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Contents

Federal Register

Vol. 58, No. 34

Tuesday, February 23, 1993

African Development Foundation
NOTICES
Meetings; Sunshine Act, 11097

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
New England et al., 10993

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Cooperative State Research Service
See Extension Service, USDA
See Forest Service
See Soil Conservation Service

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Witchweed
Correction, 11099
NOTICES
Environmental statements; availability, etc.:
Genetically engineered organisms; field test permits—
Soybeans, etc.; correction, 11099

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Meetings:
Poverty-associated mental retardation prevention technical assistance workshop, 11058
Records and Statistics Public Health Conference, 11058

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
RULES
Commodity Exchange Act:
Financial reporting by introducing brokers; customer funds investments valuation by futures commission merchants, 10949
Foreign futures and options transactions:
Option contracts permitted to be offered or sold in United States, 10953
NOTICES
Meetings; Sunshine Act, 11097

Cooperative State Research Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Special research programs—
Wood utilization research, 11144

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Orpharm, Inc., 11063

Education Department
RULES
Educational research and improvement:
Library Services and Construction Act; State-administered program; "State aid" definition, 11166
Postsecondary education:
Endowment challenge grant program, 11162
PROPOSED RULES
Postsecondary education:
Historically Black colleges and universities program and Historically Black graduate institutions program—
Higher Education Act Amendments; implementation, 11158

Employment and Training Administration
NOTICES
Wagner-Peyser Act:
Allotments and preliminary planning estimates (1993 PY), 11063

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Environmental restoration and waste management:
Albany Research Center, OR; radiological conditions, certification, 11041
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Oak Ridge, TN, 11042
Grant and cooperative agreement awards:
National Council on Radiation Protection and Measurements, 11042
Natural gas exportation and importation:
Anadarko Trading Co., 11051
Aquila Energy Marketing Corp., 11051
Tenngasco Corp., 11051
TM Star Fuel Co., 11051

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Connecticut, 10957
Massachusetts, 10964
New Mexico, 10970, 10977
Oregon, 10972
Tennessee, 10980
Virginia, 10982
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Massachusetts, 10998
Air quality implementation plans; preparation, adoption, and submittal:
Economic incentive program rules, 11110

Superfund program:
Toxic chemical release reporting; community right-to-know—
Sulfuric acid and hydrochloric acid; meeting, 11002
Water pollution control:
Ocean dumping; site designations—
Massachusetts Bay, MA, 10999
NOTICES
Air pollutants, hazardous; national emission standards:
Early reductions compliance extensions; list, 11054
Air programs:
Mobile source emission reduction credits generation; guidance, 11134
Superfund; response and remedial actions, proposed settlements, etc.:
Fairchild Semiconductor, Inc. Site, CA, 11055
Superfund program:
Toxic chemical release reporting; community right-to-know—
Reporting forms; availability, 11056

Executive Office of the President
See Management and Budget Office
See Presidential Documents
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
O'Hara, Daniel J., 11024

Extension Service, USDA
NOTICES
Grants and cooperative agreements; availability, etc.:
Socially disadvantaged farmers and ranchers, 11172

Farm Credit Administration
RULES
Equal Access to Justice Act:
Application for award of fees other expenses; implementation, 10945
Farm credit system:
Administrative expenses; assessments and apportionment, 10939
Title V conservators and receivers, 10945

Federal Aviation Administration
RULES
Standard instrument approach procedures, 10945, 10947
PROPOSED RULES
Airworthiness standards:
Special conditions—
Advanced Aerodynamics & Structures, Inc. Jetcruzer 450 airplane, 10994
NOTICES
Passenger facility charges; applications, etc.:
Robert Mueller Municipal Airport, TX, 11084

Federal Emergency Management Agency
NOTICES
Hotel and Motel Fire Safety Act; national master list, 11148

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Oklahoma Gas & Electric Co. et al., 11042
Natural gas certificate filings:
Texas Gas Transmission Corp. et al., 11044
Applications, hearings, determinations, etc.:
Glen Park Associates Limited Partnership, 11047
Illinois Power Co., 11047
Southern Natural Gas Co., 11051

