Monthly Direct Charge and Throughput Surcharge based on additional buyout and buydown costs associated with contracts that were in litigation or arbitration as of March 31, 1989 and have not been included in any of El Paso's previous filings to recover certain buyout and buydown costs.

El Paso states that it has proposed to amortize the direct bill portion (25%) of such additional amount included in its filing over a seven (7) month amortization period extending through February 28, 1993. This amortization period will permit the direct bill portion of such additional cost to be completely amortized during the same direct bill amortization period as applies to costs included in El Paso's prior filings in Docket Nos. RP90-81-000, RP91-26,000, RP91-162-000 and RP92-18-000. El Paso proposed that the Throughput Surcharge attributable to the recovery of the amount in the filing be amortized over a period commencing August 1, 1992 through March 31, 1996 which is consistent with El Paso's authorization at Docket No. RP92-115-000 to consolidate the amortization periods for the volumetric surcharge from each previous take-or-pay filing into a single amortization period terminating March 31, 1996.

El Paso further states that the adjustments proposed by the filing are for adjustments to El Paso's Monthly Direct Charge and Throughput Surcharge. The Throughput Surcharge has increased $0.0005 per dth, from $0.0388 per dth to $0.0393 per dth.

Pursuant to § 21.6 of El Paso's Volume No. 1 Tariff, El Paso is required to file with the Commission certain information supporting the buyout and/or buydown amounts paid. Accordingly, El Paso states that it is submitting concurrently, under separate cover letter, the schedules reflecting such information for which El Paso has requested confidential treatment.

El Paso respectfully requested that the Commission accept the tendered tariff sheets to become effective August 1, 1992.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation and sales customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16398 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-24-000]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

July 8, 1992.

Take notice that on July 1, 1992, Equitrans, Inc. (Equitrans), pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's Regulations (18 CFR part 154) and section 19 of the General Terms and Conditions of Original Volume No. 1 of Equitrans' tariff, Equitrans filed its third Annual Purchased Gas Adjustment, containing the following tariff sheets to Original Volume No. 1 to:

Thirty-Seventh Revised Sheet No. 10
Twenty-Seventh Revised Sheet No. 34

Equitrans states that the changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is a decrease in the demand cost of $0.2872 per dekatherm (Dth) and an increase in the commodity cost of $0.4584 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is an increase of $0.1833 per Dth. The GIC demand surcharge for Rate Schedule PLS is $0.8741 per dth, and is designed to recover an estimated $5,390,930 in Texas Eastern Transmission Corporation (TETCO) GIC charges.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 and 385.214 of the Commission's Rules of Practices and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 22, 1992. 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. 92–16519 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–187–000 and CP91–2448–000]

Florida Gas Transmission Co.; Informal Settlement Conference

July 8, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on July 21, 1992, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in this proceeding which relate to cost of service, incentive rates, throughout and bidding procedures for interruptible capacity.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Warren C. Wood at (202) 208–2091 or Donald Williams at (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16514 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–16–000]

Florida Gas Transmission Co.; Prefiling Conference

July 8, 1992.

Take notice that a prefiling conference will be convened in this proceeding on July 21, 1992, at 1:30 p.m., continuing on July 22, 1992, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of this conference is to address the summary of proposal prepared by Florida Gas Transmission Company to comply with Order No. 636. The pipeline was to serve all parties in the proceeding with the summary by July 7, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information, contact Joanne Leveque at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16528 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ92–11–4–000 and TM92–17–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

July 7, 1992.

Take notice that on July 1, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Frieberg Parkway, Westborough, Massachusetts 01581–5309 tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates and tariff provisions for effectiveness on July 1, 1992:

First Revised Fifteenth Revised Sheet No. 21,
First Revised Sixth Revised Sheet No. 22,
Second Revised Sheet No. 125,
Second Revised Sheet No. 128.

According to Granite State, its filing is a revision in its projected gas costs for the third quarter of 1992 reflecting primarily the changes in its service from Tennessee Gas Pipeline Company (Tennessee) resulting from the approval of Tennessee's "cosmic" settlement in Docket Nos. RP86–119, RP88–228, *et al.* It is stated that under the provisions of the settlement, Granite State's firm contract demand for purchases from Tennessee under Rate Schedule CD–6 have been reduced from 86,103 Dth/d to 70,903 Dth/d and the difference in the daily CD entitlement is replaced by 15,200 Dth/d of storage service under Tennessee's Rate Schedule SS–NE.

Granite State further states that is currently effective purchased gas cost adjustment tariff mechanism will enable it to passthrough to its customers immediately the reduction in the Demand costs attributable to the reduced Rate Schedule CD–6 contract demand. However, Granite State states that it lacks the tariff mechanism to recover the newly incurred Demand costs for the Rate Schedule SS–NE storage service.

According to Granite State, it has pending an application for a temporary and permanent certificate of public convenience and necessity in Docket No. CP92–552–000 requesting authorization to make the Rate Schedule SS–NE service directly available to its jurisdictional customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). Granite State states that in a concurrent filing of a Petition for Temporary Waiver of the Purchased Gas Cost Regulations it has requested permission to track the Rate Schedule SS–NE Demand costs on a current basis through its purchased gas accounts.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional sales services rendered to Bay State and Northern Utilities. Granite State further states that copies of its filing were served upon its customers and the regulatory commission's of the States of Maine, Massachusetts and New Hampshire.

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, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16399 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–18–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

July 7, 1992.

Take notice that on July 1, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581 filed Fifth Revised Sheet No. 24 in its FERC Gas Tariff, Second Revised Volume No. 1, proposing changes in rates for effectiveness on July 31, 1992.

According to Granite State, its filing is submitted to passthrough to its customers the take-or-pay buydown and buyout costs directly billed to Granite State by Tennessee Gas Pipeline Company (Tennessee).

Granite State states that on June 30, 1992, among other changes, Tennessee filed revised tariff sheets to recover additional transition costs in its compliance filing in Docket Nos. RP88–228, *et al.* According to Granite State, its tariff sheet reflects the changes in Tennessee's allocation of take-or-pay costs to Granite State and also complies with the requirements of the reallocation of costs to small customers pursuant to Order No. 528–A.

According to Granite State the proposed rate changes are applicable to its jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. and to a sale to a direct customer, Pease Air Force Base. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16406 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–197–000]

Granite State Gas Transmission, Inc. Petition for Temporary Waiver of Purchased Gas Cost Regulations

July 7, 1992.

Take notice that on July 1, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough. Massachusetts 01581 filed a Petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure for a Temporary Waiver of §§ 154.301 through 154.310 of the Regulations relating to purchased gas cost adjustment procedures.

According to Granite State, a major source of its firm system supply underlying its firm natural gas sales to its jurisdictional customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) is purchased from Tennessee Gas Pipeline Company (Tennessee) under the latters Rate Schedule CD–6. It is stated that in its "cosmic" settlement in Docket Nos. RP86–119 and RP88–228, *et al.*, Tennessee offered customers constrained by Annual Quantity Limitations (AQL) under its CD sales contracts a one time election to reduce the MDQ under their CD contracts to the level of the average daily quantity under the AQL and to subscribe for storage service under its Rate Schedule SS–NE for a daily quantity for storage service equal to the reduction in the CD sales contracts.

Granite State made the election offered by Tennessee, it is stated, and under its existing purchased gas cost adjustment tariff provisions it has the tariff mechanism to reflect immediately the reduction in the Demand costs for the reduced level of its Rate Schedule CD–6 purchases from Tennessee. However, Granite State states that it is without a tariff mechanism to recover the newly incurred Demand costs for the Rate Schedule SS–NE service.

According to Granite State, it has pending in Docket No. CP92–552–000 an application for a temporary and permanent certificate of public convenience and necessity for authority to reduce its contract demand obligations for firm sales to Bay State and Northern Utilities proportional to the reduction in its purchases from Tennessee and to replace the reductions by entitlements to Tennessee's Rate Schedule SS–NE service.

Granite State further states that its Petition requests a temporary waiver of the purchased gas cost regulations to enable it to track the Demand costs for the Tennessee Rate Schedule SS–NE service as deferred gas costs in its purchased gas cost accounts until the Commission grants its application in Docket No. CP92–552–000.

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, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16401 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP91–143–013 and RP92–159–000]

Great Lakes Gas Transmission Limited Partnership; Technical Conference

July 7, 1992.

In the Commission's order issued on May 28, 1992, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Tuesday, July 21, 1992, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16413 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–50–000 and CP90–406–000]

High Island Offshore System; Informal Settlement Conference

July 7, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on July 17, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1991).

For additional information, please contact Irene E. Szopo at (202) 208–1602, or Anja M. Clark at (202) 208–2034.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16397 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA92–1–15–000]

Mid Louisiana Gas Co. Compliance Filing

July 8, 1992.

Take notice that Mid Louisiana Gas Company ("Mid Louisiana") on July 2, 1992, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the Tariff Sheet and proposed effective date as set forth below:

Superseding

Ninety-Second, Revised Sheet No. 3a
Ninety-First Revised Sheet No. 3a
September 1, 1992.

Mid Louisiana states that the purpose of the filing of the Tariff Sheet is to project a current cost of gas for the quarterly period beginning September 1, 1992, in compliance with the Commission's Regulations issued in Order Nos. 483 and 483-A. Mid Louisiana also states that Ninety-Second Revised Sheet No. 3a is to reflect a decrease of $0.0889 in Mid Louisiana's current cost of gas, exclusive of surcharge. Additionally, Mid Louisiana is reflecting a new surcharge rate for the annual period beginning September 1, 1992.

Mid Louisiana states that copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with sections 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such petitions or protests should be filed on or before July 22, 1992. 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 Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16520 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–73–001]

National Fuel Gas Supply Corp.; Filing To Place Into Effect Revised Tariff Sheets

July 8, 1992.

Take notice that on June 30, 1982, National Fuel Gas Supply Corporation ("National") submitted for filing pursuant to section 4(e) of the Natural Gas Act, as amended, § 154.67 of the Regulations of the Federal Energy Regulatory Commission ("Commission") thereunder, a motion to place the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, into effect as of July 1, 1992, subject to refund:

Second Revised Volume No. 1

Sub. First Revised Sheet No. 1
Sub. Second Revised Sheet No. 2
Sub. Nineteenth Revised Sheet No. 5
Sub. Fifth Revised Sheet No. 6
Sub. First Revised Sheet No. 11
Sub. First Revised Sheet No. 17
Sub. First Revised Sheet No. 23
Sub. First Revised Sheet No. 148
Sub. Original Sheet No. 149
Sub. Original Sheet No. 150
Sub. Original Sheet No. 151
Sub. Original Sheet No. 152

Through the motion, National also seeks to place into effect the following sheets to its FERC Gas Tariff, First Revised Volume No. 2, as of July 1, 1992, subject to refund:

First Revised Volume No. 2

Sub. Eighth Revised Sheet No. 281
Sub. Tenth Revised Sheet No. 302
Sub. Eighth Revised Sheet No. 321
Sub. Eighth Revised Sheet No. 341
Sub. Seventh Revised Sheet No. 538
Sub. Third Revised Sheet No. 640
Sub. Fifth Revised Sheet No. 690
Sub. Third Revised Sheet No. 796
Sub. First Revised Sheet No. 825
Sub. Fourth Revised Sheet No. 857
Sub. First Revised Sheet No. 880
Sub. First Revised Sheet No. 881
Sub. First Revised Sheet No. 914
Sub. First Revised Sheet No. 915
Sub. First Revised Sheet No. 935

In the alternative, National seeks to make effective the First Alt. Sub. Nineteenth Revised Sheet No. 5 if its conversion on Tennessee Gas Pipeline Company from sales to transportation is made effective on July 1, 1992. On the other hand, if the Tennessee conversion is not made effective on July 1, 1992, National seeks to make effective the Second Alt. Sub. Nineteenth Revised Sheet No. 5.

National states that copies of National's filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16515 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–21–000]

National Fuel Gas Supply Corp.; Revised Date for Prefiling Conference

July 7, 1992.

Take notice that the prefiling conference previously scheduled to be convened in this proceeding beginning on July 21, 1992, is now scheduled to begin on July 20, 1992, at 10 a.m., in Washington, DC at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state the new location.

The purpose of the conference is to address National Fuel Gas Supply Corporation's summary of its proposal to comply with Order No. 636. The pipeline expects to serve the summary on all parties in this proceeding by July 7, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information, interested parties may call Donald Williams at (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16396 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–6–16–000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

July 7 1992.

Take notice that on June 30, 1992, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1:

Sub. Nineteenth Revised Sheet No. 5

The revised tariff sheets and alternative tariff sheets, are proposed to become effective on July 1, 1992 and implements interim purchased gas cost adjustment based on projected purchased gas costs for the month of July 1992.

National states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1992. 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. 92-16395 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-8-000]

Northern Natural Gas Co., Conference

July 7, 1992.

Take notice that on July 30, 1992 and, if necessary, July 31, 1992, the Commission staff is convening a conference concerning Northern Natural Gas Company's proposed Order No. 636 compliance filing. At this conference, representatives of Northern Natural will explain to the Commission staff and the intervenors in this proceeding the proposed compliance filing to be filed with the Commission on or before October 1, 1992.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Hearing room # 1, Washington, DC. The conference will begin at 10 a.m. on July 30, 1992. Attendance at the conference does not confer party status. Those planning to attend should contact Jane Wilson at (402) 398-7088.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16415 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-4-55-000]

Questar Pipeline Co.; Tariff Filing

July 7, 1992.

Take notice that Questar Pipeline Company (Questar) on July 1, 1992, tendered for filing and acceptance First Revised Sheet No. 19A to Original Volume No. 1 of its FERC Gas Tariff:

Questar requests an effective date of August 1, 1992, for the proposed tariff sheet and states that this filing has been served upon all interested parties and the Utah and Wyoming public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16394 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-202-000]

Tennessee Gas Pipeline Co.; Filing

July 8, 1992.

Take notice on July 6, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Fourth Revised Volume No. 1 of its FERC Gas Tariff to be effective on August 1, 1992:

First Revised Sheet No. 161
First Revised Sheet No. 172
First Revised Sheet No. 184

Tennessee states that this filing is being made to amend the fuel provisions contained in Rate Schedules IT, FT-A and FT-B, to provide Tennessee the authority to discount the fuel component under those rate schedules. Tennessee requests authority to discount the fuel percentage to zero percent; provided that Tennessee will not discount below actual fuel costs for a transaction. Tennessee states that this authority to discount fuel is necessary to enable Tennessee to effectively compete for certain transportation business. Tennessee requests that the Commission waive the 30-day notice requirement to permit the tariff sheets to become effective on August 1, 1992.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 15, 1992. 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. 92-16527 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-200-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 8, 1992.

Take notice that on July 2, 1992, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets with a proposed effective date of August 1, 1992:

Seventh Revised Sheet No. 529
Seventh Revised Sheet Nos. 530-599

Texas Eastern states that Seventh Revised Sheet No. 529 adds a new section 38 to the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. The proposed section 38 is submitted to make the currently effective open access blanket certificate imbalance resolution procedures in Texas Eastern's Tariff applicable to all imbalances under any of Texas Eastern's rate schedules whether filed as part of Volume No. 1 or Volume No. 2. In addition to being applicable to all imbalances arising after the effective date of section 38, the proposed section 38 would also apply to any imbalance existing prior to the effective date thereof. Such existing imbalances shall be subject to the penalty provisions of

section 6 of Rate Schedule IT–1 if Texas Eastern and such shipper have not reached agreement in writing, within forty-five (45) days after the effective date of section 38 of the General Terms and Conditions, as to the manner in which such imbalances shall be resolved.

Texas Eastern states that the copies of the filing were served upon Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16518 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–6–17–000]

Texas Eastern Transmission Corp., Proposed Changes

July 7, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 1, 1992 tendered for filing as part of its FERC Gas Tariff six copies of the tariff sheets listed on Appendix A to the filing.

Texas Eastern states that these tariff sheets are being filed pursuant to section 23, Purchased Gas Cost Adjustment, and section 26, Electric Power Cost (EPC) Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's regular quarterly PGA filing to be effective August 1, 1992 pursuant to 18 CFR 154.308. Texas Eastern states that in compliance with § 154.308 (b)(2) of the Commission's Regulations, a report containing detailed computations for the derivation of the current adjustment to be applied to Texas Eastern's effective rates is enclosed in the format as prescribed by FERC Form No. 542–PGA (Revised) and FERC's Notice of Criteria for Accepting Electronic PGA Filings dated April 12, 1991.

Texas Eastern states that the PGA changes proposed in this filing include a Demand current adjustment of $(0.018)/dth and a Commodity current adjustment of $0.0566/dth based upon the change in Texas Eastern's projected cost of purchased gas from Texas Eastern's May 8, 1992 out-of-cycle PGA filing in Docket No. TQ–92–5–17.

Texas Eastern states that this filing also constitutes Texas Eastern's semiannual adjustment to reflect changes in electric power costs pursuant to section 26. These changes in rates for Sales and Transportation services are based upon the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning August 1, 1992 and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account as of April 30, 1992.

Texas Eastern states that on April 15, 1992 the Commission approved Texas Eastern's August 19, 1991 Stipulation and Agreement, as supplemented December 10, 1991, in Docket Nos. RP90–119–010 and RP91–119–006 which resolved cost of service issues in those dockets. As a result, Texas Eastern filed tariff sheets on June 15, 1992 reflecting the settlement rates as prescribed in Article II of such Stipulation and Agreement. The substitute tariff sheets in this filing listed on appendix A reflect Texas Eastern's settlement rates adjusted for the PGA change proposed herein and the EPC change as recalculated pursuant to the settlement to be effective August 1, 1992.

The proposed effective date of these revised tariff sheets is August 1, 1992.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. 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 a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16407 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–15–29–000]

Transcontinental Gas Pipe Line Corp.

July 7, 1992.

Take notice that on July 1, 1992 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing Third Revised Sheet No. 60 to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheet is proposed to be effective August 1, 1992.

Transco states that the purpose of the instant filing is to revise the Great Plains Volumetric Surcharge (GPS) effective August 1, 1992 pursuant to section 39 of the General Terms and Conditions of Transco's FERC Gas Trafiff. The revised GPS Surcharge included in the instant filing consists of two components—the Current GPS Surcharge calculated for the period August 1, 1992 through July 31, 1993 and the Great Plains Deferred Account Surcharge which is based on the balance in the deferred account plus accumulated interest at April 30, 1992.

Attached in appendix A to the filing are workpapers supporting the calculation of the revised GPS Surcharge of 2.03¢ per dt reflected on the tariff sheet included therein.

Transco states that copies of the instant filing are being mailed to its customers, State Commissions and other interested parties. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

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, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available

for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16403 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-196-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 7, 1992.

Take notice that Transwestern Pipeline Company ("Transwestern") on July 1, 1992 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

Effective August 1, 1992

4th Revised Sheet No. 53

The above referenced tariff sheet is being filed by Transwestern to revise its tariff language to state that Transwestern will deliver gas at the Pacific Gas & Electric Company ("PG&E") Topock interconnect point in San Bernardino County, California with a minimum total heating value of 995 Btus per cubic foot as measured at that delivery point out of Transwestern's system. Transwestern states that it seeks to make this revision in order that it may comply with the quality requirement of the downstream pipeline at that interconnect point.

Transwestern requests waiver of any Commission Regulations and its tariff provisions as may be required to allow the tariff sheet referenced above to become effective on August 1, 1992.

Transwestern states that copies of the filing were served on its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1992. 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. 92-16404 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

July 8, 1992.

Take notice that Trunkline Gas Company (Trunkline) on July 2, 1992, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Ninety-Fourth Revised Sheet No. 3-A

The proposed effective date of this revised tariff sheet is September 1, 1992.

Trunkline states that the revised tariff sheet reflects no change in the commodity rate. This includes:

(1) A 2.55¢ per Dt increase in the projected purchased gas cost component; and

(2) A (2.55¢) per Dt decrease in the surcharge to recover the Current Deferred Account Balance at April 30, 1992 and related carrying charges.

Trunkline states that this filing is made in accordance with § 154.305 (Annual PGA filing) of the Commission's Regulations and pursuant to section 18 (Purchased Gas Adjustment Clause) of Trunkline's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Trunkline's jurisdictional sales rates effective September 1, 1992.

Trunkline states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16521 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-82-000]

Viking Gas Transmission Co.; Tariff Filing Pursuant to Tariff Rate Adjustment Provision

July 7, 1992.

Take notice that on July 1, 1992, Viking Gas Transmission Company ("Viking") filed the following tariff sheet to Volume No. 1 of its FERC Gas Tariff:

Twentieth Revised Sheet No. 6

Viking states that it is filing Twentieth Revised Sheet No. 6 to reflect quarterly purchased gas cost adjustments to its sales rates for the period of August 1 through October 31, 1992. Viking requests that this tariff sheet be made effective August 1, 1992. Twentieth Revised Sheet No. 6 reflects a $3.6084 per dekatherm decrease in the gas component of Viking's sales rates, and a $1.42 per dekatherm decrease in the demand component of those rates.

Viking states that copies of this filing have been mailed to all of its affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before July 14, 1992. 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 petition to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-16402 Filed 7-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-43-000, TM92-7-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 7, 1992.

Take notice that Williams Natural Gas Company (WNG) on July 1, 1992 tendered for filing Tenth Revised Sheet No. 6, Eleventh Revised Sheet No. 6A, and Tenth Revised Sheet No. 9 to its FERC Gas Tariff, First Revised Volume No. 1.

WNG states that pursuant to the Purchased Gas Adjustment in Article 18 of its FERC Gas Tariff, it proposes a net reduction of $.6587 per Dth as measured against its rates in Docket No. TA92–1–43 which became effective May 1, 1992 and decreases in transportation fuel rates and in gathering fuel rates resulting from a decrease in purchase gas costs to be effective August 1, 1992.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1992. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–16408 Filed 7–13–92; 8:45 am]

BILLING CODE 6717–01–M

FARM CREDIT ADMINISTRATION

Final Order Barring Claims, Discharging and Releasing the Farm Credit Bank of Omaha as Receiver and Cancelling Articles of Incorporation of Valentine Production Credit Association; Correction

AGENCY: Farm Credit Administration.

ACTION: Correction.

SUMMARY: In the notice document published in the **Federal Register** beginning on page 27974 in the issue of Tuesday, June 23, 1992, make the following correction:

The sixth line of the introductory paragraph located in the third column inaccurately referred to the Intermediate Credit Bank of Spokane. This should be changed to the Intermediate Credit Bank of Omaha.

Dated: July 8, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration.

[FR Doc. 92–16534 Filed 7–13–92; 8:45 am]

BILLING CODE 6705–01–M

FEDERAL MARITIME COMMISSION

Port of Portland et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200541–001.

Title: Port of Portland/Kawasaki Kisen Kaisha/Mitsui O.S.K./Hyundai Merchant Marine Terminal Agreement.

Parties:

The Port of Portland
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Hyundai Merchant Marine Co., Ltd

Synopsis: The subject modification extends the term of the parties' terminal use agreement through September 27, 1992.

Agreement No.: 217–011295–002.

Title: Star/Gearbulk Reciprocal Space Charter Agreement.

Parties:

Star Shipping A/S Gearbulk, Ltd.

Synopsis: The proposed amendment will expand the geographic scope of the Agreement to include all U.S. ports and points and all foreign ports and points. The amendment also adds a new provision to the Agreement Authority permitting the parties to coordinate vessel sailings and adopt operational procedures to rationalize their services.

Dated: July 8, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–16442 Filed 7–13–92; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 92–43]

Accord Craft Co., Ltd. v. Asia North America Eastbound Rate Agreement; Filing of Complaint and Assignment

Notice is given that a complaint filed by Accord Craft Co., Ltd. ("Complainant") against Asia North America Eastbound Rate Agreement ("Respondent") was served July 7, 1992. Complainant alleges that Respondent engaged in violations of sections 8(c) and 10(b)(1), (6)(A), (10), (11) and (12), of the Shipping Act of 1984 ("Act"), 46 U.S.C. app. 1707(c) and 1709(b)(1), (6)(A), (10), (11) and (12), by entering into an invalid service contract without any binding service commitment, by attempting to collect deadfreight penalties for an alleged failure to ship the minimum volume, and by establishing lower independent action tariff rates, with no deadfreight liability, for use by the shipping public, including Complainant's competitors.

This proceeding has been assigned to Administrative Law Judge Frederick M. Dolan, Jr. ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 7, 1993, and the final decision of the Commission shall be issued by November 5, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 92–16437 Filed 7–13–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0768]

Withdrawal From Priced Definitive Securities Safekeeping Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board requests comment on a proposal by the Federal Reserve

Banks to withdraw from the priced definitive securities safekeeping service by year-end 1993. This proposal would eliminate the safekeeping of definitive securities pledged to state and local governments, but would not affect the safekeeping of collateral pledged to the discount window, to the Treasury Department, or to Federal Government agencies. Secondary market purchase and sale of securities, which is currently included in the definitive securities service line, will continue to be offered but will no longer be included under this service line after 1993.

DATES: Comments must be submitted on or before September 14, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0768, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to the Board's Mail Room between 8:45 a.m. and 5 p.m. All comments received at the above address will be included in the public file and may be inspected at room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Charles W. Bennett, Assistant Director (202/452-3442), or Donna A. DeCorleto, Program Leader (202/452-3956), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The definitive securities service line consists of the definitive securities safekeeping service and the purchase and sale service. Definitive securities safekeeping consists of the storage of certain types of physical securities, such as registered and bearer municipal securities, mortgage certificates, and other commercial paper, that are ineligible for Federal Reserve Bank book-entry securities safekeeping.[1] The purchase and sale service consists of performing secondary market securities purchases and sales on behalf of depository institutions. All of the Reserve Banks, with the exception of the Federal Reserve Bank of San Francisco, offer the priced definitive securities safekeeping service and most Reserve Banks also offer the purchase and sale service.

From the inception of pricing in 1981, the long-term role of the Federal Reserve Banks in priced definitive securities safekeeping was uncertain because the industry was slowly moving its municipal securities, which represented the bulk of Reserve Bank priced vault holdings, to depositories to facilitate secondary market trading and settlement of these securities. (Similarly, the purchase and sale service was evolving from the purchase and sale of definitive and book-entry securities to primarily book-entry securities.) In 1982, Congress passed the Tax Equity and Fiscal Responsibility Act which, in effect, eliminated the Federal tax advantages for bearer municipal securities issued after July 1, 1983. This change essentially shifted the demand for new issues of municipal securities from bearer, definitive form to book-entry form; the Reserve Banks do not offer book-entry municipal securities safekeeping. As a result, as the municipal securities held in Reserve Bank vaults matured or were moved to depositories, they were not replaced by new definitive securities. Consequently, the volume of priced definitive securities safekeeping holdings steadily declined and per-deposit costs began to rise. Reserve Banks continued their on-going efforts to contain safekeeping costs, but a large portion of the cost associated with operating a securities vault is fixed. Eventually, high fixed costs and declining volume necessitated fee increases in order to achieve full-cost recovery. It is now apparent that further fee increases will only accelerate withdrawals.

Total Reserve Bank holdings in priced definitive securities safekeeping declined by 65 percent between 1987 and 1991. Through cost containment efforts, higher fees, and revenue generated by vault withdrawals, the Reserve Banks in total were able to achieve full-cost recovery for the definitive securities service line until 1991, when the recovery rate declined to 91 percent. The recovery rate for the definitive securities service line in 1992 is currently projected to be approximately 84 percent; gross revenue for 1992 is projected to be $3.3 million. The definitive securities safekeeping service is projected to comprise 81 percent of the service line's total 1992 costs, but only 77 percent of its total revenue.

Given the definitive securities safekeeping service's declining volume and its negative impact on the service line's recovery rate, the Reserve Banks evaluated several alternatives. One alternative considered was for the Reserve Banks to join a depository and offer depository access. This alternative would have enabled the Reserve Banks to achieve full-cost recovery and would have promoted securities immobilization at a depository. The Reserve Banks concluded that this alternative, however, did not meet two of the Board's criteria for establishing new services or major service enhancements. Specifically, offering depository access would not provide a clear public benefit, given the small market share of eligible definitive securities held by the Reserve Banks. In addition, depository access is widely available either directly or indirectly through depository participants. Therefore, this service enhancement would not meet the criterion that the enhancement be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity.

The Reserve Banks considered remaining in the definitive securities safekeeping service at less than full-cost recovery. Under this alternative, the Reserve Banks could avoid the expense of withdrawing and shipping securities back to the depositor or to a successor custodian. In addition, this service would continue to share costs that would otherwise have to be redistributed to other priced and non-priced services. However, further analysis revealed that withdrawal from the definitive securities safekeeping service would increase the total costs borne by other priced and non-priced services by no more than 0.03 percent. Also, the Reserve Banks did not believe that they could remain in this service at less than full-cost recovery, as provided in section 11A(c)(3) of the Federal Reserve Act (12 U.S.C. 248a), because they believed that the definitive securities safekeeping service is available nationwide from a range of alternate service providers.

A third alternative considered was to increase fees further to offset the revenue lost through declining volume. This alternative had been successful until 1991, when the Reserve Banks did not achieve full-cost recovery despite fee increases. The Reserve Banks' experience with this service in recent years, however, indicates that 1991 was the pivotal year for this service and that, in the future, further fee increases will not achieve full-cost recovery, but instead will accelerate the volume decline and increase the shortfall for this service.

The fourth alternative considered was to move the purchase and sale service, which now involves primarily book-entry securities trades, to a different

[1] A book-entry security is a certificate-less security represented by an accounting entry maintained electronically on the books of the security issuer or the issuer's agent.

service line and to withdraw from the definitive securities service line and absorb the cost of returning the securities held in priced safekeeping to the depositors or the depositors' designated agent. The Federal Reserve Banks surveyed institutions regarding the possible impact of withdrawal from priced definitive securities safekeeping and determined that withdrawal would be acceptable to the majority of service users. Consequently, the Reserve Banks requested that the Board approve their request to move the purchase and sale service to another service line and withdraw from the definitive securities service line.

In light of the Reserve Banks' request to withdraw from the definitive securities service line, the Board believed that a consistent methodology for reviewing Reserve Bank proposals to withdraw from a priced service line would help ensure that any public policy issues arising from such proposals would receive appropriate consideration. Therefore, the Board has requested comment on factors that it would consider in its evaluation of a Reserve Bank proposal to withdraw from a priced service line. (See Docket No. R-0767 elsewhere in today's **Federal Register**.)

Since the definitive securities safekeeping service comprises the large majority of the costs and revenue of the definitive securities service line, the Board has evaluated the Reserve Banks' proposed withdrawal from the definitive securities safekeeping service in the context of these proposed factors and, based on this analysis, believes that the Reserve Banks should be permitted to withdraw. The Board requests comment on the application of the proposed factors or other appropriate factors to this proposal to withdraw. The Board will consider the factors, as finally adopted, in its evaluation of whether to approve the Reserve Banks' proposal to withdraw from the definitive securities safekeeping service.

Factor 1: It is likely that other service providers would supply an adequate level of the same service (*i.e.*, access, price, and quality) in the relevant market(s) if the Federal Reserve withdraws from the service.

Yes. The Reserve Banks' survey of service users indicated that a range of alternate service providers exists, including depository institutions and securities depositories.

Factor 2: If other service providers are not likely to provide an adequate level of the same service in the relevant market(s), it is likely that users of the service could obtain other substitutable services that could reasonably meet their needs.

Since other service providers can reasonably be expected to provide an adequate supply of definitive safekeeping services in the event of the Reserve Banks' withdrawal, a substitutable service is not needed.

Factor 3: Withdrawal from the service would not have a material, adverse effect on the Federal Reserve's ability to provide an adequate level of other services.

Withdrawal from priced definitive securities safekeeping should have no material, adverse effect on the Reserve Banks' ability to provide an adequate level of other services. A large percentage of the costs of this service are fixed. These costs, plus the cost of moving the securities to other custodians, would have to be redistributed to other services, priced and non-priced, but the additional costs that would be borne by the other services as a result of withdrawal would increase the total costs for these other services by no more than 0.03 percent. Approximately 10 percent of the volume in the noncash collection service comes from securities held in Reserve Bank vaults. The Reserve Banks anticipate that any increase in unit cost in the noncash collection service resulting from a volume decline attributable to withdrawal from the definitive securities safekeeping service would be offset by cost savings associated with the interdistrict consolidation of the noncash collection service.

Factor 4: Withdrawal from the service would not have a material, adverse effect on the Federal Reserve's ability to discharge other responsibilities.

There are no material linkages between this service and any other Federal Reserve responsibilities except non-priced (i.e. collateral) safekeeping. If the priced definitive securities safekeeping service is eliminated, securities held in priced safekeeping would no longer be immediately available on Reserve Bank premises for pledge, but could still be pledged using a depository institution or depository as third-party custodian.

Factor 5: There are no public benefits of continued Federal Reserve provision of the service that outweigh the reasons for withdrawing from the service. As part of priced definitive securities safekeeping, the Federal Reserve Banks serve as custodian for collateral pledged to state and local governments; however, Federal Reserve Bank withdrawal from priced safekeeping would not leave state and local governments without alternative custodians for their collateral. Institutions surveyed by the Reserve Banks indicated that there are numerous alternate service providers available to them. Further, the Board believes that the public may benefit from the Reserve Banks' withdrawal through accelerated migration of securities to depositories.

As noted earlier in this notice, the revenue from the Reserve Banks' definitive securities safekeeping service no longer fully recovers the costs of providing this service. The Board anticipates that the cost-recovery for this service will continue to decline in the future. The Board believes that full-cost recovery in this service cannot be achieved in 1993, even assuming significant price increases. Moreover, the Board is concerned that significantly higher fees may hamper an orderly withdrawal from this service by encouraging depositors to demand immediate relocation of their safekeeping holdings. The Board also considered pricing the definitive securities safekeeping service to recover only its variable costs during the transition year, but concluded that this alternative also would hamper an orderly withdrawal by encouraging depositors to delay movement of their securities until the Reserve Banks ceased offering this service. For these reasons, the Board believes that definitive securities safekeeping fees should be maintained at current levels until withdrawal is completed.

The Board requests comment on the proposal by the Federal Reserve Banks to withdraw from the priced definitive securities safekeeping service by year-end 1993 and to absorb the cost of returning securities held in priced safekeeping to the depositors or the depositors' agent.

By order of the Board of Governors of the Federal Reserve System, July 8, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-16464 Filed 7-13-92; 8:45 am]

BILLING CODE 6210-01-F

[Docket No. R-0767]

Factors for Evaluating Reserve Bank Requests to Withdraw From a Priced Service Line

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board requests comment on proposed factors that would be used by the Board as part of its analytical framework for evaluating Reserve Banks' requests to withdraw from a

priced Federal Reserve service line. These factors were developed to provide the Board with a consistent methodology for reviewing withdrawal proposals so that any public policy issues arising from such proposals receive appropriate consideration.

DATES: Comments must be submitted on or before September 14, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0767, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to the Board's Mail Room between 8:45 a.m. and 5 p.m. All comments received at the above address will be included in the public file and may be inspected at room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Charles W. Bennett, Assistant Director (202/452-3442), or Donna A. DeCorleto, Program Leader (202/452-3956), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Monetary Control Act of 1980 requires that the Federal Reserve price the services it provides to depository institutions in order to recover the costs incurred in providing those services. The legislative history of the Act indicates that, inter alia, Congress sought to encourage competition in order to assure provision of these services at the lowest cost to society; consequently, Congress charged the Board with adopting pricing principles that "give due regard to competitive factors and the provision of an adequate level of services nationwide."

The Board subsequently adopted pricing principles that incorporate both the specific statutory requirements of the Act and provisions intended to fulfill its legislative intent. The principles require among other things that services be explicitly priced, that fees be based on all direct and indirect costs actually incurred in providing the services, and that fees be set so that revenues for major service line categories match costs. If, in the interest of providing an adequate level of services nationwide, the Board determines to authorize a below-cost fee schedule for a service, the pricing principles require that the Board announce its decision. Finally, the principles direct that service arrangements and fee schedules be responsive to the changing needs for services in particular markets.

The pricing principles established an important foundation for the conduct of priced services, but did not specifically address the issues that should be considered when a service no longer could comply with the principles. The Board has indicated that any withdrawal from a service line would have to be undertaken in an orderly way, giving due regard to the transition problems associated with the discontinuation of a service. The Board, however, previously has not identified specific factors to consider in evaluating whether to withdraw from a service line.

The question of withdrawal from a priced service line has recently arisen with respect to one of the paper-based securities services offered by the Federal Reserve. The Board believes that a consistent methodology for reviewing Reserve Bank proposals to withdraw from a priced service line is needed to ensure that any public policy issues arising from such proposals receive appropriate consideration. The Board is proposing to use the following factors in evaluating Reserve Bank proposals to withdraw from a priced service line.

1. It is likely that other service providers would supply an adequate level of the same service (*i.e.*, access, price, and quality) in the relevant market(s) if the Federal Reserve withdraws from the service.

As noted above, Congress, in requiring that the Federal Reserve price its services, was attempting to encourage competition, provision of services at the lowest cost to society, and nationwide availability of an adequate level of service. This factor considers whether other service providers are likely to supply an adequate level of the same service in terms of access, price, and quality. Restricted access, prices significantly higher than Reserve Bank full-cost-based fees, or material degradation in the quality of service would weigh in favor of the Reserve Banks continuing to provide the service. A relevant market would be the region that is accessible to the depository institution using the service at a cost and within a time frame that is reasonable for the service involved.

2. If other service providers are not likely to provide an adequate level of the same service in the relevant market(s), it is likely that users of the service could obtain other substitutable services that could reasonably meet their needs.

A substitutable service would be an alternative service that would achieve the same or a comparable outcome for the service user at a cost commensurate with that service. For example, providing access to a securities depository could be considered a substitutable service to providing definitive securities safekeeping on premises. The existence of adequate substitutable services would weigh in favor of Reserve Banks withdrawing from the service even if adequate levels of the service were not available from alternate sources.

3. Withdrawal from the service would not have a material, adverse effect on the Federal Reserve's ability to provide an adequate level of other services.

A material, adverse effect would be any consequence of withdrawal that would seriously impede or undermine the Federal Reserve's ability to provide an adequate level of other services. For example, if withdrawal from one service caused a shift of large overhead costs to another service, it could necessitate a fee increase large enough to adversely affect provision of that other service. These circumstances would weigh in favor of the Reserve Banks continuing to provide the service.

4. Withdrawal from the service would not have a material, adverse effect on the Federal Reserve's ability to discharge other responsibilities.

A material, adverse effect would be any consequence of withdrawal that would seriously impede or undermine the Federal Reserve's ability to discharge its other responsibilities as central bank or fiscal agent of the United States. For example, if Federal Reserve withdrawal from a payment service would seriously jeopardize its ability to carry out its fiscal agency responsibilities, this circumstance would weigh in favor of the Reserve Banks continuing to provide the service.

5. There are no public benefits of continued Federal Reserve provision of the service that outweigh the reasons for withdrawing from the service.

The Board would consider whether there was any other public benefit, not addressed under the previous factors, that could be achieved through continued provision of the service. If any could be identified, the Board would consider whether the public benefit outweighed the withdrawal benefits.

In conclusion, all of these factors would serve as part of the analytical framework that the Board would consider when evaluating a proposal by a Federal Reserve Bank to withdraw from a priced service line. The Board would request comment the first time a

Federal Reserve Bank or Banks proposed withdrawing from any Federal Reserve priced service line. In addition, the Board would provide at least a 60-day transition period following approval of a request to withdraw from a priced service line to enable users and other providers of the service a reasonable period of time to prepare for the change. If the Board determined that withdrawal from a service line was inappropriate, the Board's pricing principles, including the principles applicable to cost recovery, would continue to apply to the service. The Board has applied these proposed factors in its request for comment on the proposal to withdraw from priced definitive securities safekeeping, which is also being issued today (see Docket No. R-0768 elsewhere in today's **Federal Register**).

The Board requests comments on the proposed factors that would be used by the Board as part of its analytical framework for evaluating Reserve Banks' requests to withdraw from a priced service line.

By order of the Board of Governors of the Federal Reserve System, July 8, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-16463 Filed 7-13-92; 8:45 am]

BILLING CODE 6210-01-F

Skandinaviska Enskilda Banken; Application to Engage in Nonbanking Activities

Skandinaviska Enskilda Banken, Stockholm, Sweden (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through its wholly owned subsidiary, Enskilda Securities Inc., New York, New York (Company), in the following activities: acting as agent for foreign issuers in the private placement of all types of securities, including providing related advisory services; and buying and selling in secondary market trading all types of securities on the order of investors as a "riskless principal".

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously approved the proposed private placement and riskless principal activities, and Applicant has stated that it will conduct these activities using the same methods and procedures and subject to the prudential limitations established by the Board in its previous orders. *See J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990); and *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989).

Applicant states that the proposed activities will benefit the public by promoting competition. Applicant also believes that approval of this application will allow Company to provide a wider range of services and added convenience to its customers, and to offer its customers securities not otherwise available for purchase in the United States. Applicant believes that the proposed activities will not result in any unsound banking practices in light of the prudential limitations subject to which Applicant will conduct the activities. Applicant also believes that any potential adverse effects are adequately addressed by the disclosure and anti-fraud provisions of federal and state securities laws, the NASD Rules of Fair Practice, state and federal fiduciary requirements, the anti-tying provisions of banking and antitrust laws, the Employee Retirement Income Security Act, and sections 23A and 23B of the Federal Reserve Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 10, 1992. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, July 8, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-16462 Filed 7-13-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Hart-Scott-Rodino Antitrust Improvements Act of 1976 and Regulations Thereunder; Clarification to Statement Concerning Hart-Scott-Rodino Filing Fees

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: On November 21, 1989, President Bush signed into law the Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill for Fiscal 1990. Section 605 of the statute, as enacted, requires the payment of a filing fee of $20,000 by each person acquiring voting securities or assets who is required to file a premerger notification by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and regulations promulgated thereunder. The Federal Trade Commission ("Commission") issued a statement (54 FR 48726, November 24, 1989) to advise the public about the filing fee obligation. The Commission is issuing this clarification to that statement to alleviate some misunderstandings regarding when a filing fee will be required.

EFFECTIVE DATE: The filing fee requirement is effective as of November 29, 1989. This clarification is effective immediately.

FOR FURTHER INFORMATION CONTACT: John M. Sipple, Jr., Assistant Director, Premerger Notification Office, Bureau of Competition (Sixth Street and Pennsylvania Avenue NW., room 303), Federal Trade Commission, Washington, DC 20580, 202-326-2862.

SUPPLEMENTARY INFORMATION:

Clarification to the Statement of the Federal Trade Commission on Hart-Scott-Rodino Filing Fees Issued November 21, 1989.

It has come to the attention of the Federal Trade Commission ("Commission") that some filing persons have misinterpreted the language in the November 21, 1989 Statement of the Federal Trade Commission on Hart-Scott-Rodino Filing Fees concerning the refund of filing fees. That language, set our in paragraph II(G) of the Commission's statement, reads as following:

"(G) Except as provided in this paragraph, no filing fee received by the Commission will be returned to the payor and no part of the filing fee shall be refunded. However, if it is determined that premerger notification was not required by the Act and Rules, the filing fee shall be returned."

The Commission issues this clarification to alleviate any misunderstanding regarding when a filing fee will be refunded.

As provided in the Commission's November 21, 1989 statement, the filing fee shall be refunded only if "it is determined that premerger notification was not required by the Act and Rules." That determination will be made by the Commission's Premerger Notification Office at the time notification is filed based on the information and representations contained in the filing persons' Notification and Report Forms.

If the Commission's staff determines, based on the persons' filings, that notification was not required it will notify the parties and refunded the filing fee. However, once the filings are complete, and the Commission's staff has determined that premerger notification was required, the filing fee shall not be refunded, even if the filing persons and/or the transaction do not meet the reporting thresholds at the time of consummation.