Federal Maritime Commission
RULES
Maritime carriers, ocean freight forwarders, marine terminal operations, and passenger vessels:
Free time and demurrage charges on import property and truck detention at Port of New York; CFR Parts removed, 10983
NOTICES
Casualty and nonperformance certificates:
Regal Cruises Ltd., 11056
Freight forwarder licenses:
A.P.C. International, Inc., 11056

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 11098
Applications, hearings, determinations, etc :
B.H. Cox Trust et al., 11056
KeyCorp, et al., 11056
Otto Bremer Foundation et al., 11057

Federal Trade Commission
PROPOSED RULES
Comprehensive Smokeless Tobacco Health Education Act; rotation of health warnings for promotional materials for smokeless tobacco products, 10997
NOTICES
Interlocking directorates:
Clayton Act Section 8 jurisdictional thresholds, 11057

Federal Transit Administration
RULES
Bus testing facility program, 10989

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Recovery plans—
Lahontan cutthroat trout, 11061

Food and Drug Administration
NOTICES
Animal drugs, feeds, and related products:
Neomycin sulfate; regulatory status, 11058
Meetings:
Advisory committees, panels, etc., 11058

Forest Service
NOTICES
Appeal exemptions; timber sales:
Payette National Forest, ID, 11022
Stanislaus National Forest, CA, 11022
Environmental statements; availability, etc.:
Columbia River Gorge National Scenic Area, OR; Sandy River Delta master plan, 11023

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 11052

Special refund procedures; implementation, 11052

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
HOME investment partnerships program—
Indian applicants, 11102

Interior Department
See Fish and Wildlife Service
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Foreign corporations; corporate distributions
Correction, 10997
Qualified business unit functional currency definition
Correction, 11099
PROPOSED RULES
Income taxes:
Corporate net operating loss carryforwards limitations; correction, 11099

International Trade Administration
NOTICES
Antidumping:
Helical spring lock washers from Taiwan, 11027
Steel wire rope from Korea, 11029
Welded stainless steel butt-weld pipe fittings from Korea, 11029
Antidumping and countervailing duties:
Administrative review requests, 11026

International Trade Commission
NOTICES
Meetings; Sunshine Act, 11098

Interstate Commerce Commission
NOTICES
Practice and procedure:
Fee billing and debt collection
Correction, 11099

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration

Legal Services Corporation
NOTICES
Grant and cooperative agreement awards:
New York Public Utility Law, 11073

Management and Budget Office
NOTICES
Rescissions and deferrals
Cumulative reports, 11156

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council task forces, 11073

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Literature Advisory Panel, 11073
Music Advisory Panel, 11074
Presenting and Commissioning Advisory Panel, 11074
Public Partnership Office Advisory Panel, 11074
Theater Advisory Panel, 11075

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Air brake systems—
Stopping distance performance requirements; reinstatement, 11009
Hydraulic brake systems—
Stopping distance performance requirements; establishment, 11003
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 11085–11088

National Institutes of Health
NOTICES
Committees; establishment, renewal, termination, etc.:
Multidisciplinary Special Emphasis Panel, 11059
Meetings:
Genome Research Review Committee, 11059
National Heart, Lung, and Blood Institute, 11060
National Institute of Diabetes and Digestive and Kidney Diseases, 11059
National Institute on Deafness and Other Communication Disorders, 11059, 11060

National Labor Relations Board
PROPOSED RULES
Court decisions; fees and dues, exaction limitations, 10997

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 10990
NOTICES
Permits:
Endangered and threatened species, 11039, 11040
Marine mammals, 11040

National Park Service
NOTICES
Meetings:
Mississippi River Coordinating Commission, 11062
Missouri National Recreational River Advisory Group, 11061
National Register of Historic Places:
Pending nominations, 11062

National Science Foundation
NOTICES
Meetings:
High Performance Computing Blue Ribbon Panel, 11075
Science, Engineering, and Technology Federal Coordinating Council and Education and Human Resources Advisory Committee Expert Panel, 11075

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 11097

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 11097

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
NOTICES
Meetings:
Federal Prevailing Rate Advisory Committee, 11076

Presidential Documents
PROCLAMATIONS
Special observances:
Visiting Nurse Associations Week, National (Proc. 6529), 10937