If the Commission's staff determines, based on the persons' filings, that premerger notification was not required, but the filing persons represent that premerger notification will be required at the time of consummation, premerger notification will be determined to be required and no part of the filing fee shall be refunded.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 92–16475 Filed 7–13–92; 8:45 am]

BILLING CODE 6750–01–M

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 Improvements 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 waitng period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 060892 AND 061992

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
John B. Sanfilippo & Son, Inc., John C. Taylor, Sunshine Nut Company, Inc	92-1012	06/09/92
Willamette Industries, Inc., Boise Cascade Corporation, Boise Cascade Corporation	92-1028	06/09/92
The News Corporation Limited, News Corporation, American Entertainment Partners, I, L.P	92-1057	06/09/92
C. Itoh & Co., Ltd., Sequa Corporation, Sequa Capital Corporation	92-1060	06/09/92
Granite Construction Incorporated, Tarmac PLC, Tarmac California Holdings, Inc	92-0996	06/10/92
North American National Corporation, Howard Life Insurance Company, Howard Life Insurance Company	92-1015	06/12/92
General Electric Company, Marmon Holdings, Inc., Data Preference, Inc	92-1024	06/12/92
Tejas Power Corporation, Transco Energy Company, Transco Offshore Gathering Company, et al	92-1033	06/12/92
Alco Standard Corporation, Richard L. Davis, Davico, Inc	92-1052	06/12/92
The 1818 Fund, L.P., Nuevo Energy Company, Nuevo Energy Company	92-1062	06/12/92
Hanson PLC, American Electric Power Company, Inc., Southern Ohio Coal Company	92-1071	06/12/92
Kmart Corporation, Pacific Enterprises, Auburn Distribution Company and Pay'n Save Realty Corp	92-1077	06/12/92
General Electric Company, Marmon Holdings, Inc., Leasametric, Inc	92-1083	06/12/92
The Leslie Fay Companies, Inc., Sandra E. Chilewich, Moskal & Chilewich, Inc	92-1086	06/12/92
The Leslie Fay Companies, Inc., Kathleen A. Moskal, Moskal & Chilewich, Inc	92-1087	06/12/92
United Asset Management Corporation, Hans Guenther Abromeit and Anna Alexandra Abromeit, Lehndorff U.S. Equities, Inc	92-1043	06/15/92
United Asset Management Corporation, Johan Adam von Haeften, Lehndorff U.S. Equities, Inc	92-1044	06/15/92
Idemitsu Kosan Co., Ltd., John J. Moller, Isla Petroleum Corporation, Gasolinas de Puerto Rico	92-1055	06/16/92
Thomas B. Crowley, First Chicago Corporation, FNBC Leasing Corporation	92-1084	06/16/92
Columbia Hospital Corporation, Basic American Medical, Inc., Basic American Medical, Inc	92-1093	06/16/92
Franklin L. Jackson, Columbia Hospital Corporation, Columbia Hospital Corporation	92-1094	06/16/92
Ethan Jackson, Columbia Hospital Corporation, Columbia Hospital Corporation	92-1095	06/16/92
Barnes Hospital, The Washington University, The Washington University School of Medicine	92-1003	06/17/92
Time Warner, Inc., Lynx Oilfield Supply, Inc., Lynx Oilfield Supply, Inc	92-1081	06/17/92
Information Partners Capital Fund, L.P., Citicorp, I/B/E/S, Inc	92-1091	06/17/92
Harry B. Mathews, Jr. R/T, dated April 16, 1965, Scottish Heritable, Inc., Virginia Lime Company	92-1018	06/18/92
William Herbert Hunt Trust Estate, Chevron Corporation, Warren Petroleum Company	92-1090	06/18/92
Roger D. O'Shaughnessy, Clarity Holdings Corp., AFG-18, Inc	92-1076	06/19/92
Tultex Corporation, Universal Industries, Inc., Universal Industries, Inc	92-1101	06/19/92
Telephone and Data Systems, Inc. Voting Trust, Roland G. and Bette B. Nehring, Arizona Telephone Company	92-1103	06/19/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92–16474 Filed 7–13–92; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–323–09–4211–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0009), Washington, DC 20503, telephone number 202–395–7340.

Title: Land Use Application and Permit.

OMB Approval Number: (1004–0009).

Abstract: The regulations at 43 CFR part 2920 provide for non-Federal use of bureau administered land via lease or permit. Uses include agriculture, trade or manufacturing concerns and business uses such as outdoor recreation concession. BLM will determine the validity of uses proposed by private individuals and other qualified proponents form information provided by the proponent on the Land Use Application and permit form.

Bureau Form Number: 2920–1.

Frequency: Once.

Description of Respondents: Individuals, State and local government entities, and other qualified proponents applying for use of Bureau administered land via lease or permit.

Estimated Completion Time: 7.43 hours.

Annual Responses: 435.

Annual Burden Hours: 3,230.

Bureau Clearance Officer: (Alternate) Gerri Jenkins, 202–653–6105.

Dated: April 21, 1992.

H. James Fox,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 92–16427 Filed 7–13–92; 8:45 am]

BILLING CODE 4310–84–M

[AK–964–4230–15; F–32014]

Alaska Native Claims Selection; Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

In accordance with Departmental regulation 43CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to NANA Regional Corporation, Inc. for approximately 6,400 acres. The lands involved are in the vicinity of Kotzebue, Alaska, within T. 16 N., R. 18 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Arctic Sounder. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 13, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 92–16471 Filed 7–13–92; 8:45 am]

BILLING CODE 4310–JA–M

[UT–040–02–5101–09–XJAC]

Intent to Prepare an Environmental Impact Statement on the Proposed Warm Springs Project, Iron and Kane Counties, Utah; and Clark County, Nevada

AGENCIES: Bureau of Land Management and Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and the announcement of (i) a scoping period during which written comments will be accepted, (ii) six public scoping meetings during which oral statements will be accepted, and (iii) a public tour of the proposed mine site.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) and the Office of the Surface Mining Reclamation and Enforcement (OSM) intend to jointly prepare an environmental impact statement (EIS) on the proposed Warm Springs Project, including the proposed Smoky Hollow underground coal mine and its facilities, and two proposed coal-loadout facilities. Andalex Resources, Inc. (Andalex) has submitted a proposal to BLM's Cedar City District Office and OSM's Western Support Center, to develop and operate their proposed underground coal mine and the associated coal-loadout facilities. The proposed Smoky Hollow Mine would be located on a block of Federal and State coal leases in eastern Kane County, Utah. The proposed coal-loadout facilities would be located on public lands near Moapa, Nevada and Cedar City, Utah. The EIS will be prepared to assist BLM and OSM in making decisions on the various applications for right-of-way grants and on the approval of a mining plan, all necessary to complete the Warm Springs Project.

DATES: *Comment Period:* Written comments regarding the scope of the EIS analysis will be accepted through September 14, 1992 at either of the two locations listed below, under "**ADDRESSES**".

Public Meetings: The agencies will hold six public meetings for the receipt of oral statements regarding the scope of the EIS analysis. The first meeting will be held on August 17, 1992 at the City of Page Council Chambers, 697 Vista Avenue in Page, Arizona. Successive meetings will be held on August 18, 1992 at the Shilo Inn, Willows Room, 296 West 100 North in Kanab, Utah; August 19, 1992 at the Hurricane Senior Citizens Center, 95 North 300 West, in Hurricane, Utah; August 24, 1992 at the little

America Hotel, Wyoming Room, 500 South Main Street in Salt Lake City, Utah; August 25, 1992 at the Holiday Inn, Juniper #3 Conference room in Cedar City, Utah. The final public meeting will be held on August 26, 1992 at the Moapa Community Center, Highway 168 in Moapa, Nevada. All public meetings will begin at 7 p.m., local time.

Public Tour of the Mine Site: The agencies will lead a public tour of the proposed facilities area for the Smoky Hollow mine from 9 a.m. to 1 p.m. on August 18, 1992. Interested participants should meet at the Lake Powell Village gas station/convenience store in Big Water, Utah at 9 a.m. for a short introduction and overview. Agency representatives will lead a vehicle caravan to the proposed facilities area. Participants will be responsible for their own transportation and other arrangements: Four-wheel drive vehicles, clothing appropriate for the terrain and the weather, and lunch are recommended.

ADDRESSES: Written comments regarding the scope of the EIS analysis should be mailed or hand-delivered to either: (i) Gordon R. Staker, Cedar City District Manager, c/o Kanab Resource Area, Bureau of Land Management, 318 North 100 East, Kanab, Utah 84741, (Attention: Michael Noel); or (ii) Peter A. Rutledge, Chief, Federal Programs Division, Office of Surface Mining Reclamation and Enforcement, Western Support Center, Brooks Towers, Second Floor, 1020–15th Street, Denver, Colorado 80202, (Attention: Floyd McMullen).

FOR FURTHER INFORMATION CONTACT: Michael Noel, BLM, EIS Project Manager (telephone: 801–644–2672); or, Floyd McMullen, OSM, EIS Project Manager (telephone: 303–844–3104) at the Kanab, Utah and Denver, Colorado locations given under "**ADDRESSES**".

SUPPLEMENTARY INFORMATION: Andalex's proposed Smoky Hollow Mine would be a new underground coal mine located in eastern Kane County, approximately 10 miles northeast of Big Water, Utah. Andalex proposes to recover 75.0 million tons of coal from the mine over a 30-year period at an average rate of approximately 2.5 million tons per year, primarily using longwall methods. Throughout the life of the proposed mine, the coal would be hauled via contractor-supplied trucks over county and State roads to new unit-train loadout facilities that would be constructed along existing rail lines near Moapa, Nevada and Cedar City Utah. Once loaded on the rail, the coal would be delivered to developing markets in the southwest U.S. and Pacific Rim export destinations. Overall, the Warm Springs Project is expected to employ 370 people: 150 people associated with coal mining operations, and 220 people associated with truck haul operations.

Andalex expects the Smoky Hollow mine to eventually cover 9,776 acres of land in secs. 11 through 15, 23 through 25, and 36, T. 41 S., R. 3 E., and secs. 9, 16 through 21, and 29 through 32, T. 41 S., R. 4 E., all in the Salt Lake Principal Meridian. Approximately 43 of these acres, located in sec. 19, (T. 41 S., R. 4 E.), would be surfaced disturbed by mine-support facilities, including a coal stockpile, equipment and operation buildings, coal-processing and loadout facilities, sediment ponds, and subsoil/topsoil stockpiles. Another 6,160 of these acres could experience the surface effects of subsidence caused by the underground mining activities. The Andalex proposal to have a 69-KV powerline constructed from the Big Water substation to the mine would disturb an additional 34 acres outside the proposed 9,776-acre life-of-mine area.

Unit-train loading facilities would be constructed at two locations: (i) Adjacent to the Union Pacific Railroad right-of-way, southwest of Moapa, Nevada (secs. 17 and 18, T. 15 S., R. 65 E., Mount Diablo Principle Meridian); and, (ii) adjacent to the Union Pacific Railroad right-of-way, near Iron Springs, west of Cedar City, Utah (sec. 19, T. 35 S., R. 12 W., Salt Lake Principle Meridian). Each of the loadout facilities would be capable of handling the entire 2.5 million tons of annual production from the mine, but delivery could be split between loadouts, depending on market fluctuations and delivery schedules. Proposed construction and operation activities could disturb as much as 150 acres at the Moapa facility and 60 acres at the Cedar City facility. Each loadout facility would consist of a drive-over truck dump, a system of overland conveyors, a stockpile capable of storing at least 100,000 tons of coal, equipment and operation buildings, sediment ponds, and subsoil/topsoil stockpiles.

The EIS will analyze the probable impacts that would result should BLM and OSM approve the applications for, and Andalex subsequently develop, the proposed Warm Springs Project. The EIS will also analyze the probable cumulative impacts that would result from regional mining and transportation activities, not only at the proposed Smoky Hollow Mine, but also at other existing and proposed operations in its vicinity in southern Utah, northern Arizona, and southeastern Nevada. The major alternative actions BLM and OSM have thus far identified for consideration in the EIS include: (i) approval of the applicant's proposal, the pertinent right-of-way grants, and the mining plan, with such conditions, if any, necessary to assure compliance with requirements of the Federal Land Policy and Management Act of 1976, the Mineral Leasing Act of 1920, the Surface Mining Control and Reclamation Act of 1977, and other applicable State and Federal laws; (ii) disapproval of the applicant's proposal; and (iii) no action. The EIS will also evaluate other alternative actions that BLM and OSM may develop on the basis of comments they receive during the scoping process.

BLM and OSM are requesting that any interested party submit written comments, and/or attend the public meetings to submit oral statements, regarding the scope of the EIS analysis. Comments/statements received by BLM and OSM will assist those agencies in gathering information and in defining the scope of issues and concerns to be evaluated in the EIS.

Dated: July 2, 1992.

Gordon R. Staker,

District Manager.

Acreage Information for Federal Register Notice—Warm Springs Project EIS—Notice of Intent

Total Project "Permitted" Acreage

+ 9,776-acre life-of-mine "permitted" area
+ 829-acre other project "permitted" acreage

= 10,605 acres (approximate)

Life-of-Mine "Permitted" Acreage

+ 6,160-acre subsidence area (incl 45 deg angle-of-draw)
+ 3,616-acre buffer area

= 9,776 acres (approximate)

Other Project "Permitted" Acreage

+ 169-acre 69 KV powerline (14 mi x 100 ft, approx.)
+ 540-acre loadout at Moapa, NV
+ 120-acre loadout at Cedar City, UT

= 829 acres (approximate)

Life-of-Mine Disturbance Acreage

+ 43-acre facilities area
+ 6,160-acre (approx.) subsidence area

= 6,203 acres (approximate)

Total Project Disturbance Acreage

+ 43-acre facilities area
+ 6,160-acre (approx.) subsidence area
+ 34-acre 69 KV powerline dist. (14 mi x 20 ft, approx.)

+ 150-acre (approx.) loadout disturb. at Moapa, NV
+ 60-acre (approx.) loadout disturb. at Cedar City, UT.

= 6,447 acres (approximate)

[FR Doc. 92-16428 Filed 7-13-92; 8:45 am]
BILLING CODE 4310-DQ-M

[WY-060-91-4410-08]

Availability of the Record of Decision for the Management Plan Nebraska Resource

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the record of decision for the Nebraska Resource Management Plan Environmental Impact Statement (RMP EIS) and the approved Nebraska Resource Management Plan (RMP).

SUMMARY: The Bureau of Land Management (BLM) has completed the Record of Decision for the Nebraska RMP EIS and the approved Nebraska RMP. The decision and the RMP were signed on May 13, 1992, by the Wyoming BLM State Director and were distributed to the public on May 5, 1992. The Nebraska RMP will guide the management of the BLM administered public lands in the State of Nebraska. The term "public lands" means Federally-owned land surface and Federally owned minerals administered by the BLM.

The Nebraska RMP identifies the land and resource uses, management goals and constraints, and general management practices needed to manage the BLM administered public lands in Nebraska. It also contains off-road vehicle (ORV) designations for all BLM administered public land surface.

SUPPLEMENTARY INFORMATION: The BLM Newcastle Resource Area has the responsibility of managing all BLM administered public lands in Nebraska. BLM administered public land surface in Nebraska (about 6,700 acres) consists of 168 small and isolated tracts of land scattered through 30 of the 93 counties in the State. The parcels range in size from less than one acre to 240 acres. The majority of this public land surface is located in the western part of the State.

Some of the BLM administered Federal minerals in the State lie beneath the BLM administered public land surface. However, most of the BLM administered Federal mineral estate lies beneath land surface in private ownership or that is owned by the State of Nebraska (about 240,000 acres), or beneath Federally owned land surface that is managed by other Federal agencies.

The Nebraska RMP addresses the BLM administered public land surface, the BLM administered Federal mineral estate lying under the public land surface, and the BLM administered Federal mineral estate lying under non-Federally owned lands. The RMP does not address the Federal mineral estate under those Federal lands administered by other Federal agencies (about 260,000 acres) or under those lands withdrawn from BLM administration for purposes of other agencies (about 81,000 acres)—in these areas, the plans of those other agencies guide the management and administration of the Federal mineral estate.

ADDRESSES: Copies of the Nebraska RMP EIS Record of Decision and the Nebraska RMP are available from the BLM Newcastle Resource Area Office, at 1101 Washington Blvd., Newcastle, Wyoming 82701, or the BLM Casper District Office, at 1701 East E Street, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: Floyd Ewing, Newcastle Area Manager, or Gary Lebsack, RMP Team Leader, at the Newcastle office address or telephone (307) 746-4453.

Dated: July 2, 1992.

Gordon Schaffer,
State Director.

[FR Doc. 92-16472 Filed 7-13-92; 8:45 am]
BILLING CODE 4310-22-M

National Park Service

Mississippi National River and Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Comprehensive Management Plan, Mississippi National River and Recreation Area, Minnesota.

SUMMARY: The National Park Service, in cooperation with the Mississippi River Coordinating Commission and other agencies, jurisdictions, organizations, and individuals in the St. Paul/Minneapolis metropolitan area and the state of Minnesota, will prepare a Comprehensive Management Plan (CMP) and an Environmental Impact Statement (EIS) for the Mississippi National River and Recreation Area (MNRRA), Minnesota, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 and Public Law 100-696.

Congress established the 72-mile segment of the Mississippi River and a 4-mile segment of the Mississippi River in the Twin Cities area in 1988 "* * * to protect, preserve, and enhance the significant values of the waters and land of the Mississippi River Corridor * * * encourage adequate coordination of all governmental programs affecting the land and water resources * * * and provide a management framework to assist the State of Minnesota and its units of local government in the development and implementation of integrated resource management programs for the Mississippi River Corridor in order to assure orderly public and private development in the area * * *" The 1988 legislation also established the Mississippi River Coordinating Commission to serve as a planning advisor to the Secretary of the Interior.

The CMP for MNRRA will address preservation, protection, and enhancement of recreational, natural, cultural, commercial, industrial, and residential values within the area. The plan will contain a description of the important resources of the corridor and provide general guidance on coordinating and managing future land and water use in the area. The comprehensive plan will incorporate and build on existing established policies and will not replace the need for individual communities to prepare and update area plans for their portion of the river corridor. The CMP will be a catalyst for initiating more detailed planning, necessary research, and implementation actions, and it will be a benchmark for assessing the appropriateness of other plans and specific proposals for the corridor.

Major issues/needs include the general management philosophy for the corridor, type of management to best implement the plan, use conflicts, barge fleeting, visual quality, bluffs, shorelines, vegetation, cultural resources, water quality, loss and fragmentation of habitat, amount and type of open space, economic development, and interpretation. The CMP/EIS will examine a full range of alternatives for resolving these issues, including a no action alternative.

The CMP/EIS will be prepared by the National Park Service with support and

assistance from an interagency and interdisciplinary team composed of the coordinating commission and representatives from the State of Minnesota, the cities of St. Paul/Minneapolis and other communities within the MNRRA corridor.

The National Park Service has been working for about 2 years collecting data and working with Federal, State, and local agencies to scope the needs for the plan. Activities have included 10 commission meetings, several meetings with 5 work groups having a total of about 180 members, a series of meetings with cities and counties in the corridor, and many informal meetings with local interests. Newsletters have been published requesting input on a list of visions for the area and a set of preliminary alternative concepts and management options. With the extensive public involvement activities in the pre-EIS planning phases, no special meetings or publications are planned for the NEPA scoping process. However, this notice is being published in the **Federal Register** and sent to the project mailing list. A newsletter is planned for fall 1992 to identify a preferred alternative (preliminary proposed action). Meetings will be held when the draft CMP/EIS is published in the spring of 1993.

As part of the scoping process, the public is encouraged to send written comments and suggestions concerning preparation of the CMP/EIS, by September 30, 1992, to: Superintendent, Mississippi National River and Recreation Area, 175 East 5th Street, Suite 418, Box 41, St. Paul, Minnesota 55101.

FOR FURTHER INFORMATION CONTACT: Superintendent, Mississippi National River and Recreation Area, at the above address or at telephone number (612) 290–4160.

Dated: June 30, 1992.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 92–16027 Filed 7–13–90; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 1, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 29, 1992.

Beth L. Savage,

Chief of Registration, National Register.

CALIFORNIA

Los Angeles County

Ralphs Grocery Store, 1142—54 Westwood Blvd., Los Angeles, 92000969

Sacramento County

Sacramento City Library, 828 I St., Sacramento, 92000967

San Diego County

Haines, Alfred, House, 2470 E St., San Diego, 92000966

San Mateo County

De Sabla, Eugene J., Jr., Teahouse and Tea Garden, 70 De Sabla Ave., San Mateo, 92000965

Ohio

Geauga County

Fox—Pope Farm, 17767 Rapids Rd., Welshfield vicinity, 92000971

Medina County

Paleo Crossing Site, Address Restricted. Sharon Center vicinity, 92000972

Montgomery County

Krug House, 3473 Sweet Potato Ridge Rd., Union vicinity, 92000973

SOUTH CAROLINA

Aiken County

Lookaway Hall, 103 W. Forest Ave., North Augusta, 92000962

Chester County

Colvin—Fant—Durham Farm Complex, SC 22 E side, approx. 1 mi. W of jct. with SC 16. Chester vicinity, 92000961

Newberry County

Folk—Holloway House, Jct. of Holloway [Columbia Hwy. or Co. Rt. 107] and Folk Sts., Pomaria, , 92000963

TENNESSEE

Sumner County

Bledsoe's Station, Address Restricted, Castalian Springs vicinity. 92000970

VERMONT

Bennington County

Squire, Frederick, House, 185 North St., Bennington, 92000964

[FR Doc. 92–16391 Filed 7–13–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32088]

Kansas City Southern Railway Co.—Corporate Family Transaction Exemption—Louisiana & Arkansas Railway Co., et al.

The Kansas City Southern Railway Company (KCS) and its wholly owned subsidiaries—Louisiana & Arkansas Railway Company (L&A), Fort Smith and Van Buren Railway Company (FS&VB), The Arkansas Western Railway Company (A&W), The Kansas and Missouri Railway and Terminal Company (K&M), and The Maywood and Sugar Creek Railway Company (Maywood), filed a notice of exemption to merge each and all of KCS's subsidiary corporations into KCS, with KCS as the surviving corporation. Under the agreement and merger, KCS will assume all rights, obligations and business functions of its subsidiaries. The merger can be consummated on or after July 6, 1992.[1]

Because KCS and its wholly owned subsidiaries are members of the same corporate family and the merger will not result in adverse changes in service levels, significant operational changes, or a change in competitive balance with carriers operating outside the corporate family, the transaction qualifies for the class exemption at 49 CFR 1180.29(d)(3).

To ensure that all employees who may be affected by the transaction are given the minimum protection under 49 U.S.C. 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on Richard P. Bruening and Robert K. Dreiling, 114 West 11th St., Kansas City, MO 64105.

Decided: July 8, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–16491 Filed 7–13–92; 8:45 a.m.]

BILLING CODE 7035–01–M

[1] The parties indicated that consummation would occur on or after July 1, 1992. Under the class exemption invoked here, however, consummation may not occur until at least 1 week after the notice of exemption is filed. 49 CFR 1180.4(g)(1). This notice was filed with the Commission on June 29, 1992, thus making July 6, 1992 the earliest allowable consummation date.

[Finance Docket No. 32094]

Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Co.

Southern Pacific Transportation Company (SPT) has agreed to grant trackage rights to Peninsula Corridor Joint Powers Board (JPB), for a period of 90 days, over approximately 4.7 miles of SPT line between Santa Clara Junction (milepost 44.0) and Tamien, CA (milepost 48.7). The trackage rights were to have become effective on July 1, 1992.

JPB and the San Mateo County Transit District recently instituted commuter rail operations on the San Francisco Peninsula over former SPT lines and right-of-way.[1] See Finance Docket No. 31980, *Peninsula Corridor Joint Powers Board and San Mateo County Transit District—Acq. Exemp.—Sou. Pac. Transp. Co.* (not printed), served January 17, 1992, and Finance Docket No. 31985, *Penin. Corr. Jt. Powers Bd.—Tr. Rts. Exemp.—Sou. Pac. Transp. Co.* (not printed), served January 17, 1992. SPT, which had provided freight and intercity passenger service on the owner of the lines, has continued to do so under a grant-back of trackage rights.[2]

One result of the acquisition and trackage rights transactions is that JPB and SPT now operate separate, parallel tracks between Santa Clara Junction and Tamien. Because each carrier is generally prohibited from using the other's tracks between those points, JPB and SPT have begun negotiations to determine whether a coordinated use agreement will enable them to achieve more efficient freight, intercity passenger, and commuter train operations between Santa Clara Junction and Tamien. Although they have not reached a final agreement, they have amended their previous trackage rights agreements to permit each carrier to operate the other's Santa Clara Junction-Tamien line.[3] This trackage rights agreement, however, is effective for 90 days only. The parties anticipate that the 90-day term will be sufficient to accommodate further negotiations and, at the same time, facilitate the July 1, 1992 transfer of commuter operations on JPB's lines from SPT to Amtrak.[4]

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: David J. Miller, Esq., Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market Street, Suite 2300, San Francisco, CA 94105.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: July 8, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-16492 Filed 7-13-92; 8:45 am]

BILLING CODE 7035-01-M

[1] SPT initially provided the commuter service, as JPB's operator. Amtrak was to have replaced SPT as the operator, effective July 1, 1992.

[2] See Finance Docket No. 31983, *Sou. Pac. Transp. Co.—Tr. Rts. Exemp.—Peninsula Corr. Jt. Powers Bd. and San Mateo County Trans. Dist.* (not printed), served January 17, 1992.

[3] A separate notice of exemption has been filed in Finance Docket No. 32091 with regard to SPT's trackage rights over JPB's Santa Clara Junction-Tamien line.

[4] A notice of exemption under 49 CFR 1180.2(d)(7) must be filed if the trackage rights are modified, extended, or renewed.

DEPARTMENT OF JUSTICE

Consent Decree in Action Brought Under the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Hepworth, et al.*, Civil Action No. 91-0025-EJL, was lodged with the United States District Court for the District of Idaho on July 1, 1992. This Consent Decree resolves a Complaint filed by the United States against Gaius Cunningham pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413.

The United States Department of Justice brough this action on behalf of the U.S. Environmental Protection Agency, seeking to recover a civil penalty against defendant Gaius Cunningham for alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos HESHAP") during the 1988 demolition of the Peterson building in downtown Twin Falls, Idaho. As part of the settlement in this case, Gaius Cunningham will pay the United States a civil penalty of $5,000 and will conduct future demolition and renovation operations in compliance with the inspection, notification, and work practice requirements of the asbestos HESHAP.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Hepworth, et al.*, DOJ number 90-5-2-1-1377.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, District of Idaho, 550 West Fort Street, Boise, Idaho 83742, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region X, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 601 Pennsylvania Avenue, Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $3.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-16424 Filed 7-13-92; 8:45 am]

BILLING CODE 4410-01-M

Loging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA)

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(i), and Departmental policy, 28 CFR 50.7, 38 FR 19029, (July 17, 1973), notice is hereby given that on June 29, 1992 a proposed Consent Decree in *United States of America* v. *Union Electric Company, et al*, Civil Action No. 1:92CV00078, was lodged with the United States District Court for the Eastern District of Missouri, Southeastern Division.

On June 29, 1992, the Complaint in this action was filed by the United States of America against the following Defendants under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, seeking injunctive relief and reimbursement of costs incurred by the United States in response to a release or

threatened release of hazardous substances from the Missouri Electric Works, Inc. Superfund Site ("Site") in Cape Girardeau, Missouri: A.P. Green Industries, Inc.; ARA Services, Inc.; Absorbent Clay Products, Inc.; Acme Electric Co., Inc.; Allied-Signal Inc.; Aluminum Company of America; American Charcoal Company; American Family Broadcast Group, Inc.; The Anna-Jonesboro Water Commission; Ariens Company; Vernon Bagwell; Barry Electric Cooperative; Barton County Electric Cooperative; Beazer East, Inc.; Belcher Electric, Inc.; Black River Electric Cooperative; The BOC Group, Inc.; Boone Electric Cooperative; Bridgestone/Firestone, Inc.; Brown & Root, Inc.; Bull Moose Tube Co.; Burlington Northern Railroad Company; Central Illinois Public Service Company; Chase Resorts, Inc.; Chevron Chemical Company; Citizens Electric Corporation; Citizens Utilities Company; City of Cabool; City of Cairo, Illinois; City of Cambell, Missouri; City of Carmi, Illinois; City of Casey; City of Charleston, Missouri; City of Farmington, Missouri; City of Fredericktown; City of Higginsville; City of Houston, Missouri; City of Jackson; City of Jacksonville, Illinois; City of Jefferson, Missouri; City of Madisonville, Kentucky; City of Malden Board of Public Works; City of Owensville, Missouri; City of Richmond; City of St. James; City of Salem, Missouri; City of Seymour; City of Shelbina, Missouri; City of Sikeston; City of Steelville, Missouri; City of Thayer, Thayer, Missouri; Clinton County Electric Cooperative, Inc.; Columbia Quarry Company, d/b/a Charles Stone Co.; Consolidated Aluminum Corporation; Costain Coal, Inc.; Damson Oil Corporation; Daviess-Martin County REMC; Decatur Industrial Electric, Inc.; Majorie H. Deimund; Delmarva Power & Light Company; The Dow Chemical Company; Dugger Electric Equipment Co.; East Perry Lumber Company; E.I. du Pont de Nemours and Co.; Electric Plant Board, City of Mayfield, Kentucky, d/b/a Mayfield Electric & Water Systems; Electric Supply Co., Inc.; Esselte Pendaflex Corporation; Essex Group, Inc.; Evansville Electric & Mfg. Co., Inc.; Farmers' Electric Cooperative, Inc.; Florida Power Corporation; Florida Rock Industries, Inc.; Fulton County REMC; General Cable Corporation; General Electric Company ("GE"); General Iron & Salvage Co., Inc.; Gold Fields American Corporation; Gunther-Nash Mining Construction Co.; H–J Enterprises, Inc.; Hancock County REMC; Hancock-Wood Electric Cooperative, Inc.; Harris Truck & Trailer Sales, Inc.; Himmelberger Harrison Co., Inc.; Geraldine F. Hirsch; James F. Hirsch; Oscar C. Hirsch; Robert O. Hirsch; Housing Authority of Johnson County; Howell-Oregon Electric Coop., Inc.; ITT Federal Services Corporation, formerly known as Federal Electric Corporation; Independent Electric Machinery Company; Ingram Barge Company Interlake Packaging Corporation; Jader Fuel Co., Inc.; Jefferson Smurfit Corporation; Jim Smith Contracting Co., Inc.; KBOA, Inc.; Kagmo Electric Motor Co.; Kaiser Aluminum & Chemical Corporation; Klein Armature Works, Inc.; Koerner Electric Motors of Indiana Inc.; Kopf Electric Motor Service, Inc.; The L.E. Myers Co. Group; Logan County Cooperative Power and Light Association, Inc.; Lowry Electric Company; MFA Incorporated; M.J.M. Electric Cooperative, Inc.; Magnetek Inc.; Marathon Oil Company; McCarthy Brothers Company; Menard Electric Cooperative; Midwest Electric, Inc.; Millstone Construction, Inc., d/b/a Knobel-Redman Construction Company; Mississippi Lime Company; Missouri Barge Line Company, Inc.; Missouri Dry Dock and Repair Company Inc.; Missouri Portland Cement Company; Mobil Oil Corporation; Morgan County R.E.M.C.; Mt. Carmel Public Utility Company; NL Industries, Inc.; New England Power Service Company; New-Mac Electric Cooperative, Inc.; North Central Missouri Electric Coop.; Otis Elevator Company; PSI Energy, Inc., formerly Public Service Company of Indiana, Inc.; Paragould Light & Water Commission; Paul Oberman and Company; Peabody Coal Company, Pemiscot-Dunklin Electric Coop.; Pet Incorporated; Phillips Petroleum Company; The Pittsburgh and Midway Coal Mining Co.; Plibrico Company; Pulaski County Housing Authority; Purolator Products NA, Inc., a/k/a Purolator Products Company; Quincy Soybean Company; Ralston Purina Company; Rathje Enterprises, Inc.; Richards Electric Motor Co.; Rural Electric Convenience Coop. Co.; S.D.I. Operating Partners L.P., d/b/a Philips & Company; Sac Osage Electric Cooperative, Inc.; Sachs Electric Company; St. Joe Minerals Corporation; St. Louis Steel Casting Inc.; St. Louis University; Sam Tanksley Trucking Co.; Sandner Electric Company; Scott-New Madrid-Mississippi Electric Coop.; Siemens Energy & Automation, Inc.; Southern Illinois Electric Coop.; Southern Illinois Materials Company; State of Missouri, Department of Mental Health, Southeast Missouri Mental Health Center; State of Missouri, Southeast Missouri State University; Steuben County REMC; Sullivan Electric Company; Swanson-Nunn Electric Co., Inc.; Teamsters Local 688 Insurance and Walfare Fund; Texas Eastern Products Pipeline Company; Texas Eastern Transmission Corporation; Textron, Inc.; Tipmont Rural Electric Membership Corporation; Toastmaster Inc.; Town of Paragon; Tucson Electric Power Company; The Union County Hospital District; Union Electric Company; Chester R. Upham, Jr.; Vaughn Electric Company, Inc.; Wayne County REMC; Wayne-White Counties Electric Cooperative; Webster County Coal Corporation; West Lake Quarry and Material Company; Westinghouse Electric Corporation; Westvaco Corporation; Wetterau Incorporated; Whirlpool Corporation; and Zeller Electric, Inc.

Under the terms of the Consent Decree, the Settling Defendants have agreed to conduct a soil remedial action and a groundwater investigation at the Site, and to reimburse the United States for all future response costs associated with this work. Some of the *De Minimis* Settling Defendants and the United States on behalf of the Settling Federal Agencies have agreed to pay estimated costs, including the United States' future response costs, for the soil remedial action and a groundwater investigation at the Site. Other *De Minimis* Settling Defendants have agreed to pay estimated costs, including future response costs, for the soil remedial action and an undetermined groundwater remedy. The United States also has agreed to pay the Agencies' share of past response costs. The United States has agreed that the Environmental Protection Agency will reimburse Settling Defendants from the Hazardous Substance Superfund for a portion of the costs associated with the soil remedial action and groundwater investigation.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Union Electric Company, et al.*, D.O.J. Ref. No. 90–11–2–614A.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Missouri, Southeastern Division, 325

Broadway, Second Floor, Cape Girardeau, Missouri 63701; the office of the United States Attorney, Eastern District of Missouri, U.S. Court and Custom House, 1114 Market Street, room 414, St. Louis, Missouri 63101; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66106; and the Consent Decree Library, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree can be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of either $125.50 for the Consent Decree with signature pages and exhibits or $80.50 for the Consent Decree without the signature pages but with exhibits (25 cents per page reproduction charge) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 92-16426 Filed 7-13-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree United States v. Union Pacific Railroad Company

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to section 122(d)(2) (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(d)(2)(B), notice is hereby given that a Consent Decree in *United States* v. *City of Corvallis, Oregon* Civil Action No. 92-6232-HO was lodged with the United States District Court for the District of Oregon on June 29, 1992. This action was brought under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The Consent Decree provides the Defendant, City of Corvallis, Oregon, will complete the cleanup of the United Chrome Superfund Site as required by the Record of Decision issued by the United States Environmental Protection Agency and pay $2,020,000 towards a portion of the costs incurred by the Environmental Protection Agency.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and National Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *City of Corvallis, Oregon,* D.O.J. Ref. No. 90-11-2-409

The Consent Decree may be examined at the Office of the United States Attorney, District of Oregon, 701 High Street, Eugene, Oregon 97401 and at the Region X Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

A copy of the Consent Decree may also be examined at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004 (telephone number (202) 347-2072). A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. The proposed Consent Decree package consists of an eighty-one page Consent Decree and one hundred and one pages of appendices. You may request a copy of the Consent Decree with or without the appendices. Please specify in the request whether or not the appendices are requested. A request for a copy of the proposed Consent Decree with appendices should be accompanied by a check in the amount of $45.75 (25 cents per page reproduction charge) made payable to "Consent Decree Library." A request for a copy of the proposed Consent Decree without appendices should be accompanied by a check in the amount of $21.00.

Roger Clegg,

Acting Assistant Attorney General, Environment and National Resources Division.

[FR Doc. 92-16423 Filed 7-13-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *William D. Rogers, d/b/a Village Imports,* Civil Action No. 1:91CV00 112 was lodged on June 24, 1992, with the United States District Court for the Middle District of North Carolina. The Defendant conducted a business in which he imported motor vehicles into the United States and modified them so as to meet federal emission requirements, during the time periods set forth in the Complaint. Rogers improperly imported into the United States a number of foreign made vehicles, without valid certificates of authority for these vehicles in violation of section 203(a)(1) of the Act, 42 U.S.C. 7522(a)(1) and 40 CFR 85.1501 *et seq.*

He also improperly imported into the United States a 1988 Porsche 911 Carrera without a valid memorandum of exemption in violation of section 203(a)(1) of the Act, 42 U.S.C. 7522(a)(1) and 40 CFR 85.1511(b)(3). Rogers also violated 40 CFR 85.1510(b)(3) by requesting final admission for a 1984 Porsche 911 SC without the required warranty and insurance coverage.

Pursuant to the terms of the consent decree Rogers shall pay to the United States a civil penalty of $5,000.00 within 60 days of the date of entry of the decree, and he is prohibited from importing motor vehicles into the United States that do not conform to federal emission requirements as set forth in 40 CFR parts 85 and 86, and is further enjoined and prohibited from participating in or owning any interest in any business that modifies motor vehicles to conform to federal emissions standards.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *William D. Rogers d/b/a/ Village Imports,* DOJ ref. #90-5-2-1-1503.

The proposed consent decree may be examined at the Office of the United States Attorney, 324 West Market Street, Greensboro, North Carolina 27402; Manufacturers Operations Division, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202-347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-16425 7-13-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on June 9, 1992, pursuant to section 6(a) of the

National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), General Motors Corporation filed written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Low Emissions Technologies Cooperative Research and Development Partnership." The notification discloses (1) the identities of the parties to the project, and (2) the nature and objectives of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are: Chrysler Corporation, Highland Park, MI; Ford Motor Company, Dearborn, MI; and General Motors Corporation, Detroit, MI.

The parties intend to identify opportunities for joining aspects of their independent research and development efforts pertaining to technologies for future low emission motor vehicles. The objectives are to avoid inefficient duplication of effort and expense in research in this area, collect, exchange and, where appropriate, license analysis of emission control technology research information, coordinate the scientific investigations of each party into emission control technologies, accelerate the development of new emission control technologies and perform further acts allowed by the Act that would advance the Partnership's objectives.

Party Contacts

Mark P. Calcaterra, Chrysler Corporation, Highland Park, MI
John K. Dickerson, Ford Motor Company, Office of the General Counsel, Dearborn, MI; and
Steven J. Cernak, General Motors Corporation Legal Staff, Detroit, MI

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-16418 Filed 7-13-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—Hydrogen Chloride Joint Venture

Notice is hereby given that, on June 19, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Hydrogen Chloride Joint Venture filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of two parties to the Hydrogen Chloride Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Hydrogen Chloride Joint Venture advised that Mason Chemical Company, Chicago, Illinois, and The Proctor & Gamble Company, Cincinnati, Ohio, have become parties to the Joint Venture.

No other changes have been made in either the membership or planned activity of the Joint Venture. Membership in this Joint Venture remains open, and the members intend to file additional written notification disclosing all changes in membership.

On June 3, 1991, the Hydrogen Chloride Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on June 27, 1991 (56 Fed. Reg. 29500).

Joseph H. Widmar,

Director of Operations, Antitrust Division,

[FR Doc. 92-16422 Filed 7-13-92; 8:45 am]

BILLING CODE 4140-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on December 17, 1991, High Standard Products, 1100 West Florence Avenue, #B, Inglewood, California 90301, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Heroin (9200)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Methadone (9250)	II
Morphine (9300)	II

High Standard Products plans to procure or manufacture small quantities of deuterated substances in quantities from 10 to 20 grams annually.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: July 7, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-16486 Filed 7-13-92; 8:45 am]

BILLING CODE 4410-09-M

[Docket Nos. 90-11, 90-12, 90-13 and 90-14]

Leonard Browder, R.Ph. d/b/a/ Lominick's Pharmacy; Family Pharmacy, Inc.; Aiken Drug Co.; Woodruff Drug Co.; Revocation of Registrations

On January 30, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued Orders to Show Cause to Leonard Browder, R.Ph., d/b/a Lominick's Pharmacy, 839 Richland Avenue West; Family Pharmacy, Inc., 333 Newberry Street; Aiken Drug Company, 101 Laurens Street; and Woodruff Drug Company, 130 Whiskey Road, all located in Aiken, South Carolina. The Orders to Show Cause proposed to revoke DEA Certificates of Registration, AL2636756, BF0300715, AB0340341, and AB0350556, previously issued to the aforementioned pharmacies, and to deny any pending applications for renewal of such registrations on the grounds that the continued registration of these pharmacies was inconsistent with the public interest.

By letter dated March 1, 1990, Leonard Browder, through counsel, requested a hearing on the issue raised by the Orders to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. On May 23, 1990, the matter was reassigned to Administrative Law Judge Mary Ellen Bittner. Following the completion of prehearing proceedings, Judge Bittner scheduled the hearing in this matter to begin on July 9, 1991. However,

commencement of the hearing was postponed to facilitate negotiations between the Government and the Respondent pharmacies.

By letter dated October 28, 1991, Respondent withdrew his request for a hearing and on December 2, 1991, filed a written statement of position. On December 3, 1991, Judge Bittner issued a Memorandum to Counsel and Order Terminating Proceedings. Accordingly, the Respondent is deemed to have waived his opportunity for a hearing on all matters of law and fact involved herein. 21 CFR 1301.54(d) and 1301.54(e). Pursuant to 21 CFR 1301.57, the Administrator now issues his final order in this matter, based on information contained in the investigative file and the Respondent's statement of position.

The Administrator finds that Leonard Browder is a registered pharmacist in the State of South Carolina. Leonard Browder was the owner of Aiken Drug Company, Woodriff Drug Company, and Lominick Pharmacy and part owner of Family Pharmacy. In 1987, the Drug Enforcement Administration and the South Carolina Department of Health and Environmental Control conducted an in-depth investigation of Respondent pharmacies. The investigation revealed that extensive violations of the Controlled Substances Act and its attendant regulations had been committed by Leonard Browder and other pharmacists whom he employed.

Investigators reviewed the prescription files at Respondent pharmacies and interviewed physicians whose names appeared on the prescriptions. Many of the physicians stated that they had not issued or authorized the prescriptions for controlled substances which had been filled at Respondent pharmacies. Others stated that while they had issued the basic prescriptions, they had not authorized the refills which had been dispensed by the Respondent pharmacies. Some of the physicians had not seen the patients during the period of time in which the prescriptions were supposedly issued. In several cases, the physicians has not seen the patients for a number of years. In numerous instances, the DEA registration numbers on the prescriptions were not those of the physicians who purportedly issued them. Some prescriptions had physician addresses which had not been correct for years. In one case, the physician was not even practicing medicine at the time prescriptions attributed to him were filled by Respondent's pharmacists.

The investigation further reveals that during an eighteen month period, one individual obtained approximately 7,000 dosage units of Didrex, a Schedule IV controlled substance. The majority of the Didrex had been dispensed from Respondent pharmacies. When interviewed by state investigators, the prescribing physician stated that while he issued many of the prescriptions, he also identified many that he had not authorized. Among those not issued or authorized by the physician were twelve call-in prescriptions, with 49 refills, all of which were filled at Respondent pharmacies. Some of these alleged "call-in" prescriptions were for quantities of ten, eighty and one hundred dosage units of Didrex.

When DEA Investigators interviewed the individual whose name appeared on the Didrex prescriptions, he admitted that he had no legitimate medical need for the drugs he obtained. He had many of the prescriptions filled at Respondent pharmacies and went to Aiken Drug Company most often because he knew Leonard Browder. The individual presented either a prescription or an empty prescription bottle. Neither Leonard Browder, nor any of the other pharmacists, ever questioned him about the large quantities of Didrex he received. The individual further stated that with the exception of one pill, all of the Didrex he obtained was given to his girlfriend.

In 1986, Dr. Allan Schifferli, an Aiken dentist, was convicted of 226 counts of unlawfully prescribing controlled substances. Dr. Schifferli has been indicted on 257 counts, all but two of which represented a prescription issued other than for a legitimate medical or dental purpose. Dr. Schifferli's prescriptions were for drugs including Demerol, Mepergan Fortis and Valium. Of the 255 prescriptions set out in Dr. Schifferli's indictment, approximately 146 were filled at Respondent's pharmacies.

The investigation further revealed that Leonard Browder obtained Ritalin, a Schedule II stimulant controlled substance, for his personal use pursuant to prescriptions which had not been issued in the legitimate course of medical practice. The prescriptions had been presigned by the physician and left with Mr. Browder. Mr. Browder claims that he had narcolepsy and that the physician authorized the prescriptions. However, the physician was very ill at the time and both his wife and his treating physician stated that he could not have authorized all of the prescriptions.

Federal law and regulations permit pharmacists to dispense Schedule V narcotics, primarily cough preparations containing codeine, without a prescription. The law prohibits the dispensing of the so-called "exempt narcotics" for other than legitimate medical purposes, limits the quantity dispensed to any one individual and requires that pharmacists obtain identification of the consumer and maintain a contemporaneous record of all such drugs dispensed. 21 CFR 1306.32. In the course of the investigation of the Respondent pharmacies, Investigators learned that the exempt narcotic books at Aiken Drug Company were forged for a two-month period, from January to March 1985, in an attempt to conceal entries showing the dispensing of terpin hydrate with codeine to a patient who had died of cardiac arrest. Investigators interviewed several employees who stated that Leonard Browder ordered them to rewrite the exempt narcotic record in order to delete the entries for the patient. The employees were instructed to use different colored pens and to skip around within the book to avoid detection for similar handwriting. As they eliminated the entries for the deceased individual, the employees made up new names and addresses, apparently to fill the voids in the pharmacy's accountability for the drugs. Mr. Browder then signed the altered book as the approving pharmacist.

During the course of the investigation, Investigators also learned of other violations of the Federal regulations. For example, one employee stated that she opened Aiken Pharmacy on Saturdays and some Sundays and filled prescriptions for both controlled and noncontrolled substances. Since the employee was not a licensed pharmacist, she held the prescriptions aside for Leonard Browder's signature. Additionally, Investigators found numerous violations relating to the emergency dispensing of Schedule II controlled substances. As a rule, drugs containing Schedule II controlled substances may only be dispensed pursuant to written prescriptions. 21 U.S.C. 829(a). In the event of an emergency, where the physician determines that immediate administration of the drug is required, that no alternative medication is available and that it is not reasonably possible to provide a written prescription at that time, the pharmacist may dispense, upon oral authorization of the physician, a quantity of the Schedule II drug adequate to treat the patient during the emergency period. The pharmacy must obtain a written prescription for the drugs so dispensed within 72 hours. See, 21 CFR 290.10 and 21 CFR 1306.11(d). Respondent pharmacies filled such "emergency" prescriptions for excessive quantities,

without later obtaining the required written prescription, without valid DEA registration numbers and for drugs such as Seconal, Ritalin, Amytal and Tuinal, the emergency need for which is at best questionable.

Finally, the investigation revealed that Leonard Browder, and other pharmacists in his employ, dispensed less expensive generic substitute medications to Medicaid patients while they billed the Medicaid program for the trade name drugs. Pharmacists at Aiken Drug Company and Woodruff Drug Company used the initials "L" or "LTB" on such Medicaid prescriptions. It was also learned that Leonard Browder attempted to conceal evidence of the false Medicaid claims instructing employees to alter the pharmacy records.

During the course of the investigation, the Investigators interviewed two pharmacists who had formerly been employed at Respondent pharmacies. Both confirmed that controlled substances were dispensed without the knowledge or approval of the physician whose name appeared on the original prescription, that physicians were not contacted concerned refills and that the pharmacists added refills to prescriptions that had no refills authorized. Both of the former employees also confirmed that the Respondent pharmacies billed Medicaid for brand name drugs while dispensing the generic equivalents.

On April 20, 1989, a Grand Jury sitting in the United States District Court for the District of South Carolina returned a 153-count indictment charging Leonard Browder and others with felony violations of the Controlled Substances Act and fraud with respect to the Medicaid system. On July 10, 1989, Mr. Browder and two of his pharmacists entered pleas of guilty to two counts of the indictment and, on February 2, 1990, they were adjudged convicted of violations of 21 U.S.C. 843, felony offenses under the Controlled Substances Act, and 18 U.S.C. 2 and 1341, felonies relating to the Medicaid fraud offenses. The three defendants received suspended sentences and were placed on probation for a period of five years.

The South Carolina Board of Pharmacy suspended Leonard Browder's license to practice pharmacy for a period of six months, from June 1990 through December 1990, followed by a two year period of probation. Additionally, the United States Department of Health and Human Services excluded Mr. Browder and his two-codefendants from participation in the Medicaid program.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Administrator may revoke a DEA Certificate of Registration and may deny an application for renewal of such registration if he determines that continued registration would be inconsistent with the public interest. Section 823(f) provides for consideration of the following factors in determining where the public interest lies:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution or dispensing of controlled substances;

(4) Compliance with applicable State, Federal or local laws relating to controlled substances;

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive. That is, the Administrator may properly rely on any one or a combination of those factors, giving each the weight he deems appropriate in determining whether a registration should be revoked or an application denied. See, *Henry J. Schwartz, Jr., M.D.*, Docket No. 88–42, FR 16422 (1989). The Administrator finds that the second, third, forth and fifth factors are relevant to the adjudication of this matter. Additionally, Sections 824(a)(2) and 824(a)(5), provide, respectively, that a registration may be revoked for reason of conviction of a felony relating to controlled substances or mandatory exclusion from participation in the Medicaid program pursuant to 42 U.S.C. 1320a–7(a).

The investigative findings set forth at length above, amply document Respondent's numerous violations of the Controlled Substances Act and its attendant regulations, fraud offenses relating to both controlled substances and the Medicaid program, felony convictions arising from those violations, a general indifference to both the requirements of law governing the handling of controlled substances and the duties and responsibilities of a registrant and professional, and exclusion from participation in the Medicaid program. Accordingly, the Administrator concludes that there are lawful bases under 21 U.S.C. 823(f), 824(a)(2), 824(a)(4) and 824(a)(5) for the revocation of Respondent's registrations and for denial of any applications for renewal thereof.

In the written statement of position filed on behalf of the Respondent pharmacies, Mr. Browder at once consents to the revocation of these registrations; agrees to revocation, but asks that such sanction be for a finite period of time; asks that the registration not be revoked; and requests reissuance following a definite period of suspension. The documents filed on behalf of Mr. Browder show him to be an individual who has practiced pharmacy in South Carolina for almost forty-one years, beginning in 1951 as an employed pharmacist and ending in 1992 as the owner and operator of four pharmacies in Aiken, South Carolina. During the course of the criminal proceedings against him, over 150 people, including civic leaders, public officials, members of the health care industry and citizens representing all walks of life wrote letters to the Court in his behalf. These people uniformly portray Mr. Browder as an individual dedicated to his profession, family, church and community.

The evidence which emerged in the course of the investigation described above presents a very different picture. The evidence shows a person who has abandoned his professional responsibilities; the head of a group of pharmacists who dispensed controlled substances without authorization from a physician; dispensed controlled substances pursuant to prescriptions that they knew, or should have known, were issued for other than legitimate medical purposes; altered prescriptions to reflect greater numbers of refills; and otherwise falsified records required to be kept under the Controlled Substances Act. Under Leonard Browder, the pharmacies became a source for drugs, where individuals inclined to abuse drugs could obtain them without attracting attention. Under Mr. Browder, the pharmacies were used to defraud a program designed to provide for the medical needs of those least able to afford such care.

In filling the hundreds of prescriptions which led to their indictment and conviction, Mr. Browder and some of his pharmacists abdicated their responsibility as pharmacists and registrants. The practice of pharmacy, like that of medicine, is a profession to which society entrusts the responsibility for control over a force which, when properly used, has great benefit for mankind, but when abused is a force for evil and human destruction. It follows that society cannot tolerate in these professions the presence of individuals who abdicate their professional responsibility and permit themselves to be used as a conduit by which controlled substances reach the illicit market and become that force for evil.

See, *Vermont & 110th Medical Arts Pharmacy, et al.* v. *Board of Pharmacy*, 125 Cal. App. 3d 19 (1981). When such abdication of responsibility involves a DEA registrant, the public interest clearly requires that the registration be revoked.

The Administrator concludes that the dispensing practices of Leonard Browder indicate a callous disregard of his duties as a professional to obey the controlled substance laws and to protect the public health and safety. The Administrator concludes that revocation of the pharmacies' registrations is the only appropriate sanction which will adequately protect the public interest. Accordingly, Mr. Browder's plea for a less onerous sanction is denied. These registrations must, and will, be revoked.

During the course of these proceedings, counsel for the Government, the Respondents and for Leonard T. and Laurie Ann Browder, the son and daughter of Respondent, Leonard Browder entered into negotiations concerning the sale of the pharmacies. These negotiations led to an agreement whereby the subject pharmacies would be purchased by Leonard T. and Laurie Ann Browder in an arms-length transaction which would afford Leonard Browder no financial or other interest in the pharmacies. The agreement further excluded Mr. Browder from employment by the pharmacies in any capacity and from use of their facilities for the conduct of any other business. Additionally, the agreement prohibits the new registrants from employing those other pharmacists who were convicted along with Mr. Browder. While DEA normally suspects transfers between members of the same family as being sham transactions, it appears that this transfer of ownership is genuine and has been entered in good faith by all parties.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration, AL2636756, BF0300715, AB0340341 and AB0350556, previously issued to Leonard Browder, R.Ph., doing business as Lominick's Pharmacy, Family Pharmacy, Aiken Drug Company and Woodruff Drug Company, respectively, be, and they hereby are, revoked. The Administrator further orders that any pending applications for renewal of these registrations be, and they hereby are, denied. This order is effective August 13, 1992.

Dated: July 7, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-16393 Filed 7-13-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-27, 137, et al.]

BJ Services Co., USA a/k/a BJ Titan Services; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of BJ Serivces, Company, WA a/k/a BJ Titan Services, TA-W-27, 137 Pleasanton, Texas TA-W-27, 137A Houston, Texas and operating in the following States: TA-W-27,137B Alaska; TA-W-27,137C Colorado; TA-W-27,137D Alabama; TA-W-27,137E California; TA-W-27,137F Louisiana; TA-W-27,137G Florida; TA-W-27,137H Illinois; TA-W-27,137I Kansas; TA-W-27,137J Massachusetts; TA-W-27,137K Missouri; TA-W-27,137L Mississippi; TA-W-27,137M North Dakota; TA-W-27,137N New Mexico; TA-W-27,137O Oklahoma; TA-W-27,137P West Virginia; TA-W-27,137Q Wyoming; TA-W-27,137R Texas (except Pleasanton and Houston).

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 June 9, 1992, applicable to all workers of BJ Services Company in Pleasanton and Houston, Texas. The Notice was published in the Federal Register on June 30, 1992 (57 FR 29101).

At the request of the company the Department reviewed the certification for workers of BJ Services. New information from the company shows that worker separations occurred in the several States mentioned above. The additional findings show that the company changed its name in 1990 from BJ Titan Services to BJ Services Company, USA.

The intent of the Department's certification is to include all workers of BJ Services (BJ Titan Services) who were affected by increased imports of crude oil and natural gas.

The amended notice applicable to TA-W-27,137 is hereby issued as follows:

All workers of BJ Services Company, U.S.A., Pleasanton, and Houston, Texas and operating in the following states: Alaska; Alabama; California; Louisiana; Colorado; Florida; Illinois; Kansas; Missouri; Massachusetts; Mississippi; North Dakota; New Mexico; Oklahoma; Texas, except Pleasanton and Houston; West Virginia and Wyoming and who became totally or partially separated from employment on or after April 7, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-16495 Filed 7-13-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,237]

Coltec Industries, Inc.; Engines Accessories Operations, Roscoe, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 11, 1992 in response to a worker petition which was filed on May 11, 1992 on behalf of workers at COLTEC Industries, Incorporated, Engines Accessories Operations, Roscoe, Illinois.

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 at Washington, DC this 2nd day of July 1992.

Ronald E. Putz,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-16496 Filed 7-13-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,942]

John L. Cox, Oklahoma City, OK; Notice of Negative Determination Regarding Application for Reconsideration

By applications dated June 2, 1992 through June 24, 1992 the petitioners and the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 11, 1992 and was published in the Federal Register on May 28, 1992 (57 FR 22492).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake

in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the subject firm in this investigation is the Oklahoma City District (OCD) facility of John L. Cox. The findings show that layoffs occurred in February, 1992 and were for the exploration staff and landmen. Other findings show that the OCD facility explores only for its own account.

The petitioners state that the subject firm was certified in 1988 and that the present conditions remain the same as in 1988. It's also claimed that the Department's survey was inadequate. An additional list of customers was submitted.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements was not met. This test is usually demonstrated through a survey of the subject firm's customers.

The Department's survey of the OCD facility's major customers shows that none of them imported natural gas and the crude oil customers had declining purchases of imported oil in 1992. Further, some of the customers did not need to be contacted since the Department already had their recent import purchases on file from other investigations. The amended list of customers submitted by the company were not customers of the OCD facility but are corporate customers with no purchases from the OCD and, therefore, cannot be used.

In order to qualify for a worker group certification, there must be increased imports of articles that are like or directly competitive with those of the workers' firm. Further, the Act states that the increased imports must have contributed importantly to worker separations and declines in sales or production in the period relative to the petition. What the findings do show is that John L. Cox eliminated the exploration staff at Oklahoma City but still continues to produce oil and gas.

The Department's earlier certification for workers at the OCD facility (TA–W–22,289) would not provide a basis for a worker group certification under the subject petition, TA–W–26,942. The earlier certification was not only in a different time period but the purchasing patterns of its earlier customers were different than those submitted with the latter petition.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 2nd day of July 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 92–16497 Filed 7–13–92; 8:45 am]

BILLING CODE 4510–30–M

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 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 Director, Office of Trade Adjustment Assistance, at the address show below, not later than July 24, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 24, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 29th day of June 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Secorp Industries, Inc. (Wkrs)	Lafayette, LA	06/29/92	06/16/92	27,422	Oilfield, Oilwell Services.
Pirelli Armstong Tire Corp. (URW)	Des Moines, IA	06/29/92	06/16/92	27,423	Tires.
Man Roland, Inc. (Wkrs)	Middlesex, NJ	06/29/92	06/15/92	27,424	Printing Presses.
Athenia Wire (IBWW)	E. Syracuse, NY	06/29/92	06/15/92	27,425	Steel Wire.
Ashland Forge & Machining, Inc. (UPIU)	Ashlands, WI	06/15/92	06/11/92	27,426	Scissors and Wrenches.
J. Gilmore Hill (Co)	Denver, Co	06/29/92	06/15/92	27,427	Oil and Gas.
Lee's Carpets (Wkrs)	Hillsville, VA	06/29/92	06/15/92	27,428	Carpet Yarn.
Wolf Energy (Co)	Denver, Co	06/29/92	06/12/92	27,429	Oil and Gas Exploration.
Pope & Talbot (IWA)	Ladysmith, WI	06/29/92	06/24/92	27,430	Toilet Tissue, Disposable Diaper Tissue.
Aberdeen Petroleum (USA) (Co)	Denver, CO	06/29/92	06/26/92	27,431	Exploration, Drilling for Oil, Gas.
Sojourner Drilling Corp. (Wkrs)	Abilene, TX	06/29/92	06/24/92	27,432	Oil, Gas Well Drilling.
ASARCO—Galena Unit (Wkrs)	Wallace, ID	06/29/92	06/18/92	27,433	Silver Mining.
Pittsburgh Forgings (USWA)	Coraopolis, PA	06/29/92	06/16/92	27,434	Forging Products.
Cook Bates Co. (Co)	Venice, FL	06/29/92	06/16/92	27,435	Manicure and Pedicure Implements.
Sterling Group (Wkrs)	Sewickley, PA	06/29/92	06/19/92	27,436	Electrical Varnishes.
Soricon Corp. (Wkrs)	Boulder, Co	06/29/92	06/16/92	27,437	Optical Recognition Devices.
Grace Petroleum Corp. (Co)	Oklahoma City, OK	06/29/92	06/17/92	27,438	Oil and Gas.
Grace Petroleum Corp. (Co)	Jackson, MS	06/29/92	06/17/92	27,439	Oil and Gas.
Geotrace Technologies, Inc. (Co)	Denver, CO	06/29/92	06/19/92	27,440	Seismic Data.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Maghielse Tool Corp. (Wkrs)	Grand Rapids, MI	06/29/92	06/15/92	27,441	Tools and Dies.
Frontier Exploration, Inc. (Wkrs)	Englewood, CO	06/29/92	06/10/92	27,442	Oil and Gas Exploration.
United Technologies Automotive (Wkrs)	Troy, MO	06/29/92	06/17/92	27,443	Headliners for Automobiles.
National Semi-Conductor (Wkrs)	W. Jordan, UT	06/29/92	06/18/92	27,444	Semi-Conductors.
Louisiana Land & Exploration Co. (Co)	New Orleans, LA	06/29/92	06/19/92	27,445	Oil and Gas.
Louisiana Land & Exploration Co. (Co)	Houston, TX	06/29/92	06/19/92	27,446	Oil and Gas.
Louisiana Land & Exploration Co. (Co)	Denver, CO	06/29/92	06/19/92	27,447	Oil and Gas.
Louisiana Land & Exploration Co. (Co)	Oklahoma, City, OK	06/29/92	06/19/92	27,448	Oil and Gas.
Mt. Fir Lumber Co. (Wkrs)	Tygh Valley, OR	06/29/92	06/11/92	27,449	Pine Lumber.
Tektronix, Inc., CAX Center (Wkrs)	Beaverton, OR	06/29/92	06/12/92	27,450	Oscilloscopes and Analyzers.

[FR Doc. 92-16498 Filed 7-13-92; 8:45 am]
BILLING CODE 4510-30-M

[Field Memorandum No. 47–92]

Labor Certification Process for the Permanent Employment of Aliens in the United States: Amending Certified Labor Certification Applications

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration has issued a directive to provide instructions to Regional Certifying Officers for responding to requests to amend an Application for Alien Employment Certification (Form ETA 750) after it has been certified pursuant to 20 CFR Part 656—"Labor Certification Process for the Permanent Employment of Aliens in the United States". The attached directive, Field Memorandum No. 47–92, is being published in the Federal Register for the information of the general public.

DATES: Field Memorandum No. 47–92 was issued on May 7, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Flora Richardson, Chief, Division of Foreign labor Certifications, United States Employment Service, Employment and Training Administration, United States Department of Labor, suite N–4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535–0163.

Signed at Washington, DC, this 8th day of July, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

U.S. Department of Labor, Employment and Training Administration, Washington, DC 20210
Classification: ES–Immigration
Correspondence Symbol: TEE
Date: May 7, 1992
Directive: Field Memorandum No. 47–92
To: All Regional Administrators
From: Donald J. Kulick, Administrator, Office of Regional Management
Subject: Amending Certified Labor Certification Applications
Rescissions: None
Expiration Date: April 30, 1993

1. *Purpose. To provide instructions for responding to requests to amend an Application for Alien Employment Certification* (Form ETA 750) after it has been certified.

2. *References.* 20 CFR Part 656; Section 203(b) as added to the Immigration and Nationality Act by Section 121 of the Immigration Act of 1990.

3. *Background.* Certifying Officers have indicated that they are receiving an increasing number of requests to amend labor certification applications after they have been certified. In view of the substantial increase in the number of such requests and the workload involved in responding to such requests, Certifying Officers have requested clarification of the procedures and policies to follow in responding to such requests. Requests to amend certified labor certification applications primarily involve the information furnished on the application form regarding the employer (Part A, Items 4 and 5) to which the certification had been issued and items relating to the employer's job requirements (Part A, Items 14 and 15).

A. *Change in Employer.*

After certification there may be a change in the employer specified on the application form for a variety of reasons; e.g., sale, merger, reorganization, movement to a new location, etc. It has been past policy that Certifying Officers may make appropriate changes relating to the name and address of the employer on a case-by-case basis. Certifying Officers could, if needed, request advice from the Division of Foreign Labor Certifications regarding the appropriateness of any such changes.

The Employment Service and the Immigration and Naturalization Service (INS) have entered into an agreement whereby all changes relating to the name and address of the employer will be made by INS. This agreement was entered into because of INS's extensive experience in determining whether an entity is the same employer after a change such as a sale, merger or reorganization, and to enhance consistency in administering immigration laws and policies. The INS has developed, and is continuing to develop, a body of extensive administrative case law in making determinations involving changes in employers on the various petitions filed with the Service. When the employer's location has changed, the INS may request advice from ETA regarding the application of the definition of "area of intended employment" as defined at 20 CFR 656.50.

B. *Changes in Job Requirements.*

Amendments made to the Immigration and Nationality Act by the Immigration Act of 1990 limited the number of visas that can be issued to unskilled workers—i.e., aliens immigrating to perform work that requires less than 2 years of training—to 10,000 workers in any fiscal year. Since the waiting time to obtain an unskilled visa number is substantial and growing, employers are with increasing frequency requesting Regional Certifying Officers to amend the employers' requirements entered in Part A, items 14 and 15, on a previously approved labor certification so that the alien can now qualify for a preference category that is more current; i.e., does not have as large a number of aliens waiting in line to obtain a visa number.

It is inappropriate for Certifying Officers to make amendments to any items on the certified ETA 750 that relates to the test of the labor market for U.S. workers. Such items, for example, include: rate of pay (item 12), job description (item 13), and job requirements (items 14 and 15). Changes in any of the items that relate to the labor market test could, in turn, have affected the number of available U.S. workers that applied for the job opportunity involved in the labor certification application. After a certification has been issued, exceptions should only be made in cases where the Certifying Officer made an error, as explained below, in processing the application.

4. *Action Required.* Administrators are requested to instruct Regional Certifying Officers to:

A. Reject a request for amendments to the information on the labor certification application that relates to the employer; i.e., name and address, if the request is made after issuance of the labor certification and does not involve correction of an error by ETA. All such requests are to be returned to employers with a letter explaining that any such requests along with appropriate supporting documentation should be submitted to the INS for consideration along with the visa petition.

B. Reject a request for amendments to items on the labor certification application

that involve employer job requirements or any other items that relate to the test of the labor market for U.S. workers, if the request is made after issuance of the labor certification and does not involve correction of an error. All such requests are to be returned to employers with a letter explaining that Certifying Officers have been instructed not to make amendments to items on the application that relate to the test of the labor market after a labor certification has been issued.

C. Accept a request for amendment(s) to an application after issuance of a labor certification when it is clear from the case record maintained in the Regional Office that a proper amendment was requested and not made before the certification was issued. For example, if the Certifying Officer failed to change an employer's experience requirements on the form pursuant to a proper request from the employer prior to its recruitment of U.S. workers, it would be appropriate for the Certifying Officer to amend a certified application to correct such an error.

5. *Inquiries.* Questions may be directed to Denis Gruskin on 202–535–0169.

[FR Doc. 92–16499 Filed 7–13–92; 8:45 am]

BILLING CODE 4510–30–M

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Announcement of Vacancies; Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (The Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of her functions under ERISA, and to submit to the Secretary, or their designee, recommendations with respect thereto.

The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to Congress on ERISA.

The terms of five members of the Council expire on Thursday, November 14, 1992. The groups or fields represented are as follows: Employee organizations, accounting field, insurance field, employers, and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to, Attention: William E. Morrow, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., suite N–5677, Washington, DC 20210.

Recommendations must be delivered or mailed on or before September 14, 1992. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of Section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, DC this 8th day of July, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92–16452 Filed 7–13–92; 8:45 am]

BILLING CODE 4510–29–M

Occupational Safety and Health Administration

Vermont State Standards; Notice of Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On October 16, 1973, notice was published in the **Federal Register** (38 FR 28658) of the approval of the Vermont State Plan and the adoption of subpart U to part 1952 containing the decision.

The Vermont State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing for two (2) successive weeks, in three (3) newspapers having general circulation in the center, northern and southern parts of the State, an intent to amend the State Plan by adopting the standard(s).

b. Review of standards by the Interagency Committee on Administrative Rules, State of Vermont.

c. Approval by the Legislative Committee on Administrative Rules, State of Vermont.

d. Filing in the Office of the Secretary of State, State of Vermont.

e. The Secretary of State publishing, not less than quarterly, a bulletin of all standard(s) adopted by the State.

The Vermont State plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6, of the Act. By letters dated May 19, 1992 and May 20, 1992, from Dana J. Cole-Levesque, Commissioner, Vermont Department of Labor and Industry, to John B. Miles, Jr., Regional Administrator; and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR parts 1907; 1910; and 1926; and subsequent amendments thereto, as described below:

(1) Amendments to 29 CFR part 1910.7, Definition and Requirements for Nationally Recognized Testing Laboratory (53 FR 12120–12125, dated 4/12/88 and 53 FR 16838 dated 5/11/88). (By letter dated 5/19/92, from Dana Cole-Levesque, Commissioner, to John B. Miles, Jr., OSHA Regional Administrator, the State of Vermont advised that it will not established a laboratory accreditation program and will accept the Federal program as compliance with the State rules.)

(2) Amendments to 29 CFR part 1910, Electrical Safety-Related Work Practices (55 FR 32014, dated 8/6/90 and 55 FR 46052, dated 11/1/90).

(3) Amendment to 29 CFR part 1926, Safety Standards for Stairways and Ladders Used in the Construction Industry; Final Rule (55 FR 47687, dated 11/14/90).

(4) Amendment to 29 CFR 1926.1053, Safety Standards for Stairways and Ladders Used in the Construction Industry (56 FR 41794, dated 8/23/91).

These standards became effective on January 6, 1992 and April 30, 1992, pursuant to Section 224 of State Law.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and are accordingly approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 133 Portland Street, Boston, Massachusetts, 02114; Office of the Commissioner, State of Vermont, Department of Labor and Industry 120 State Street, Montpelier, Vermont 05602, and the Office of State Programs, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Vermont State plan as proposed changes and making the Regional Administrator's approval effective upon publication for the following reasons:

a. These standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The Standards were adopted in accordance with the procedural requirements of the State Law which included Public comment, and further public participation would be repetitious.

This decision is effective July 14, 1992.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Boston, Massachusetts, this 5th day of June, 1992.

John B. Miles, Jr.,

Regional Administrator.

[FR Doc. 92–16500 Filed 7–13–92; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SPACE COUNCIL

Vice President's Space Policy Advisory Board; Establishment of Industrial Base Review Task Group

The Vice President has determined that the establishment of a sub-committee of the Vice President's Space Policy Advisory Board is necessary and in the public interest in connection with the performance of duties imposed upon the National Space Council by Executive Order 12675 of April 20, 1989 (3 CFR, 1989 Comp., p. 218).

Name of Sub-Committee: Vice President's Space Policy Advisory Board Industrial Base Review Task Group.

Purpose: The Industrial Base Review Task Group of the Vice President's Space Policy Advisory Board will assess the current strength of U.S. space-related industrial base and prospects for its health and vitality over the next decade. In conducting this assessment, the panel will consider the implications of declining defense spending, the nature and scope of international competition, current and projected national security needs as well as taking into account the changing trade relationship between the U.S. government, the U.S. private sector, and the republics of the former Soviet Union and their industries. The panel will also consider the emerging and long term implications of other space industry nations, such as China, Japan, and members of the European Space Agency.

Balanced Membership Plans: The Industrial Base Review Task Group shall be composed of between 5 and 8 individuals drawn from the members of the Vice President's Space Policy Advisory Board. As the Vice President's Space Policy Advisory Board represents a balanced membership of diverse backgrounds and experiences, so too will this Sub-Committee.

Responsibile National Space Council Official: Courtney A. Stadd, National Space Council, Executive Office of the President, Washington, DC (202) 395–6175.

Steven D. Harrison,

Committee Management Officer.

[FR Doc. 92–16439 Filed 7–13–92; 8:45 am]

BILLING CODE 3128–01–M

Vice President's Space Policy Advisory Board; Establishment of Space Launch Strategy Implementation Task Group

The Vice President has determined that the establishment of a subcommittee of the Vice President's Space Policy Advisory Board is necessary and in the public interest in connection with the performance of duties imposed upon the National Space Council by Executive Order 12675 of April 20, 1989 (3 CFR, 1989 Comp., p. 218).

Name of Subcommittee: Vice President's Space Policy Advisory Board Space Launch Strategy Implementation Task Group.

Purpose: The Space Launch Strategy Implementation Task Group will review the implementation of the National Space Policy Directive on National Space Launch Strategy.

Balanced Membership Plans: The Space Launch Strategy Implementation Task Group shall be composed of between 5 and 8 individuals drawn from the members of the Vice President's Space Policy Advisory Board. As the Vice President's Space Policy Advisory Board represents a balanced membership of diverse backgrounds and experiences, so too will this Subcommittee.

Responsible National Space Council Official: James Beale, National Space Council, Executive Office of the President, Washington, DC, (202) 395–6175.

Steven D. Harrison,

Committee Management Officer.

[FR Doc. 92–16440 Filed 7–13–92; 8:45 am]

BILLING CODE 3128–01–M

Meeting of the Space Launch Strategy Implementation Task Group

AGENCY: National Space Council.

ACTION: Notice of meeting

SUMMARY: The Space Launch Strategy Implementation Task Group of the Vice President's Space Policy Advisory Board will meet July 30 and 31, 1992.

DATES: July 30 and 31, 1992.

ADDRESSES: 1215 Jefferson Davis Highway, Suite 800, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Stephen Hopkins, (703) 685–3307 or James Beale, National Space Council, Executive Office of the President, Washington, DC, (202) 395–6175.

SUPPLEMENTARY INFORMATION: The Space Launch Strategy Implementation Task Group of the Vice President's Space Policy Advisory Board will meet

between 8:30 a.m. and 5 p.m. on July 30 and 31, 1992 at the ANSER Corporation, Suite 800, 1215 Jefferson Davis Highway, Arlington, Virginia. Persons interested in attending should contact Stephen Hopkins, ANSER, (703) 685–3307.

James R. Beale,

Committee Action Officer.

[FR Doc. 92–16505 Filed 7–13–92; 8:45 am]

BILLING CODE 3128–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by August 13, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Service Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 94 Music Fellowships Application Guidelines.

Frequency of Collection: One-time.

Respondents: Individuals.

Use: Guideline instructions and applications elicit relevant information from individual artists that apply for funding under the Music Program Fellowships category. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 715.

Average Burden Hours per Response: 20.

Total Estimated Burden: 14,300.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92–16451 Filed 7–13–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Co.; Withdrawal of Application for Amendment to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (the licensee) to withdraw its July 1, 1989, application for proposed amendment to Facility Operating License Nos. NPF–11 and NPF–18 for the LaSalle County Station, Unit Nos. 1 and 2, located in LaSalle County, Illinois.

The proposed amendment would have revised the Technical Specifications to allow periodic cycling of the pneumatically operated VQ valves in accordance with the manufacturer's recommendation.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 4, 1989 (54 FR 40925). However, by letter dated May 13, 1992, the licensee withdrew the proposed amendment.

For further details with respect to this action, see the application for amendment dated July 1, 1989, and the licensee's letter dated May 13, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the local public document room located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois.

Dated at Rockville, Maryland this 1st day of July 1992.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Project Manager, Project Directorate III–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–16489 Filed 7–13–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF NATIONAL DRUG CONTROL POLICY

President's Drug Advisory Council; Meeting

AGENCY: President's Drug Advisory Council; Office of National Drug Control Policy.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix), of a meeting of the President's Drug Advisory Council.

DATE AND TIME: July 22, 1992 from 1 to 3:30 p.m.

PLACE: The meeting will be held in room 180 of the Old Executive Office Building (OEOB), Washington, DC 20500.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Cavanagh, Confidential Assistant, President's Drug Advisory Council, Executive Office of the President, Washington, DC 20500, (202) 466–3100.

SUPPLEMENTARY INFORMATION: The President's Drug Advisory Council was created by Executive Order 12696 of November 13, 1989 (54 FR 47507, November 15, 1989), with the general purpose of advising the President and the Director of the Office of National Drug Control Policy on the development, dissemination, explanation and promotion of national drug policy.

At the session on July 22, the Council will receive progress reports from its National Coalition Committee and its Drug-Free Workplace Committee.

Members of the public interested in attending the meeting should contact the President's Drug Advisory Council, (202) 466–3100, at least one day prior to the meeting. Callers should be prepared to give their birthdate and social security number over the telephone, in order to facilitate clearance into the Old Executive Office Building. Due to difficulties in scheduling a reception with the President on the morning of

July 22, 1992, notice of this open meeting was delayed.

Terence J. Pell,

Chief of Staff, Office of National Drug Control Policy.

[FR Doc. 92-16509-Filed 7-9-92; 1:39 pm]

BILLING CODE 3180-02-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30898; File No. SR-PSE-90-44]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change, Including Amendment No. 1 to the Proposed Rule Change, and Filing and Order Granting Accelerated Approval to Amendment Nos. 2, 3, 4, 5, and 6 to the Proposed Rule Change, Relating to Listing Guidelines for Certain Unit Investment Trusts

July 7, 1992.

I. Introduction

On December 10, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change to amend Rules 3.2 and 3.5 of the PSE Rule Book to provide listing guidelines for certain investment trusts that issue securities based on a portfolio of stocks included in a broad-based stock market index and/or portfolio of money market instruments or other debt securities.

The proposed rule change was published for comment in Securities Exchange Act Release No. 29805 (October 10, 1991), 56 FR 52108 (October 17, 1991). No comments were received on the proposed rule change.[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The proposal was amended on August 26, 1991, to provide customer suitability standards for investments in unit investment trust securities ("UIT interests") and to require that PSE members have all discretionary orders in UIT interests approved by proper supervisory personnel. This amendment was noticed in Securities Exchange Act Release No. 29805 (October 10, 1991), 56 FR 52108 (October 17, 1991). No comments were received on the amendment. The proposal was amended again on November 27, 1991, to clarify the listing standards for UIT interests and to require that the stock market index on which UIT interests may be based is a broad-based stock market index that is of the type the Commission previously has reviewed and approved for index products. The proposal was further amended on December 19, 1991 to require that trading in index UIT interests be halted when trading in index options has been halted. The proposal was further amended on February 5, 1992 to clarify how voting rights conferred by UIT interests would be divided between the securities component parts. The proposal was further amended on April 13, 1992, and April 15, 1992 to clarify the requirements applicable to the trustees of unit investment trusts and to require that a prospectus be delivered to every customer effecting a transaction in UIT interests. Finally, the proposal was amended on June 11, 1992, to eliminate a provision that gave the PSE the authority to list a UIT if the trust meets the minimum standards as established by another authorized national securities exchange.

II. Description of Proposal

A. Listing Requirement for Unit Investment Trusts

The PSE proposes to amend Rules 3.2 and 3.5 of the PSE Rule Book to provide for the listing of unit investment trusts that issue securities based on a portfolio of stocks included in a domestic, broad-based stock market index, which is of the type the Commission has previously reviewed and approved for index products, and/or a portfolio of money market instruments or other debt securities. Under the proposal, these unit investment trusts may operate on an open or closed end basis and may permit investors to separate their securities into distinct trading components. These distinct trading components may represent interests in the income, capital appreciation potential, or other economic characteristics of the securities deposited in the unit investment trust.[4]

Under the proposal, a unit investment trust's eligibility for listing its securities will be subject to the following requirements. First, the unit investment trust must have assets in excess of $100 million. Second, the trust must have a minimum public distribution of 1 million shares or units held specifically by a minimum of 400 public holders. Third, the trust must have an aggregate market value of $18 million. Fourth, the trust must have a term of two years or as otherwise stated in the trust prospectus.

Under the proposal, the PSE will consider the suspension of trading in or withdrawal from listing of the securities of a unit investment trust if the aggregate market value of the trust is less than $1 million, or if the related security to which the cash payment of the trust at term is tied is delisted. The PSE will also consider the suspension of trading in, or removal from listing of, any unit investment trust if further dealings in such securities appears unwarranted due to the occurrence of any of the following circumstances: The trust has more than 60 days remaining until termination and there are less than 50 record and/or beneficial holders of shares, units or trading components thereof for 20 or more consecutive trading days; there has been a failure on the part of the trust and/or trustee to comply with the PSE's listing policies or agreements; or such other event occurs or condition exists that, in the PSE's opinion, makes further dealings on the Exchange inadvisable.

The proposal also requires that the trustee of a UIT interest be a trust company or banking institution having substantial capital and surplus. Such trustee may not have an executive officer who is also an officer of the issuing sponsor nor shall the trustee and issuer be under common control. If an individual is appointed as the trustee, the proposal requires that a qualified trust company or banking institution be appointed co-trustee.

B. Trading of Unit Investment Trust Interests

The proposal also provides for specific rules to govern the trading of the securities issued by a unit investment trust and their component parts ("UIT interests"). First, the proposal requires that a broker recommending a transaction in a UIT product (*i.e.*, securities issued by a unit investment trust and any distinct trading components of those securities) to determine that all aspects of the product, including its component parts, are not unsuitable for the customer and that the customer has the financial ability to bear the risk of the product, including its component parts, even if the recommendation is limited to a transaction in a whole UIT interest rather than any of the component parts. This suitability standard is substantially identical to the one that is applied to recommendations in options products.[5] Second, the PSE proposal requires that customers be provided with a statutory prospectus before effecting a transaction in a UIT interest.

Third, the PSE proposal includes rules governing the entering of discretionary

[4] The Commission recently approved similar proposals by the American Stock Exchange, Inc. ("Amex") and the Chicago Board Options Exchange, Inc. ("CBOE"). The Amex and the CBOE specifically had applied to list and trade securities, and their component securities, issued by unit investment trusts sponsored by Supershare Services Corporation, a majority owned subsidiary of Leland O'Brien Rubinstein Associates Incorporated, called SuperUnits and SuperShares. See Securities Exchange Act Release Nos. 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (order approving SR-Amex-90-06), and 30393 (February 21, 1992), 57 FR 7415 (March 2, 1992) (order approving SR-CBOE 90-13). The PSE rule filing is intended to provide the Exchange with the regulatory structure to trade SuperUnits and SuperShares. Of course, in order to actually trade SuperUnits and SuperShares, the PSE would need to apply for and be granted unlisted trading privileges for these securities.

[5] See PSE Rule 9.18(c).

orders in UIT interests. Currently, PSE rules prohibit a PSE member from exercising discretion in a customer's account unless the member obtains the prior written authorization of the customer and, in the case of an options account, the approval of a Senior Registered Options Principal.[6] In addition, all discretionary accounts are required to be reviewed by a general partner or principal executive officer of the PSE member at frequent intervals.[7] The proposal would add, for listed UIT interests that are separable into distinct trading components, an additional requirement that discretionary orders in such securities must be approved and initialled on the day entered by a person delegated such responsibility under PSE rules or, in accounts approved for options trading, by a Senior Registered Options Principal or Registered Options Principal.

Fourth, the PSE proposes that trading in an index UIT interest will be halted when trading in index options has been halted.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[8] Specifically, the Commission believes that providing for the exchange trading of securities issued by unit investment trusts based on a portfolio of stocks in a broad-based stock market index or a portfolio of money market instruments will offer a new and innovative means of participating in the securities markets. In particular, the Commission believes that the trading of UIT interests will accord investors flexibility in shaping their investment needs by providing (1) the means to trade open-end mutual funds on the secondary market, and (2) a mechanism to separate a stock or money market investment into component pieces.[9]

Moreover, the ability of investors to split a UIT interest into component parts should provide investors with flexibility to meet their investment needs. For example, a UIT interest separable into component parts representing the respective income and appreciation portion of the value of the UIT interest would permit an investor interested in maintaining low risk to hold on to the income portion of the UIT interest and sell the appreciation portion in the secondary market. Investors who could bear the risks of holding the appreciation portion also would have the ability to obtain differential rates of return on a capital outlay if the index on which the value of the appreciation component was based moved in a favorable direction above a specified amount.[10]

While a whole UIT interest is analogous to open-end index and money market funds, the components of that UIT interest are hybrid derivative securities having certain option-like characteristics and risks. Accordingly, the Commission has reviewed carefully the PSE's proposal to ensure that the rules for trading UIT interests and their component parts maintain and meet the Act's requirements for adequate investor protection.

Because UIT interests that can be divided into component parts involve a level of risk that is greater than the level of risk involved with traditional mutual fund securities, the Commission has several specific concerns regarding the trading of UIT interests. In particular, these UIT interests raise customer suitability, disclosure, and secondary market trading issues that must be addressed adequately. As discussed in detail below, the PSE has proposed safeguards that are designed to meet these investor protection concerns.

First, the PSE has addressed customer suitability concerns by proposing to add Commentary .02 to PSE Rule 3.2. As noted above, Commentary .02 would require a broker recommending a purchase of a UIT interest product (*i.e.*, securities issued by a unit investment trust and any district trading components of those securities) to determine that all aspects of the product, including its component parts, are not unsuitable for the customer and that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and special characteristics of the recommended transaction. The Commentary also requires that the recommending broker determine that the customer has the financial ability to bear the risk of the component parts, even if the recommendation is limited to purchasing a whole UIT interest rather than any of the component securities. This suitability standard is almost identical to the one that is applied and recommended for options products.[11]

As applied to UIT interests that are dividable into component parts, the Commission believes that the use of an options-like suitability standard to a recommendation to establish a position (either long or short) in a UIT interest will provide protection that the recommendation only will be made to those investors who can evaluate and bear the risks of the component securities. The Commission believes that applying this suitability standard to the entire product is necessary because a purchase of a whole UIT interest always involves the potential to separate the UIT interest later into component securities.

Second, the Commission has reviewed the appropriate account approval standards. For example, in order to trade options, an investor's account must be approved for options trading.[12] The PSE has not proposed to require or recommend that UIT interests, including those which are the component parts of a whole UIT interest, be sold only to options approved accounts. The Commission finds this acceptable because (1) UIT interests have some aspects that are more akin to equity than to options; and (2) the PSE has developed other adequate customer protection rules applicable to transactions in these products. For example, the PSE has proposed to require that discretionary transactions in UIT interests be approved by a Senior Registered Options Principal, a Registered Options Principal, or a Person delegated such responsibility under PSE rules governing the proper conduct and supervision of customer accounts.[13] By requiring review of all

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[6] See PSE Rules 9.6(a) and 9.18(e).

[7] See PSE Rule 9.6(b).

[8] In addition to the discussion set forth below, the Commission hereby incorporates the discussion set forth in Securities Exchange Act Release Nos. 30394 (February 21, 1992) (order approving SR–Amex–90–06), and 30393 (February 21, 1992) (order approving SR–CBOE 90–13), *supra* note 4.

[9] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[10] Of course, if the index on which the value of the appreciation component was based moved in the wrong direction, the appreciation component would expire worthless and the investor would have lost his entire investment.

[11] *See eg.* PSE Rule 9.18(c).

[12] These rules require member firms, among other things, to make certain inquiries about a customer's financial situation and investment objectives and verify, and maintain records containing, this background and financial information.

[13] As discussed in *"Trading of UIT Interests,"* *supra*, PSE rules require discretionary orders in options-approved accounts to be approved by a Senior Registered Options Principal or a Registered Options Principal and discretionary orders in other

Continued

discretionary transactions in UIT interests on the day the transaction is executed, in addition to special supervisory controls to open a discretionary account, the proposal will ensure that discretionary transactions are appropriate for the account and that the account suitability standards are being met. Moreover, as noted above, the PSE has proposed special, heightened suitability standards for these products.

If the PSE obtains approval to trade the "SuperTrust" product [14] (*i.e.*, SuperUnits and SuperShares) through unlisted trading privileges at a future time,[15] the Commission believes that the options-like suitability standard applicable to the product and the special supervisory rules for discretionary transactions will provide adequate protection to investors. Accordingly, the Commission does not believe that it is necessary to limit the sale of the "SuperTrust" product, which has characteristics of debt, equity and options, to only those investors that meet the account eligibility requirements for options trading. The Commission emphasizes, however, that recommendations for SuperShares should be limited to investors who would qualify for options trading if they were to seek qualification.

Third, the PSE has addressed customer disclosure concerns by requiring, under proposed Commentary .02 to Exchange Rule 3.2, that PSE members provide customers with an explanation of any special characteristics and risks attendant to trading UIT interests. Further, the PSE will require, under proposed Commentary .02, that all investors in UIT interests be provided a prospectus, describing the UIT interests and the trust issuing such interests. Proposed Commentary .02 states that unless the member organization has a system in place which will verify that they previously delivered a prospectus to each investor, it will require a prospectus to be delivered in conjunction with each transaction in UIT interests. Accordingly, the Commission believes that investors in UIT interests will be provided with adequate disclosure.

Fourth, the PSE has addressed any market impact concerns in its proposal. Specifically, the PSE proposal only permits the listing of UIT interests on a portfolio of stocks if the stock market index on which it is based is a broad-based index that the Commission has reviewed and approved in another context.

Accordingly, because the index on which a UIT interest would be based already would be the subject of derivative instruments, the Commission believes it is less likely that the listing and trading of UIT interests would adversely impact U.S. securities markets.[16] Moreover, in the case of the "SuperTrust" product, the Commission notes that a variety of derivative instruments currently trading, including index options and index futures contracts, are based on the S&P 500 Index. The "SuperTrust" product, therefore, would be only one of a number of instruments that are based on the S&P 500 Index.

Finally, the Commission finds that the PSE has designed adequate rules and procedures to govern the trading of UIT interests, including UIT interests separable into component parts. Specifically, the Commission believes that the PSE's rules governing the trading of UIT interests provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

The Commission finds good cause for approving amendment Nos. 2, 3, 4, 5, and 6 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission finds that these amendments provide requirements applicable to the listing and trading of UIT interests that are identical to the requirements set forth in Amex and CBOE proposals to list and trade UIT interests and raise no new issues.[17] The Commission believes that approving these amendments on an accelerated basis will provide the PSE with the regulatory structure to compete with the Amex and the CBOE on an equal basis for orders in UIT interests if they decide to apply for uniform trading privileges in these products.

Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6(b)(5) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning amendment Nos. 2, 3, 4, 5, and 6 to the proposed rule change. 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 4, 1992.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–PSE–90–44) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,

Secretary.

[FR Doc. 92–16435 Filed 7–13–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30738; File No. SR–PSE–92–13]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Trading Restriction Associated With Financial Arrangements, Among PSE Members

May 26, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 13, 1992, the Pacific Stock Exchange, Inc. ("PSE" or

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accounts to be approved as provided in PSE Rule 9.6(a).

[14] For a description of the SuperTrust product, *see* Securities Exchange Act Release Nos. 30394 (February 21, 1992) and 30393 (February 21, 1992), *supra* note 4.

[15] *See supra* note 4.

[16] The PSE, of course, could submit proposals pursuant to section 19(b) of the Act to trade UIT interests based on other types of indexes. This will provide the Commission with an opportunity to determine if a particular index raises potential manipulation or other trading abuse concerns. See Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988) (order approving listing and trading rules for index warrants). The Commission believes this approach is appropriate and consistent with its policy on the trading of other types of index products.

[17] These proposals were noticed in Securities Exchange Act Release Nos. 28095 (June 6, 1990), 55 FR 24016 (June 13, 1990) and 28132 (June 18, 1990), 55 FR 26038 (June 26, 1990), respectively. No comments were received on these proposals.

[18] 15 U.S.C. 78s(b)(2)(1988).

[19] 17 CFR 200.30–3(a)(12)(1991).

"Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] 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 PSE proposes to broaden its Rule 6.40 governing trading restrictions imposed on financially affiliated market makers to include financial arrangements between market makers and any other PSE member of member organization and to expand the trading restriction to prohibit financially affiliated PSE members from trading in the same crowd without the approval of two floor officials. The text of the proposed rule change is attached as Exhibit A.

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

The PSE proposes to clarify and expand the existing trading restrictions on market makers who have financial arrangements with other Exchange members or member organizations. These restrictions are designed to prevent domination of trading crowds by groups of market makers with financial arrangements. They also are intended to enhance the competitiveness of each trading crowd on the trading floor.

Existing PSE Rules 4.18 [2] and 6.40 require the disclosure to the Exchange of market maker financing arrangements. PSE Rule 4.18 specifies the types of financial arrangements that must be disclosed; direct financing of dealings on the Exchange; any direct equity arrangement or profit sharing arrangement; and the receipt of any consideration over five thousand dollars that constitutes a gift, loan, salary or bonus. Under the proposed rule change, market makers having financial arrangements as specified in Rule 4.18 and market makers trading for the same joint account would be subject to the trading restrictions as specified in Rule 6.40.

Currently, PSE Rule 6.40 provides that market makers with existing financial arrangements with other market makers may not bid, offer, purchase, sell, or enter orders in the same option series. The proposed rule change would broaden this restriction to prohibit market makers with financial arrangements from trading in the same trading crowd without written approval from two floor officials. Moreover, the PSE proposal provides that if two or more market makers are granted written approval to trade in the same trading crowd, they would still not be permitted to trade in the same option series at the same time or trade on the same order ticket.

Additionally, PSE Rule 6.40 currently governs financial arrangements between market makers and other market makers. The proposed rule change would broaden the scope of Rule 6.40 to cover financial arrangements between market makers and any other PSE members or member organizations. Finally, the PSE proposes in order to amend Rule 6.84(f) so that it cross references proposed Rule 6.40 in order to eliminate any possible ambiguity regarding trading restrictions on market makers trading for the same joint account.

The PSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it will prevent fradulent and manipulative acts and practices; will promote just and equitable principles of trade; will remove impediments to and perfect the mechanism of a free and open market and the national market system; and will, in general, 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 burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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 self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the question above and should be submitted by August 4, 1992.

[1] The PSE amended its original proposal on May 4, 1992 in order to clarify references to other Exchange rules and to amend PSE 6.84(f) to reflect the proposed rule change. See letter from Michael D. Pierson, Staff Attorney, PSE to Thomas Gira, Branch Chief, Options Regulations, dated May 4, 1992.

[2] The Commission recently approved an amendment to PSE Rule 4.18, entitled "Disclosure of Financial Arrangements of Members." See Securities Exchange Act Release No. 29961 (Nov. 19, 1991), 56 FR 60144.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [3]

Jonathan G. Katz,

Secretary.

Exhibit A [1]

Financial Arrangements of Market Makers

Rule 6.40(a) *Financial Arrangements Defined. A Market Maker has a "financial arrangement" for purposes of this Rule if:*

(1) The Market Maker is required to report the terms of a financial arrangement to the Exchange pursuant to Rule 4.18; or

(2) The Market Maker is trading for a joint account.

(b) Trading Restrictions. A Market Maker who has a "financial arrangement" with another Member or Member Organizations (as specified herein) and the Member or Member Organization having a "financial arrangement" with that Market Maker, shall together be subject of the following restrictions:

(1) They may not bid, offer and/or trade in the same trading crowd at the same time unless they obtain a written dispensation from two Floor Officials. Such dispensation shall be provided by two Floor Officials only on the basis of a demonstrated need to trade in the same crowd.

(2) They may not bid, offer and/or trade in the same option series at the same time.

(3) They may not trade on the same order ticket.

(c) Committee Review. The Options Floor Trading Committee shall review, on a regular basis, each dispensation granted pursuant to Rule 6.40(b)(1).

(d) Reporting to the Exchange. [Each Market Maker who makes an arrangement to finance his transactions as a Market Maker, and each Market Maker who makes an arrangement to finance the transactions of another Market Maker, shall inform the Exchange of the name of the creditor/debtor and the terms of such arrangement. The Exchange shall be informed immediately of the intention of any party (1) to terminate or change any such arrangement, or (2) to issue a margin call. On a form prescribed by the Exchange, a Market Maker shall submit to the Exchange a monthly report of his use or extension of credit pursuant to this Section.] *Market Makers, Floor Brokers, Specialists, and Member Organizations are required to report the terms of their financial arrangements to the Exchange pursuant to Rule 4.18 ("Disclosure of Financial Arrangements of Members").*

Commentary:

[.01 Market Makers having existing financial arrangements with other Market Makers may not concurrently bid, offer, purchase, sell, or enter orders in the same option series.]

.01 [.02] No change.

.02 [.03]—No change.

Joint Accounts

Rule 6.84(a)–(e)—No change.

(f) Participants in a joint account [may not concurrently bid, offer, purchase, sell, or enter orders in the same option series] must comply with the trading restrictions provided in Rule 6.40.

(g)–(h)—No change.

Commentary .01–.07—No change.

[FR Doc. 92–16504 Filed 7–13–92; 8:45am]

BILLING CODE 8010–01–M

Issuer Delisting; Application to Withdraw From Listing and Registration; (Gerber Products Company, Common Stock $2.50 Par Value; Common Share Purchase Rights) File No. 1–4007

July 8, 1992.

Gerber Products Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the company, it decided to withdraw the Common Stock and the Common Share Purchase Rights from listing on the PSE because the Company believes its needs, as well as those of its shareholders, are being adequately served by the listing of the securities on the New York Stock Exchange, Inc. and Midwest Stock Exchange, Inc.

Any interested person may, on or before July 29, 1992, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–16434 Filed 7–13–92; *:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92–032]

South Florida Oil Spill Research Center

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent; Request for letters of interest; Third of three required notices.

SUMMARY: The Coast Guard intends to establish a Federally Funded Research and Development Center to address prevention, tracking and cleanup of oil discharges in the unique tropical and subtropical environment around South Florida. The Coast Guard is seeking letters of interest with capabilities statements from interested parties. This is the third of three required notices.

DATES: Letters of interest with capabilities statements must be received not later than July 28, 1992.

ADDRESSES: Letters of interest with capabilities statements may be mailed to Superintendent, U.S. Coast Guard Academy, 15 Mohegan Avenue, New London, CT 06320–4195, Attention: Ms. B. Burke, Procurement Office (Code FP), or may be delivered at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. B. Burke, Procurement Office, U.S. Coast Guard Academy, (203) 444–8242.

SUPPLEMENTARY INFORMATION: Congress has directed that the Coast Guard establish a research center to address prevention, tracking, and cleanup of oil discharges in the unique tropical and subtropical environment around South Florida. Research at the proposed Tropical/Subtropical Oil Spill Research Center will focus on improving the ability of the Federal government to monitor oil discharges around South Florida and other tropical and subtropical environments; predict and track their flow; predict oil spill behavior in warm waters; and make informed decisions concerning treatment and cleanup. Specific research areas may include, but not be limited to, satellite and airborne oil spill remote sensing; predicting and tracking their movement with trajectory models; predicting the physical properties and behavior of oil in warm waters; decision support systems for making informed decisions concerning treatment and cleanup; studying the impacts of oil discharges on public health, the socio-economic environment, and the natural environment; and developing advanced

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[3] 17 CFR 200.30–3(a)(12) (1989).

[1] Italics indicates language to be added; brackets indicate language to be deleted.

technologies for cleaning up or mitigating the impact of oil spills on shorelines and open water including mechanical recovery, dispersants, bioremediation, and insitu burning. The Coast Guard is seeking capability statements from universities, colleges, and other research and education institutions. The universities, colleges, or institutions should be able to demonstrate strong capabilities in remote sensing from satellites and other modalities, and strengths in research, education, and training in geophysics, oceanography, marine biology, chemistry, ocean engineering, and computer science. The Coast Guard intends to establish the Center as a Federally Funded Research and Development Center (FFRDC) in accordance with Federal Acquisition Regulation 35.017, 48 CFR section 35.017. The institution will be required to provide no less than 20 percent of the annual total cost of the Center from institutional, private sector, and philanthropic sources. The expectation is that the research center will be located at an existing marine sciences institution in the appropriate tropical/subtropical environment and in close proximity to the Gulf Stream and to other unique tropical flora and fauna, but may draw upon faculty, facilities, and other resources from other institutions to build a comprehensive capability to conduct research in the prevention, tracking and cleanup of oil discharges.

Interested parties should send letters of interest with a capabilities statement. Capabilities statements should include institution research interests, a description of past and present research related to oil spill prevention, tracking, and cleanup, description of educational programs and courses related to marine pollution control, resumes of research faculty, list of facilities (vessels, laboratories, test tanks, etc.) that will be available for oil spill related research, and cooperative agreements with other private and government research institutions which augment the institution's on-site capabilities. Letters of interest with capabilities statement are limited to a total of 20 typewritten pages and are required not later than July 28, 1992.

Dated: July 8, 1992.

T. E. Omri,

Acting Chief, Office of Engineering, Logistics and Development

[FR Doc. 92-16493 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-14-M

Federal Railroad Administration

[FRA Docket No. H-92-1 and H-92-2]

Petition for Waiver for Test Program; National Railroad Passenger Corporation Metro North Commuter Railroad

In accordance with 49 CFR part 211, notice is hereby given that the National Railroad Passenger Corporation (Amtrak) and Metro North Commuter Railroad (Metro North) submitted essentially identical petitions, dated April 27, 1992 and May 21, 1992, respectively, for a temporary waiver of compliance with specific requirements of certain parts of Title 49 of the Code of Federal Regulations in order to conduct a test and to provide a limited revenue service demonstration of a passenger trainset imported from abroad. The test and demonstration programs described in this notice would, if approved, involve two separate, but contiguous railroads in the same activity. Virtually identical trainset test and demonstration activities carried out between Boston and New York City would operate in sequence over the tracks of Amtrak and Metro North. When sequential operation occurs the same test plan would be in effect for each railroad.

The proposed program is meant to evaluate the curving performance of the trainset under certain conditions (test phase) and to assess the market response to the availability of advanced rail passenger transport of this nature (demonstration phase). The results of the test phase will provide guidance to FRA in the formulation of conditions to be applied to the revenue service demonstration phase.

The track safety standards in § 213.57(b) prescribe a speed limit, not distinguishing between freight and passenger rolling stock, at which trains may operate over curved track as a function of curve radius (curvature) and the installed superelevation. In the general case, for any combination of curvature and superelevation there is a specific ("balanced") speed at which the effect of centrifugal force is canceled resulting in passenger insensitivity to actual curve negotiation. This is an ideal outcome for passenger trains which usually operate considerably faster than freight trains and, as a consequence, would demand greater superelevation to produce the balance effect. The track standards permit the operation of trains on curves at speeds producing a conservative underbalance ("cant deficiency") in line with historic industry practice. (A more detailed discussion of cant deficiency can be found in 52 FR 38035, October 13, 1987.) On the other hand, successful passenger train operation in many places overseas is predicated on curve negotiation at train speeds developing significantly higher cant deficiencies than permitted by the U.S. track regulations. Authorities in Sweden and other countries have approved curving speeds for specially designed rolling stock that produce cant deficiencies at the upper end of the acceptable range without passengers incurring centrifugal force-induced discomfort.

Should this petition be approved, Amtrak and Metro North expect to schedule the test/demonstration program late this year or early 1993. The equipment proposed to be evaluated will consist of an "X2000" trainset composed of a locomotive, four coaches and a so-called "driving trailer" (in effect, a cabcontrol car for reverse running). This equipment is representative of the fleet of similar trainsets operated on a daily basis by Statens Järnvägar (SJ), the Swedish State Railways. The distinguishing feature of this trainset is that the coaches are tilted hydraulically on curves to compensate for centrifugal force. The presence of curved track, including acuteness of curvature, along with specific amounts of superelevation, is sensed by instrumentation which actuates the carbody tilting mechanism.

The X2000 trainset operates in daily revenue service in Sweden at up to 9 inches of cant deficiency and has been successfully operated during tests in Europe at up to twelve inches of cant deficiency. During the proposed test series, the trainset will be operated through test zones which contain track conditions similar to those over which future revenue service would be likely.

Petitioners intend to investigate the response of the X2000 trainset at curving speeds producing up to twelve inches of cant deficiency (seven-inch limit imposed by Metro North) if this can be accomplished safely. One or more RTL Turboliner power cars would be used to propel the train during portions of the test in non-electrified territory (between New Haven and Boston) at up to eight inches of cant deficiency. The utility of tilt-body equipment would also be investigated on the much less curved segment of the Northeast Corridor between New York City and Washington, DC.

The petitions contain seven individual requests for relief from compliance with various provisions of Title 49 of the Code of Federal Regulations. The following is a summary of the requests, in the order presented by the petitioners.

Request 1—High Cant Deficiency and Train Speeds for Test Purposes

This request seeks temporary relief from the requirements of § 213.9(c), "Classes of Track Operating Speed Limits" and § 213.57(b), "Curves; elevation and speed limitations" in order to establish the safe cant deficiency limits for the revenue service demonstrations discussed in Request 3.

Initial cant deficiency testing is proposed to be conducted between Harrisburg and Lancaster, Pennsylvania. Amtrak selected this location because it is electrified and contains curve and track conditions similar to those evident between New Haven and Boston on the Northeast Corridor. The availability of electric power assures attainment of the test train speeds of interest.

Amtrak states that it desires to operate the X2000 at the highest cant deficiency possible consistent with safety. According to Amtrak, in order for this technology to have a significant impact on New York to Boston trip times, Amtrak needs to operate at speeds developing approximately ten inches of cant deficiency. It is the intent of the petitioners to test this trainset on the Harrisburg corridor at progressively higher cant deficiencies starting at the currently authorized three inches and progressing to 11 inches if stop-test criteria are not exceeded.

After completion of these tests, the petitioners propose to run between Philadelphia and New York City at incrementally higher speeds and cant deficiencies, starting at 110 mph and seven inches of cant deficiency, and progressing to 150 mph at 11 inches of cant deficiency if test data analyses support this sequence.

The petitioners state that to perform the high cant deficiency tests, it will be necessary to exceed the present 110 mph speed limit imposed by 49 CFR 213.9(c). The petitioners state that this equipment presently operates at 125 in Sweden in daily scheduled revenue service.

The petitioners propose establishing the following safeguards for the tests: (1) A knowledgeable and independent third party will monitor data in real time; (2) the adjacent track(s) will be kept clear; (3) runs at the next higher speed will not be made until the data is reviewed and it is determined that is safe to do so; (4) a track geometry run will be made over the test tracks within the month preceding the X2000 tests; (5) the locomotive engineer and an on-board transportation supervisor will be given a written list of curve speeds for each series of tests. An accurate speedometer will be provided; (6) a designated railroad official, with full authority, will be on each run as the Test Director; and (7) two-way radio communications will be maintained between the Test Director and the locomotive engineer. A back-up radio will be provided to each.

FRA's approach to ensuring safety if this petition is granted, would be to require that sufficient instrumentation be installed on the trainset to enable comparison of equipment behavior during testing to predetermined derailment criteria and, also, to previously tested equipment of similar types known to be safe. FRA would require that attainment of maximum target curving speeds be in increments permitting a step-by-step analysis of applied forces and dynamic responses during and at the conclusion of each test run. The decision to proceed to the next level of cant deficiency or speed would be based on this analysis process and be subject to the approval of the on-board FRA test monitor.

Request 2—RTL Turbine Locomotives at Eight-Inches of Cant Deficiency

In order to haul the X2000 between New Haven and Boston, the petitioners are requesting a waiver from 49 CFR 213.57(b) to operate two of the RTL turbine power cars coupled to the X2000 trainset. The maximum speeds would be established on a curve-by-curve basis between Boston and Market Interlocking, and would generally produce eight inches of cant deficiency on Amtrak and seven inches on Metro North. Those speeds will be verified based on current track geometries. The same safety conditions as in Request 1 would apply. Additionally, the petitioners state that when operating near road crossings at grade at higher than normal speeds, Amtrak will flag those crossings to insure adequate protection.

Request 3—High Cant Deficiency in Revenue Service Testing/Demonstration

Based on a successful outcome of the previous tests, the petitioners are also requesting temporary relief from 49 CFR 213.57(b) to operate the X2000 in revenue service for approximately four months at cant deficiencies to be mutually established for various curves. An analysis of each curve would be provided to FRA for approval before starting revenue service.

Request 4—150 mph for Test Purposes Only

If warranted by the results of the High Cant Deficiency test progressed under Request 1, above, petitioners propose to conduct further tests on the Northeast Corridor between Trenton and New Burnswick in New Jersey at speeds up to 150 mph and 11 inches of cant deficiency. Tracks 2 and 3 of the proposed test zone have been used for conducting similar tests in the past and, although the actual 20-mile test zone in the Corridor includes four long-radii curves, it is mainly tangent track. This is the area used in 1969–71 for acceptance testing of newly-delivered Metroliners which had to demonstrate a capability of attaining 150 mph speed.

Truck stability and braking performance will be items of concern. The test will commence at 130 mph, proceed to 140 mph, and conclude at 150 mph if analysis of the on-board instrumentation data output supports these speed increases.

The petitioners state that the same safety conditions as in Request 1 would apply to these tests. In addition, adjacent tracks would be kept clear.

Request 5—125 mph for Revenue Operation

Based on a successful test at 125 mph, petitioners request a temporary waiver from 49 CFR 213.9(c) to operate at a maximum speed of 125 for the four month revenue service evaluation. This request is being made for those tracks currently authorized for such speed.

This request complements Request 3 in that both would be simultaneously operative in staging the four-month test/demonstration between New York and Washington. Amtrak now has approval to operate AEM–7 locomotives and Amfleet cars in revenue service between Washington and New York over certain curves of the railroad's own selection at train speeds developing four inches of cant deficiency and at a maximum speed of 125 mph, overall. (See 54 FR 27790, June 30, 1989).

Request 6—Hand Brakes, Side and End Handholds and Uncoupling Levers (§ 231.12)

Petitioners request relief from 49 CFR 231.12 for the duration of both the testing and revenue service evaluation of the X2000 trainset. Section 231.12 governs the number and manner of application of hand brakes, side and end handholds and uncoupling levers on passenger-train cars with wide vestibules.

The petitioners suggest that the parking brake system relied upon in Sweden is an adequate substitute for hand brakes designed according to U.S. practice. The X2000 system is claimed to be similar to that used here with the RoadRailer Mark V trucks and to that employed in turbine-powered trainsets regularly operating between New York City and western New York state. It is

further claimed that the X2000's parking brakes automatically apply when the brake pipe pressure falls to zero. The advantage of this effect over manually applied hand brakes is advanced as not having to depend on human intervention for appropriate brake application.

The petitioner recognizes that the X2000 trainset is to be used within a very limited, closely controlled operating environment and claims. As a consequence, that it is neither practical nor economically feasible to modify the carbodies with side and end handholds for a short test and evaluation program. Petitioners further content that since the X2000 will be used in very limited service and the cars will not be individually shifted, there will be no need to have handholds.

In support of petitioners request pertaining to uncoupling levers, petitioners state that the X2000 train set is semipermanently coupled and notes that it is a shop job to separate the coaches. It is further stated that field crews have no practical means of uncoupling cars. For the tests/demonstration operations in this country, petitioners intend to have an adapter coupler carried on-board in order to join the X2000 to a conventional locomotive in an emergency or to RTL turbine locomotives when operating between New York and Boston. According to the petition, when the adapter coupler is used, the work will be performed by SJ technicians assigned to the equipment.

Request 7—Sanders (§ 229.131)

Section 229.31 requires that locomotives be equipped with a method of sanding the rail running surface in front of the first set of powered wheels in the direction of travel as a means of enhancing wheel/rail adhesion when the locomotive (and following equipment) is in the braking mode. The petitioner advises that the use of sand, to augment adhesion in either the locomotive acceleration or braking modes, is not practiced in Sweden. Consequently, Swedish locomotives are not equipped with sanding devices. However, petitioners state that the X2000 locomotive will have a magnetic brake in addition to truck brakes and regenerative braking. It is the petitioner's position that this braking arrangement compensates for the absence of sanding capability.

Public Comment

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., FRA docket No. H–92–1 and H–92–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before August 25, 1992, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on July 7, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92–16432 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420(202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 13, 1992.

Dated: July 6, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Financial Counseling Statement, VA Form 26–8844.
2. This form is completed by VA loan service representatives in counseling veteran obligors of seriously defaulted guaranteed home loans. The form solicits information necessary for the loan service representative to make recommendations to the veteran obligor in an effort to help cure the default status of the loan.
3. Individual or households.
4. 2,250 hours.
5. 45 minutes.
6. On occasion.
7. 3,000 respondents.

[FR Doc. 92–16454 Filed 7–13–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20403, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 13, 1992.

Dated: July 6, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

2. The form is used by veterans to apply for specially adapted housing grant. The information requested is used to determine the economic feasibility of residing in specially adapted housing and to compute the proper grant amount.

3. Individuals or households.

4. 110 hours.

5. 15 minutes.

6. On occasion.

7. 440 respondents.

[FR Doc. 92–16455 Filed 7–13–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Office on or before August 13, 1992.

Dated: July 6, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information, Resources Policies and Oversight.

Extension

1. Statement of Purchaser or Owner Assuming Seller's Loan, VA Form 26–6382.

2. The requested information on this form is used to make determinations necessary for release of liability and substitution of entitlement of veteran-sellers to the government on guaranteed, insured and direct loans.

3. Individuals or households; Businesses or other for-profit.

4. 2,250 hours.

5. 15 minutes.

6. On occasion.

7. 9,000 respondents.

[FR Doc. 92–16456 Filed 7–13–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 13, 1992.

Dated: July 6, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information, Resources Policies and Oversight.

Reinstatement

1. Request for Supplies, VA Form 20–1905m.

2. This form is used to inform VA of supplies the veteran needs to continue his or her vocational rehabilitation program and to certify that the supplies are required, not merely desired, by the veteran.

3. Individuals or households; Businesses or other for-profit; Non-profit organizations; Small businesses or organization.

4. 1,000 hours.

5. 1 hour.

6. On occasion.

7. 1,000 respondents.

[FR Doc. 92–16459 Filed 7–13–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 13, 1992.

Dated: July 6, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Request for Change of Program or Place of Training, VA Form 22–1995.

2. The form is used by veterans, servicepersons, and selected reservists receiving educational benefits to request a change of program or place of training.

3. Individuals or households.

4. 43,333 hours.

5. 20 minutes.

6. On occasion.

7. 130,000 respondents.

[FR Doc. 92–16457 Filed 7–13–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 13, 1992.

Dated: July 6, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Monthly Record of Training and Wages, VA Form 20–1905c.

2. The requested information is used to verify the training history and to determine the continuing entitlement to benefits.

3. Individuals or households; Businesses or other for-profit; Small businesses or organizations.

4. 3,000 hours.

5. 15 minutes.

6. Monthly.

7. 400 respondents.

[FR Doc. 92–16458 Filed 7–13–92; 8:45 am]

BILLING CODE 8320–01–M

Wage Committee; Meetings

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, July 29, 1992, at 2:30 p.m.
Wednesday, August 12, 1992, at 2:30 p.m.
Wednesday, August 26, 1992, at 2:30 p.m.
Wednesday, September 9, 1992, at 2:30 p.m.
Wednesday, September 23, 1992, at 2:30 p.m.

The meetings will be held in room 1161, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, room 1161, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: June 29, 1992.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–16453 Filed 7–13–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 135
Tuesday, July 14, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:00 p.m., Friday, July 17, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st 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.

Date: July 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–16646 Filed 7–10–92; 2:14 pm]

BILLING CODE 6210–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 20, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. 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: July 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–16647 Filed 7–10–92; 2:15 pm]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 13, 20, 27, and August 3, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 13

Tuesday, July 14

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 20—Tentative

Monday, July 20

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 27—Tentative

Wednesday, July 29

9:30 a.m.
Periodic Briefing on EEO Program (Public Meeting) (Contact: William Kerr, 301–492–4665)
11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
1:00 p.m.
Briefing on National Research Council Report: Nuclear Power—Technical and Institutional Options for the Future (Public Meeting)
3:00 p.m.
Discussion of Litigative and Related Matters (Closed—Ex. 9B and 10)

Friday, July 31

10:00 a.m.
Periodic Meeting with Advisory Committee on Medical Uses of Isotopes (Public Meeting) (Contact: Larry Camper, 301–504–3417)

Week of August 3—Tentative

Tuesday, August 4

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: July 9, 1992.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 92–16645 Filed 7–10–92; 2:14 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [57 FR 30532 July 9, 1992]

STATUS: Open meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, July 7, 1992.

CHANGE IN THE MEETING: Time change and additional meeting.

An open meeting scheduled for Wednesday, July 15, 1992, at 3:00 p.m., has been changed to 2:00 p.m., in Room 1C30. The following open items will be considered on Thursday, July 16, 1992, at 10:00 a.m., in Room 1C30:

1. Consideration of whether to publish for comment proposed changes to rules and forms under the Securities Act of 1933 designed to simplify Securities Act registration and to extend the availability of shelf registration. For further information, please contact Abigail Arms at (202) 272–2573.
2. Consideration of whether to propose for comment amendments to Rule 144A under the Securities Act of 1933 affecting qualification for the exemption. For further information please contact Brent Taylor or Michael Hyatte at (202) 272–3245.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted

or postponed, please contact: Chris Sakach at (202) 272–2300.

Dated: July 10, 1992

Jonathan G. Katz,

Secretary.

[FR Doc. 92–16602 Filed 7–10–92; 10:55 am]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 57, No. 135
Tuesday, July 14, 1992

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-92-046IR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Temporary Relaxation of Grade Requirements for Red and White Seedless Grapefruit

Correction

In rule document 92-10601 beginning on page 19518 in the issue of Thursday, May 7, 1992, make the following correction:

§ 905.306 [Corrected]

1. On page 19520, in § 905.306(a), in the table, in the second column, the second entry, "8/17/92-10/25/92", should be set on the same line as "Improved No. 2 (External)" the first time it appears; the third entry, "On and after 10/26/92", should be set on the same line as "Improved No. 2 (External)" the second time it appears; and the fifth entry, "On and after 8/17/92", should be set on the same line as "Improved No. 2 (External)" the third time it appears.

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 916

[Docket No. FV-92-003IR]

Nectarines and Peaches Grown in California; Revision of Size, Maturity, Maturity Variance Procedure, and Container Marking Requirements for California Nectarines (M.O. 916) and California Peaches (M.O. 917)

Correction

In rule document 92-11509 beginning on page 20735 in the issue of Friday, May 15, 1992, make the following correction:

§ 916.356 [Corrected]

1. On page 20739, in the first column, in § 916.356(a)(1)(i), the first paragraph reading "Except not less...for the variety." should be moved to page 20738, in the third column, in § 916.356(a)(1)(i), in the first entry of the table, in the second column after "L".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 723

Tobacco

Correction

In proposed rule document 92-15132 beginning on page 28801 in the issue of Monday, June 29, 1992, make the following corrections:

1. On page 28802, in the second column, under 3. Attachment, in the sixth line, "ASCA" should read "ASCS".

2. On the same page, in the 3rd column, in the 22nd line, "burly" should read "burley" and "1992" should read "1993.".

§ 723.401 [Corrected]

3. On page 28804, in the 3rd column, in § 723.401(b) in the 1st line, "Each" was misspelled and in the 22nd line, "[MA-79-2]." should read "[MQ-79-2].".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1992-June 30, 1993

Correction

In notice document 92-15063 beginning on page 28653 in the issue of Friday, June 26, 1992, make the following corrections:

1. On page 28653, in the third column, in the first table, in the first column, in the fourth line from the bottom, "5 day" should read "50 day".

2. On the same page, in the same column, in the second table, in the second column, in the fourth line, "1900" should read ".1900".

3. On page 28654, in the first column, in the "Authority", in the fourth line, after "section 4(b)" insert "(1)".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-801, et al.]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al; Final Results of Antidumping Duty Administrative Reviews

Correction

In notice document 92-14639 beginning on page 28360 in the issue of Wednesday, June 24, 1992, make the following corrections:

On page 28361, in the tables, in the second, third, and fourth columns, everywhere leaders appear should read "0.00".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 303

RIN 0970-AA78

Child Support Enforcement Program; Federal Parent Locator Service Fees

Correction

In rule document 92-14780 beginning on page 28103 in the issue of Wednesday, June 24, 1992, make the following corrections:

PART 303 [CORRECTED]

1. On page 28110, in the second column, in the **Authority**, in the second line, after "1396a(a)(25" insert "),".

§ 303.3 [Corrected]

2. On the same page, in the third column, in amendatory instruction 2., in

the second line, "receiving" should read "removing".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use of the Fort Peck Assiniboine and Sioux Indian Tribes Judgment Funds Awarded in Docket 31-88L Before the United States Claims Court

Correction

In notice document 92-15243 appearing on page 29162 in the issue of Tuesday, June 30, 1992, in the third column, in the first full paragraph, in the ninth line, after "allotted," insert "tribal and fee lands within large tracts to improve and".

BILLING CODE 1505-01-D

federal register

Tuesday
July 14, 1992

Part II

Department of Commerce

International Trade Administration

Consortia of Businesses in the Newly Independent States; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 920498-2098]

Consortia of American Businesses in the Newly Independent States

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a New Business Consortia Grant Program to Assist U.S. Firms Establish a Commercial Presence in the Newly Independent States of the former Soviet republics.

SUMMARY: A program has been designed to assist U.S. firms in establishing a commercial presence in the former Soviet republics through the formation of Consortia of American Businesses in the Newly Independent States (CABNIS). CABNISs are private and public non-profit organizations which will be formed to promote U.S. goods and services in the Newly Independent States (NIS). The participants in these consortia will be for-profit U.S. firms interested in trade with the former Soviet republics. CABNISs will establish offices and staff in the NIS to provide a broad range of services for their for-profit member firms, including market research, sales promotion, communication of sales opportunities, identification of and introduction to potential buyers and trade contacts, staging trade and technical missions and seminars, provision or arrangement of necessary legal services, and other export trade facilitation services. Grant funds will be awarded as seed money to pay the start-up costs of establishing and operating U.S. consortia offices in the NIS. CABNISs can be organized along a single industry line or represent more than one business sector. There is no limitation on the number of for-profit firms that a consortium may represent.

SUPPLEMENTARY INFORMATION:

Program Objectives

The consortia are intended to strengthen the U.S. business presence in the NIS. They will provide direct trade facilitation support for their member firms, stimulating increased U.S. exports to the NIS. The consortia will promote two-way trade and will be expected to support the privatization movement of host country economies through consortia assistance with defense plant conversion projects, finding markets for NIS products, promoting U.S. investment and U.S.-NIS joint ventures, and/or technical training.

Funding Availability

Pursuant to section 531 and section 632 (b) of the Foreign Assistance Act of 1961, as amended, (the "Act") funding for the program will be provided by the Agency for International Development (A.I.D.). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act. The total amount of program grant funds available for CABNIS is $1 million for FY 1992 and an anticipated $3.5 million for FY 1993.

Funding Instrument and Project Duration

The Federal grant contribution will not exceed 50 percent of proposed eligible project costs with a maximum grant amount of $50,000 per consortium. Applicants are expected to provide the remaining share, preferably in cash. Federal funding will be a one-time injection with a grant period not to exceed three years. Assistance will be available for the period of time required to complete the scope of work but not to exceed three years from the date of the grant offer.

Request for Applications

Competitive Application kits (Application Kits) #110-0005-1 will be available from Commerce starting July 13, 1992.

To obtain a copy of the Application Kit #110-0005-1, please send a written request with two self-addressed mailing labels to Mr. George Muller, Director, Office of Export Trading Company Affairs, room 1800 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. Only written requests will be honored; telephone, fax, or walk-in requests will not be accepted. Only one copy of the Application Kit will be provded to each organization requesting it, but it may be reproduced by the requester. Applications (Standard Form 424 (Rev. 4-88)) are to be received at the address designated in the Application Kit no later than 3 p.m. e.d.t. August 28, 1992. Commerce intends to award a minimum of two grants prior to the end of FY 1992 and, subject to availability of funds, award an anticipated minimum of seven grants during FY 1993. Applications which are not selected for funding in FY 1992 will be carried over automatically and be evaluated for possible funding in FY 1993—again subject to availability of FY 1993 funds.

Eligibility

Eligible applicants for the CABNIS grant program will be private and public non-profit U.S. organizations including non-profit corporations, associations and public sector entities established to represent the commercial interests of U.S. firms. Within the industry or industries represented by the consortium, membership in a consortium must be available on a non-discriminatory basis. For example, membership in a trade association cannot be a requirement for membership in a consortium. Only applicants proposing to open an office in one or more of the Newly Independent States are eligible for this program. Each application will receive an independent, objective review by one or more review panels qualified to evaluate the applications submitted under the program. Applications will be evaluated on a competitive basis in accordance with the selection criteria set below.

Selection Criteria

Consideration for financial assistance will be given to those CABNIS proposals which:

1. Demonstrate how proposed member firms' U.S. exports and consortia business activities will support privatization and private enterprise (e.g., through assistance with defense plant conversion projects, technical training, marketing assistance and investment promotion). Marketability of the proposed products and/or services in the NIS will be taken into account in evaluating applications.

2. Are proposed by non-profit organizations with the capacity, qualifications and staff necessary to successfully undertake the intended activities.

In addition, priority consideration will be given to those applications which:

3. Demonstrate the capability and intent of enlisting small and mid-sized U.S. firms as members of the consortium.

4. Provide a reasonable assurance that the proposed project can be continued on a self-sustained basis after expiration of the Federal grant expenditure period.

5. Contain a commitment to encourage, support and assist in the development of indigenous counterpart organizations (e.g., trade associations) and a well reasoned plan as to how that will be accomplished.

6. Present a realistic work plan detailing the services it will provide to the consortium member firms.

7. Present a reasonable, itemized budget for the proposed activities.

Selection criteria factors 1 and 2 will be weighted equally and will take precedence over priority consideration

factors 3–7. Priority consideration factors 3–7 will be weighted equally.

The need for U.S. products and services and for assistance in the privatization process canvasses all of the former Soviet republics. Different geographic locations will be more suitable for different industries (e.g., oil production equipment versus medical equipment). In selecting grant recipients, ITA reserves the right to award grants in such a way to ensure a reasonably balanced distribution of consortia and the industry sectors that they represent among the NIS countries. Preference will be given to financial proposals which demonstrate the maximum allocation of Federal and non-Federal resources to program activities. ITA reserves the right to determine the level of funding for each grant awarded.

Notifications

All applicants are advised of the following:

1. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

2. Primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Governmentwide Debarment and Suspension (Nonprocurement)" and the related section of the certification form prescribed above applies. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000 and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

3. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

4. A false statement on the application may be grounds for denial or termination of funds.

5. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

6. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

7. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

8. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

9. Awards under this program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.

10. The Standard Form 424 (Rev. 4–88) mentioned in this Notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348–0006.

11. Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

Dated: July 8, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92–16337 Filed 7–13–92; 8:45 am]

BILLING CODE 3510–DR–M

federal register

Tuesday
July 14, 1992

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4150-7]

RIN 2060-AD50

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule establishes standards and requirements for servicing of motor vehicle air conditioners, and restricts the sale of small containers of ozone-depleting substances, under section 609 of the Clean Air Act, as amended (Act). Specifically, the regulations require persons who repair or service motor vehicle air-conditioning units for consideration to be certified in refrigerant recovery and recycling and to properly use approved equipment when performing service involving the refrigerant. Finally, effective November 15, 1992, the regulations prohibit the sale of containers of ozone depleting substances under 20 pounds except to certified technicians.

DATES: This final regulation is effective August 13, 1992.

Note: Under Section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Circuit Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under Section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A-91-41 in room M-1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Dockets may be inspected from 8:30 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Lena Nirk, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation (6202-J), 401 M Street SW., Washington, DC 20460. (202) 233-9147. The Stratospheric Ozone Information Hotline at 1-800-296-1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. Statutory Authority
B. Ozone Depletion
C. Montreal Protocol
D. Excise Tax
E. London Amendments
F. Advance Notice of Proposed Rulemaking
G. Clean Air Act Amendments of 1990
H. September 4, 1991 Proposed Rule and April 22, 1992 Supplemental Proposal

II. Summary of Public Participation

III. Response to Major Public Comments

A. Definitions
B. Equipment Certification
C. Independent Standards Testing Organizations
D. Technician Training and Certification
E. Small Container Restrictions
F. Equipment Certification and Small Entity Certification
G. Relationship to State Regulations
H. Recordkeeping Requirements

IV. Summary of Today's Final Rule

V. Effective Date

VI. Summary of Supporting Analyses

A. Regulatory Impact Analysis
B. Regulatory Flexibility Analysis
C. Paperwork Reduction Act

I. Background

A. Statutory Authority

Section 609 of the Act requires the Administrator to promulgate regulations establishing standards and requirements regarding the servicing of motor vehicle air conditioners. This section also prohibits the sale of small containers of ozone depleting substances, except to certified technicians. Title VI of the Act is designed to protect the stratospheric ozone layer.

B. Ozone Depletion

The stratospheric ozone layer protects the earth from the penetration of ultraviolot (UV-B) radiation. A national and international consensus exists that chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform must be restricted because of the risk of depletion of the stratospheric ozone layer through the release of chlorine and bromine. To the extent depletion occurs, penetration of UV-B radiation increases, resulting in potential health and environmental harm including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to plants including crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics. (See 53 FR 30566, August 12, 1988 for more information on the effects of ozone depletion.)

The original theory linking CFCs to ozone depletion was first proposed in 1974. Since then, the scientific community has made remarkable advances in understanding atmospheric processes affecting stratospheric ozone science. Model predictions in the late 1980s suggested that continued use of CFCs would lead to substantial ozone depletion in the middle of the next century. Despite the sophistication of these models, scientists were unable to predict the extent of the decrease in stratospheric ozone over Antarctica that was first reported in 1985. This seasonal loss of ozone over the south pole became known as the "Antarctic ozone hole". In 1988, the results of an international assessment of ozone trends were published in the Executive Summary of the Ozone Trends Panel Report. In addition to the ozone hole, this report stated that analysis of total-column ozone data showed measurable downward trends from 1969 to 1988 of 3 to 5 percent in the northern hemisphere in the winter. In early 1991, new scientific evidence indicated an annual loss of stratospheric ozone over the northern mid-latitudes during the past decade of 3 to 5 percent. This amount is 2 times greater than past studies suggested and illustrated the concern that ozone depletion appears to be occurring faster than theoretical models had predicted. The latest scientific assessment showed for the first time stratospheric ozone depletion in summertime over the continental United States.

C. Montreal Protocol

In September 1987, the United States and 22 other countries signed the Montreal Protocol on Substances that Deplete the Ozone Layer. As originally drafted, the Protocol called for production and consumption of CFCs (CFC-11, 12, 113, 114, 115) and Halon-1211, -1301 and -2402 to be frozen at 1986 levels beginning July 1, 1989 and January 1, 1992 respectively, and for the CFCs to be reduced to 50 percent of 1986 levels by 1998. To date, 75 nations representing well over 90% of the world's production capacity have signed the Montreal Protocol. EPA promulgated regulations implementing the requirements of the 1987 Protocol through a system of tradable allowances (53 FR 30566, August 12, 1988). EPA apportioned the allowances to producers and importers of ozone depleting substances (controlled substances) based on their 1986 level of production and importation. It then

reduced the allowances for the controlled substances according to the schedule specified in the Protocol.

D. Excise Tax

As part of the Omnibus Budget Reconciliation Act of 1989, the U.S. Congress levied an excise tax on the sale of CFCs and other chemicals that deplete the ozone layer, with specific exemptions for exports and recycling. The tax has operated as a complement to EPA's regulations limiting production and consumption by increasing the costs of using virgin controlled substances. As a result of the tax, there is an added incentive for industry to shift out of controlled substances and to increase recycling activities. The tax has also stimulated the market for alternative chemicals and processes. The original excise tax was amended in 1991 to include methyl chloroform, carbon tetrachloride and other CFCs regulated by the amended Montreal Protocol and title VI of the Clean Air Act.

E. London Amendments

Since the signing of the Protocol in 1987, additional scientific evidence became available indicating that depletion of the stratospheric ozone layer was occurring more quickly than had been anticipated. In response to this evidence (i.e. the 1988 Ozone Trends Panel Report), the Parties to the Protocol at their meeting in London in June 1990 amended the Protocol schedule for CFCs and halons to require a complete phaseout by January 1, 2000. Methyl chloroform and carbon tetrachloride were added to the list of ozone depleting substances, with carbon tetrachloride phased out by January 1, 2000 and methyl chloroform phased out by January 1, 2005.

The parties also passed a non-binding resolution regarding the use of hydrochlorofluorocarbon (HCFCs). HCFCs have been identified as interim substitutes for CFCs because they add much less chlorine to the stratosphere than fully halogenated CFCs. The Parties were concerned, however, that rapid growth in the amount of use of these chemicals over time would still pose a threat to the ozone layer. As a result, the resolution calls for the phaseout of HCFCs by 2020 if feasible and no later than 2040 in any case.

F. Advance Notice of Proposed Rulemaking

On May 1, 1990, EPA published an advance notice of proposed rulemaking (ANPRM, 55 FR 18256) addressing issues related to the development of a national recycling program. This notice emphasized that in addition to delaying or reducing the release of ozone depleting substances, recycling is important for avoiding the cost of early retirement or retrofit of equipment requiring CFCs for service past the year in which production is eliminated. Although the Agency continues to investigate destruction of these chemicals, at this time it believes that continuing to use these substances through recycling in existing equipment can serve as a useful bridge to alternative products while minimizing disruption in the utilization of the current capital stock of equipment, preventing costly early retirement of equipment.

The ANPRM asked for comment on the feasibility of recycling in various CFC end uses and also asked for comment on methods, such as a deposit/refund system, that could be employed to further enhance recycling. The Agency received 110 public comments in response to the ANPRM. In general, most commenters recognized the need for recycling to help efforts to protect the ozone layer and to provide a source of supply to service existing capital equipment past the end of production.

The ANPRM also described the cooperative project undertaken between EPA, the Mobile Air Conditioning Society, the Motor Vehicle Manufacturers Association (MVMA), the Automotive Importers of America, the Society of Automotive Engineers (SAE), the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE), manufacturers of recover/recycling equipment, automotive industry representatives, and environmental groups to develop recycling of motor vehicle air conditioning refrigerant. This group participated in projects that led to the development of a purity standard for recycled refrigerant for motor vehicles (SAE J1991), a service procedure standard (SAE J1989), and a standard for the recycling equipment (SAE J1990). For a more detailed discussion of the voluntary program, see the NPRM published September 4, 1991 (56 FR 43842).

G. Clean Air Act Amendments of 1990

The Clean Air Act Amendments of 1990, signed November 15, 1990, include requirements for controlling ozone-depleting substances which are generally consistent with, but in some cases more stringent than those contained in the revised Montreal Protocol. For the substances covered by the revised Protocol's control measures ("class I" substances including fully halogenated CFCs, Halons, methyl chloroform, and carbon tetrachloride), title VI of the Act calls for a phase-out by January 1, 2000 with deeper interim reductions and, in the case of methyl chloroform, an earlier phaseout date (2002 instead of 2005). For the HCFCs ("class II" substances), title VI requires use restrictions, a production freeze in 2015 and a phaseout in 2030. EPA issued a temporary final rule on March 6, 1991 implementing the production and consumption limits contained in the Act for calendar year 1991. (See 56 FR 9518.) The Agency published proposed regulations for 1992 and beyond on September 30, 1991 (See 56 FR 49548).