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

Research and Special Programs Administration
RULES
Hazardous materials:
Registration and fee assessment program, 10985
Pipeline safety:
State grants; allocation formula, 10985
NOTICES
Applications, hearings, determinations, etc.:
National Solid Wastes Management Association, 11176

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 11078
MBS Clearing Corp., 11081
Midwest Securities Trust Co., 11076, 11079
National Securities Clearing Corp., 11082
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 11076
Pacific Stock Exchange, Inc., 11078
Philadelphia Stock Exchange, Inc., 11078
Applications, hearings, determinations, etc.:
ABC Investment Co., 11082

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
North East Middle Swannee River Area Watershed FL, 11024

State Justice Institute
NOTICES
Meetings; Sunshine Act, 11097

Trade Representative, Office of United States
NOTICES
Trade relations agreements:
Belarus; effective date, 11096

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 11083
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 11083

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 11089
Notes, Treasury:
K-1998 series, 11089
T-1995 series, 11093

Veterans Affairs Department
PROPOSED RULES
Disabilities rating schedule:
Endocrine system
Correction, 11099

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 11101

Part III
Environmental Protection Agency, 11109

Part IV
Environmental Protection Agency, 11133

Part V
Department of Agriculture, Cooperative State Research Service, 11143

Part VI
Federal Emergency Management Agency, 11147

Part VII
Office of Management and Budget, 11155

Part VIII
Department of Education, 11157

Part IX
Department of Education, 11161

Part X
Department of Education, 11165

Part XI
Department of Agriculture, Extension Service, 11171

Part XII
Department of Transportation, Research and Special Programs Administration, 11175

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

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

6529.....10937

7 CFR

301.....11099

Proposed Rules:

1001.....10993

1002.....10993

12 CFR

607.....10939

611.....10945

615.....10945

618.....10939

625.....10945

627.....10945

14 CFR

97 (2 documents).....10945, 10947

Proposed Rules:

23.....10994

16 CFR

Proposed Rules:

307.....10997

17 CFR

1.....10949

30.....10953

26 CFR

1 (2 documents).....11099

Proposed Rules:

1.....10997

29 CFR

Proposed Rules:

103.....10997

34 CFR

Proposed Rules:

608.....11158

609.....11158

628.....11162

770.....11166

38 CFR

Proposed Rules:

4.....11099

40 CFR

52 (7 documents).....10957–10982

Proposed Rules:

51.....11110

52.....10998

228.....10999

372.....11002

46 CFR

525.....10983

530.....10983

49 CFR

107.....10985

171.....10985

198.....10985

665.....10989

1018.....11099

1312.....11099

Proposed Rules:

571 (2 documents).....11003, 11009

50 CFR

642.....10990

Federal Register
Vol. 58, No. 34
Tuesday, February 23, 1993

Presidential Documents

Title 3—

The President

Proclamation 6529 of February 18, 1993

National Visiting Nurse Associations Week, 1993

By the President of the United States of America

A Proclamation

Since 1885, countless men, women, and children have been provided care in their own communities and homes by the staff of Visiting Nurse Associations. These associations are in 422 urban and rural communities in 45 States and provide home health care to more than 1,500,000 people. The associations are voluntary in nature, independently owned, and community based. They offer a wide range of services, including hospice care, personal care, homemaking, social services, nutritional counseling, specialized nursing care, and occupational, physical, and speech therapy by registered nurses.

Historically, the care provided by Visiting Nurse Associations has enabled many individuals who are chronically ill or disabled to remain in their homes. Such care provides a setting that is familiar to them and is characterized by the physical and social support of family, friends, and loved ones.

Today, as an increasing number of people are being released from acute care settings and returning to their communities in need of complex home health assistance, Visiting Nurse Associations have been quick to respond. Whether caring for a low birth-weight baby, assisting a person recently released from the hospital following surgery, or administering life-sustaining procedures, Visiting Nurse Associations have proven to be critical care providers.

The associations adhere to high standards of quality and provide personalized and cost-effective health care and support, regardless of a person's ability to pay. They are enthusiastically supported by the communities in which they are located, and their resources are regularly enhanced by the services of volunteers and the donations of community members.