In addition to the phaseout of ozone depleting substances, title VI includes provisions to reduce emissions of all ozone-depleting substances. Section 608 contains requirements for EPA to promulgate a regulation to achieve a "lowest achievable level" of emissions of controlled substances during use and disposal of appliances and industrial process refrigeration and bans intentional venting at service and disposal. Section 609, which today's notice implements, requires standards for certification of technicians and for equipment used in the servicing of motor vehicle air conditioners and restricts the sale of small containers of CFCs. A nonessential products ban and mandatory labeling are required in sections 610 and 611, respectively, and a program to review the safety of alternatives to controlled substances is required under section 612.

H. September 4, 1991 Proposed Rule and April 22, 1992 Supplemental Proposal

In a notice of proposed rulemaking published on September 4, 1991 (56 FR 43842), EPA discussed many of the important issues surrounding implementation of Section 609 of the Act. The proposal discussed various requirements, all designed to limit the release of refrigerant during the service of motor vehicle air conditioners. The following is a short description of the major components of the September 4 Notice.

EPA proposed definitions for the terms "motor vehicle," "motor vehicle air conditioner," "service for consideration," "service involving refrigerant," "approved refrigerant recycling equipment," and "properly using." These proposed definitions would apply only to regulations under section 609. In describing these definitions, EPA discussed the legal and policy aspects of the various options considered.

With respect to approved refrigerant recycling equipment, EPA proposed approval of two kinds of equipment—

equipment that recovered and recycled the refrigerant, and equipment that only recovered the refrigerant. Standards for approval of recovery/recycle equipment were proposed in appendix A of the proposal. These standards consisted of the two SAE standards specifically mentioned in the Act (SAE J1990, SAE J1989). They contain appropriate service procedures for recycling refrigerant in motor vehicles, and equipment specifications for recover/recycle machines. Appendix A also contained the SAE standard of purity for refrigerant recycled on-site at a service establishment (SAE J1991).

Appendix B was reserved for the technical standard for recover only equipment. Proposed appendix B was published in a supplemental notice dated April 22, 1992 (57 FR 14763). This proposed standard closely resembles another SAE standard (SAE J2209) written specifically for equipment that removes refrigerant from motor vehicle air conditioners but does not purify it. That standard will be finalized, upon completion of the public comment period, in a separate rulemaking.

Under the proposal, an EPA approved "independent standards testing organization" would certify that equipment met the applicable standards. Upon such certification, the equipment would meet EPA's definition of approved refrigerant recycling equipment. The September proposal outlined the procedures for EPA approval of independent standards testing organizations. These approved organizations would test equipment and certify that equipment met the applicable standards. EPA proposed standards for the proper use of approved equipment, as well as a procedure for EPA determination of whether equipment was "substantially identical" to approved equipment.[1]

In addition to using approved equipment, service or repair technicians would have to be trained and certified by an approved technician training and certification program. The proposal described the standards for approval of such programs, as well as application procedures.

The January 1, 1992 effective date would be delayed for one year for small volume shops—entities that serviced less than 100 motor vehicle air conditioners during 1990. This one year delay would apply only for those small entities that filed a small entity certification with EPA on or before January 1, 1992. In addition, as of November 15, 1992, the sale or distribution of class I or class II substances suitable for use in motor vehicle air conditioners was restricted in containers of less than 20 pounds of such substances to persons who were properly trained and certified under the regulation, or who purchased them for resale only.

The Agency proposed certification and recordkeeping requirements needed for compliance monitoring. In addition to the statutorily required certification to the Administrator of small entity status and equipment ownership, the Agency proposed that service establishments retain records of service events and amounts of refrigerant purchased. The amount of refrigerant sent to reclamation facilities would have to be recorded and sellers of refrigerant would be required to record technician certification numbers and amounts sold.

In developing the proposed rule, the Agency received guidance from the Stratospheric Ozone Protection Advisory Council (STOPAC) subcommittee for Servicing of Motor Vehicle Air Conditioning. This subcommittee was made up of members of the original STOPAC that advised the Agency on the development of the production phase-out requirements and the international negotiations, as well as additional representatives from the automobile industry, environmental groups, and State and local government. Several members of the voluntary program described in section I.F. also participated. The Agency wishes to acknowledge their valuable assistance in the development of the proposal.

II. Summary of Public Participation

A public hearing on the proposed rule was held on September 13, 1991. Six groups presented oral comments on the proposed requirements and submitted written testimony to the Agency. A transcript of the hearing is contained in the public docket.

The agency received a total of 68 letters on the proposed rule. The technician certification standards were frequently addressed. Commenters requested clarification of the term "independent testing authority". Many commenters addressed the effectiveness and validity of a minimum standard that allowed unproctored testing. Several commenters requested the option of developing their own training and certification programs. Commenters also frequently addressed the definition and use of approved equipment. In general, there was significant support for the Agency's option of allowing both recover only and recover/recycle equipment, although several comments expressed serious concern over misuse of equipment and refrigerant contamination.

Several commenters requested clarification of the recordkeeping requirements for their specific circumstances. Commenters also addressed the relationship between state and federal regulatory requirements. Many expressed concern about the continued sale of small containers of class I and class II substances and possible adverse consequences if alternative refrigerants are used in equipment. Other issues addressed in the comments included the substantially identical equipment determination and equipment testing and labeling.

III. Responses to Major Public Comments

A document summarizing the public comments to this rulemaking is available in the public docket for this final rule. The major issues raised by the commenters and the Agency's responses to them are described below. Other comments are addressed in the comment response document also found in the public docket.

A. Definitions

1. Motor Vehicle Air Conditioners

Several commenters addressed EPA's proposed definitions of "motor vehicle" and "motor vehicle air conditioner." As proposed, motor vehicle would be defined as "any vehicle which is self-propelled and designed for transporting persons or property, including but not limited to passenger cars, light duty vehicles, heavy duty vehicles, farm vehicles and construction equipment." The definition of motor vehicle air conditioner was proposed as a "mechanical compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on vehicles for refrigerated cargo." While the hermetically sealed refrigeration system that cools the storage container of a refrigerated transport truck would be excluded, the unit that cools the driver or passenger compartment of such a truck would be included.

As proposed a broad array of vehicles would be defined as a motor vehicle for purposes of regulation under section 609 of the Act. Coverage would extend beyond the definition of motor vehicle used for purposes of title II, part A of the Act, and should include a wide variety of off-road equipment, trains, and

[1] Substantially identical equipment purchased on or before the date of EPA's proposal would be deemed to be approved equipment.

mining equipment. In the notice of proposed rulemaking, EPA noted that the passenger air conditioner units for these vehicles use CFC–12 as the refrigerant, with the possibility that future refrigerants such as HFC–134a would be used. EPA was concerned about the breadth of coverage in the proposed definition of motor vehicle, and therefore specifically requested comment on inclusion of off-road vehicles in the definition of motor vehicle.

Several commenters discussed this issue, and in general counseled caution in extending the section 609 regulations beyond the scope of vehicles defined as a motor vehicle for the purposes of title II of the Act. They argued that the proposed definition of motor vehicle was too broad, and should not include farm and construction equipment. They viewed the definition of motor vehicle in title II as controlling. In the alternative, they suggested EPA conduct a study of the contribution of CFC's from air conditioner servicing for such off-road vehicles, and the potential regulatory burdens of extending section 609 to them, before including such vehicles in the section 609 program. The commenters argued that the flexibility was needed, given the unique circumstances of off-road equipment dealers, the fact that repair and maintenance of off-road vehicles is often performed in the field, and the seasonal and sporadic demand for air conditioner repairs for these vehicles. At the same time, other commenters argued that EPA should include off-road equipment, aircraft, and marine vessels in its definition of motor vehicle, to provide broad coverage under section 609 regulations.

EPA has decided to limit the definition of motor vehicle for purposes of section 609 to include only those vehicles that meet the definition of motor vehicle under section 216(2) of the Act. While EPA does not believe that section 609 precludes a broader definition,[2] the Agency believes the best exercise of its discretion is to exclude off-road vehicles from the definition of motor vehicle at this time, given the significantly different circumstances presented by off-road vehicles.

EPA expects that implementation of the section 609 regulations adopted today will occur in a smooth and straightforward manner for on-road vehicles; the industry has been involved in a voluntary recycling effort for several years, and there is a general uniformity in the type of vehicle and air conditioner covered by the definition, as well as uniformity in service and repair circumstances. Off-road vehicles, however, present a different picture. These vehicles differ widely in nature, reflecting the broad array of industries in which they are used. Some are mobile but many are not, potentially leading to a wide variety of service and repair circumstances. Certain of these industries have been involved with the voluntary recycling program, but as a whole they have not been closely involved as the traditional motor vehicle sector.

As noted by the commenters, these differences pose a wide variety of potential problems, ranging from access to reclamation centers to difficulties in air conditioner servicing. EPA therefore believes it is appropriate at this time to confine the definition of motor vehicle for purposes of section 609 to on-road vehicles.[3] These vehicles encompass the overwhelming majority of vehicle air conditioners, and constitute the core group Congress meant to cover under section 609.

At the same time, EPA is aware that voluntary recycling is expanding in certain segments of the off-road sector, and supports such efforts. EPA will consider these off-road vehicles under the section 608 program, which extends to all uses of class I and II substances as refrigerants. For all of these reasons, EPA therefore believes that the definition of motor vehicle being promulgated as part of these regulations should have no adverse environmental effects.

The Agency would also like to clarify that the HCFC–22 air conditioner systems typically found in buses are not included in the definition of motor vehicle air conditioner at this time, because these systems are more akin to stationary units in their functioning and the type of refrigerant they use. In addition, the SAE standards referenced in the Act and the certified recycling equipment developed under those standards is not appropriate for use with HCFC–22 systems. EPA expects that such HCFC–22 air conditioning systems will be subject to the venting prohibition in section 608 of the Act and that the servicing of these systems will be covered by the regulations implementing section 608.

Finally, the Agency wishes to respond to comments from the Motor Vehicle Manufacturing Association (MVMA), Navistar, and the John Deere Company that questioned whether the charging and/or repair of motor vehicle air conditioners, prior to completion of final assembly of the vehicle, should be covered by this regulation. In additional comments received after the close of the comment period, MVMA highlighted that the type of equipment currently used in the manufacturing facility to recover refrigerant during repairs is "specialized production equipment singularly intended for high volume operation in delivering clean refrigerant to every unit, every time. Such large volume equipment is designed to be a permanent, stationary fixture in the plant * * *". The comments state further that "[i]ndustry equipment used during the manufacturing process clearly meets the substantive requirements of the proposed regulation even though, because of its in-line nature, Underwriter's Laboratory (UL) or other certification does not exist and is not appropriate." This type of equipment was contrasted to the small, low volume, moveable equipment found in the service sector. EPA believes the repair of newly manufactured units is not likely to be a common occurrence and when it does occur, the manufacturing facilities clearly use equipment to recover and recycle the refrigerant so that it may be reintroduced once the motor vehicle air conditioner is repaired. The equipment is significantly different from the kind of equipment covered by EPA's definition of approved equipment, yet serves the purpose of such equipment equally well. In addition, the technicians performing this operation are typically manufacturing employees, not service technicians. For all these reasons, the Agency believes it is not necessary at this time to extend the requirements of this servicing regulation into the assembly operation.

MVMA did note that the manufacturer's garages perform air conditioner service and repair activities on company-owned fleet vehicles that is akin to the service and repair performed by dealerships. EPA agrees with MVMA that such repair and service activities should be and are fully covered by today's regulation. EPA wants to be clear that this exclusion is limited to final assembly activities conducted by the vehicle's original manufacturer, and

[2] EPA is not persuaded by commenters' arguments that Section 609 is limited by law to motor vehicles as defined in section 216(2). First, the definition of motor vehicle found in Section 216(2) of the Act is explicitly limited in application to part A of title II. In addition, neither the statute nor the legislative history for Section 609 indicates that motor vehicle as used in that section is limited by law to those vehicles included in the title II part A definition.

[3] To avoid confusion, vehicles that otherwise meet the definition of motor vehicle are covered by these regulations notwithstanding their use, for example, on farms or construction sites.

does not include service or repair activities conducted, for example, by a dealer.

2. Refrigerant

This term is defined to mean any class I or class II substance used in a motor vehicle air conditioner and, effective November 15, 1995 (five years after enactment of the Act), any substitute substance, such as HFC–134a. For clarity, this additional provision of section 609(b)(1) was added to the definition.

The Agency emphasizes that any blend of substance that includes a class I or class II substances, such as R–176 (a blend of CFC–12, HCFC–142b and HCFC–22), is included under today's requirements and must be recovered or recycled at service. EPA also is evaluating the impact of alternative refrigerants, including R–176, on the effectiveness of its recycling efforts.

3. Service Involving Refrigerant

The Agency stated in the proposal that the intent of the Act is to require recycling of refrigerant in motor vehicle air conditioners whenever service is being performed that may release refrigerant to the atmosphere. This includes service of motor vehicle air conditioners and service of other motor vehicle components that may require some dismantling of the motor vehicle air conditioning system. Servicing of motor vehicle air conditioners, therefore, includes repairs, leak testing, and "topping off" of air conditioning systems low on refrigerant, as well as any other repair which requires some dismantling of the air conditioner. Each of these operations involves a reasonable risk of releasing refrigerant to the atmosphere.

Four commenters stated that if recovery of refrigerant at disposal is not required under section 609, it should be covered by the safe disposal program under section 608. As stated in the proposal, EPA would like to encourage recovery of refrigerant at disposal. The specific requirements for recovery at disposal, it any, may be addressed in the regulations implementing the safe disposal program under section 608 of the Act. The Agency will consider the commenters' suggestions on this issue when addressing the safe disposal requirements under section 608.

4. Service For Consideration

In the proposed rule, the Agency interpreted "service for consideration" to include persons who are paid to perform service on motor vehicle air conditioners, thus subjecting to regulation all service except that done for free. Several commenters questioned whether fleets are included. The Agency would like to clarify that fleets of vehicles, whether private, or federal, state or local government owned, are covered because the technicians doing the service are being paid. Other examples of establishments doing service covered by the regulations include, not are not limited to, independent repair shops, service stations, fleet shops, body shops, chain or franchised repair shops, new or used car and truck dealers, rental establishments, radiator repair shops, mobile repair operations, vocational technical schools (because instructors are paid), farm equipment dealerships, and fleets of vehicles at airports.

Two commenters suggested adding the recover, recycle, reclaim definitions to the rule language with the definition of service. The Agency did not propose this and will not be incorporating the definitions formally into rule language now. The meaning of these words may evolve over time with continued technological innovation. The Agency does not wish to impede this progress through inclusion of a definition of these terms in the regulations.

Comments from MVMA, Navistar, and the John Deere Company questioned whether the charging and/or repair prior to the completion of final assembly is covered under the "service for consideration" definition. As previously discussed in section III.A.1., a motor vehicle air conditioner is not subject to these regulations prior to the completion of final assembly of the vehicle by the original equipment manufacturer. While repair or service work on air conditioners in unfinished vehicles may well fit the definition of "service for consideration," the equipment and technician certification requirements of these rules do not apply as the motor vehicle air conditioner is not subject to these rules prior to completion of the final assembly process by the vehicle's manufacturer.

5. Properly Using

The Act requires that the Administrator establish standards for using equipment that shall be at least as stringent as the applicable standards of the Society of Automotive Engineers (SAE) in effect as of the date of enactment (November 15, 1990). The standard referred to, J1989, provides recommended service procedures for the containment of CFC–12. In the September 4, 1991 notice, the Agency proposed that the standard for "properly using" include J1989 and an additional requirement that if recover only equipment is used, the refrigerant must be sent off-site for reclamation or recycled on-site. The Agency also proposed that, as prescribed in the SAE J Standards, refrigerant received from an off-site reclamation facility that is intended for recharge of automobiles must been the Air-conditioning and Refrigeration Institute standard of purity (ARI Standard 700–88) for CFC–12.

The proposed definition of properly using was intended to apply to facilities that own an on-site recycle machine or an on-site recycle machine and several recover only machines (such as large establishments with many service bays) as well as small facilities that purchase one piece of recover only equipment. The Agency believes that the requirement that such equipment be properly used will ensure that recovered refrigerant is not vented to the atmosphere. The Agency wishes to highlight that under the properly using definition, refrigerant introduced into the system for the purpose of leak detection must be recovered and not vented.

Three commenters supported EPA's proposed properly using standard, stating that if EPA allowed recover only equipment to be used, the Agency should require that recovered refrigerant be either recycled on-site or sent off-site for reclamation as a means of minimizing prospects of contamination of motor vehicle air conditioners. These commenters suggested that the Agency consider methods to assure that the reclamation facilities have the capability to reclaim refrigerant to the ARI 700–88 standard. EPA does intend to consider requirements for reclamation facilities in the section 608 regulation under the Act.

Several commenters questioned whether several service establishments owned by a single owner may recover refrigerant and send the refrigerant to a central location for recycling to the SAE J1991 standard for CFC–12. The Agency believes that this practice may be a cost effective option in some situations. To minimize the risk of contamination (whether intentional or unintentional), this option will only be available when the owner of the recover only equipment is also the owner of the recover/recycle equipment and is therefore able to assure direct recycling of refrigerant from motor vehicles for use in motor vehicles serviced at his facilities. The equipment used to recycle the refrigerant must meet the standards for CFC–12 recycle machines adopted in appendix A.[4] Franchised or chain

[4] The equipment standards in Appendix A are designed for equipment that recovers and recycles

Continued

service establishments (i.e. those service establishments that share a common name but are separately owned) may not use this option.

This is the only exception to the on-site requirement for recycling. In all other cases, if refrigerant leaves the service establishment then it must be reclaimed to the ARI 700–88 standard to assure purity. The on-site requirement is important because equipment certified to meet the SAE standards is only capable of cleaning CFC–12 to the SAE J1991 standard if that refrigerant has been removed from a motor vehicle; refrigerant from another type of air conditioning or refrigeration system may contain contaminants, such as acid formed in a compressor burn-out, that such equipment is not designed to remove. Introduction of this contaminated CFC–12 could result in severe damage to the motor vehicle air conditioner. This type of damage would destroy consumer confidence in recycled refrigerant and jeopardize the success of the recycling program.

B. Equipment Certification

1. Approved Equipment

In the September 4, 1991 Notice of Proposed Rulemaking, the Agency proposed defining the statutory term "approved refrigerant recycling equipment" to include two types of equipment. One type, recover/recycle equipment, both extracts refrigerant from the motor vehicle air conditioner and cleans the refrigerant on-site. The other type of equipment, recover only, extracts the refrigerant from the motor vehicle but does not clean the refrigerant. The refrigerant from these recover machines must be sent off-site for reclamation or recycled on-site. The Agency proposed this definition to provide flexibility to the regulated community and to maximize environmental protection while protecting air conditioning units from damage. The September 4, 1991 notice proposed Appendix A as the standards to which recover/recycle equipment would have to be certified. The supplemental notice published on April 22, 1992 proposed the standard for recover equipment as Appendix B.

The terms "extraction", "reclamation" and "recycle" are terms of art currently used by the industry, and refer to the removal of refrigerant (extraction), processing of the refrigerant off-site to a near virgin condition of purity (reclamation), or processing of the refrigerant on-site to a condition acceptable for reuse as a refrigerant in the same vehicle, without the need to send it off-site for reclamation (recycle).[5] The ANPRM published May 1, 1990 and the NPRM published September 4, 1991 defined these terms.

Seen against this background, the section 609 definition of "approved refrigerant recycling equipment" [6] is an ambiguous term, leaving EPA with the obligation to establish its meaning in a way that best effectuates the goals of this section. First, the statutory definition of "refrigerant recycling equipment" refers to equipment that "extracts and reclaims". The recycle equipment normally used in this context however is equipment that cleans the refrigerant on-site, but does not reclaim it. The latter term is reserved for refrigerant that is sent off-site for distillation to a higher standard of purity. At the same time, section 609(b)(2) references SAE J1990, which states that its purpose is to "provide equipment specifications for * * * recycling and/or recovery, and recharging systems." [7]

The legislative history fails to resolve this ambiguity in the statute. However, it does appear clear from the terms and structure of section 609 that Congress focused on activities conducted at the service establishment, whether recovery or recovery/recycle, and was not legislating specification for off-site equipment used to reprocess refrigerant to near virgin purity.

EPA, therefore, attempted to define "approved refrigerant recycling equipment" with the view of providing environmental protection, and providing the affected industry flexibility to meet the changing nature of refrigerants. For all the reasons described in the September 4, 1991 Notice, EPA proposed a definition including both types of equipment.

The comments submitted on this issue focused primarily on the feasibility and practicality of the proposed definition, and not on EPA's authority to include recover only equipment. One commenter, however, argued that SAE standard J1990 set the minimum requirements for "approved refrigerant recycling equipment." Since section 3.1 of this SAE standard established that the equipment must be able to extract and process refrigerant, recover only equipment could not meet the minimum requirements as stringent as J1990, and, therefore, could not be approved. Congress, by incorporating SAE J1990 in section 609, intended that EPA adopt the then existing automotive recycle program, which did not extend to recover only equipment. The commenter did seem to accept that EPA could approve recover only equipment in the future if such equipment was found to be necessary, for example with respect to future refrigerant blends.

The commenter's arguments do not persuade EPA that it lacks authority to interpret refrigerant recycling equipment as including recover only equipment. First, the portion of SAE J1990 noted above and quoted in the comments does no more than highlight an apparent inconsistency in that document. It does not remove the ambiguity present in this statutory term, and does not indicate a clear Congressional intent to exclude recover only equipment from approval under Section 609. In addition, the Agency's restrictions on the use of recover only equipment [8] tie it closely to the extraction, recycling or reclamation process. Finally, for the reasons discussed below, EPA believes that it is reasonable to interpret "approved refrigerant recycling equipment" to include recover only equipment.

As noted earlier, the majority of commenters focused not on the legal issue of statutory interpretation, but on the proper policy for EPA to follow; in effect, not whether it could approve such equipment, but whether it should do so. Seventeen commenters supported allowing both certified recover/recycle equipment and recover only equipment to meet the definition of approved equipment. The commenters cited the importance of allowing service establishments the flexibility to chose equipment that suits their individual circumstances. Commenters believed that this would increase compliance with the requirements. Many commenters noted that recover only equipment has a lower initial cost than recover/recycle equipment and that many service establishments are already using this type of equipment. This equipment is also used in conjunction with recover/recycle equipment, for example in service establishments with several service

CFC–12 refrigerant. As necessary, EPA will adopt additional standards that will govern the approval of equipment designed to recover/recycle other refrigerants.

[5] Industry has adopted separate voluntary standards for the purity of refrigerant, depending whether it is sent off-site for reclamation (ARI 700–88) or is recycled on-site (SAE J1991).

[6] Section 609 defines the term as "equipment certified by the Administrator * * * to meet the standards established by the Administrator and applicable to equipment for the extraction and reclamation of [motor vehicle air conditioner] refrigerant * * *". The standards that EPA sets are to be as stringent as one set by the Society of Automotive Engineers, SAE J1990.

[7] See § 1. "Scope", SAE Standard J1990.

[8] For example, any recovered refrigerant must be recycled on-site or sent off-site for reclamation except for the limited situations described in III.A.5.

bays. Commenters stated that the lower initial cost will become increasingly important in the future when different refrigerants (e.g. HFC–134a, blends) enter the motor vehicle servicing market. Commenters mentioned the importance of recover equipment for the salvaging of refrigerant from disposed automobiles (requirements that will be covered under section 608 of the Act) and that refrigerant sent off site for reclamation is actually purified to a higher standard than refrigerant recycled on-site. Commeters disputed claims that the use of recover only equipment would lead to an increased risk of venting refrigerant or contamination through the reuse of unrecycled refrigerant.

The Agency received five comments opposed to recover only equipment in the motor vehicle servicing sector. MVMA opposed recover equipment for several reasons. MVMA stated that approval of recover only equipment does not reflect Congressional intent or the intent of the automobile industry when they developed the voluntary program for CFC recycling. The Association suggested that recover only equipment would lead to venting of refrigerant. It would jeopardize the purity of refrigerant in the motor vehicle sector because of the economic incentives derived from the greater economic value of refrigerant ready for use in a car as compared to refrigerant sold for reclamation. MVMA also stated that the use of recover only equipment is not cost effective, whereas recover/recycle equipment is cost effective and more easily implemented. MVMA argued that the potential need for recovery of other refrigerant in the motor vehicle sector did not justify the use of recover only machines. Other commenters emphasized the need to require off-site reclamation if recover only equipment were allowed, and mentioned that the limited number of reclamation centers across the country could render the recover only option unworkable.

The Agency understands that the voluntary recycling program, which it supported, and the SAE standards were intended to establish and promote on-site recycling, and agrees that on-site recycling may well be an efficient option for most service entities because of the efficiency of the procedure. However, the Agency believes that approving two separate standards for equipment provides both environmental protection and needed flexibility to the regulated community. As stated in the proposal, the cost effectiveness of equipment is dependent on the number of service jobs performed and the price of virgin refrigerant. Some service establishments may find it more cost effective to comply with the regulations by purchasing recover only equipment.

As stated in the September 4, 1991 notice and the April 22, 1992 supplemental notice, the Agency examined the relative environmental consequences of using the two types of equipment. For example, the efficiency of removal of refrigerant is equivalent between the two types of equipment and both types of equipment separate the lubricant from refrigerant to indicate the amount of lubricant that must be returned to the system. Unlike recycling equipment, recover only equipment does not purge non-condensable gases during operation. Such purging in recover/recycle equipment may result in the loss of 5 percent of refrigerant in a purge. Recover only equipment therefore provides at least as much protection from the release of refrigerant as recover/recycle equipment.

Flexibility is also an important consideration for the potential need to recover other refrigerants in the motor vehicle sector in the future. Several automobile manufacturers have announced that HFC–134a is the designated replacement for motor vehicle air conditioners in new cars beginning as early as 1992 in some models. This substitute must be recycled under the Act, effective November 15, 1995. For retrofit of existing CFC–12 systems, research is currently underway to determine an appropriate substance and both HFC–134a and HCFC blends are being considered. Under the Act, blends containing HCFCs are subject to this regulation if they are used in motor vehicle air conditioners and recover only equipment approved for use with blends may be an attractive option in this case. The Agency does not wish, as a result of delays associated with the regulatory process, to impede the progress of the sector as it addresses the challenges of alternative refrigerants in the future.

The Agency is very concerned about the issue of contamination of refrigerant raised by MVMA's comments but believes that the option of two types of equipment will not increase the risk of contamination or venting. On the issue of contamination, the Agency notes that regardless of how the refrigerant is extracted, today's rule requires that it be purified to standards that allow its safe use in motor vehicle air conditioners before it is so used. Refrigerant recycled on-site must be cleaned to the SAE J1991 standard of purity for recycled refrigerant. Any refrigerant that leaves the site must be reclaimed to the ARI–700 standard of purity, a standard developed by the Air-conditioning and Refrigeration Institute that defines the level of quality for reclaimed refrigerants. The only exception to this is described in section III.A.5. under the definition of "properly using." Moreover, recharging motor vehicle air conditioners with used refrigerant that has not been purified in accordance with the applicable standard is prohibited.

The proposed standard for recover only equipment would make it highly unlikely that refrigerant extracted using recover only equipment would be reused in recharging motor vehicle air conditioners before being purified. That standard would require that "[t]he equipment discharge or transfer fitting shall be unique to prevent the unintentional use of extracted CFC–12 to be used for recharging auto air conditioners." In other words, recover only equipment would have to be designed so that it can be connected, for example, to a recover/recycle machine for recycling of extracted refrigerant, but could only be directly connected to the recharging equipment under circumstances of intentional tampering. It would therefore be extremely difficult for recover only machines to be misused in the way MVMA fears. In addition, it is unlikely that persons in the business to service motor vehicle air conditioners would knowingly use contaminated refrigerant since they have an interest in satisfying customers and not injuring the customer's air conditioner.

As for venting, EPA believes that there is little chance that use of recover only machines would lead to venting. First, such venting is prohibited by these regulations for both recover only and recover/recycle equipment. Second, recover only equipment users would have an economic incentive not to vent but to either recycle or reclaim the extracted refrigerant. Since unpurified extracted refrigerant may not be used to recharge motor vehicle air conditioners, recover only equipment users can be expected to either recycle the extracted refrigerant before recharging the air conditioner, or to sell it to reclaimers. Finally, any risk of venting or contamination from the use of recover only equipment should be minimized by the required technician training and certification, which will alert technicians to the proper procedures to be followed.

Several commenters questioned whether one owner with several service establishments using recover only equipment could ship refrigerant to a

central location for recycling, as opposed to reclamation where the same owner owns the recover only equipment and the recycling equipment. As discussed under the definition of "properly using" (section III.A.5), the Agency believes that this practice may be a cost effective option in some situations. The Agency wishes to clarify that because of the importance of protecting refrigerant and the inability to assure the source of the refrigerant once it leaves the service site, this is the only exception that can be made from the on-site recycling requirement. A company may also wish to set up a central reclamation facility if it wishes to assure the purity of refrigerant.

EPA shares the concern of commenters regarding the limited number of reclamation facilities in the country. Any service establishment considering the purchase of recover only equipment should first determine if refrigerant reclamation opportunities exist in their area and the cost of using such service. The Agency would like to encourage the development of reclamation operations with the capability to clean refrigerant to the ARI–700 standard. It is of utmost importance to the proper functioning of air conditioning equipment that all refrigerant sold by reclaimers meets the ARI–700 standard of purity. Therefore, the Agency will consider a reclaimer certification program under its section 608 requirements. In developing the requirements, the Agency will consider the commenters' concern for periodic inspections of refrigerant quality and any possible measures to facilitate the development of the reclamation network around the country.

SAE commented that the 1989 version of SAE standard J1990 has been revised by SAE to add clarity and specification. Changes include the following:

(1) Section 1 of J1990 was revised to clarify that the scope of the standard applies to recover/recycle equipment, and not to recover only equipment (this is consistent with the SAE draft standard J2209 which applies to recover only equipment);

(2) Section 3 of J1990 added a labeling requirement, referring to the standard;

(3) Section 4 of J1990 is more specific regarding purge devices required for non-condensable gases (NCG). The equipment must either have an automatic purge device to expel NCG, or have a device that warns the operator if the limit for NCG has been received. In addition, a limit was placed on the refrigerant loss from the purging of NCG; the limit was set at 5% by weight of the total refrigerant recovered;

(4) Section 7 of J1990 clarified the requirement in the 1989 version that the equipment reduce the system to a vacuum. Revised J1990 requires that the equipment reduce system pressure to a minimum mercury level (4 in./102 mm) below atmospheric pressure; and

(5) Section 7 of J1990 also clarified the section regarding the extraction of used lubricants, for example discussing the need to only use new lubricant to replace the amount removed. The equipment must take into account the amount of refrigerant dissolved in the lubricant to avoid indicating the recovery of more lubricant than actually removed.

EPA agrees that the final standard for recover/recycle equipment should include these revisions to J1990 because the Agency believes these changes are minor in nature, and are not a significant change to the 1989 version of J1990 that EPA proposed in the NPRM. For example, section 4 of J1990 (1989) required a device to alert the operator that the NCG level had been exceeded, if the equipment had a self-contained recovery tank. The 1991 version expands on this concept. With respect to the amount of refrigerant loss attributable to purge of NCG, EPA noted in the NPRM that UL estimated that CFC–12 releases were well under 5% in machines certified prior to that date. With respect to the specification of a vacuum level, the change clarifies an ambiguous term in the old standard but does not change the level of extraction efficiency. The same can be said for the changes regarding lubricant extraction.

While including the changes to J1990 in the standard for recover/recycle equipment, EPA will only apply this revised J1990 standard to recover/recycle equipment certified after February 1, 1992. The standard for equipment certified prior to that date shall be J1990 (1989), the version proposed in the NPRM. EPA is taking this action for several reasons. First, a large number of recover/recycle machines have already been purchased, with the overwhelming majority of them certified to J1990 (1989). It would impose a significant economic burden to require equipment owners to either recertify their equipment or purchase new equipment. Second, as discussed above, the changes made to the 1989 version of J1990 are minor in nature and do not reflect any significant increase in environmental protection. Third, the 1989 version of J1990 clearly meets the statutory requirement of Section 609(b)(2)(A)—that section of the Act refer, in fact, to the 1989 version of J1990 as the minimum standard for equipment. Fourth, February 1, 1992 is a reasonable date to use as Underwriters Laboratory started using revised J1990 for all equipment submitted for certification after that date.

Three commenters objected to the statement in the September 4, 1991 notice regarding the appropriate method to handle the lubricant removed from refrigerant by either recover/recycle or recover only equipment. In the proposal, the Agency stated that the lubricant should be handled in the same manner that the service establishment handles used oil. Since the publication of the September 4 notice, the Office of Solid Waste and Emergency Response published a Supplemental Notice of Proposed Rulemaking on used oil characterization and management standards (56 FR 48000, September 23, 1991). The Agency would like to clarify that the presence of CFCs in used lubricant may have implications for how the used lubricant should be handled. The Agency refers persons to that rulemaking for further information on this issue.

2. Substantially Identical Equipment

The Act states that equipment purchased before the proposal of regulations under this section shall be considered certified if it is "substantially identical" to approved equipment. In the NPRM, the Agency proposed a process for review of uncertified equipment that would rely primarily on the manufacturer submitting information, such as process flowsheets, lists of component, or laboratory tests, to the Agency for review. Owners of equipment may also submit information to the Agency if they are unable to establish the status of equipment through the manufacturer. The Agency stated that it would narrowly interpret the substantially identical clause in order to protect the air-conditioning units and the integrity of the recycling program.

Several commenters agreed that EPA should maintain a strict interpretation of the substantially identical clause while others stated that EPA should recognize industry efforts by not declaring equipment purchased and used in good faith to be obsolete. In response to the latter group of comments, EPA points out that Congress' clear intent in providing an exception for substantially identical equipment was to credit industry efforts undertaken before the development of regulations to the greatest extent possible without endangering the environment and air conditioning equipment.

The Agency would like to clarify that recover/recycle equipment that has

been design certified by Underwriters Laboratory [9] as meeting the SAE standards in appendix A is considered approved equipment for the purposes of this regulation. The first recover/recycle equipment was certified in September, 1989. Such equipment should be labeled with UL's "design certified to meet SAE Standards" sticker. This should not be confused with other UL listing stickers that indicate satisfactory performance in safety testing only. The Agency understands that the vast majority of recover/recycle equipment sold has been design certified by UL, and EPA maintains a list of the certified models. The list is available to the public upon request to the address that appears in § 82.36.

The Agency would also like to clarify that it can only review equipment to determine if it is substantially identical to certified equipment once applications for review have been received. One commenter's suggestion that the Agency inventory and review every model of equipment ever sold is resource intensive and impractical. The Agency encourages equipment manufacturers that have models that do not have UL certification to submit applications for equipment they believe to be substantially identical to certified models. This includes retrofit packages that the manufacturer believes will result in equipment performance to certified levels. The Agency's review will concentrate on the aspects of equipment that vary from certified models. As stated in the proposal, an essential element of such review is that recover/recycle equipment purify refrigerant to the SAE J1991 standard of purity. For recover only equipment, essential elements of review are that equipment remove refrigerant as efficiently as approved equipment under the SAE J2209 standard and also that equipment separate lubricant.

The Agency realizes that the statutory deadlines require quick review of the information submitted. As soon as determinations are made, equipment determined to be substantially identical will be placed on the approved equipment list as "approved if purchased before September 4, 1991" for recover/recycle equipment and "approved if purchased before April 22, 1992 for recover only equipment. While equipment that EPA has not reviewed may in fact be substantially identical, an EPA determination on this point is important so a regulated party may verify their compliance in advance.

C. Independent Standards Testing Organizations

1. Summary and Response to Comments

In the proposal, EPA stated that organizations interested in obtaining approval as independent standards testing organizations must apply to the Agency and demonstrate that they are capable of performing equipment testing to the applicable standards. One commenter stressed the importance of highly trained, qualified staff. In addition, commenters argued that the standards testing organization should not be owned or controlled by manufacturers or vendors of the product being tested, to promote objectivity and preclude conflicts of interest. In general, various commenters considered the criteria proposed in § 82.38(b)(1)–(5) lacking in detail and substance.

EPA agrees that staff expertise is very important, as are objectivity and lack of conflicts of interest. However EPA believes these factors are fully addressed in the proposed regulations. For example, the proposal required that the applicant must demonstrate "[e]xpertise in equipment testing and the technical experience of the organization's personnel." In addition, the organization could have no conflict of interest and receive no financial benefit from the outcome of certification testing." [10] These criteria provide adequate detail and substance for an applicant to prepare its submission and guide the agency in its determinations. Evidence supporting this are the detailed and substantive applications that have already been submitted. Accordingly, the Agency is adopting the criteria as proposed, excepting changes for purposes of clarification.

One commenter urged EPA to make clear that UL 1963 and the SAE standards apply only to motor vehicle air conditioning equipment. This commenter correctly points out that there are separate industry standards (ARI Standard 740–91) that apply for equipment used for recovery and recycling in the other air conditioning and refrigeration sectors.

Equipment that recovers and recycles refrigerant must be certified to meet the SAE standards in appendix A. While EPA is not promulgating a specific test procedure that each independent standards testing organizations must follow, EPA does want to emphasize that EPA's review of an application of an organization for approval under section 82.38 will include a review of the test procedure the organization intends to employ. The application for approval will need to include information on the proposed test procedure and an explanation of its adequacy. Any approval of an organization will be contingent on use of such test procedure. While EPA considers this implicit in the criteria proposed in the NPRM, EPA is clarifying the final regulation to reflect the above.

EPA notes that the approval of UL, discussed herein, is based in part on the testing protocol developed by UL known as UL1963. EPA expects that a UL testing protocol will also be developed for testing the ability of recover only equipment to comply with applicable SAE standards. The Agency anticipates that a UL testing procedure will also be developed for this equipment.

2. Approved Independent Standards Testing Organizations

The Agency received an application for approval for UL on October 21, 1991, and from ETL Testing Laboratories, Inc on November 27, 1991. The Agency has reviewed their applications in detail and has formally approved UL and ETL Testing Laboratories, Inc. as independent standards testing organizations. This approval will be effective as of August 13, 1992. EPA encourages applications from other facilities that are capable of testing equipment to the necessary standards. The Agency recognizes that since a large amount of equipment has already been certified, additional laboratories may not find it cost effective to enter the certification market for equipment certified under this section of the Act. The EPA will maintain a list of approved independent standards testing organizations available upon request at the address in § 82.38. As stated in the proposed notice, the Agency reserves the right to revoke approval if the testing organization violates any of the requirements contained in § 82.38.

D. Technician Training and Certification

In the September 4, 1991 notice, EPA proposed standards for training and certification in the proper use of approved refrigerant recycling equipment during service of motor vehicle air conditioners. The standards were designed to assure that all aspects

[9] EPA discusses its approval of Underwriters Laboratory (UL) under 40 CFR 82.36 as an "independent standards testing organization" in section III.C.

[10] In response to a comment seeking clarification, this condition clearly allows an independent standards testing organization to generate a reasonable profit margin. However, it would preclude, for example, charging a fee based on the results of a test, as well as ownership of the testing organization by a manufacturer or vendor of the equipment being certified.

of the use of approved equipment are covered by certification programs while preserving flexibility in testing mechanisms. The Agency believes flexibility in testing mechanisms is important in technician certification because of the large number of technicians that must be certified in a very short period of time. In addition, service technicians are employed in a wide variety of circumstances and businesses, such that no one program may be adequate for all the situations involved.

Several commenters suggested that EPA had exceeded the intent of the statute by proposing a training, test administration and certification process, and that uniform Federal certification standards are excessive and unworkable. The language and the intent of the statute, however, explicitly requires EPA to establish standards for certification and training. In specified circumstances, section 609 of the Act prohibits the service and repair of motor vehicle air conditioners except by properly trained and certified personnel.[11] Under Section 609(b)(4), EPA is to establish the standards for such training and certification, subject to a minimum stringency level set by statute. EPA proposed to accomplish this goal by establishing a process to approve technician training and certification programs. The proposed criteria for approval of such programs balances flexibility of program design with an assurance that adequate training would be provided.

Several commenters raised the issue of self-certification, especially employer self-certification of employees as in the DOT certification for fleet mechanics and drivers. The commenters appeared concerned that only a limited number of national training and certification programs could seek approval under the proposed regulations. In addition, they were concerned that these national organizations could not train and certify a large number of technicians in a short time.

The Agency would like to clarify that the two programs mentioned in the statute, the Mobile Air Conditioning Society (MACS) or the National Institute of Automotive Service Excellence (ASE), are not the only training and certification programs that can seek EPA approval. The Agency did consider these programs, in addition to other certification programs and consultation with industry, government officials, and environmentalists, in developing the minimum criteria as they appeared in the proposal. Companies do have the option of developing their own certification program for their technicians; however, the Agency must review these programs to assure that they conform to the minimum criteria. The intent of the criteria is to establish a framework for certification under which a variety of entities, including testing organizations, individual companies, fleets and vocational schools, may design certification programs.

The commenters did not provide details on the DOT program mentioned. EPA understands it to involve training at the service establishment, with the service establishment then maintaining records of training. DOT does not review and approve the individual service establishments' training programs. EPA has serious questions whether such a program meets the minimum requirements set forth in section 609(b)(4). In addition, as described above, the review and approval process under section 82.40 should provide the needed flexibility for a wide variety of organizations, from the national, state and local levels, to obtain approval as technician training and certification programs.

The Agency is aware that many technicians may find independent testing organizations a simple and cost effective mechanism to achieve certification. Also, many companies who train their technicians may choose to use an independent testing organization's program to test or certify their technicians after training. The Agency does not wish to discourage any company from developing its own training and certification program and will assure parity across programs through a review of how each program meets the criteria. Agency review is important to assure veracity of information and fairness in testing. For a discussion of the review status of the programs developed in advance of this final rule, see section D.7.

The Agency received several specific comments on the various criteria proposed for technician certification programs.

1. Training

EPA proposed that each approved program must provide adequate training, using one or more of various formats: On-the-job training, training through self-study of instructional material, or on-site training involving instructors, videos or a hands-on demonstration. Three commenters suggested that hands-on demonstrations should be required in each technician certification program. In developing the proposal, EPA reviewed the actual operation of recover/recycle and recover only equipment and determined that proper operation could be adequately described and demonstrated in self-study instructional material as well as other kinds of instructional material. This is because the skills needed to properly use such equipment do not differ substantially from the skills technicians already possess for servicing the motor vehicle air conditioner. There is no evidence to suggest that this determination is inaccurate and therefore the Agency will not require hands-on demonstrations as a minimum standard. The Agency recognizes that demonstrations are valuable and would like to encourage their use whenever possible, including manufacturer demonstrations of equipment upon purchase. The Agency is aware that some technician certification programs already incorporate demonstrations. The Agency does have the authority to revoke a certificate if a technician fails to demonstrate for an authorized representative of the Administrator his or her ability to properly use the equipment.

2. Test Subject Material

EPA proposed that certification tests adequately address the relevant SAE J standards established for the service and repair of motor vehicle air conditioners, anticipated future technological developments (such as the introduction of HFC–134a), environmental consequences of refrigerant release and the adverse effects of stratospheric ozone layer depletion. In addition, the certification tests were to cover the general regulatory requirements under section 609 to assure that technicians are familiar with the legal requirements regarding service.

EPA received comments requesting that EPA "grandfather" technicians that were trained and certified before the promulgation of this rule. The Agency is aware that thousands of technicians have been certified in advance of the effective date of this final rule in anticipation of the final requirements and also as part of the voluntary program developed several years ago. These technicians would not have had the opportunity to receive training on the specifics of either section 609 of the Act or of these implementing regulations.

EPA believes it is important that training address the requirements imposed by the Administrator under section 609 of the Act, and will require

[11] The effective date of this prohibition depends on the size of establishment and the filing of a proper small volume certificate. See the discussion in section I.H herein.

that all training conducted by approved programs include such subject material for training conducted after the effective date of these regulations. However, training conducted before the effective date of these regulations need not include the specifics of the final rule. EPA is taking this action for several reasons. First, EPA believes that training on the requirements imposed by the Administrator under section 609 of the Act is quite valuable, but is not necessary to meet the legal standards required under section 609(b)(4). This is shown by the Act's reference to the then existing MACs and ASE training programs, which could not have included the then future regulatory requirements imposed by EPA in implementing section 609. Second, large numbers of technicians have already been trained and certified, and it would be a great burden and perhaps impossible to quickly retrain and recertify all of these technicians. Third, EPA believes that many technician training and certification programs did include training material on the requirements of section 609 and EPA's proposed regulations as soon as such information was available.

As stated in the proposal, the technician certification program is not intended to test the technical skills of technicians regarding the diagnosis and repair of motor vehicle air conditioners. The basic goal of the technician training and certification program is to teach technicians how to properly recover and/or recycle refrigerant, and why it must be done to protect the stratospheric ozone layer.

The supplemental notice published April 22, 1992, proposed an additional equipment standard for motor vehicle air conditioner service. Once the standard for recover only equipment is finalized, technician training and certification programs will have to include training and testing on the proper use of such equipment. For a further discussion, see section III.D.7.

3. Test Administration

In the proposed criteria, the Agency did not specify details of certification tests such as the number of questions, the passing scores required, the format of questions or the number of versions of tests. EPA's goal was to stimulate the development of a number of certification programs designed to meet the diverse needs of the technician community. For example, the Agency is aware that several open-book, unproctored tests and closed-book, proctored programs have been developed. Some programs use video training, while others stress written material or hands-on demonstration. As stated in the proposal, the number and format of test questions may vary depending on the testing scheme employed. At the same time, the questions must be adequate to cover the subject material in sufficient depth and detail. Individual companies interested in providing a certification opportunity for their employees may develop a program that reflects their existing training structure and seek EPA approval under § 82.40. EPA's goal in reviewing programs will be to assess whether each program meets the minimum standards in § 82.40. The Agency encourages programs to surpass the minimum standards and develop superior programs, but this is not a requirement.

EPA specifically requested comment on the validity of open-book testing for technician certification. Most commenters supported open-book testing as a valid minimum testing procedure; however, many commenters stated that proctors should be required whether the tests are open-book or closed-book. Commenters questioned the validity and quality of unproctored testing.

In developing standards for the certification of technicians under section 609, the Agency examined existing industry certification programs such as ASE and MACS, as well as other types of testing formats, including correspondence courses. One program referred to in Section 609(b)(4), MACS, employs non-proctored exams. Given the large number of technicians dispersed through a multitude of cities and towns in the country, and the Act's short statutory timeframes, the Agency believes that requiring proctored exams would require technicians to travel to a limited number of testing locations and would be infeasible for many technicians.

The proposed test administration criteria would require that programs establish sufficient measures to assure that tests are completed honestly by technicians and that there are methods for assuring technician identity. Examples include requiring signatures of technicians on test forms, requesting social security numbers, using multiple versions of tests and use of proctors in testing situations. Proctored exams are one, but not the only available method and certification programs are free to develop their combination of methods to assure valid testing. The Agency commends the procedures of many of the programs that have already been submitted to the Agency as effective yet not burdensome.

In the September 4, 1991 notice, the Agency described how open-book testing, if structured properly, could result in technicians having the necessary knowledge to properly perform refrigerant recovery and recycling, a subset of the knowledge needed to perform effective service on motor vehicle air conditioners. Several certification programs that have been developed incorporate proctors and the Agency commends this action. As a minimum standard, however, the Agency will allow technicians access to unproctored testing such as mail-in programs, assuming the test program meets all the criteria in § 82.40.

The Agency received several comments on the proposed requirement that completed tests be sent to an independent testing authority for grading. Commenters questioned whether any real benefit was obtained from such a requirement, since open-book, unproctored tests would be allowed. The requirement was also considered costly and unnecessary. Commenters sought clarification on various points, such as whether a non-profit entity associated with the sponsoring certification program would be an independent testing authority for grading.

EPA originally proposed this requirement, on the advice of motor vehicle air conditioning industry representatives, to avoid certification programs that did not actually test learning of material presented but merely provided a "certificate of attendance". The Agency also sought to minimize the potential conflicts of interest that might arise, such as in certification programs that wish to guarantee certification or individual companies that have a vested interest in assuring all employees pass the test. The concept of an independent testing authority was based on both programs mentioned in section 609 of the statute, which incorporate grading services or computerized grading of their existing exams. The goal was to incorporate neutrality into the grading process.

The Agency continues to believe that neutrality in the grading process is an important goal. To clarify the regulatory language, § 82.40 will be changed to state "Completed tests must be graded by an entity or individual who receives no benefit from the outcome of testing; a fee may be charged for grading". Programs submitted for EPA approval must demonstrate that the grading entity is neutral. Examples of independent grading include a scoring establishment which is a separate non-profit association associated with the

sponsoring certification program, a contracted grading company or individual and computerized grading services.

The Agency wishes to clarify that although it supports certification programs making provisions for non-English speaking technicians (indeed there is a great need for these provisions in certain areas of the country), this is not a requirement. The Agency does commend the efforts of the programs that have already made progress in this area.

4. Technical Revisions

Two commenters stated that the proposed requirement to review certification programs periodically and submit a written summary of the review and any changes to the Administrator every two years was excessive. They recommended that review of program content should only be triggered by the introduction of new equipment or refrigerants. The Agency believes the nature of the motor vehicle air conditioning market is rapidly changing, as evidenced by the development of the SAE J2209 standard for recovery only equipment. In this context, EPA has determined to keep the review provision as proposed. The Agency fully anticipates that certification programs will review and revise their program content more often than every two years (for example, each time they order reprints of instructional material or tests) in order to stay current in the field. Requiring these updates to be reported to the Administrator assures accuracy of information and maintains parity among programs.

5. Recertification

Two commenters favored EPA's proposal that it would reserve the right to require recertification of technicians in the future, if necessary. Three commenters maintained that periodic recertification would be unnecessary, burdensome and beyond the intent of the Act.

EPA believes the need to retest and recertify technicians in the future should be limited because certification programs are required to address the anticipated changes in motor vehicle air conditioning and to periodically review their programs. However, the Agency believes it is important to reserve the right to require recertification if environmentally significant changes in equipment for motor vehicle air conditioning occur.

6. Proof of Certification

No commenters disagreed with the proposed requirement that each training and certification program offer individual proof of certification upon successful completion of the test. Proof of certification is essential for the purchase of small containers of class I or class II substances. Several commenters disagreed with or questioned the related proposal that unique numbers be provided for each certified technician by certification programs.

Several programs already use the technician's social security number as a unique number, while other programs number tests distributed for their own recordkeeping purposes and then assign that number to the technician when he or she successfully completes the exam. Agency inspectors may need access to technician certification numbers to verify compliance with the regulation. In addition, the Agency may need these numbers to prove non-compliance with the regulations in an enforcement action. Unique numbers will aid in meeting these compliance and enforcement activities. In addition, it presents little if any burden on these programs to provide such unique numbers. Unique numbers within programs are also needed to distinguish between technicians with the same name. Programs must only assure that the numbers assigned within their own programs are unique. EPA will not provide these numbers, and will not require that the numbers be reported to EPA by technician certification programs because of the administrative burden associated with this activity on a national basis, and the need to coordinate between several programs.

7. Approval of Programs

The Agency is aware of three technician certification programs that have already certified several thousand technicians. One program, given by the Mobile Air Conditioning Society, was developed as part of the voluntary program established before the 1990 amendments to the Act. Two programs, given by the International Mobile Air Conditioning Association and the National Institute of Automotive Service Exellence, were developed in advance of the proposed rule. Several programs, including these three, applied for approval under § 82.40. EPA has completed its review of these three applications, and based on this review, EPA has formally approved them as technician training and certification programs. This approval will be effective as of August 13, 1992.

Two aspects of this approval should be noted. First, in light of the fact that these programs have already trained and certified numerous technicians, training and certification conducted by these programs prior to the effective date of the approval will be considered valid for purposes of these regulations as long as the training and certification was conducted in conformity with the training and certification program approved by EPA. The earliest date for which the Agency will accept training under these requirements will be September, 1990, which the Agency understands to be the date that the first technicians were certified under the MACS program. Second, all training and certification conducted after the effective date of any standards adopted for recover only equipment (Appendix B) must cover such standards in the training and testing. Since the procedures for extraction of refrigerant are very similar for both recover/recycle equipment and recover only equipment, EPA expects that technicians trained and certified by these programs prior to the final adoption of recover only standards would not need to be retrained and recertified with respect to the appendix B standards. That issue, however, will be addressed when EPA promulgates the final appendix B standards At this time, the Agency believes that programs should incorporate the specifics of the labeling of containers of recovered refrigerant into certification programs as soon as possible. The Agency encourages recover only equipment salespersons to reiterate to technicians that equipment meeting the SAE J2209 standard does not clean refrigerant and thus refrigerant captured with these machines must be recycled or sent to a reclamation facility, as specified in EPA's definition for the proper use of such equipment.

Several commenters questioned whether programs approved by states or localities were automatically approved by the EPA. Commenters also suggested that EPA accept state approved programs where the state standards are either substantially equivalent or more stringent than the Federal requirements.

Certification by a state program is not a substitute for training and certification by a Federally approved program. The Federal requirements established by section 609 of the Act and these regulations are separate and distinct from any valid state laws or regulations that may apply. Compliance with one does not automatically guarantee compliance with the other. At the same time, state-approved programs may apply to EPA for approval under EPA's regulations. Approval by EPA of such a program will be based on compliance with the requirements of § 82.40, which

may be more or less stringent than applicable state requirements.

The Agency is aware of three state or local technician certification regulations (Florida, Wisconsin, and the South Coast Air Quality Management District in California). EPA will work with the relevant entities to review the requirements of their regulations and the approval process of any technician certification programs not already reviewed by the Agency to assure that no program falls below the minimum Federal standards.

The Agency is aware that some states may have approved technician certification programs in advance of promulgation of the EPA requirements using criteria different than the proposed Federal criteria. EPA also believes these differences are limited to the Test Administration criteria contained in § 82.40. With this problem in mind, EPA believes it is reasonable to modify § 82.40 to authorize approval of a training and certification program that meets all but the Test Administration criteria of that section. This would be allowed, however, only if the program, when viewed as a whole, is as or more effective than a program that does meet all of those criteria.[12]

EPA is taking this action for several reasons. First, EPA is aware that the statute and these regulations require the training and certification of a large number of technicians in a short period of time. These state-approved programs, as well as a variety of other programs, have already started this process to meet Federal and/or state or local requirements. This provision should allow additional flexibility in meeting these training and certification requirements, and will avoid penalizing activities conducted prior to the promulgation of these regulations. Second, programs approved under this provision can be expected to provide the same or better quality of training and exhibit the same or better level of validity in the certification process, since the program will have to show EPA that when viewed as a whole it is as good or better than programs which meet all of the criteria.

EPA has decided to limit this provision, however, to training and certification provided prior to the effective date of these regulations. After that date, all programs will have had adequate notice of the Federal requirements. This is especially so given that little change is being made from the September proposal. Programs will also have received adequate time to conform their program to these requirements. Limitation of this provision to such earlier training will also help to ensure that all approved programs meet common requirements, increasing the consistency of test administration in approved programs. For more discussion of the relationship between state and Federal requirements, see section III.G.

Since the publication of the proposed rule, the Agency has received other technician certification program applications and these will be reviewed as quickly as possible upon receipt of complete application materials. To facilitate EPA review, each program requesting review should supply information illustrating how each element of the certification criteria in § 82.40 is met. This includes test questions, test administration and training information such as videos or self-study booklets. The Agency encourages submission of applications for approval from training certification programs and will make every effort to review programs quickly. EPA will maintain a list of all approved programs including both national testing programs and any individual company programs that are approved.

E. Small Container Restrictions

The Act makes it unlawful, effective November 15, 1992, for any person to sell or distribute, or offer for sale or distribution, any class I or class II substance suitable for use as a refrigerant in motor vehicle air conditioning systems in a container with less than 20 pounds of refrigerant except to certified technicians servicing motor vehicles for consideration. The Agency proposed an implementation approach distinguishing between purchasing refrigerant in small containers for use and purchasing refrigerant in small containers for the purpose of resale only. For resale, the Agency proposed that sellers obtain a signed statement from purchasers stating that the small containers are for resale only. At retail sales outlets, the Agency proposed that sellers review the technician certification and keep a record of the technician's name, technician certification number and program name, date of sale and the quantity (number and size) of containers purchased. The proposal also stated that outlets selling small containers must display a sign stating that it is unlawful to sell small containers to an individual who is not a properly trained and certified technician.

Six commenters believed the continued existence of small containers allowed too great a potential for "do-it-yourselfer" access to refrigerant and that therefore the containers should be eliminated. Three commenters stated that the availability of small containers of CFC–12 increases the likelihood that the refrigerant supply will be contaminated because HCFC–22 and HFC–134a are also available in small containers. One commenter mentioned that if sales to retail outlets were eliminated, the effectiveness of recycling efforts would be increased. Five commenters believed the sales restriction should be expanded to all size containers.

EPA does not have authority under section 609 of the Act to ban or otherwise eliminate all small containers. The regulatory language in subpart B is designed to implement a specific statutory provision concerning small containers. That provision does not ban, but only limits the sale of such small containers. The Agency, however, is concerned about the potential problems that the continued availability of small containers of refrigerants could cause, as suggested in the comments. Mixing refrigerants may lead to air conditioning systems failures and may also subsequently contaminate recycle and recover equipment. The Agency is also aware that do-it-yourselfers may lawfully purchase containers with over 20 pounds of refrigerant. EPA will review this situation after gaining some experience with the operation of today's rule. It is important to note that several states have completely banned the sale of small containers.

The Agency received one comment supporting the requirement that a sign be posted at the point of refrigerant sale for its educational and deterrence value. One comment stated that the requirement was redundant because the small containers would not be available to the general public, and one comment suggested that a label on the container was more appropriate than a sign. The Agency wishes to clarify that the intent of the retail sign is to alert the public to the sales restriction under section 609 of the Act. Labeling requirements alerting consumers to products containing or made with class I and class II substances are being developed under section 611 of the Act and will not be redundant with the section 609 sales restrictions. For these reasons, EPA has determined to keep the requirement for a retail sign. EPA has clarified the regulation to state that the sign must be located where the sales occur.

[12] To avoid confusion, it is important to note that although this provision is made in response to comments concerning state approved programs, the revision to the Test Administration criteria is not limited to such programs.

Several commenters addressed the proposed recordkeeping requirements. The Automative Refrigerant Products Institute (ARPI) suggested that, at the wholesale level, purchasers be permitted to offer a one-time signed statement stating that cans are intended for retail sale in situations where sellers and purchasers have several transactions over time. The seller would keep the statement on file. The Agency agrees that this would be an efficient implementation method. No changes have been made to the regulations, however, because such actions would be allowed under the regulations as written.

ARPI also suggested that equipment registration certifications, instead of technician certifications, be used in recordkeeping for small container purchases. Although service establishments must submit information to the Agency concerning the type of equipment they have purchased, the Agency will not send back a verified proof of equipment purchase. As a result, there is no equipment registration certification that could be used for recordkeeping as ARPI suggested. Proof of certification will be provided by the technician certification programs and therefore, other than the purchase for resale, certified technicians are the only individuals permitted to purchase small containers.

Two commenters stated that retail purchasers should be required to simply present valid proof of certification at the time of purchase, with no additional recordkeeping required at the retail level. Upon further consideration, the Agency agrees that the recordkeeping requirements are not essential to determine compliance and develop effective enforcement actions. For example, if necessary, EPA may review the normal records maintained by a business when circumstances lead EPA to believe a violation may have occurred. EPA has therefore deleted the recordkeeping for retail purchase from the final requirements published today.

The Agency received several comments on the residual amount of CFC–12 remaining in cans after use, the standard of purity used by small container manufacturers, and the dispensing mechanism of the containers themselves. The Agency continues to be concerned about this aspect of the use of small containers and will further consider these comments when developing lowest achievable emission levels under section 608 of the Act.

F. Equipment Certification and Small Entity Certification

1. Certification Dates

As noted earlier, the statute requires that, after January 1, 1992, no person repairing or servicing a motor vehicle for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant unless they properly use approved equipment. In addition, the repair or service personnel must have been properly trained and certified for such work. The statute grants a one year extension to small service establishments—establishments that performed less than 100 service jobs involving refrigerant in the year 1990. This one year extension is only available if the small service establishment certifies to the Administrator on or before January 1, 1992 that they meet the requirements for this extension.

All persons performing service on motor vehicle air conditioners for consideration, notwithstanding the size of the establishment, must certify to the Administrator on or before January 1, 1993 that they have purchased approved equipment and that authorized service personnel have been properly trained and certified.

One commenter expressed concern that the one year delay between the requirement to use approved equipment for servicing (except small shops) and the requirement to certify the purchase and use of such equipment could result in reduced compliance. The commenter recognized that the difference in dates stems from section 609(c) and 609(d), and suggested that EPA increase compliance through education and enforcement.

EPA would like to encourage establishments to certify that they own equipment before January 1, 1993. The Agency applauds the efforts of the hundreds of service entities that have already submitted their equipment registrations to the Agency. The Agency has also received hundreds of the small establishment certifications. Once the certifications are filed with the Agency, the small establishments have until January 1, 1993 to purchase equipment. As discussed in section V. on effective dates, EPA enforcement actions may be taken as of the effective date of this regulation.

Several commenters were concerned that the small entity extension is too easy to obtain. Two commenters suggested that the small establishments be required to submit substantially more information than proposed on the motor vehicle air conditioner service jobs they performed in 1990, such as vehicle make, model, engine size and CFC charge remaining, before they are granted an extension. The Agency believes that the intent of Congress in including this specific small establishment extension was to reduce the regulatory burden on small entities. Requiring small entities to supply substantially more information could significantly reduce the relief Congress sought to provide. Moreover, the additional information that commenters suggested EPA collect would not provide significantly greater assurance that the numbers of service jobs reported by small entities was accurate. The Agency will therefore not require the suggested service record submittal for small entities. However, the Agency may examine an establishment's records supporting its certification that it performed less than 100 service jobs in 1990. If warranted, appropriate enforcement action may be taken.

In additional comments received after the end of the comment period, the State of Oregon requested that EPA consider exempting very small service establishments from all requirements. They classify the very small establishments as those performing under 20 jobs involving refrigerant per year. Oregon is considering establishing this exemption in its own program based on several factors; the state's belief that small service establishments will not voluntarily undertake recycling because of the high cost of the equipment and the fact that the small number of service jobs the shop performs will make it difficult for them to make a return on their investment. The amount of refrigerant released by these shops would be small and Oregon suggests that the compliance rates for these shops will be low if an exclusion is not granted.

Congress clearly recognized that small service establishments merited special consideration and included the one year extension for the equipment requirements. By implication, Congress also considered that no further relief was necessary or appropriate. The Agency, moreover, does not believe the establishment of any "de minimis" number of service jobs is warranted. The Agency recognizes that small service establishments may determine that the small number of jobs involving refrigerant that they perform do not justify continuing to perform service and purchasing the equipment. They may choose to decline this type of work or arrange to have the refrigerant removed from the motor vehicle air conditioner at a service location that does have the appropriate equipment before they

perform service. The small establishment may also consider the purchase of recover only equipment, which is typically less expensive than recover/recycle equipment. The sale of any recovered refrigerant to a reclamation facility will also help the entity recoup the cost of the investment. The Agency also wishes to highlight the fact that a significant amount of recover/recycle equipment was sold before enactment of the Act on the basis of the industry voluntary program. Although most of the equipment was purchased by larger service establishments such as dealerships, the estimates of the equipment sold indicate that some smaller service establishments also purchased equipment voluntarily. The Agency believes the flexible nature of this final regulation and the inclusion of the one year extension for small service establishments provide for appropriate relief for these entities and no further measures are necessary.

2. Example Form

In the proposed rule, EPA included an example form to illustrate the type of information necessary to certify equipment to the Agency. Equipment owners are not required to use the form to certify; it is provided as an example only. One commenter questioned whether the proposed example form can be used to certify recover only equipment to the Agency. To clarify that the example form may be used for either type of equipment, the form has been revised to include the words "or recover" wherever the form states recover/recycle equipment. It should be noted, however, that EPA has not yet finalized the standards for approval of recover only equipment. Until that time, the only equipment officially approved by EPA is recover/recycle equipment certified to meet the standards of appendix A. The only other change to the example form provided in the proposal is the replacement of the acronym "MACs" with the more accurate "MVAC" for motor vehicle air conditioner. One commenter mentioned that MACs could be confused with the name of the Mobile Air Conditioning Society (MACS). The revised form appears as Example A in today's notice. Any certifications received using the proposed form are acceptable because, as stated in the proposal, the form is intended for guidance and the Agency does not require establishments to report in this format. The data elements for reporting remain the same as the proposal: the serial number of each unit of equipment, the name of the purchaser of equipment and the address of the establishment where the equipment will be located, the manufacturer name, model number, date of manufacture, and a signed statement that each individual authorized to perform service using the equipment is properly trained and certified and that the equipment will be properly used in servicing motor vehicle air conditioners.

Small establishments may also use the example form to certify that they performed less than 100 service jobs involving refrigerant in 1990. All certifications, both equipment and small entity, should be sent to the following address: MVACs Recycling Program Manager, Stratospheric Ozone Protection Branch (6202–J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

G. Relationship to State Regulations

In the proposed notice, the Agency stated that the Act does not provide for Federal preemption of state requirements. The rule published here today represents the Federal requirements applicable to the servicing of motor vehicle air conditioners, and states or localities may establish programs with different requirements to the extent otherwise consistent with the United States Constitution. EPA is aware of several states with their own programs, e.g. Florida and Oregon, and in most cases the programs contain requirements that mirror the Federal program. The Agency would like to clarify that compliance with a state or local program may not in and of itself constitute compliance with the Federal standards. For example, regardless of state registration or permitting requirements, the service establishments must certify their equipment with EPA (see section III.F.). Conversely, service entities and technicians in states or localities with regulations that are effective in advance of the Federal program must comply with these earlier requirements in their state and locality.

Regarding technician certification, as stated in section III.D., in cases where the state or locality has approved programs, the Agency will work with the state or locality to minimize the burden of obtaining approval for these programs. The Agency encourages any programs that have been approved by a state or locality to submit those program for Federal approval. The Agency is aware that in many cases the programs approved at the Federal level may also be approved by the state or locality and, therefore, no conflict would exist.

The Agency is aware that some states have also performed "substantially identical equipment" reviews for equipment. Equipment in those states also must be reviewed for applicability with the Federal requirements and EPA will work with the states to determine if their review criteria were appropriate.

Eight commenters highlighted the importance of coordinated state and Federal activity and the Agency will work with states to coordinate and streamline the enforcement activities in states where programs exist.

One commenter asked whether the State of Oregon's inclusion of wrecking yards in their recycling program would be superseded by the Federal requirements. Although the regulations published today do not include removal of CFCs from automobiles at disposal, the Agency intends to include requirements under the Safe Disposal Program within section 608 of the Act. The Federal regulations promulgated today do not preempt Oregon's requirements and, in fact, supports the state's efforts to develop a program. Leak detection efforts by the states of Wisconsin and Florida are other examples of requirements that EPA's program do not preempt.

H. Recordkeeping Requirements

1. Certification

The proposed certification requirements were intended to establish records to assist EPA in its compliance and enforcement activities. Section 609(d) of the Act requires that persons performing service on motor vehicle air conditioners certify to the Agency that they have acquired and are properly using approved equipment. The Agency proposed that this certification include name and address of the establishment, the name of the manufacturer, the equipment model number, manufacturer date, and serial number. The proposed certificate also included a statement concerning the proper use of the equipment, and that authorized service personnel were properly trained and certified. Small service establishments must certify to the Agency that they did under 100 service jobs involving refrigerant in 1990 if they wish to qualify for the one year extension described in section III.F.

The Agency would like to clarify that the Agency will not issue permits or licenses to service establishments upon receipt of the equipment certification. Several commenters mistakenly suggested that permits or EPA certifications be used for the small container sales restrictions discussed in section III.E. As required in the Act, the small container sales restriction is based on the technician certification requirements. Service establishments

that wish to verify EPA's receipt of their certification may send the certification by certified mail. They may also wish to retain a copy.

2. Recordkeeping

In the proposal, EPA attempted to develop requirements similar, in most cases, to the typical invoice or purchasing records maintained by a service entity. The Agency proposed that invoices kept upon service of motor vehicle air conditioners include the fact that service was performed, the name, address, and phone number of the vehicle owners, and the year, make, model and license plate numbers of the vehicles serviced, date of service, and the odometer reading of the vehicle. Owners of approved equipment would retain records of the amount of refrigerant purchased and consumed each month and they retain records demonstrating that all persons authorized to use the approved equipment are properly certified. The Agency also proposed that owners of approved recover only equipment maintain records of the refrigerant sent to off-site reclaimers or recycled on-site.

For the small container sales restriction, the Agency proposed that purchasers attest in writing that they are properly trained and certified. This writing would include the name of the purchaser, their technician certification number, the date of sale, and the quantity of cans purchased. Under the proposal, the only exception to the requirement that purchasers of small containers be trained and certified is if the purchaser is purchasing the small containers for resale only and signs a statement to that effect.

Several industry commenters noted that the proposed recordkeeping requirements were written for the consumer vehicle repair industry and do not consider several specific circumstances. Examples include service on fleet vehicles and farm or construction equipment where license plates, vehicle owner, or routine invoice procedures do not exist. As stated above, the Agency intended the proposed requirements to be as similar as possible to the types of recordkeeping already being maintained for accounting purposes to minimize the burden of this regulation. The Agency acknowledges that the proposed requirements do not reflect all the servicing situations that may occur nationally.

Two commenters believed that the recordkeeping requirements were unnecessarily burdensome on small businesses that do not have the resources to create or complete new forms. One commenter specifically questioned whether the reconciliation of purchases and estimation of the volumes of recycled refrigerant was possible considering the various amounts of refrigerant that motor vehicle air conditioners may contain when they are serviced. The Agency's proposal included a provision requiring the maintenance of records on the amount of refrigerant purchased and consumed each month in order to allow the Agency to make a determination if refrigerant was actually being recycled. The Agency agrees with the commenter that this recordkeeping requirement will not necessarily aid in determining whether recycling actually occurred. This determination would be difficult to make because the Agency could only compare the records to statistics for the average amount of refrigerant remaining in motor vehicle air conditioners at service. The amount of refrigerant actually found in a particular system, however, is dependent upon the type of repair that must be made, for example automobiles involved in front-end accidents may well have lost their entire charge, while the amount of refrigerant lost during normal use will vary between manufacturers and models of motor vehicles. The requirement that service establishments keep invoices of service performed and record their purchases and consumption of refrigerant, therefore, has been deleted in today's final rule.

Several commenters addressed the tracking of off-site shipments to reclamation facilities, with some commenters suggesting more detailed tracking and others suggesting that all records of off-site shipments or on-site recycling were unnecessary. The Agency has determined that service establishments using recover only equipment should be required to keep records of where refrigerant is sent for reclamation. Shops using recover only equipment that will have the refrigerant recycled by the owner must keep the name and address of the owner on-site. The Agency has decided it would not require in this regulation that service entities keep records of amounts of refrigerant sent and dates the shipments have been made. The Agency would like to clarify that service establishments using recover equipment need not retain records of the amount of refrigerant recycled on-site, only the address of the off-site reclamation facility they are currently doing business with. Additional recordkeeping requirements proposed by EPA have been deleted as unnecessary. The records required by these regulations must be maintained on-site for three years for spot checks upon inspection. The records should not be submitted to the Agency.

As discussed in section III.E, the small container recordkeeping requirements will not remain the same as proposed. Sellers of small containers of refrigerant must review the technician certification of anyone purchasing small containers, however they are not required to maintain records of the technician name, technician certification program, technician certification number, the date of sale and the number of containers purchased. The only exception to this is if the purchaser is purchasing the cans for resale, then he must so certify to the seller in writing.

IV. Summary of Today's Final Rule

This section briefly describes the provisions of today's final rule. Any changes made to the rule language as a result of the public comments are described. Various changes to the final rule that have been made for purposes of clarification are not described herein.

A. Authority

The authority citation has been revised to reflect the most recent authority citation adopted by EPA for part 82.

B. Purpose and Scope (Section 82.30)

This section states that these rules implement section 609 of the Act and apply to persons performing service for consideration on motor vehicle air conditioners. There were no changes to this section based on public comment. Minor editing changes were made for clarification.

C. Definitions (Section 82.32)

This section contains the definition of the terms "approved independent standards testing organization", "approved refrigerant recycling equipment", "motor vehicle", "motor vehicle air conditioners", "properly using", "refrigerant", "service for consideration", and "service involving refrigerant".

The definitions for approved equipment and standards testing organization reference the sections of the rule (§ 82.36 and § 82.38) described below. The motor vehicle definition was limited to this subpart and the definition was changed to include those vehicles meeting the definition of motor vehicle used for purposes of title II of the Act. Also, the definition was clarified to specify motor vehicles where final assembly has been completed by the original equipment manufacturer. Motor vehicle air conditioner defines the type of systems covered by this regulation

and this definition was clarified to exclude buses using HCFC–22 refrigerant. The definition of refrigerant was clarified by including the language in the Act that states that effective November 15, 1995, refrigerant shall include any substitutes for class I or class II substance. Service involving refrigerant defines the activities regulated. The service for consideration definition is intended to exclude "do-it-yourselfers" from the requirements of the regulation.

The term "properly using" sets out the requirements for use of approved equipment. It states that technicians must follow the SAE J standard J1989 when operating equipment, as found in appendix A. For recover/recycle equipment, properly using includes recycling the refrigerant before reuse. For recover only equipment, properly using includes sending the refrigerant recovered to a reclamation facility or recycling it on-site if recycle equipment is available. Any refrigerant from reclamation facilities used for the purpose of recharging motor vehicle air conditioners must be at or above the ARI 700–88 standard of purity. The definition also states that intentional venting of refrigerant is an improper use of equipment.

The only change to the properly using definition is the addition of a provision allowing the owner of a piece of recover only equipment to transfer the refrigerant off-site and recycle it using a piece of recover/recycle equipment owned by the same person.

D. Prohibitions (Section 82.34)

There are three prohibitions in this final rule. The first requires that by January 1, 1992, persons performing service for consideration on motor vehicle air conditioners must properly use approved equipment. These persons must be trained and certified. The requirements of this prohibition do not apply until January 1, 1993, for service establishments that performed under 100 service jobs involving refrigerant in 1990, and so certify to EPA.

The second prohibition states that effective November 15, 1992, no person may sell or distribute any class I or class II substance in a container with less than 20 pounds of refrigerant that is suitable for use as a refrigerant in a motor vehicle air conditioner to any person unless that person is properly trained and certified, or certifies to the seller that the containers are intended for resale only.

The final prohibition states that no technician training program may issue certificates unless that program complies with all the standards in § 82.40. The three prohibitions remain as originally proposed, except for clarifying language changes.

E. Approved Refrigerant Recycling Equipment (Section 82.36)

This section describes the two types of equipment that meet the definition of approved equipment for use in servicing motor vehicle air conditioners. The first type of equipment recovers CFC–12 and recycles it on-site to the SAE standard J1991. The standards for certification of this type of equipment appear in appendix A.

The second type of equipment only recovers refrigerant. As stated in the properly using definition, the recovered refrigerant must be sent to a reclamation facility or recycled on-site. The standard for this equipment was proposed as Appendix B on April 22, 1992. The appendix will be finalized upon completion of the analysis of the public comments. In finalizing the standards for recover only equipment, appendix B, the Agency intends to also amend § 82.36 (a) and (b) to include references to appendix B.

This section also contains provisions allowing the Agency to determine if equipment is substantially identical to certified equipment. Equipment manufacturers or owners may submit applications for approval which contain information on the equipment that indicates its capability to meet the standards in appendix A. EPA anticipates that a substantially identical determination will apply to appendix B. That issue, however, will be addressed when EPA promulgates the final appendix B standards. The Agency will maintain a list of approved equipment. This list is available to the public.

F. Approved Independent Standards Testing Organizations (Section 82.38)

This section establishes the criteria for approval of testing laboratories or organizations for equipment. Organizations must demonstrate that they have the experience and the appropriate equipment to perform testing. Various changes to this section between the proposed notice and today's final regulation were made for purposes of clarification. In finalizing the standards for recover only equipment, appendix B, the Agency intends to also amend § 82.38 (a) and (b) to include references to appendix B.

G. Technician Training and Certification (Section 82.40)

This section establishes the standards for programs approved to train and certify technicians. The standards cover training, the subject material that must be covered by each program, and minimum test administration procedures. Summaries of reviews of programs must be submitted every two years and programs must offer technicians proof of certification upon successful completion of the test. Recertification of technicians is not required at this time.

One change to this section is clarification of the term independent testing authority to state "Completed tests must be graded by an entity or individual who receives no benefit from the outcome of testing; a fee may be charged for grading." This is not a substantive change in the requirements. Another change involves approval of organizations that meet all criteria except for the Test Administration criteria, if the program, when viewed as a whole, is as effective as a program that does meet all of these criteria. In finalizing the standards for recover only equipment, appendix B, the Agency intends to also amend § 82.40(a) to include references to appendix B.

The Administrator reserves the right to revoke approval if a program violates any of the requirements and inspectors may revoke a technician's certification if the technician is unable to properly use equipment upon inspection.

H. Certification and Recordkeeping Requirements

This section states that no later than January 1, 1993, establishments repairing or servicing motor vehicle air conditioners for consideration must certify to the Agency that they have acquired and are properly using approved equipment. The data elements required for certification include the name of the purchaser of the equipment, the address of the service establishment, the name of the manufacturer, the model number of equipment, the date of manufacture and serial number. The owner of the equipment or another responsible officer must sign the certification stating that equipment will be properly used by certified technicians. The certification must be sent to: MVACs Recycling Program Manager, Stratospheric Ozone Protection Branch (6202–J), U.S. Environmental Protection Agency, 401 M Ss)treet, SW., Washington, DC 20460.

The address is the same as proposed except the MACs acronym has been replaced with the more accurate MVAC acronym for motor vehicle air conditioners. Other clarifications have also been made. These are not substantive changes.

Service establishments that performed fewer than 100 service jobs involving

refrigerant in 1990 may qualify for a one year extension by submitting a small establishment certification by January 1, 1992. This submittal must contain the name and address of the service establishment and a signed statement that the establishment performed under 100 service jobs in 1990. The statement must be sent to the address shown above. Establishments must retain records to verify this, however those records should not be submitted to the Agency. The example form provided in the preamble may be used for both the equipment and small establishment certification, although use of the form is not required.

Recordkeeping requirements at the service establishment have been changed. The establishment need not retain invoices of motor vehicle air conditioner service. The requirement in the proposed rule to record the amount of refrigerant recycled on-site (if recover only equipment is used and the refrigerant is not sent to a reclamation facility) has been deleted. The proposed requirement that service establishments retain records of the amount of refrigerant purchased and consumed each month has also been deleted in today's final rule. The service establishments must retain records demonstrating that technicians authorized to use the equipment are certified and must maintain records identifying the reclamation facility that refrigerant is sent to.

The recordkeeping requirements for sales of containers of less than 20 pounds of refrigerant have been deleted. The only exception to this requirement is if the purchaser is purchasing the small containers for resale. In that case, the seller must receive a written statement from the purchaser that the cans are for resale only. In all other cases, the seller must verify that the purchaser is properly trained and certified, and must have a reasonable basis to believe the information presented by the purchaser is accurate. Finally, a sign must be displayed at the point of sale of small containers stating that it is a violation of federal law to sell containers of class I and class II refrigerant in containers of less than 20 pounds to anyone who is not properly trained and certified.

All records under this section must be retained for three years. EPA authorized representatives must be allowed access to records upon inspection.

I. Appendix A and Appendix B

Appendix A contains the three SAE standards used to certify recover/recycle equipment. The SAE standard J1990 (Extraction and Recycle Equipment for Mobile Automotive Air Conditioning Systems) has been revised by SAE and the revised version is incorporated into today's final rule. As discussed in section III.B.1, SAE J1990 (1991) includes minor changes from SAE J1990 (1989).

Appendix B was proposed on April 22, 1992. The appendix will be finalized after the completion of the public comment period.

V. Effective Date

The effective date for today's rule is August 13, 1992. Section 82.34 of these regulations requires that after this date, no person repairing or servicing a motor vehicle for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant unless they properly use equipment approved pursuant to § 82.36 of these regulations. Any such repair or service personnel must have been properly trained and certified under § 82.40 of the regulations.

The effective date of these rules does not, however, limit the lawful effect of various statutory prohibitions in section 609 of the Act. These statutory prohibitions are not dependent on EPA rulemaking. For example, section 609(c) states that "[e]ffective January 1, 1992, no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recycling equipment and no such person may perform such service unless such person has been properly trained and certified." Section 609(c) also conditions the one year extension for small volume establishments on the filing of a certificate with the Administrator on or before January 1, 1992.

The Agency received several comments requesting a "grace period" to allow enough time to purchase equipment and certify technicians. EPA is aware that it may have been impossible in practice for persons to fully comply with the section 609(c) requirements, given that this final rule was not promulgated until after January 1, 1992. The Agency is also aware that numerous establishments purchased refrigerant recycling equipment in anticipation of these regulations, and had their technicians trained and certified. EPA has already received many equipment certificates as well as small volume establishment certificates. This program was developed in the context of a pre-existing voluntary recycling program that involved several industries, trade associations, and numerous business entities across the nation. In addition, Congress apparently envisioned a maximum of 45 days between promulgation of the regulation (November 15, 1991) and the effective date of the statutory prohibition (January 1, 1992). The Agency will consider all of these factors when deciding whether to commence an enforcement action for violations of section 609(c) that occurred after January 1, 1992, but before the effective date of this rule.

VI. Summary of Supporting Analyses

A. Regulatory Impact Analysis

Executive Order No. 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency has determined that this regulation does not meet the definition of a major rule under E.O. 12291. However, the Agency has prepared an analysis to assess the impact of the regulation (see Costs and Benefits of MACs Recycling, May 24, 1991) which is available for review in the public docket for this rulemaking.

The Clean Air Act requires the EPA to promulgate regulations to phase out the production of ozone depleting substances by the year 2000 (2002 for methyl chloroform). EPA prepared a Regulatory Impact Analysis (RIA) under the requirements of E.O. 12291 to analyze the costs and benefits of the phaseout (see Regulatory Impact Analysis: Compliance with the Clean Air Act Provisions for the Protection of Stratospheric Ozone, December 21, 1990). A key result of this analysis is that with the imposition of the phase out of production coupled with an excise tax of CFCs (see Omnibus Trade Reconciliation Act, 1989), CFC–12 recycling would be fully implemented by service establishments by the year 1992 even without a specific regulatory requirement to do so. As a result, the overwhelming majority of costs of this regulation on CFC–12 recycling at service of motor vehicle air conditioners (e.g. capital cost of recycling equipment and annual operating costs) have

already been attributed to the CFC phaseout and have been included in the Phaseout RIA. The Phaseout RIA does not, however, include the costs of motor vehicle air conditioner service technician certification as required under the Act. The total cost of this requirement is determined to be approximately $14.9 million, well under the $100 million cost threshold for a major rule. The Costs and Benefits of MAC Recycling provides some general costs and benefits that could be attributed to motor vehicle air conditioner recycling, however, these costs are not incremental to the costs of the phaseout.

One commenter asserted that the regulatory requirements will result in an annual effect on the economy of $100 million or more. The Agency reiterates that the $100 million figure is intended to address incremental costs as a result of regulation, and as stated above the majority of the costs for this rulemaking have already been determined as part of the phase-out of ozone depleting substances. Attributing the cost of equipment purchase to this regulation would result in double counting of costs.

The State of Oregon questioned the assumption within the phase-out RIA that service establishments would implement recycling absent a specific requirement to do so. At the time the phase-out RIA was developed, the Agency believed that service establishments would undertake recycling for both economic and non-economic reasons. Non-economic reasons could include customers' environmental concerns or development of industry service norms that include recycling (a result of the voluntary program). These assumptions have been verified to some extent by the fact that over 50,000 pieces of recover/recycle equipment were sold prior to the end of 1990.

B. Regulatory Flexibility Analysis

1. Purpose

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency has performed an initial regulatory flexibility analysis and determined that while this regulation affects a substantial number of small businesses, it does not impact a substantial number significantly. The analysis is found in appendix A in the Costs and Benefits of MAC Recycling and is available for review in the docket. The methodology and results of the analysis are presented below.

2. Methodology and Results

To examine the impacts on small businesses, EPA first characterized the regulated community by identifying the SIC codes that would be involved in the servicing and repair of motor vehicle air conditioners. After determining the number of these entities that are classified as small by the Small Business Act (SBA), the Agency performed impact tests using sales, profits and cash flow measures. The analysis included least expensive and most expensive private cost scenarios for compliance that were developed for the Costs and Benefits of MAC Recycling. The least expensive cost scenario assumed recover only equipment is purchased at a price of $1000 while the more expensive option assumes $3000 recycle equipment is acquired. The analysis also takes the cost of filter changes, sending refrigerant out for reclamation, labor, and cost savings from using recycled refrigerant into account.

The State of Oregon questioned the Agency's determination that 90 percent of establishments that perform service are small businesses and suggested that 50 percent is a more reasonable figure. Oregon offered no justification for the 50 percent figure, however and the Agency maintains that the original analysis, which closely followed the Small Business Administration guidelines for determination of small business when performing regulatory flexibility analysis, is accurate.

The analysis indicates that the number of small establishments impacted by the regulation ranges from 18 percent if the least expensive compliance option, purchasing equipment that recovers refrigerant for off-site reclamation, is chosen to 32 percent if the most expensive compliance option is chosen. The Agency believes that most small establishments will choose the least cost option. This analysis did not reflect the fact that over 50,000 machines have already been sold based on the voluntary program developed by industry. The establishments that have purchased these machines will only have the incremental regulatory burden of technician certification. In addition, Congress has already established some flexibility for small establishments, defined as those entities that performed under 100 motor vehicle service jobs in 1990, by providing a one year extension on the requirement to purchase equipment.

The Agency believes that the one year extension, the fact that some entities have already purchased equipment, and the existence of the lease cost option of purchasing recover only equipment will result in less than 18 percent of small establishments being significantly impacted by this regulation. The Agency frequently defines a "significant number" of small entities as approximately 20 percent or more of small establishments. As a result, the Agency certifies that this regulation will not have an impact on a significant number of small entities, pursuant to 5 U.S.C. 605(b).

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Informational Collection Request document has been prepared by EPA (ICR No. 1432.07) and a copy may be obtained by writing to the Information Policy Branch (PM–223y), U.S.EPA, 401 M Street SW., Washington, DC 20460 or by calling (202) 260–2740.

Send comments on the information collection requirements to Chief, Information Policy Branch, PM–223, U.S. EPA, 401 M Street, SW., Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project [2060–0170], Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 82

Chlorofluorocarbons, Clean Air Act Amendments of 1990, Motor vehicle air conditioning, Reporting and recordkeeping requirements, Reporting and certification requirements, Stratospheric ozone layer.

Dated: June 29, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, EPA is hereby amending 40 CFR part 82 as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. Authority: The authority citation for part 82 is revised to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Part 82 is amended by designating the existing sections and appendices as subpart A and by adding a new subpart B to read as follows:

Subpart A—Production and Consumption Controls

* * * * *

Subpart B—Servicing of Motor Vehicle Air Conditioners

Sec.

82.30 Purpose and Scope.
82.32 Definitions.
82.34 Prohibitions.
82.36 Approved Refrigerant Recycling Equipment.
82.38 Approved Independent Standards Testing Organizations.
82.40 Technician Training and Certification.
82.42 Certification, Recordkeeping and Public Notification Requirements.

Appendix A to Part 82 Subpart B—Standard for Recycle/Recover Equipment

Appendix B to Part 82 Subpart B—Standard for Recover Equipment [Reserved]

§ 82.30 Purpose and scope.

(a) The purpose of these regulations is to implement section 609 of the Clean Air Act, as amended (Act) regarding the servicing of motor vehicle air conditioners.

(b) These regulations apply to any person performing service on a motor vehicle for consideration when this service involves the refrigerant in the motor vehicle air conditioner.

§ 82.32 Definitions.

(a) *Approved Independent Standards Testing Organization* means any organization which has applied for and received approval from the Administrator pursuant to § 82.38.

(b) *Approved Refrigerant Recycling Equipment* means equipment certified by the Administrator or an organization approved under § 82.38 as meeting either one of the standards in § 82.36. Such equipment extracts and recycles refrigerant or extracts refrigerant for recycling on-site or reclamation off-site.

(c) *Motor vehicle* as used in this subpart means any vehicle which is self-propelled and designed for transporting persons or property on a street or highway, including but not limited to passenger cars, light duty vehicles, and heavy duty vehicles. This definition does not include a vehicle where final assembly of the vehicle has not been completed by the original equipment manufacturer.

(d) *Motor vehicle air conditioners* means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC–22 refrigerant.