In recognition of the increasing need for home health care, and the significant potential of Visiting Nurse Associations to provide this care, the Congress, by House Joint Resolution 484, has designated the week beginning February 14, 1993, as "National Visiting Nurse Associations Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week beginning February 14, 1993, as National Visiting Nurse Associations Week. I urge all Americans to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of February, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

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Rules and Regulations

Federal Register
Vol. 58, No. 34
Tuesday, February 23, 1993

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

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

FARM CREDIT ADMINISTRATION

12 CFR Parts 607 and 618

RIN 3052–AB19

Assessment and Apportionment of Administrative Expenses; General Provisions

AGENCY: Farm Credit Administration (FCA).

ACTION: Final rule.

SUMMARY: The FCA, by the FCA Board, adopts new regulations at 12 CFR part 607 that prescribe the method by which the assessments that are required to pay the FCA's annual administrative expenses are apportioned among and paid by Farm Credit System (System) institutions and other entities that are required to pay such expenses. The regulations supersede existing assessment regulations at 12 CFR 618.8230, which are rescinded.

These regulations are based in large part on the consensus recommendations of the FCA Assessment Regulations Negotiated Rulemaking Committee (Committee), which was established by the FCA to help develop the assessment regulations.

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

FOR FURTHER INFORMATION CONTACT: Robert S. Child, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4189, TDD (703) 883–4444, or William L. Larsen, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Assessment Regulations

The operating expenses of the FCA in administering the Farm Credit Act of 1971, 12 U.S.C. 2001–2279bb–6 (Act) are paid by the institutions it regulates and examines. Section 5.15 of the Act establishes the process by which System institutions are assessed for their share of FCA administrative expenses. Prior to the beginning of every fiscal year, the FCA must determine the cost of administering the Act for the succeeding year as well as the amount of assessments needed to pay such expenses and maintain a necessary reserve. On the basis of the assessment determination, the FCA must apportion the assessment among System institutions in a manner "determined to be equitable" by the FCA. 12 U.S.C. 2250(a)(2)(A). The FCA then assesses and collects the allocations on a periodic basis during the fiscal year. Regulations implementing section 5.15 of the Act currently are found in § 618.8230 of this chapter.

The current FCA assessment process was developed before Congress enacted the Agricultural Credit Act of 1987, Public Law 100–233, (1987 Act). The structural and regulatory changes brought about by the 1987 Act led the FCA to evaluate its current assessment process to determine whether it remained valid and fair. On the basis of this evaluation, the FCA concluded that the current assessment formula needed to be revised. In April, 1991, the FCA published a Notice of Proposed Rulemaking that proposed to establish an asset-based formula for assessments of System institutions. 56 FR 13424, April 2, 1991. The comments received indicated a concern that the proposed asset-based formula would create inequities due to the method by which assets of banks and associations would be counted for assessment purposes. Further, some commenters strongly urged that alternative assessment procedures be explored before adoption of an asset-based formula.

B. The Negotiated Rulemaking

After considering various alternatives for public participation in a further exploration of assessment allocation procedures, the FCA concluded that negotiated rulemaking might provide a creative means to achieve an equitable assessment formula. In accordance with the Negotiated Rulemaking Act of 1990, 5 U.S.C. 581–590, the FCA published notice of its intent to establish a negotiated rulemaking committee to develop and negotiate proposed amendments to its assessment regulations. 57 FR 19405, May 6, 1992. To meet the statutory and practical requirements of negotiated rulemaking, the FCA attempted to select a group of System institutions that would be as balanced and representative as possible. The FCA issued an advisory committee charter to the Committee on June 5, 1992.

The Committee met four times during June and July, 1992. Committee procedures complied with the Negotiated Rulemaking Act, *supra*, and the Federal Advisory Committee Act, 5 U.S.C. app. 2. All meetings were open to the public and meeting minutes were recorded. At the conclusion of negotiations, the Committee submitted a report to the FCA containing the consensus recommendations and views of the Committee regarding proposed amendments to the assessment regulations.

C. The Proposed Assessment Regulations

The FCA found that the consensus recommendations of the Committee regarding proposed assessment regulations were consistent with the FCA's legal obligations under the Act. On October 15, 1992, as sanctioned by the Negotiated Rulemaking Act, *supra*, the FCA issued proposed assessment regulations based in large part on the consensus recommendations of the Committee. 57 FR 47288.