(e) *Properly using* means using equipment in conformity with Recommended Service Procedure for the Containment of R–12 (CFC–12) set forth in appendix A to this subpart. In addition, this term includes operating the equipment in accordance with the manufacturer's guide to operation and maintenance and using the equipment only for the controlled substance for which the machine is designed. For equipment that extracts and recycles refrigerant, properly using also means to recycle refrigerant before it is returned to a motor vehicle air conditioner. For equipment that only recovers refrigerant, properly using includes the requirement to recycle the refrigerant on-site or send the refrigerant off-site for reclamation. Refrigerant from reclamation facilities that is used for the purpose of recharging motor vehicle air conditioners must be at or above the standard of purity developed by the Air-conditioning and Refrigeration Institute (ARI 700–88) (available at 4301 North Fairfax Drive, Suite 425, Arlington, Virginia 22203) in effect as of November 15, 1990. Refrigerant may be recycled off-site only if the refrigerant is extracted using recover only equipment, and is subsequently recycled off-site by equipment owned by the person that owns both the recover only equipment and owns or operates the establishment at which the refrigerant was extracted. In any event, approved equipment must be used to extract refrigerant prior to performing any service during which discharge of refrigerant from the motor vehicle air conditioner can reasonably be expected. Intentionally venting or disposing of refrigerant to the atmosphere is an improper use of equipment.

(f) *Refrigerant* means any class I or class II substance used in a motor vehicle air conditioner. Class I and class II substances are listed in part 82, subpart A, appendix A. Effective November 15, 1995, refrigerant shall also include any substitute substance.

(g) *Service for consideration* means being paid to perform service, whether it is in cash, credit, goods, or services. This includes all service except that done for free.

(h) *Service involving refrigerant* means any service during which discharge or release of refrigerant from the motor vehicle air conditioner to the atmosphere can reasonably be expected to occur.

§ 82.34 Prohibitions.

(a) Effective August 13, 1992, no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner

(1) Without properly using equipment approved pursuant to § 82.36; and

(2) Unless such person has been properly trained and certified by a technician certification program approved by the Administrator pursuant to § 82.40.

The requirements of this paragraph do not apply until January 1, 1993 for small entities who certify to the Administrator in accordance with § 82.42(a)(2).

(b) Effective November 15, 1992, no person may sell or distribute, or offer for sale or distribution, any class I or class II substance that is suitable for use as a refrigerant in motor vehicle air-conditioner and that is in a container which contains less than 20 pounds of such refrigerant to any person unless that person is properly trained and certified under § 82.40 or intended the containers for resale only, and so certifies to the seller under § 82.42(b)(4).

(c) No technician training programs may issue certificates unless the program complies with all of the standards in § 82.40(a).

§ 82.36 Approved refrigerant recycling equipment.

(a)(1) Refrigerant recycling equipment must be certified by the Administrator or an independent standards testing organization approved by the Administrator under § 82.38 to meet the following standard:

(2) Equipment that recovers and recycles refrigerant must meet the standards set forth in appendix A to this subpart (Recommended Service Procedure for the Containment of R–12, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems, and Standard of Purity for Use in Mobile Air Conditioning Systems).

(b) Refrigerant recycling equipment purchased before September 4, 1991 that has not been certified under paragraph (a) of this section shall be considered approved if the equipment is substantially identical to equipment certified under paragraph (a) of this section. Equipment manufacturers or owners may request a determination by the Administrator by submitting an application and supporting documents which indicate that the equipment is substantially identical to approved equipment to: MVACs Recycling Program Manager, Stratospheric Ozone Protection Branch (6202–J), U.S.

Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attn. Substantially Identical Equipment Review.

Supporting documents must include process flow sheets, lists of components and any other information which would indicate that the equipment is capable of cleaning the refrigerant to the standards in appendix A. Authorized representatives of the Administrator may inspect equipment for which approval is being sought and request samples of refrigerant that has been extracted and/or recycled using the equipment. Equipment which fails to meet appropriate standards will not be considered approved.

(c) The Administrator will maintain a list of approved equipment by manufacturer and model. Persons interested in obtaining a copy of the list should send written inquiries to the address in paragraph (b) of this section.

§ 82.38 Approved independent standards testing organizations.

(a) Any independent standards testing organization may apply for approval by the Administrator to certify equipment as meeting the standards in appendix A to this subpart. The application shall be sent to: MVACs Recycling Program Manager, Stratospheric Ozone Protection Branch (6202–J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(b) Applications for approval must document the following:

(1) That the organization has the capacity to accurately test whether refrigerant recycling equipment complies with the applicable standards. In particular, applications must document:

(i) The equipment present at the organization that will be used for equipment testing;

(ii) The expertise in equipment testing and the technical experience of the organization's personnel;

(iii) Thorough knowledge of the standards as they appear in appendix A of this subpart; and

(iv) The test procedures to be used to test equipment for compliance with applicable standards, and why such test procedures are appropriate for that purpose.

(2) That the organization has no conflict of interest and will receive no financial benefit based on the outcome of certification testing; and

(3) That the organization agrees to allow the Administrator access to verify the information contained in the application.

(c) If approval is denied under this section, the Administrator shall give written notice to the organization setting forth the basis for his or her determination.

(d) If at any time an approved independent standards testing organization is found to be conducting certification tests for the purposes of this subpart in a manner not consistent with the representations made in its application for approval under this section, the Administrator reserves the right to revoke approval.

§ 82.40 Technician training and certification.

(a) Any technician training and certification program may apply for approval, in accordance with the provisions of this paragraph, by submitting to the Administrator at the address in § 82.38 (a) verification that the program meets all of the following standards:

(1) *Training.* Each program must provide adequate training, through one or more of the following means: on-the-job training, training through self-study of instructional material, or on-site training involving instructors, videos or a hands-on demonstration.

(2) *Test Subject Material.* The certification tests must adequately and sufficiently cover the following:

(i) The standards established for the service and repair of motor vehicle air conditioners as set forth in Appendix A to this subpart. These standards relate to the recommended service procedures for the containment of refrigerant, extraction and recycle equipment, and the standard of purity for refrigerant in motor vehicle air conditioners.

(ii) Anticipated future technological developments, such as the introduction of HFC–134a in new motor vehicle air conditioners.

(iii) The environmental consequences of refrigerant release and the adverse effects of stratospheric ozone layer depletion.

(iv) As of August 13, 1992, the requirements imposed by the Administrator under § 609 of the Act.

(3) *Test Administration.* Completed tests must be graded by an entity or individual who receives no benefit based on the outcome of testing; a fee may be charged for grading. Sufficient measures must be taken at the test site to ensure that tests are completed honestly by each technician. Each test must provide a means of verifying the identification of the individual taking the test. Programs are encouraged to make provisions for non-English speaking technicians by providing tests in other languages or allowing the use of a translator when taking the test. If a translator is used, the certificate received must indicate that translator assistance was required.

(4) *Proof of Certification.* Each certification program must offer individual proof of certification, such as a certificate, wallet-sized card, or display card, upon successful completion of the test. Each certification program must provide a unique number for each certified technician.

(b) In deciding whether to approve an application, the Administrator will consider the extent to which the applicant has documented that its program meets the standards set forth in this section. The Administrator reserves the right to consider other factors deemed relevant to ensure the effectiveness of certification programs. The Administrator may approve a program which meets all of the standards in paragraph (a) of this section except test administration if the program, when viewed as a whole, is at least as effective as a program that does meet all the standards. Such approval shall be limited to training and certification conducted before August 13, 1992. If approval is denied under this section, the Administrator shall give written notice to the program setting forth the basis for his determination.

(c) *Technical Revisions.* Directors of approved certification programs must conduct periodic reviews of test subject material and update the material based upon the latest technological developments in motor vehicle air conditioner service and repair. A written summary of the review and any changes made must be submitted to the Administrator every two years.

(d) *Recertification.* The Administrator reserves the right to specify the need for technician recertification at some future date, if necessary.

(e) If at any time an approved program is conducted in a manner not consistent with the representations made in the application for approval of the program under this section, the Administrator reserves the right to revoke approval.

(f) Authorized representatives of the Administrator may require technicians to demonstrate on the business entity's premises their ability to perform proper procedures for recovering and/or recycling refrigerant. Failure to demonstrate or failure to properly use the equipment may result in revocation of the technician's certificate by the Administrator. Technicians whose certification is revoked must be recertified before servicing or repairing any motor vehicle air conditioners.

§ 82.42 Certification, recordkeeping and public notification requirements.

(a) *Certification requirements.* (1) No later than January 1, 1993, any person repairing or servicing motor vehicle air conditioners for consideration shall certify to the Administrator that such person has acquired, and is properly using, approved equipment and that each individual authorized to use the equipment is properly trained and certified. Certification shall take the form of a statement signed by the owner of the equipment or another responsible officer and setting forth:

(i) The name of the purchaser of the equipment;

(ii) The address of the establishment where the equipment will be located; and

(iii) The manufacturer name and equipment model number, the date of manufacture, and the serial number of the equipment. The certification must also include a statement that the equipment will be properly used in servicing motor vehicle air conditioners, that each individual authorized by the purchaser to perform service is properly trained and certified in accordance with § 82.40, and that the information given is true and correct. The certification should be sent to: MVACs Recycling Program Manager, Stratospheric Ozone Protection Branch (6202–J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(2) The prohibitions in § 82.34(a) shall be effective as of January 1, 1993 for persons repairing or servicing motor vehicle air conditioners for consideration at an entity which performed service on fewer than 100 motor vehicle air conditioners in calendar year 1990, but only if such person so certifies to the Administrator no later than August 13, 1992. Persons must retain adequate records to demonstrate that the number of vehicles serviced was fewer than 100.

(3) Certificates of compliance are not transferable. In the event of a change of ownership of an entity which services motor vehicle air conditioners for consideration, the new owner of the entity shall certify within thirty days of the change of ownership pursuant to § 82.42(a)(1).

(b) *Recordkeeping requirements.* (1) Any person who owns approved refrigerant recycling equipment certified under § 82.36(a)(2) must maintain records of the name and address of any facility to which refrigerant is sent.

(2) Any person who owns approved refrigerant recycling equipment must retain records demonstrating that all persons authorized to operate the equipment are currently certified under § 82.40.

(3) Any person who sells or distributes any class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air conditioner and that is in a container of less than 20 pounds of such refrigerant must verify that the purchaser is properly trained and certified under § 82.40. The seller must have a reasonable basis for believing that the information presented by the purchaser is accurate. The only exception to these requirements is if the purchaser is purchasing the small containers for resale only. In this case, the seller must obtain a written statement from the purchaser that the containers are for resale only and indicate the purchasers name and business address. Records required under this paragraph must be retained for a period of three years.

(4) All records required to be maintained pursuant to this section must be kept for a minimum of three years unless otherwise indicated. Entities which service motor vehicle air conditioners for consideration must keep these records on-site.

(5) All entities which service motor vehicle air conditioners for consideration must allow an authorized representative of the Administrator entry onto their premises (upon presentation of his or her credentials) and give the authorized representative access to all records required to be maintained pursuant to this section.

(c) *Public Notification.* Any person who conducts any retail sales of a class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air conditioner, and that is in a container of less than 20 pounds of refrigerant, must prominently display a sign where sales of such containers occur which states:

"It is a violation of federal law to sell containers of Class I and Class II refrigerant of less than 20 pounds of such refrigerant to anyone who is not properly trained and certified to operate approved refrigerant recycling equipment."

Appendix A to Subpart B—Standard for Recycle/Recover Equipment

Standard of Purity for Use in Mobile Air-Conditioning Systems

Foreword

Due to the CFC's damaging effect on the ozone layer, recycle of CFC–12 (R–12) used in mobile air-conditioning systems is required to reduce system venting during normal service operations. Establishing recycle specifications for R–12 will assure that system operation with recycled R–12 will provide the same level of performance as new refrigerant.

Extensive field testing with the EPA and the auto industry indicate that reuse of R–12 removed from mobile air-conditioning systems can be considered, if the refrigerant is cleaned to a specific standard. The purpose of this standard is to establish the specific minimum levels of R–12 purity required for recycled R–12 removed from mobile automotive air-conditioning systems.

1. Scope

This information applies to refrigerant used to service automobiles, light trucks, and other vehicles with similar CFC–12 systems. Systems used on mobile vehicles for refrigerated cargo that have hermetically sealed, rigid pipe are not covered in this document.

2. References

SAE J1989, Recommended Service Procedure for the Containment of R–12

SAE J1990, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems

ARI Standard 700–88

3. Purity Specification

The refrigerant in this document shall have been directly removed from, and intended to be returned to, a mobile air-conditioning system. The contaminants in this recycled refrigerant 12 shall be limited to moisture, refrigerant oil, and noncondensable gases, which shall not exceed the following level:

3.1 *Moisture:* 15 ppm by weight.

3.2 *Refrigerant Oil:* 4000 ppm by weight.

3.3 *Noncondensable Gases (air):* 330 ppm by wright.

4. Refrigeration Recycle Equipment Used in Direct Mobile Air-Conditioning Service Operations Requirement

4.1 The equipment shall meet SAE J1990, which covers additional moisture, acid, and filter requirements.

4.2 The equipment shall have a label indicating that it is certified to meet this document.

5. Purity Specification of Recycled R–12 Refrigerant Supplied in Containers From Other Recycle Sources

Purity specification of recycled R–12 refrigerant supplied in containers from other recycle sources, for service of mobile air-conditioning systems, shall meet ARI Standard 700–88 (Air Conditioning and Refrigeration Institute).

6. Operation of the Recycle Equipment

This shall be done in accordance with SAE J1989.

Rationale

Not applicable.

Relationship of SAE Standard to ISO Standard

Not applicable.

Reference Section

SAE J1989, Recommended Service Procedure for the Containment of R–12

SAE J1990, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems
ARI Standard 700–88

Application

This information applies to refrigerant used to service automobiles, light trucks, and other vehicles with similar CFC–12 systems. Systems used on mobile vehicles for refrigerated cargo that have hermetically sealed, rigid pipe are not covered in this document.

Committee Composition

Developed by the SAE Defrost and Interior Climate Controls Standards Committee

W.J. Atkinson, Sun Test Engineering, Paradise Valley, AZ—Chairman
J.J. Amin, Union Lake, MI
H.S. Andersson, Saab Scania, Sweden
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D. Hawks, General Motors Corporation, Pontiac, MI
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H. Kaltner, Volkswagen AG, Germany, Federal Republic
D.F. Last, GMC, Troy, MI
D.E. Linn, Volkswagen of America, Warren, MI
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J. Phillips, Air International, Australia
R.H. Proctor, Murray Corp., Cockeysville, MD
G. Rolling, Behr America Inc., Ft. Worth, TX
C.D. Sweet, Signet Systems Inc., Harrodsburg, KY
J.P. Telesz, General Motors Corp., Lockport, NY

Extraction and Recycle Equipment for Mobile Automotive Air Conditioning Systems

SAE Recommended Practice, SAE J1990 (1991) [1]

0. Foreword

Due to the CFC's damaging effect on the ozone layer, recycle of CFC–12 (R–12) used in mobile air-conditioning systems is required to replace system venting during normal service operations. Establishing recycle specifications for R–12 will provide the same level of performance as new refrigerant.

Extensive field testing with the EPA and the auto industry indicates that R–12 can be reused, provided that it is cleaned to specifications in SAE J1991. The purpose of this document is to establish the specific minimum equipment specification required for recycle of R–12 that has been directly removed from mobile systems for reuse in mobile automotive air-conditioning systems.

1. Scope

The purpose of this document is to provide equipment specifications for CFC–12 (R–12) recycling equipment. This information applies to equipment used to service automobiles, light trucks, and other vehicles with similar CFC–12 air-conditioning systems. Systems used on mobile vehicles for refrigerated cargo that have hermetically sealed systems are not covered in this document. The equipment in this document is intended for use with refrigerant that has been directly removed from, and intended to be returned to, a mobile air-conditioning system. Should other revisions due to operational or technical requirements occur, this document may be amended.

2. References

2.1 Applicable Documents:

2.1.1 SAE Publications—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096–0001.

SAE J1991—Standard of Purity for Use in Mobile Air-Conditioning Systems
SAE J2196—Service Hose for Automotive Air-Conditioning

2.1.2 CGA Publications—Available from CGA, Crystal Gateway #1, Ste. 501, 1235 Jefferson Davis Hwy., Arlington, VA 22202

CGA Pamphlet S–1.1—Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases

3. Specification and General Description

3.1 The equipment must be able to extract and process CFC–12 from mobile air-conditioning systems. The equipment shall process the contaminated R–12 samples as defined in 8.4 and shall clean the refrigerant to the level as defined in SAE J1991.

3.2 The equipment shall be suitable for use in an automotive service environment and be capable of continuous operation in ambients from 10 to 49 °C.

3.3 The equipment must be certified by Underwriters Laboratories or an equivalent certifying laboratory.

3.4 The equipment shall have a label "Design Certified by (Company Name) to Meet SAE J1991". The minimum letter size shall be bold type 3 mm in height.

4. Refrigeration Recycle Equipment Requirements

4.1 Moisture and Acid—The equipment shall incorporate a desiccant package that must be replaced before saturated with moisture and whose mineral acid capacity is at least 5% by weight of total system dry desiccant.

4.1.1 The equipment shall be provided with a moisture detection device that will reliably indicate when moisture in the CFC–12 exceeds the allowable level and requires the filter/dryer replacement.

4.2 Filter—The equipment shall incorporate an in-line filter that will trap particulates of 15 μm or greater.

4.3 Noncondensable Gas.

4.3.1 The equipment shall either automatically purge noncondensables (NCGs) if the acceptable level is exceeded or incorporate a device to alert the operator that NCG level has been exceeded. NCG removal must be part of normal operation of the equipment and instructions must be provided to enable the task to be accomplished within 30 minutes.

4.3.2 Refrigerant loss from noncondensable gas purging during testing described in Section 8 shall not exceed five percent (5%) by weight of the total contaminated refrigerant removed from the test system.

4.3.3 Transfer of Recycled Refrigerant—Recycled refrigerant for recharging and transfer shall be taken from the liquid phase only.

5. Safety Requirements

5.1 The equipment must comply with applicable federal, state and local requirements on equipment related to the handling of R–12 material. Safety precautions or notices related to the safe operation of the equipment shall be prominently displayed on the equipment and should also state "Caution—Should Be Operated By Qualified Personnel".

6. Operating Instructions

6.1 The equipment manufacturer must provide operating instructions, necessary maintenance procedures, and source information for replacement parts and repair.

6.2 The equipment must prominently display the manufacturer's name, address and any items that require maintenance or replacement that affect the proper operation of the equipment. Operation manuals must cover information for complete maintenance of the equipment to assure proper operation.

7. Functional Description

7.1 The equipment must be capable of ensuring recovery of the R–12 from the system being service, by reducing the system pressure below atmospheric to a minimum of 102 mm of mercury.

7.2 To prevent overcharge, the equipment must be equipped to protect the tank used to store the recycled refrigerant with a shutoff device and a mechanical pressure relief valve.

7.3 Portable refillable tanks or containers used in conjunction with this equipment must meet applicable Department of Transportation (DOT) or Underwriters Laboratories (UL) Standards and be adaptable to existing refrigerant service and charging equipment.

7.4 During operation, the equipment shall provide overfill protection to assure the storage container, internal or external, liquid fill does not exceed 80% of the tank's rated volume at 21.1 °C (70 °F) per DOT standards, CFR title 49, § 173.304 and American Society of Mechanical Engineers.

7.4.1 Additional Storage Tank Requirements.

7.4.1.1 The cylinder valve shall comply with the standard for cylinder valves, UL 1769.

7.4.1.2 The pressure relief device shall comply with the Pressure Relief Device

[1] This standard is appropriate for equipment certified after February 1, 1992. This equipment may be marked design certified for compliance with SAE J1990 (1991). The standard for approval for equipment certified on or before February 1, 1992 is SAE J1990 (1989). This equipment may be marked design certified for compliance with SAE J1990 (1989). Both types of equipment are considered approved under the requirements of this regulation

Standard Part 1—Cylinders for Compressed Gases, CGA Pamphlet S–1.1.

7.4.1.3 The tank assembly shall be marked to indicate the first retest date, which shall be 5 years after date of manufacture. The marking shall indicate that retest must be performed every subsequent 5 years. The marking shall be in letters at least ¼ in high.

7.5 All flexible hoses must meet SAE J2196 hose specification effective January 1, 1992.

7.6 Service hoses must have shutoff devices located within 30 cm (12 in) of the connection point to the system being serviced to minimize introduction of noncondensable gases into the recovery equipment and the release of the refrigerant when being disconnected.

7.7 The equipment must be able to separate the lubricant from the recovered refrigerant and accurately indicate the amount removed during the process, in 30 ml units. Refrigerant dissolves in lubricant sample. This creates the illusion that more lubricant has been recovered than actually has been. The equipment lubricant measuring system must take in account such dissolved refrigerant to prevent overcharging the vehicle system with lubricant. Note: Use only new lubricant to replace the amount removed during the recycle process. Used lubricant should be discarded per applicable federal, state, and local requirements.

7.8 The equipment must be capable of continuous operation in ambient of 10 to 49 °C (50 to 120 °F).

7.9 The equipment should be compatible with leak detection material that may be present in the mobile AC system.

8. Testing

This test procedure and the requirement are used for evaluation of the equipment for its ability to clean the contaminated R–12 refrigerant.

8.1 The equipment shall clean the contaminated R–12 refrigerant to the minimum purity level as defined in SAE J1991, when tested in accordance with the following conditions:

8.2 For test validation, the equipment is to be operated according to the manufacturer's instructions.

8.3 The equipment must be preconditioned with 13.6 kg (30 lb) of the standard contaminated R–12 at an ambient of 21 °C (70 °F) before starting the test cycle. Sample amounts are not to exceed 1.13 kg (2.5 lb) with sample amounts to be repeated every 5 min. The sample method fixture, defined in Fig. 1, shall be operated at 24 °C (75 °F).

8.4 Contaminated R–12 Samples.

8.4.1 Standard contaminated R–12 refrigerant shall consist of liquid R–12 with 100 ppm (by weight) moisture at 21 °C (70 °F) and 45,000 ppm (by weight) mineral oil 525 suspension nominal and 770 ppm by weight of noncondensable gases (air).

8.4.2 High moisture contaminated sample shall consist of R–12 vapor with 1,000 ppm (by weight) moisture.

8.4.3 High oil contaminated sample shall consist of R–12 with 200,000 ppm (by weight) mineral oil 525 suspension viscosity nominal.

8.5 Test Cycle.

8.5.1 After preconditioning as stated in 8.3, the test cycle is started, processing the following contaminated samples through the equipment:

8.5.1.1 3013.6 kg (30 lb) of standard contaminated R–12.

8.5.1.2 1 kg (2.2 lb) of high oil contaminated R–12.

8.5.1.3 4.5 kg (10 lb) of standard contaminated R–12.

8.5.1.4 1 kg (2.2 lb) of high moisture contaminated R–12.

8.6 Equipment Operating Ambient.

8.6.1 The R–12 is to be cleaned to the minimum purity level, as defined in SAE J1991, with the equipment operating in a stable ambient of 10, 21, and 49 °C (50, 70, and 120 °F) and processing the samples as defined in 8.5.

8.7 Sample Analysis.

8.7.1 The processed contaminated sample shall be analyzed according to the following procedure.

8.8 Quantitative Determination of Moisture.

8.8.1 The recycled liquid phase sample of CFC–12 shall be analyzed for moisture content via Karl Fischer coulometer titration or an equivalent method. The Karl Fischer apparatus is an instrument for precise determination of small amounts of water dissolved in liquid and/or gas samples.

8.8.2 In conducting the test, a weighed sample of 30 to 130 grams is vaporized directly into the Karl Fischer analyte. A coulometer titration is conducted and the results are calculated and displayed as parts per million moisture (weight).

8.9 Determination of Percent Lubricant.

8.9.1 The amount of oil in the recycled sample of CFC–12 is to be determined by gravimetric analysis.

8.9.2 Following venting of noncondensable, in accordance with the manufacturer's operating instructions, the refrigerant container shall be shaken for 5 minutes prior to extracting samples for test.

8.9.3 A weighted sample of 175 to 225 grams of liquid CFC–12 is allowed to evaporate at room temperature. The percent oil is to be calculated from the weight of the original sample and the residue remaining after the evaporation.

8.10 Noncondensable Gas.

8.10.1 The amount of noncondensable gas is to be determined by gas chromatography. A sample of vaporized refrigerant liquid shall be separated and analyzed by gas chromatography. A Porapak Q column at 130 °C and a hot wire detector may be used for analysis.

8.10.2 This test shall be conducted on recycled refrigerant (taken from the liquid phase) within 30 minutes after the proper venting of noncondensable.

8.10.3 Samples shall be shaken for 8 hours prior to retesting while at a temperature of 24 ± 2.8 °C (75 ± 5 °F). Known volumes of refrigerant vapor are to be injected for separation and analysis by means of gas chromatography. A Porapak Q column at 130 °C (266 °F) and a hot wire detector are to be used for the analysis.

8.10.4 This test shall be conducted at 21 and 49 °C and may be performed in conjunction with the testing defined in Section 8.6. The equipment shall process at least 13.6 kg of standard contaminated refrigerant for this test.

8.11 Sample Requirements.

8.11.1 The sample shall be tested as defined in 8.7, 8.8, 8.9, and 8.10 at ambient temperatures of 10, 21, and 49 °C (50, 70 and 120 °F) as defined in 8.6.1.

BILLING CODE 6560–50–M

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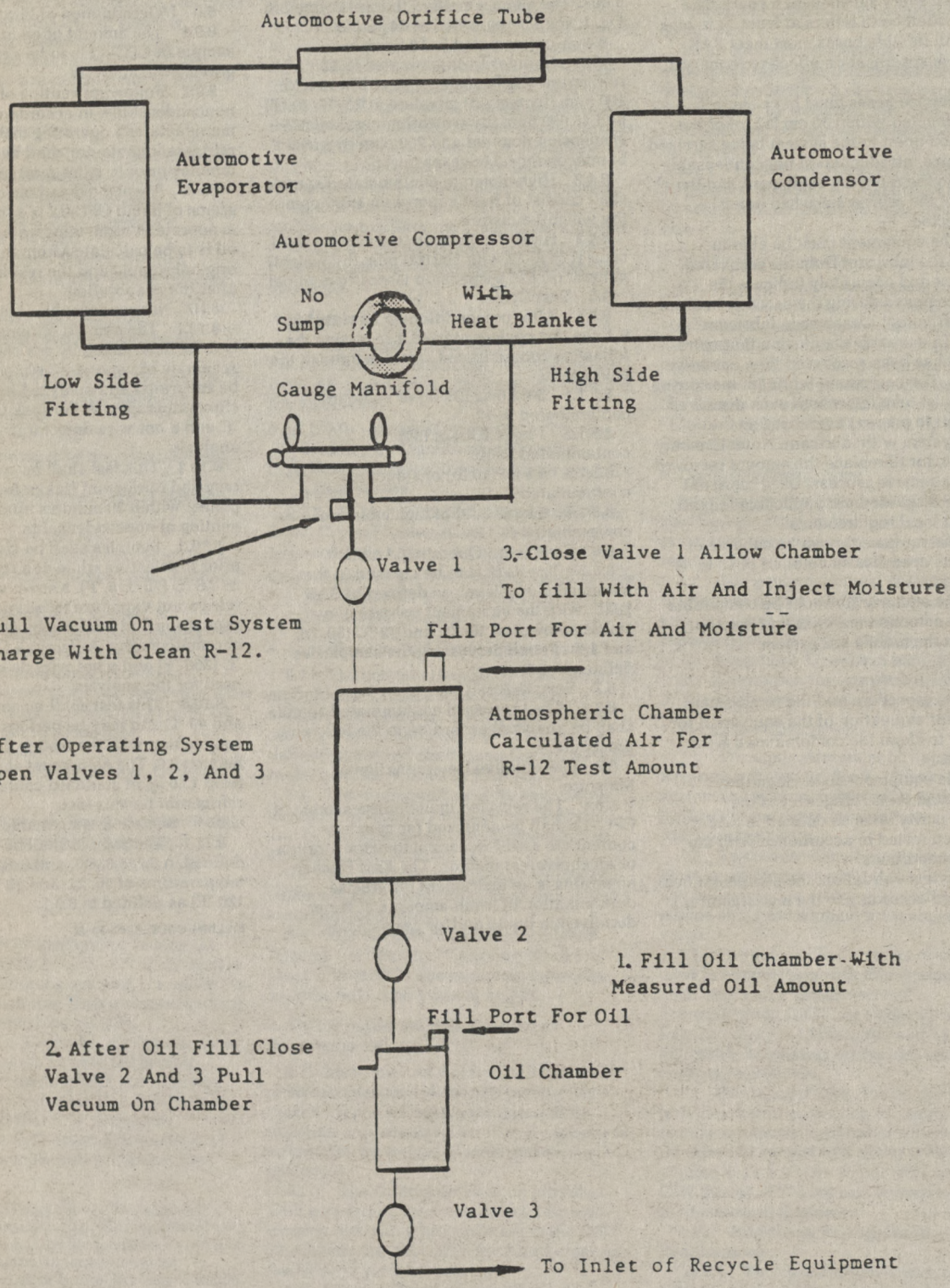

FIGURE 1

BILLING CODE 6560-50-C

Recommended Service Procedure for the Containment of R–12

1. Scope

During service of mobile air-conditioning systems, containment of the refrigerant is important. This procedure provides service guidelines for technicians when repairing vehicles and operating equipment defined in SAE J1990.

2. References

SAE J1990, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems

3. Refrigerant Recovery Procedure

3.1 Connect the recovery unit service hoses, which shall have shutoff valves within 12 in (30 cm) of the service ends, to the vehicle air-conditioning system service ports.

3.2 Operate the recovery equipment as covered by the equipment manufacturers recommended procedure.

3.2.1 Start the recovery process and remove the refrigerant from the vehicle AC system. Operate the recovery unit until the vehicle system has been reduced from a pressure to a vacuum. With the recovery unit shut off for at least 5 min, determine that there is no refrigerant remaining in the vehicle AC system. If the vehicle system has pressure, additional recovery operation is required to remove the remaining refrigerant. Repeat the operation until the vehicle AC system vacuum level remains stable for 2 min.

3.3 Close the valves in the service lines and then remove the service lines from the vehicle system. Proceed with the repair/service. If the recovery equipment has automatic closing valves, be sure they are properly operating.

4. Service With Manifold Gage Set

4.1 Service hoses must have shutoff valves in the high, low, and center service hoses within 12 in (30 cm) of the service ends. Valves must be closed prior to hose removal from the air-conditioning system. This will reduce the volume of refrigerant contained in the service hose that would otherwise be vented to atmosphere.

4.2 During all service operations, the valves should be closed until connected to the vehicle air-conditioning system or the charging source to avoid introduction of air and to contain the refrigerant rather than vent open to atmosphere.

4.3 When the manifold gage set is disconnected from the air-conditioning system or when the center hose is moved to another device which cannot accept refrigerant pressure, the gage set hoses should first be attached to the reclaim equipment to recover the refrigerant from the hoses.

5. Recycled Refrigerant Checking Procedure for Stored Portable Auxiliary Container

5.1 To determine if the recycled refrigerant container has excess noncondensable gases (air), the container must be stored at a temperature of 65°F (18.3°C) or above for a period of time, 12 h, protected from direct sun.

5.2 Install a calibrated pressure gage, with 1 psig divisions (0.07 kg), to the container and determine the container pressure.

5.3 With a calibrated thermometer, measure the air temperature within 4 in (10 cm) of the container surface.

5.4 Compare the observed container pressure and air temperature to determine if the container exceeds the pressure limits found on Table 1, e.g., air temperature 70°F (21°C) pressure must not exceed 80 psig (5.62 kg/cm²).

TABLE 1

Temp °F	Psig	Temp °F	Psig	Temp °F	Psig	Temp °F	Psig	Temp °F	Psig
65	74	75	87	85	102	95	118	105	136
66	75	76	88	86	103	96	120	106	138
67	76	77	90	87	105	97	122	107	140
68	78	78	92	88	107	98	124	108	142
69	79	79	94	89	108	99	125	109	144
70	80	80	96	90	110	100	127	110	146
71	82	81	98	91	111	101	129	111	148
72	83	82	99	92	113	102	130	112	150
73	84	83	100	93	115	103	132	113	152
74	86	84	101	94	116	104	134	114	154

TABLE 1 (METRIC)

Temp° C	Pres	Temp° C	Pres	Temp° C	Pres	Temp° C	Pres	Temp° C	PRres
18.3	5.20	23.9	6.11	29.4	7.17	35.0	8.29	40.5	9.56
18.8	5.27	24.4	6.18	30.0	7.24	35.5	8.43	41.1	9.70
19.4	5.34	25.0	6.32	30.5	7.38	36.1	8.57	41.6	9.84
20.0	5.48	25.5	6.46	31.1	7.52	36.6	8.71	42.2	9.98
20.5	5.55	26.1	6.60	31.6	7.59	37.2	8.78	42.7	10.12
21.1	5.62	26.6	6.74	32.2	7.73	37.7	8.92	43.3	10.26
21.6	5.76	27.2	6.88	32.7	7.80	38.3	9.06	43.9	10.40
22.2	5.83	27.7	6.95	33.3	7.94	38.8	9.13	44.4	10.54
22.7	5.90	28.3	7.03	33.9	8.08	39.4	9.27	45.0	10.68
23.3	6.04	28.9	7.10	34.4	8.15	40.0	9.42	45.5	10.82

Pres kg/sq cm.

5.5 If the container pressure is less than the Table 1 values and has been recycled, limits of noncondensable gases (air) have not been exceeded and the refrigerant may be used.

5.6 If the pressure is greater than the range and the container contains recycled material, slowly vent from the top of the container a small amount of vapor into the recycle equipment until the pressure is less than the pressure shown on Table 1.

5.7 If the container still exceeds the pressure shown on Table 1, the entire contents of the container shall be recycled.

6. Containers for Storage of Recycled Refrigerant

6.1 Recycled refrigerant should not be salvaged or stored in disposable refrigerant containers. This is the type of container in which virgin refrigerant is sold. Use only DOT CFR title 49 or UL approved storage containers for recycled refrigerant.

6.2 Any container of recycled refrigerant that has been stored or transferred must be checked prior to use as defined in section 5.

7. Transfer of Recycled Refrigerant

7.1 When external portable containers are used for transfer, the container must be evacuated at least 27 in of vacuum (75 mm Hg absolute pressure) prior to transfer of the recycled refrigerant. External portable containers must meet DOT and UL standards.

7.2 To prevent on-site overfilling when transferring to external containers, the safe

filling level must be controlled by weight and must not exceed 60% of container gross weight rating.

8. Disposal of Empty/Near Empty Containers

8.1 Since all the refrigerant may not be removed from disposable refrigerant containers during normal system charging procedures, empty/near empty container contents should be reclaimed prior to disposal of the container.

8.2 Attach the container to the recovery unit and remove the remaining refrigerant. When the container has been reduced from a pressure to a vacuum, the container valve can be closed. The container should be marked empty and is ready for disposal.

Rationale

Not applicable.

Relationship of SAE Standard to ISO Standard.

Not applicable.

Reference Section

SAE J1990, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems

Application

During service of mobile air-conditioning systems, containment of the refrigerant is important. This procedure provides service guidelines for technicians when repairing vehicles and operating equipment defined in SAE J1990.

Committee Composition

Developed by the SAE Defrost and Interior Climate Control Standards Committee

W.J. Atkinson, Sun Test Engineering, Paradise Valley, AZ—Chairman
J.J. Amin, Union Lake, MI
H.S. Andersson, Saab Scania, Sweden
P.E. Anglin, ITT Higbie Mfg. Co., Rochester, MI
R.W. Bishop, GMC, Lockport, NY
D.Hawks, General Motors Corporation, Pontiac, MI
J.J. Hernandez, NAVISTAR, Ft. Wayne, IN
H. Kaltner, Volkswagen AG, Germany, Federal Republic
D.F. Last, GMC, Troy, MI
D.E. Linn, Volkswagen of America, Warren, MI
J.H. McCorkel, Freightliner Corp., Charlotte, NC
C.J. McLachlan, Livonia, MI
H.L. Miner, Climate Control Inc., Decatur, IL
R.J. Niemiec, General Motors Corp., Pontiac, MI
N. Novak, Chrysler Corp., Detroit, MI
S. Oulouhojian, Mobile Air Conditioning Society, Upper Darby, PA
J. Phillips, Air International, Australia
R.H. Proctor, Murray Corp., Cockeysville, MD
G. Rolling, Behr America Inc., Ft. Worth, TX
C.D. Sweet, Signet Systems Inc., Harrodsburg, KY
J.P. Telesz, General Motors Corp., Lockport, NY

Note: This form will not appear in the Code of Federal Regulations.

BILLING CODE 6560-50-M

MVAC RECOVER/RECYCLE OR RECOVER EQUIPMENT CERTIFICATION FORM

1

Name of Establishment

Street

City, State, Zip Code

(Area Code) Telephone Number

2

Name of Equipment Manufacturer and Model Number

Serial Number(s) Year

3 **I certify that I have acquired approved recover/recycle or recover equipment under Section 609 of the Clean Air Act. I certify that only properly trained and certified technicians operate the equipment and that the information given above is true and correct.**

Signature of Owner/Operator Date

Name (Please Print) Title

4 **Small Entity Certification.**

I certify that fewer than 100 jobs involving refrigerant were performed at the establishment named in Part 1 of this form during 1990. I will purchase approved equipment and certify this to EPA by January 1, 1993.

Signature Date

Name (Please Print) Title

Send this form to:
MVACs Recycling Program Manager
Stratospheric Ozone
Protection Branch
(6202–J)
U.S. EPA
401 M Street, S.W.
Washington, D.C. 20460

MVAC RECOVER/RECYCLE OR RECOVER EQUIPMENT CERTIFICATION FORM INSTRUCTIONS

Motor vehicle recover/recycle or recover equipment must be acquired by January 1,1992 and certified to EPA on or before January 1, 1993 under Section 609 of the Clean Air Act. To certify your equipment, please complete the above form according to the following instructions and mail to EPA at the following address: MVACs Recycling Program Manager, Stratospheric Ozone Protection Branch, (6202–J), U.S. EPA, 401 M Street, S.W., Washington , D.C. 20460.

1 *Please provide the name, address and telephone number of the establishment where the recover/recycle or recover equipment is located.*

2 *Please provide the name brand, model number, year, and serial number(s) of the recover/recycle or recover equipment acquired for use at the above establishment.*

3 *The certification statement must be signed by the person who has acquired the recover/recycle or recover equipment (the person may be the owner of the establishment or another responsible officer). The person who signs is certifying that they have acquired the equipment, that each individual authorized to use the equipment is properly trained and certified, and that the information provided is true and correct.*

4 **Small Entity Certification.** *Service establishments that serviced fewer than 100 jobs involving refrigerant during 1990 are not required to purchase equipment until January 1, 1993. To qualify for this one year extension, the owner must fill out Part 1, sign the statement in Part 4 above, and send this form to EPA. Upon inspection, the owner must be able to prove it serviced fewer than 100 jobs in 1990. Small entities must buy approved equipment and certify to EPA by January 1, 1993.*

S25055-3

Appendix B to Subpart B—Standard for Recover Equipment [Reserved]

[FR Doc. 92–15861 Filed 7–13–92; 8:45 am]
BILLING CODE 6560–50–M

federal register

Tuesday
July 14, 1992

Part IV

General Accounting Office

4 CFR Parts 22 and 30

Procedures for Decisions on Appropriated Fund Expenditures Which Are of Mutual Concern to Agencies and Labor Organizations, Claims, General; Final Rule

GENERAL ACCOUNTING OFFICE

4 CFR Parts 22 and 30

Procedures for Decisions on Appropriated Fund Expenditures Which Are of Mutual Concern to Agencies and Labor Organizations, Claims, General

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: Due to recent judicial decisions interpreting the Civil Service Reform Act, the General Accounting Office (GAO) is changing and redesignating its regulations to provide that it will no longer issue decisions or settle Federal employee's claims concerning matters which are subject to negotiated grievance procedures under collective bargaining agreements.

EFFECTIVE DATE: The amendments are effective as of July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Higgins, (202) 275–6410.

SUPPLEMENTARY INFORMATION: Judicial decisions have held that, under the comprehensive scheme created by Congress in the Civil Service Reform Act of 1978, matters which are covered by negotiated grievance procedures should not be heard in another forum, except for matters specifically excluded from such procedures by the collective bargaining agreement or matters otherwise provided for by the Act. See *Carter* v. *Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990), *cert. denied*, 111 S. Ct. 46 (1990); *Harris* v. *United States*, 841 F.2d 1097 (Fed. Cir. 1988); *Adams* v. *United States*, 20 Cl. Ct. 542 (1990); *Adkins* v. *United States*, 16 Cl. Ct. 294 (1989). These judicial decisions reply on the so-called "exclusivity" provision of the Civil Service Reform Act, 5 U.S.C. 7121(a)(1) (1988), which provides that collective bargaining agreements shall include procedures for the settlement of grievances, and, with certain exceptions, these procedures shall be the exclusive procedures for resolving grievances which fall within their coverage.

Comptroller General decisions and our regulations in 4 CFR part 22, which pre-dated the judicial decisions cited above, identified circumstances in which we would exercise jurisdiction over claims involving matters subject to negotiated grievance procedures, pursuant to our authority in 31 U.S.C. 3529 to issue decisions to Federal agency heads and accountable officers and our general claims settlement authority in 31 U.S.C. 3702. However, in our recent decision *Cecil E. Riggs, et al.*, B–222926.3, April 23, 1992, 71 Comp. Gen. _____, we held that the reasoning of *Carter* v. *Gibbs*, and the other judicial decisions cited above, applies equally with respect to GAO's authority under 31 U.S.C. 3720 and 3529.

Thus, *Riggs* overruled several of our prior decisions and recognized that changes were required in our regulations since we concluded therein that the negotiated grievance procedures under 5 U.S.C. 7121(a) provide the exclusive remedy for members of a collective bargaining unit with respect to matters covered by the collective bargaining agreement. Since the effect of *Riggs* is to take away our jurisdiction to decide most labor relations cases arising under part 22, we have decided to repeal part 22 rather than amend it. Any claims involving labor unions and agencies that arise outside of the negotiated grievance procedures may be processed under our General Claims Procedures in part 31. Also, notwithstanding the repeal of part 22, we will continue to issue decisions to accountable officers and agency heads, in accordance with 31 U.S.C. 3529, on questions that do not involve specific claims within the scope of negotiated grievance procedures and are not otherwise more appropriate for resolution under those procedures.

Accordingly, GAO's regulations at 4 CFR part 22, which provided procedures governing GAO decisions on matters of mutual concern to agencies and labor organizations, are being repealed.

We are also amending our regulations at 4 CFR part 30 to expressly provide that we will not take jurisdiction over claims that are subject to negotiated grievance procedures. We will continue to take jurisdiction under the claims procedures in part 31 over Federal employees' claims which are not subject to negotiated grievance procedures.

List of Subjects in 4 CFR Part 22

Claims, Administrative practice and procedure, Labor management relations, Government employees, Labor unions, Negotiated grievance and arbitration procedures.

List of Subjects in 4 CFR Part 30

Claims, Administrative practice and procedure, Labor management relations, Government employees, Labor unions.

For the reasons stated above, parts 22 and 30 title 4, Code of Federal Regulations, are amended as follows:

PART 22 [REMOVED AND RESERVED]

1. Part 22 is removed and reserved.

PART 30—SCOPE OF SUBCHAPTER

2. The authority citation for part 30 continues to read as follows:

Authority: 31 U.S.C. 711 and 3702.

3. Section 30.1 is amended by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b) as follows:

§ 30.1 Coverage of regulations in Subchapter C.

* * * * *

(b) Claims concerning matters which are subject to negotiated grievance procedures under collective bargaining agreements entered into pursuant to 5 U.S.C. 7212(a);

* * * * *

Charles A. Bowsher,

Comptroller General of the United States.

[FR Doc. 92–16384 Filed 7–13–92; 8:45 am]

BILLING CODE 1610–01–M

federal register

Tuesday
July 14, 1992

Part V

Department of Transportation

Coast Guard
46 CFR Part 16

Federal Aviation Administration
14 CFR Part 121

Federal Highway Administration
49 CFR Part 391

Federal Railroad Administration
49 CFR Part 219

Research and Special Programs Administration
49 CFR Part 199

Drug Testing Requirements; Delay of International Application; Rules

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[CGD 86-067f]

RIN 2115-AD74

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Delay of Implementation Dates

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government. Under this final rule, employees must become subject to testing no later than January 2, 1995. This delay of implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This rule is effective July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mark Grossetti, Project Manager, Marine Investigation Division (G-MMI), Office of Marine Safety, Security and Environmental Protection, (202) 267-1421.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Mark Grossetti, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Helen Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

On November 21, 1988, the Coast Guard, along with other agencies of the Department of Transportation (DOT), adopted regulations requiring pre-employment, post-accident, reasonable cause and random drug testing. Those individuals required under Federal law or regulation to have periodic medical examinations were also required to undergo a drug test at the same time. The drug testing required by the rule applies to some persons located outside of the United States. However, the rules provided that they would not apply outside the United States in any situation in which application of the rules violated foreign local laws or policies.

At the same time, the Coast Guard stated that the DOT and other elements of the government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. The Coast Guard stated that if, as a result of those discussions, it was found that amendments to the rule were necessary, timely amendments would be issued. An amendment was issued on December 21, 1989, and published on December 27, 1989 (54 FR 53286). Under that amendment, drug testing for persons onboard U.S. vessels in waters subject to the jurisdiction of a foreign government was scheduled to begin by January 1992. A Final Rule was published on April 24, 1991, delaying the implementation date to January 2, 1993 (56 FR 18982).

DOT has continued active discussions over the last two years with representatives of the Canadian Government, and with representatives of the nations of the European Community. The DOT's initial efforts in this area were focused on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. The Government of Canada completed a process under which it received and considered the recommendations and concerns of the House of Commons Standing Committee on Transport, as well as representations from the Canadian transportation industry and other interested Canadians, on a substance use policy. The culmination of that effort was an announcement by the Minister of Transport on November 7, 1990, on the Government of Canada's decision to proceed with what he describes as a "comprehensive series of measures to prevent and remedy substance use in safety-sensitive positions in the Canadian transportation network." The policy includes requirements for education, access to employee assistance programs, and alcohol and drug testing. The Government of Canada is continuing to work on necessary legislation and regulations to implement the program.

Because the requirements will apply to American companies operating in Canada, the Canadian Minister of Transport has asked the U.S. Secretary of Transportation to consider "the idea of a mutual recognition agreement." Senior officials from the U.S. and Canadian governments met on November 15, 1990, to discuss the new Canadian measures on substance use and the possibility of the mutual recognition agreement, and discussions are continuing.

During the past two years, discussions with other countries also have been held, and the difficulty of achieving effective bilateral agreements has become clear. Although the DOT could allow its regulations to take effect even for operations outside the U.S., the DOT continues to recognize that: (1) It would be difficult for U.S. carriers to effectively implement the regulations without cooperation from foreign governments; (2) in response, foreign governments could impose restrictions on U.S. operations; and, perhaps most importantly, (3) there are distinct advantages to be gained in aligning foreign measures and U.S. measures, especially as they relate to international transportation operations. For these reasons, the U.S. is continuing to pursue multilateral efforts; specifically, the U.S. is exploring the possibility of initiatives in the International Civil Aviation Organization and the International Maritime Organization on the problem of substance use.

In order to allow decisions and agreements to be reached in an orderly fashion, the Coast Guard has again determined that additional time is necessary. Another additional delay of approximately two years should provide sufficient time. Accordingly, the Coast Guard has determined to postpone again the date by which testing programs must commence for persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government.

The change in this final rule will delay the applicability of the regulations where they may conflict with foreign law or policy so that the DOT and other elements of the government can complete discussions with foreign governments to attempt resolve to any conflict between our rules and foreign government laws or policies. Accordingly, the Coast Guard finds that good cause exists under 4 U.S.C. 553(b) to publish this rule without notice and comment and to make this rule effective less than 30 days after publication in the **Federal Register.**

Regulatory Evaluation

This final rule is not major under Executive Order 12291. However, because of public interest in, and concern for, a drug-free transportation environment, this final rule is considered significant under the DOT regulatory policies and procedures (44 CFR 11034; February 26, 1979). The economic impact of these changes is so minimal that further evaluation is not necessary. This final rule modifies the effective date for compliance with Coast Guard regulations governing drug

testing, insofar as those regulations would require testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government. It does not change the basic regulatory structure of that rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The amendment in this final rule only extends a compliance date. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to require programs for chemical drug and alcohol testing of commercial vessel personnel has been committed to the Coast Guard by Federal statutes. This final rule does, therefore, preempt State and local regulations regarding drug testing programs requiring the testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government.

Environment

The Coast Guard has considered the environmental impact of this final rule, and has concluded that, under section 2.B.2.1 of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. This final rule merely extends an implementation date.

International Trade Impact

This final rule extends that date by which an employer must ensure that employees outside the United States are in compliance with the final rule issued on November 21, 1988. Thus, the Coast Guard has determined that this final rule will not have an impact on trade opportunities on U.S. firms doing business overseas or on foreign firms doing business in the United States.

List of Subjects in 46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, the Coast Guard amends 46 CFR part 16 as follows:

PART 16—CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

2. Section 16.207(b) is revised to read as follows:

§ 16.207 Conflict with foreign laws.

* * * * *

(b) This part is not effective until January 2, 1995, with respect to any person onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government. On or before December 1, 1994, the Commandant shall issue any necessary amendment resolving the applicability of this part to such person on and after January 2, 1995.

Dated: June 10, 1992.

R.C. North,

Captain, U.S. Coast Guard Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-16356 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25148; Amendment No. 121-229]

RIN 2120AE76

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Federal Aviation Administration (FAA) announces a delay in the effective date of the anti-drug rule for persons located outside the territory of the United States. Under this final rule, employees located outside the territory of the United States will be subject to the provisions of the anti-drug rule, including requirements for drug testing, on January 2, 1995. This extension of the effective date is adopted in order to allow negotiation with foreign governments and international organizations to continue in an orderly and effective fashion.

EFFECTIVE DATE: This final rule is effective on July 14, 1992.

FOR FURTHER INFORMATION CONTACT: William McAndrew, Office of Aviation Medicine, Drug Abatement Branch (AAM-220), Federal Aviation Administration, 400 Seventh Street SW., Washington, DC 20590; telephone (202) 366-6710.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the FAA was one of six Department of Transportation (DOT) agencies that adopted regulations requiring education, training, and drug testing of employees in the regulated industry of the respective agencies (53 FR 47024). The FAA's anti-drug rule required preemployment, post-accident, reasonable cause, random, and return to duty drug testing. Additionally, certain individuals who were required to have medical examinations under 14 CFR part 67 were required to undergo periodic drug testing.

The requirements of the FAA's anti-drug rule apply to all employees performing sensitive safety- or security-related functions directly for or by contract with a covered employer. As originally promulgated, the rule did not differentiate between employees located within or outside the territory of the United States. However, the rule provided that its provisions would not apply in any situation in which application of the rules would violate local law or policies.

In the preamble to the anti-drug rule, the FAA stated that DOT, FAA, and other elements of the government would enter into discussions with foreign governments to try to resolve any conflicts between our rules and foreign laws or policies. The final rule stated that the Administrator might further delay the effective date of the rule as necessary to enable discussions with other governments to be successfully completed.

The anit-drug rule has been amended on several occasions since its promulgation. Of significance to the current rulemaking, the rule has been amended on three prior occasions to defer the effective date of the rule with respect to employees located outside the territory of the United States. The last of

these three amendments deferred the effective date to January 2, 1993.

The delays have permitted the FAA and the DOT to continue their discussions with representatives of the Canadian government, the European Economic Community, and the International Civil Aviation Organization (ICAO). During these discussions, it has become apparent that the difficulties associated with achieving effective bilateral agreements remain of concern. Further, the reasons for prior deferrals of unilateral imposition of the requirements of the anti-drug rule outside the territory of the United States, including the practical problems associated with implementation of the rule, and the possibility that foreign governments would impose adverse restrictions on U.S. operations, remain valid. A uniform multilateral anti-drug program that is supported by the international aviation community would best serve not only the affected employers but international aviation as well.

For these reasons, the United States has been pursuing initiatives in the ICAO on the problem of illegal drug use. As a first step in these initiatives, the ICAO (at the request of the United States) recently surveyed its Contracting States to determine the nature and scope of any substance abuse problem in the respective States. The survey results have been evaluated by the ICAO Council, and were released to the member States following the completion of the evaluation. Based on the results, the ICAO appears to be willing to consider substantive efforts to promote an international aviation community free of substance abuse. The United States will continue to make every effort to expedite the ICAO's handling of matters related to these substance abuse initiatives.

In light of the ICAO's demonstrated willingness to cooperate with the United States on initiatives to combat substance abuse, unilateral imposition of the requirements of the anti-drug rule would be premature and counterproductive. Accordingly, the FAA is postponing by two years the date on which the anti-drug rule becomes effective with respect to persons located outside the territory of the United States. The FAA notes, however, that while the rule will not become effective with respect to these employees until January 2, 1995, it will be incumbent upon affected employers to ensure that, sometime prior to the effective date, they have appropriate plans submitted to the FAA for implementation on that date.

Availability of the Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Reason for No Notice

This amendment to the anti-drug rule merely defers for two years the effective date of the anti-drug rule for persons located outside the territory of the United States. This minor change reflects the commitment made in the preamble to the final rule to "delay the effective date further * * * if such delay is necessary to permit consultation with any foreign governments to be successfully completed" (53 FR 46050; November 21, 1988). The FAA concludes that issuing a notice of proposed rulemaking would not result in the receipt of significant comments. Accordingly, the FAA has determined that notice and public comment procedures are unnecessary and contrary to public interest.

Economic Assessment

In accordance with the requirements of Executive Order 12291, the FAA reviewed the costs and benefits of the final anti-drug rule issued on November 14, 1988. At that time, the FAA prepared a comprehensive Regulatory Impact Analysis of the final anti-drug rule. The FAA also summarized and analyzed the comments submitted by interested persons on the economic issues in the final rulemaking document published in the **Federal Register** on November 21, 1988.

This amendment defers the effective date of the anti-drug rule for persons located outside the territory of the United States, but does not change the basic regulatory structure and requirements promulgated in the final anti-drug rule. The FAA is taking this action to provide additional time to pursue multilateral initiatives and negotiations with foreign governments on implementation of the anti-drug rule outside the territory of the United States. The FAA has also determined that costs and benefits associated with this rule will be minimal, and therefore has determined that a revision of the comprehensive Regulatory Impact Analysis is not necessary and the preparation of a separate economic analysis for this amendment is not warranted.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a Federal agency to review any final rule to assess its impact on small business. The amendment contained in this final rule merely extends by two years the effective date of the rule outside the territory of the United States. In consideration of the nature of this amendment, the FAA has determined that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small businesses.

International Trade Impact Statement

This final rule contains an amendment that defers until January 2, 1995, the effective date of the anti-drug rule issued on November 21, 1988, with respect to employees located outside the territory of the United States. The FAA has determined that this final rule will not have an impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final anti-drug rule, issued on November 14, 1988, were previously submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. The OMB approval is under control number 2120–0535. Because this final rule does not amend the recordkeeping and reporting requirements, it is not necessary to amend the prior approval received from OMB.

Federalism Implications

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

Conclusion

This action defers the effective date of the anti-drug for employees located outside the territory of the United States. This rulemaking action is

intended to improve administration of the final anti-drug rule.

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. Because of the absence of any costs related to this amendment, the FAA has determined that the expected impact of this amendment is so minimal that it does not warrant a full regulatory evaluation.

List of Subjects in 14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Drug testing, Narcotics, Pilots, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

Accordingly, the FAA amends part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. Paragraph B of Section XII of Appendix I to Part 121 is revised to read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

XII. *Conflict with foreign laws or international law.*

* * * * *

B. This appendix is effective with respect to any employee located outside the territory of the United States on January 2, 1995.

Issued in Washington, DC on June 30, 1992.

Barry Lambert Harris,

Acting Administrator.

[FR Doc. 92–16357 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

49 CFR Part 391

RIN 2125–AC50

Controlled Substances Testing; Delay of Implementation Dates

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; extension of compliance date.

SUMMARY: The FHWA announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of foreign-based employees of foreign-domiciled motor carriers. Under this final rule, these persons must be tested no later than January 2, 1995. This delay is being adopted to allow negotiation with foreign governments to continue in an orderly and effective fashion.

DATES: This final rule is effective July 14, 1992. Compliance with requirement to test foreign-based employees of foreign-domiciled carriers for drug use is extended until January 2, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Office of Motor Carrier Standards (202) 366–2981, or Mr. David Sett, Office of the Chief Counsel (202) 366–1392, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the FHWA, along with other agencies of the Department of Transportation, adopted regulations requiring preemployment/use, periodic, post-accident, reasonable cause and random drug testing.

The drug testing required by these rules applies to some persons located outside of the United States. However, the rules provided that they would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rules provided that 49 CFR part 391 would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rules raises questions of compatibility with that country's laws or policies. 53 FR 47134 (November 21, 1988).

On September 27, 1989, the FHWA issued a delay to the effective date to January 1, 1991. 54 FR 39546 (September 27, 1989).

On December 27, 1989, the FHWA published a revision to its drug testing rule to indicate that the rule would not be effective until January 2, 1992, with respect to any foreign-based employee of a foreign-domiciled carrier. 54 FR 53294 (December 27, 1989).

On April 24, 1991, the FHWA published a revision to its drug testing rule to indicate that the rule would not be effective until January 2, 1993, with respect to any foreign-based employee of a foreign-domiciled carrier. 56 FR 18994 (April 24, 1991).

The Department of Transportation and other elements of the U.S. Government have entered into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. The additional time that the FHWA is allowing would permit the Department to try to achieve our goals of a drug-free transportation system while respecting the national sovereignty of other countries.

In addition, this extension would comply with the intent of Congress in a recent Congressional mandate passed in October 1991, The Omnibus Transportation Employee Testing Act of 1991, Public Law 102–143, Title V. This Act directs the Secretary of Transportation and the Secretary of State to discuss controlled substances and alcohol use testing with the International Civil Aviation Organization (ICAO). and to determine ways and means to accomplish the strengthening and enforcing of existing ICAO standards. The intent of Congress is to allow the Department to have further discussions with other countries. The FHWA is continuing multilateral discussions with Canada and Mexico to allow motor carriage of freight throughout these countries as unencumbered as possible.

To allow these discussions to progress in an orderly fashion, the FHWA and the DOT have determined that additional compliance time is necessary. An additional delay of approximately two years should provide sufficient time. Accordingly, this final rule postpones the date by which testing programs must commence for persons located outside the territory of the United States to January 2, 1995, including foreign-based employees of American companies (or their foreign subsidiaries.) This action does not postpone testing for any other person, including U.S.-based employees of foreign companies, including their American subsidiaries.

This delay is being adopted to allow negotiations with foreign governments to continue in an orderly and effective fashion. Further notice and opportunity for comment are not required under the regulatory policies and procedures of

the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information. Therefore, the FHWA finds good cause exists to publish this final rule without notice and comment, and to make it effective upon publication in the **Federal Register.**

Rulemaking Analyses and Notices

Regulatory Impact

The action taken by the FHWA in this document defers the effective date that the FHWA's controlled substances testing rules will apply to foreign-based employees of foreign-domiciled motor carriers. This delay is being adopted to allow discussions with foreign governments to continue in an orderly and effective fashion. The FHWA, therefore, finds good cause to promulgate the amendment as a final rule without prior notice and opportunity to comment.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, the FHWA considers this document to be significant because of public interest in the drug testing program and the international impact of this document.

Regulatory Flexibility Act

It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 and has determined that this action would not have any effect on the quality of the environment.

Regulation Identifier Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 391

Alcohol abuse, Controlled substances, Drug abuse, Drug testing, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: June 30, 1992.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulation, Subtitle B, Chapter III, Part 391 as set forth below:

PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. App. section 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

Subpart H—Controlled Substances Testing

2. In § 391.83, paragraph (c) is revised to read as follows:

§ 391.83 Applicability

* * * * *

(c) This subpart is not applicable until January 2, 1995, with respect to any foreign-based employee of a foreign-domiciled carrier.

[FR Doc. 92–16358 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR–6, Notice No. 33]

RIN 2130–AA43

Alcohol/Drug Regulations: Postponement of International Application

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA issues a final rule delaying to January 2, 1995, the application of random drug testing requirements to railroad personnel based outside the United States. This delay in implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

DATES: This final rule is effective on July 14, 1992.

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel (RCC–30), FRA, room 8201, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Patricia V. Sun, Trial Attorney (RCC–30), FRA, Washington, DC 20590 (Telephone: (202) 366–4002).

SUPPLEMENTARY INFORMATION: On November 21, 1988, the Federal Railroad Administration published random drug testing requirements. 53 FR 47102. The random testing rule amended § 219.3 of the existing rule to provide that subpart G of the regulation does not apply to any person for whom compliance with the subpart would violate the domestic laws or policies of another country and to provide that the random testing rule (subpart G) would not apply until January 1, 1990, with respect to certain foreign operations. On May 23, 1989, FRA amended the applicability provisions dealing with operations of foreign railroads (54 FR 22284; May 23, 1989) by extending to January 1, 1991, the date on which Subpart G would become effective with respect to any employee whose place of reporting or point of departure for rail transportation services is located outside the United States. In order to provide additional time for negotiations with foreign governments, FRA subsequently issued two more rules, the last of which extended this compliance date further to January 1, 1993. 56 FR 18990; April 24, 1991. [Operations of foreign carriers have been subject to FRA alcohol/drug regulations other than random testing

since implementation in 1986. 49 CFR part 219; 50 FR 31508; Aug. 2, 1985. This applicability is not affected by the action discussed here.)

The Department's initial efforts in this area were focussed on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. During the past year, discussions with other countries also have been held, and the difficulty of achieving effective bilateral agreements has become clear. Although the DOT could allow its regulations to take effect even for operations outside the U.S., the Department recognizes that (1) it would be difficult of U.S. carriers to effectively implement the regulations without cooperation from foreign governments; (2) in response, foreign governments could impose restrictions on U.S. operations; and, perhaps most importantly, (3) there are distinct advantages to be gained in aligning foreign measures and U.S. measures, especially as they relate to international transportation operations. For these reasons, the U.S. has decided to pursue multilateral efforts.

In order to facilitate this process, FRA is postponing application of the random drug testing requirements to foreign-based personnel until January 2, 1995. This schedule will apply to all such foreign operations, whether or not there have been formal notifications of conflicts with local law or policy. The postponement does not affect testing of U.S.-based employees.

Regulatory Procedures

FRA finds that notice and opportunity for comment are not necessary because the effect of the amendment is to provide additional time for compliance. FRA also finds that providing such notice would be contrary to the public interest because of the need to conduct ongoing international negotiations in an atmosphere of comity and cooperation. FRA finds that there is good cause for making this amendment effective less than 30 days from publication, since its effect is to provide additional time for compliance.

This rule has been evaluated in accordance with existing regulatory policies. It is not a "major" rule under Executive Order 12291 but is "significant" as defined under DOT policies and procedures. The amendment contained in the final rule does not have any significant paperwork, Federalism or economic impact. To the extent any such impact exists, the amendments will lessen regulatory burdens by increasing the time available to comply with regulations previously issued. Because the amendments do not have any significant economic impact, FRA has not prepared a regulation evaluation. It is certified that this final rule will not have significant economic impact on a substantial number of small entities under the provisions of Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*).

Therefore, in consideration of the foregoing, part 219, title 49, Code of Federal Regulations is amended as follows:

List of Subjects in 49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

PART 219—[AMENDED]

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

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. No. 100–342; and 49 CFR 1.49(m).

2. Section 219.3 is amended by revising paragraph (c) to read as follows:

§ 219.3 Application.

* * * * *

(c)(1) Subpart G of this part shall not apply to any person for whom compliance with that subpart would violate the domestic laws or policies of another country.

(2) Subpart G is not effective until January 2; 1995, with respect to any employee whose place of reporting or point of departure ("home terminal") for rail transportation services is located outside the territory of the United States.

Issued in Washington, DC, on June 29, 1992.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 92–16359 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–06–M

Research and Special Programs Administration

49 CFR Part 199

[Docket PS–102; Amdt. No. 7]

RIN 2137–AC

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule; modification of implementation date.

SUMMARY: RSPA announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of persons located outside the territory of the United States. Under this final rule, these persons must become subject to testing no later than January 21, 1995.

EFFECTIVE DATE: July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Richard L. Rippert, Alcohol and Drug Program Manager, Office of Pipeline Safety Enforcement (DPS–23), Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (Tel. 202–366–6223).

SUPPLEMENTARY INFORMATION: On November 21, 1988, RSPA, along with other agencies of the Department of Transportation, adopted regulations requiring pre-employment, post-accident, reasonable cause, and random drug testing (53 FR 47084).

The drug testing required by these rules applies to some persons located outside of the United States. However, the rules provided that they would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rules provided that 49 CFR part 199 would not be effective until January 1, 1990, with respect to any person for whom foreign government contends that application of the rule raises questions of compatibility with that country's laws or policies.

At the same time, RSPA stated that the Department of Transportation and other elements of the U.S. government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. We stated that if, as a result of those discussions, we found that an amendment to the rules was necessary, we would issue the amendment by December 1, 1989.

On April 13, 1989, RSPA published an amendment to part 199 (Amdt. No. 199–1; 54 FR 14922) to provide that the rules would not be effective until January 1, 1991, with respect to such persons.

Similar amendments were published on December 27, 1989, extending the effective date until January 2, 1992 (Amdt. No. 19–3; 54 FR 53290), and April 24, 1991, extending the date until January 2, 1993 (Amdt. No. 199–5; 56 FR 18986). These amendments provided additional time while government-to-government discussions tried to reach a permanent resolution of this issue.

DOT has continued active discussions with representatives of the Canadian government and representatives of the

nations of the European Economic community. To allow decisions and agreements to be reached in an orderly fashion, we have determined that additional compliance time is necessary. Accordingly, this final rule postpones the date by which testing must commence for persons located outside the territory of the United States to January 2, 1995. Our action does not postpone testing for any other person, including U.S.-based employees of American subsidiaries of foreign companies.

This final rule delays the applicability of the Part 199 regulations for persons located outside the territory of the United States. Accordingly, RSPA finds that good cause exists under 5 U.S.C. 553(b) and 553(d) to publish this final rule without notice and comment, and to make it effective less than 30 days after publication in the **Federal Register.**

Regulatory Analyses and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

This rule is not a major rule under Executive Order 12291, and is significant under DOT's Regulatory Policies and Procedures. This final rule modifies one of the compliance provisions contained in the final rule published on November 21, 1988, as modified on April 13, 1989, December 27, 1989, and April 24, 1991. It does not change the basic regulatory structure of that rule. The economic impact of this modification is so minimal that further evaluation is not necessary.

Regulatory Flexibility Act

This final rule modifies the effective date of Part 199 only with respect to persons outside the territory of the United States. Therefore, RSPA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not change the recordkeeping and reporting requirements of the final rule published on November 21, 1988.

Executive Order 12612

In accordance with Executive Order 12612, RSPA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation.

In view of the foregoing, 49 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 is revised to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, and 2002; 49 CFR 1.53.

2. Section 199.1(d) is revised to read as follows:

§ 199.1 Scope and compliance.

* * * * *

(d) This part is not effective until January 2, 1995, with respect to any employee located outside the territory of the United States.

Issued in Washington, DC, on July 2, 1992.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 92–16360 Filed 7–13–92; 8:45 am]

BILLING CODE 4910–60–M

federal register

Tuesday
July 14, 1992

Part VI

Department of Education

Even Start Family Literacy Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

DEPARTMENT OF EDUCATION

[CFDA No.: 84.258A]

Even Start Family Literacy Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide the Federal share of the cost of family-centered education projects to help parents become full partners in the education of their children, to assist children in reaching their full potential as learners, and to provide literacy training for their parents. Even Start supports AMERICA 2000 by helping grantees address two of the National Education Goals: Goal 1—that all children will start school ready to learn; and Goal 5—that every adult will be literate, possess the knowledge and skills necessary to compete in a global economy, and exercise the rights and responsibilities of citizenship.

Eligible Applicants: The following are eligible for new awards under this competition: Indian tribes and tribal organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act.

Deadline for Transmittal of Applications: September 4, 1992.

Available Funds: $1,050,000.

Estimated Range of Awards: $75,000 to $200,000.

Estimated Average Size of Awards: $135,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR part 212, as published in the **Federal Register** on June 19, 1992 (57 FR 27556–27569).

SUPPLEMENTARY INFORMATION: The Department is conducting a national evaluation of projects under Even Start, and successful projects are considered for dissemination through the National Diffusion Network. Grantees shall cooperate with the Department's efforts by adopting an evaluation plan that is consistent with the Department's national evaluation and with the grantee's responsibilities under § 75.590 of EDGAR. It is not expected that the application will include a complete evaluation plan because grantees will be asked to cooperate with the national evaluation of Even Start to be conducted by an independent contractor. Grantees may be required to amend their plans to conform with the national evaluation. However, the review panel's examination of the applicant's potential as a model, under 34 CFR 212.21(e) of the program regulations, will include an analysis of the approach the applicant expects to use to evaluate its project.

Each applicant shall budget for evaluation activities as follows: a project with an estimated cost of up to $120,000 must designate $5,000 for this purpose; a project with an estimated cost of over $120,000 must designate $10,000 for these activities. These funds will be used for expenditures related to the collection and aggregation of data required for the Department's national evaluation. Indian tribal entities shall also budget for the cost of travel to Washington, D.C., and two nights' lodging for the project director and the project evaluator, for their participation in annual evaluation meetings.

Selection Criteria

Selection criteria for the Even Start Family Literacy Program are found in the program regulations at 34 CFR 212.21.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.258), Washington, DC 20202–4725; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.258), room # 3633, Regional Office Building # 3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt with 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into five parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information-Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Part IV: Additional Program Information, Documentation, and Certifications.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Lobbying; Debarment, Suspension, and Other

Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014) and instructions.

(Note: ED Form 80–0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on photostatic copies of the application, budget forms, assurances, and certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2017, Washington, DC 20202–6132. Telephone: (202) 401–1692. Deaf and hearing impaired individuals may call: (202) 732–4538 for TDD services, or in the Washington, DC 202 area code, telephone 708–9300 between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2741–2749.

Dated: July 7, 1992.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 5 8

TITLE: Even Start Family Literacy Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

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Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

PART III—Application Narrative

Instructions for Application Narrative

Before preparing the application narrative, applicants should read carefully the Even Start programmatic requirements in the Act, 20 U.S.C. 2741–49, and the applicable regulations (34 CFR part 212). The narrative should encompass each function or activity for which funds are being requested and should be presented in the following sequence—

A. Begin with an abstract; that is, a summary of the proposed project.

B. Address each selection criterion in the order in which the criteria are listed in 34 CFR 212.21.

C. Describe a plan of operation containing the following items required by section 1056(c) of the Act, 20 U.S.C. 2746(c). Where appropriate, the applicant should reference other parts of this narrative rather than repeat information here. The required items are as follows:

1. A description of the project goals and objectives. Express objectives in measurable terms against which the progress of the project can be evaluated.

2. A description of the activities and services that will be provided by the project, including a description of how the following seven program elements required by section 1054(b) of the Act, 20 U.S.C. 2744(b), will be implemented:

- The identification and recruitment of eligible children. Include a description of the outreach methods to be used to identify families not currently associated with the school of the LEA.
- The screening and preparation of parents and children, including testing, referral to necessary counseling, other developmental and support services, and related services.
- The design of programs and provision of support services (when unavailable from other sources) appropriate to the participants' work and other responsibilities, including—scheduling and location of services to allow joint participation by parents and children; child care for the period that parents are involved in the Even Start project; and transportation for the purpose of enabling parents and their children to participate in the Even Start project.
- The establishment of instructional programs that promote adult literacy, training parents to support the educational growth of their children, and preparation of children for success in regular school programs.
- The provision of special training to enable staff to develop the skills necessary to work with parents and young children in the full range of instructional services offered through Even Start (including child care staff in programs enrolling children of Even Start participants on a space available basis).
- The provision of and monitoring of integrated instructional services to participating parents and children through home-based programs.
- The coordination of the Even Start project with programs assisted under chapter 1 and any relevant programs under Chapter 2 of title I of the Act, the Adult Education Act, the Individuals with Disabilities Education Act, the Job Training Partnership Act, and with the Head Start program, volunteer literacy programs, and other relevant programs.

3. A description of the population to be served and an estimate of the number of participants.

4. If appropriate, a description of the collaborative efforts of the institutions of higher education, community-based organizations, the appropriate State educational agency, private elementary schools, or other appropriate nonprofit organizations in carrying out the project for which assistance is sought.

5. A statement of the methods that will be used—to ensure that the project will serve those eligible participants most in need of the Even Start activities and services; to provide Even Start services to special populations, such as individuals with limited English proficiency and individuals with disabilities; and to encourage participants to remain in the project for a time sufficient to meet project goals.

D. Include any other pertinent information that might assist the Secretary in reviewing the application.

E. Supply necessary information as requested in part IV.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications under this program generally meet this page limit. Supplemental documentation should be appended to the narrative and need not be counted as part of the 25 pages.

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Part IV--Even Start Program

A. Information on additional funds

(1) Estimate the additional funds necessary to meet the requirements of section 1054(c) of the Act, which provides that the Federal share of the total cost of the project may be no more than 90 percent in the first year of the project, 80 percent in the second year, 70 percent in the third year, and 60 percent in the fourth and any subsequent year. Additional funds may be obtained from any source other than funds made available for programs under Chapter 1 of the Act.

Year	Requirement	Amount	Source of funds
1.....	10%	$_____	_____
2.....	20%	$_____	_____
3.....	30%	$_____	_____
4.....	40%	$_____	_____

(2) If other Federal or State funds are listed as the source for additional funds, how will the applicant meet the requirements of section 1054(c) of the Act in the event that Federal or State funds are not available?

_____

_____

_____

_____

B. Documentation on personnel

Attach documentation to demonstrate that the applicant has the qualified personnel required--

(1) To develop, administer, and implement the project, and;

(2) To provide special training necessary to prepare staff for the project.

C. Certifications

(1) The applicant certifies that it has arranged for the services of an experienced evaluator to assist in the development of the applicant's evaluation plan and to coordinate that plan with the Secretary's independent evaluation.

_____

Authorized representative of applicant Indian tribe or tribal organization

_____

Title

_____

Date

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Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations amending the Act, the Department of Education requests comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651, and to the Office of Management and Budget, Paperwork Reduction Project, 1810–0540, Washington, DC 20503.

(Information collection approved under OMB control number 1810–0540. Expiration date: 5/95.)

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OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6 Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5 If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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[FR Doc. 92-16450 Filed 7-13-92; 8:45 am]
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Federal Register

Vol. 57, No. 135

Tuesday, July 14, 1992

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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Public Laws

102d Congress, 2nd Session, 1992

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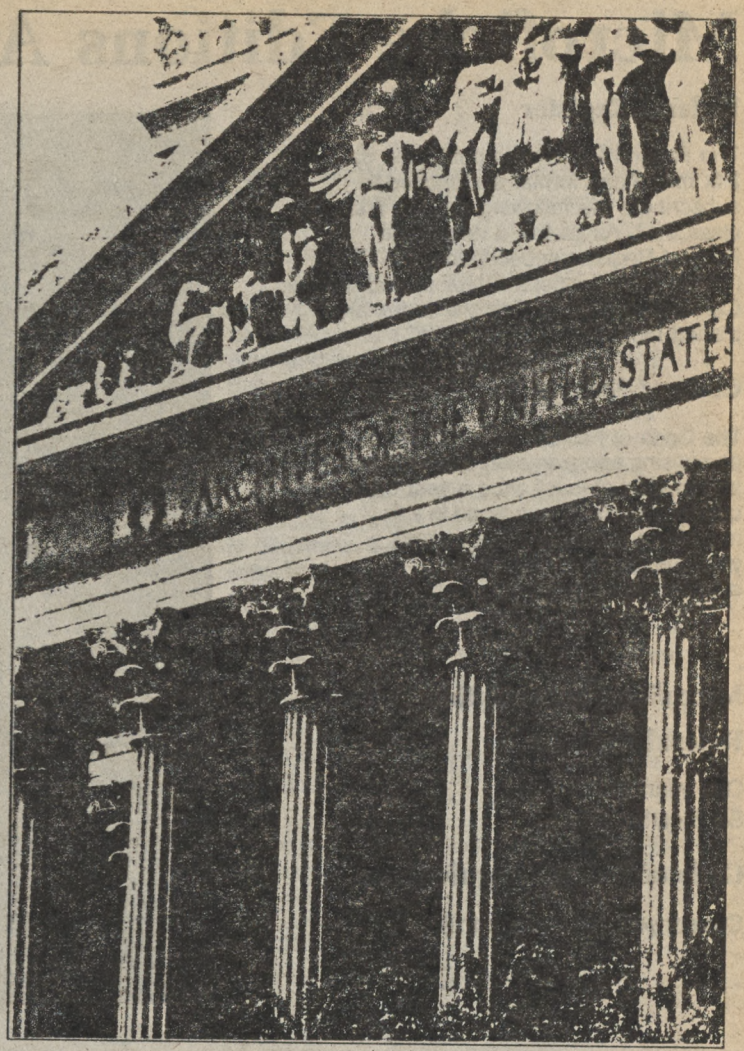

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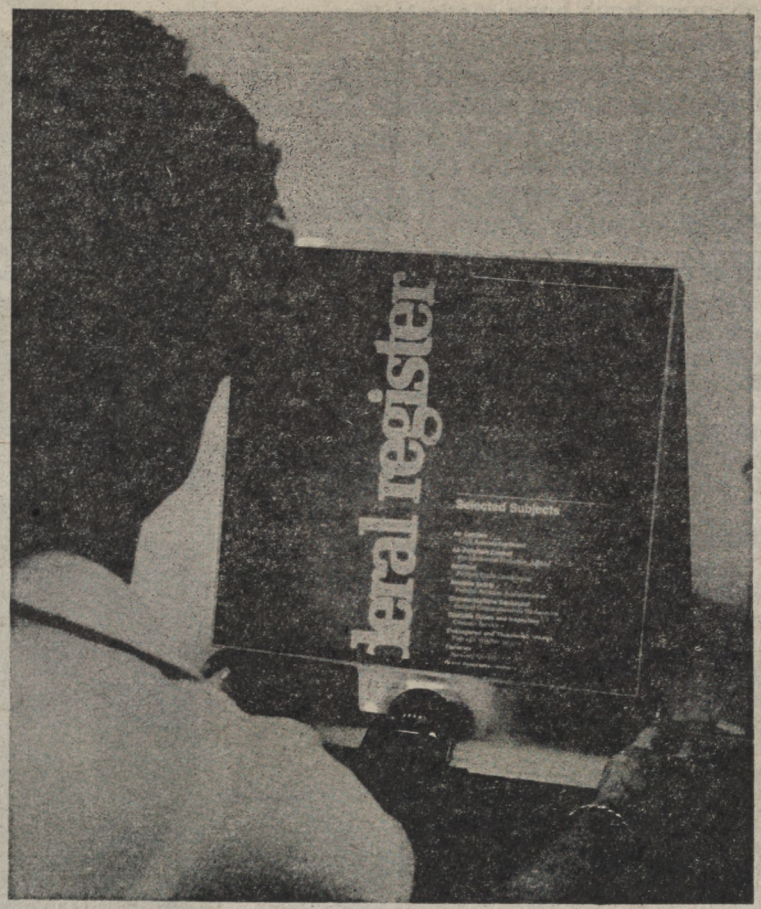

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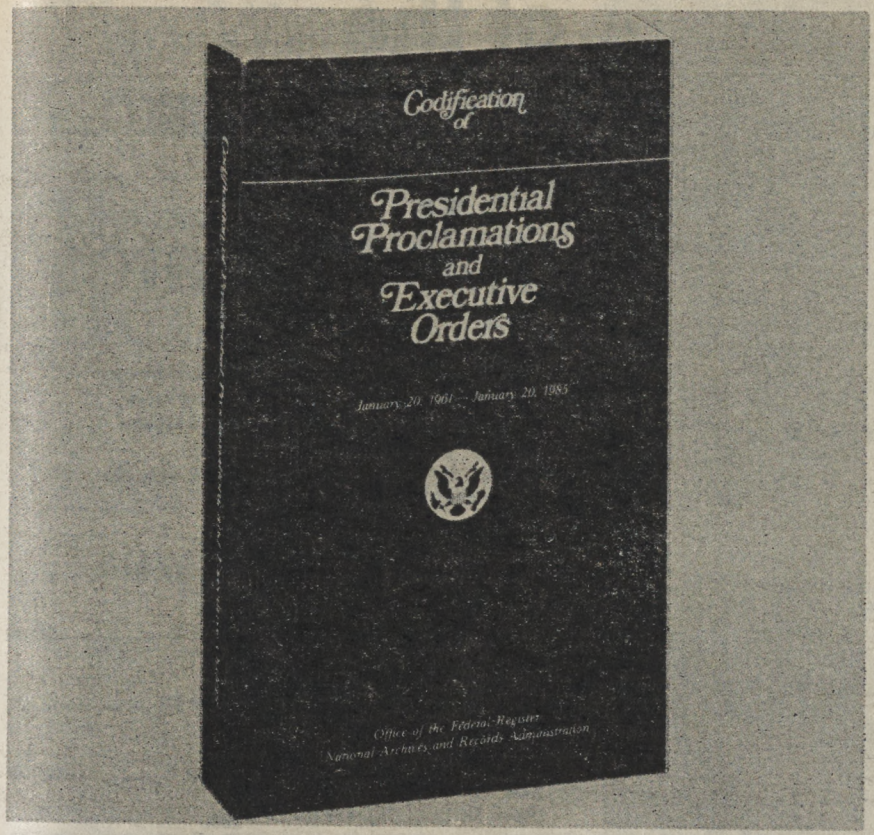

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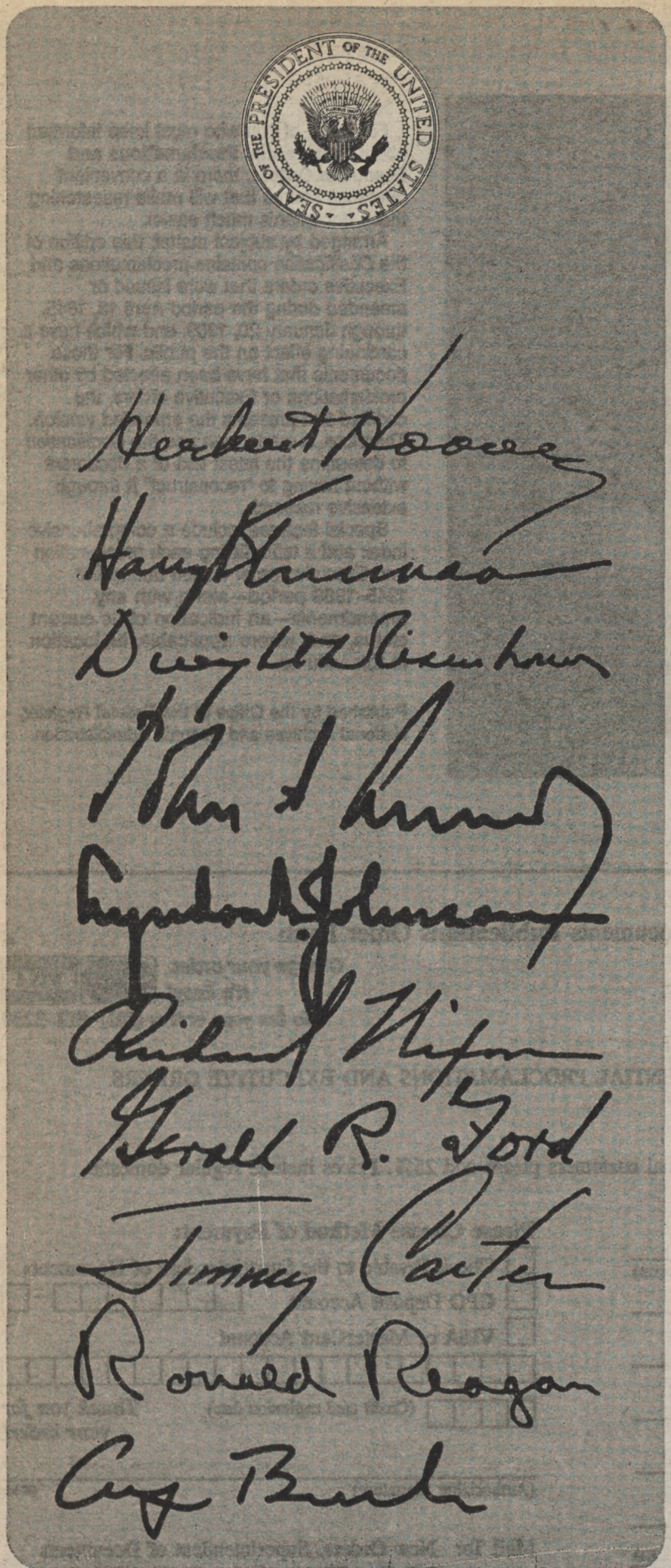

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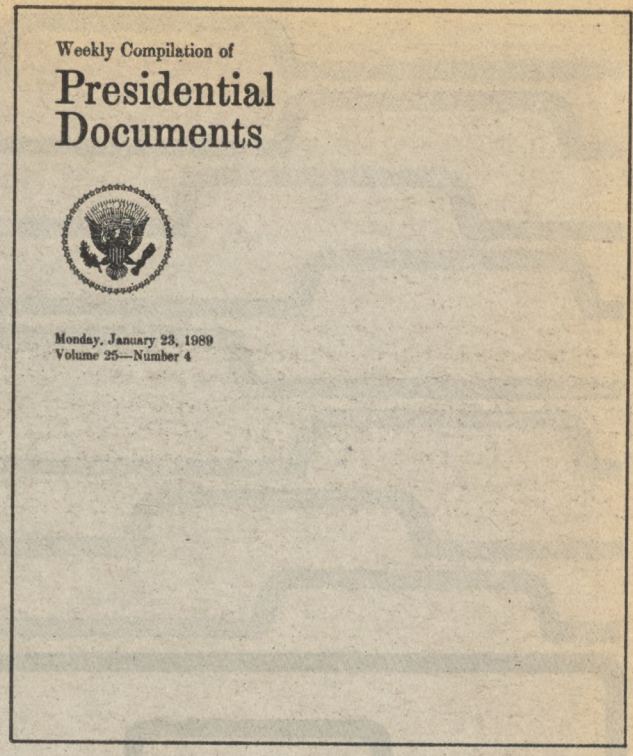

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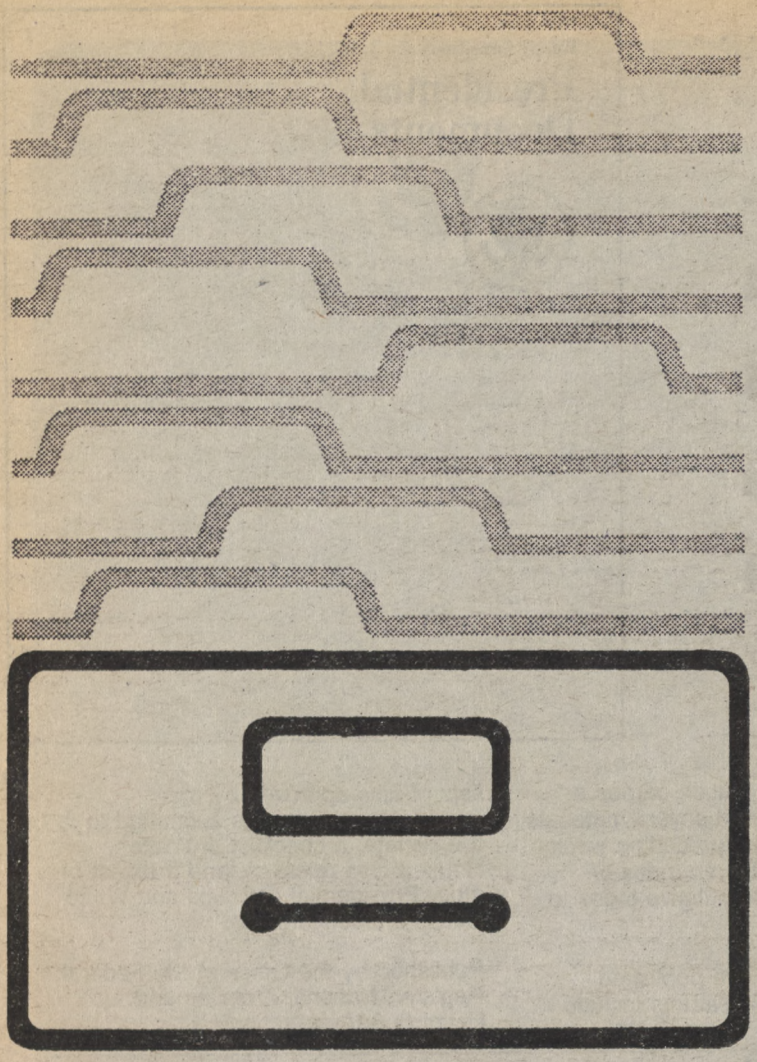

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