The FCA received three comment letters on its proposed assessment regulations. Comments came from the Farm Credit Council (FCC), the Farm Credit Bank of Texas (Texas FCB), and the Federal Agricultural Mortgage Corporation (FAMC).

In response to public comment and based on its further consideration of the assessment process, the FCA has adopted several minor changes in the rules as proposed. Discussion of these changes and of pertinent public comment follows.

II. Analysis of Changes and Comments by Section

A. Section 607.3 Assessment of Banks, Associations, and Designated Other System Entities

Section 607.3 contains the assessment formula developed by consensus of the Committee. In its comment letter, the FCC noted its approval of the negotiated rulemaking process and its agreement with the basic assessment formula proposal, describing it as "an equitable solution to a complicated and potentially controversial matter." The FCC suggested three minor changes to proposed § 607.3.

With regard to § 607.3(a), the FCC commented that provision should be made for situations when an assessment may not be needed to maintain a necessary reserve pursuant to section 5.15 of the Act, or when the FCA may determine to reduce its necessary reserve. In response to this concern, the FCA is amending §§ 607.3(a) and 607.4(a)(1) to clarify that the FCA will only assess such an amount as may be required to maintain the reserve it determines to be "necessary" under section 5.15(a)(1)(B) of the Act. Adjustments in assessments due to changes in the necessary reserve are provided for in §§ 607.3(d), 607.4(a)(2), and 607.10.

Proposed § 607.3(b)(2)(iii) provided that where banks, associations, and designated other System entities are formed through merger or consolidation and the combined entity has not been examined prior to its initial assessment, such institution shall be assigned the "highest" composite CAMEL (capital, asset quality, management, earnings, and liquidity) rating received by any of the predecessor merged or consolidated institutions in their most recent examinations prior to the merger or consolidation. The FCC pointed out that use of the term "highest" could lead to confusion, since the best CAMEL ratings are actually lower numbers. To cure this ambiguity, the FCA has substituted the term "best."

The FCC also suggested that the reference to the $20,000 minimum assessment in § 607.3(b)(3) be changed to minimum "annual" assessment to avoid confusion regarding the frequency of the minimum assessment. The FCA finds such a change unnecessary because the term "assessment" is defined in § 607.2(a) as the "*annual* amount to be paid by each System institution to the FCA in accordance with section 5.15 of the Act." (emphasis added.)

The Texas FCB also commented on the $20,000 minimum assessment required by § 607.3(b)(3). The Texas FCB urged the FCA to reduce the minimum assessment to avoid an unfair impact on small institutions. Alternatively, the Texas FCB suggested that § 607.5(b) be revised to permit the institutions in each Farm Credit district to choose to be assessed by district rather than individually and permit the district's Farm Credit bank to reallocate the assessment to its affiliated associations.

The FCA notes that a representative of the Texas FCB was a member of the Committee, which unanimously adopted the $20,000 minimum only after thorough consideration of the concept of a minimum assessment and extensive debate on both higher and lower minimums. Moreover, the Committee rejected the concept of assessing System institutions by district rather than individually. The FCA agrees with the consensus recommendation of the Committee that all banks, associations, and designated other System entities should pay some minimum assessment, regardless of risk-adjusted asset base, to reflect a share of FCA regulatory costs and as a necessary cost of doing business as a federally chartered System financial institution. Consequently, § 607.3(b)(3) is adopted as proposed. The FCA will monitor the impact of the $20,000 minimum assessment and make adjustments in the future if necessary.

B. Section 607.4(b) Assessment of the Federal Agricultural Mortgage Corporation

As noted in the proposal, the Committee did not attempt to develop the method of assessment for FAMC. Under section 5.15(a) of the Act, the assessment of FAMC is separate from the rest of the System. Thus FAMC's assessment is separately covered in § 607.4(b). This section provides that FAMC is to be assessed for the estimated cost of the FCA's regulation, supervision, and examination of FAMC. FAMC is not subject to an assessment for the FCA's necessary reserve under section 5.15(a)(1)(B) of the Act. However, the FCA will include in its estimate of regulatory expenses sufficient funds to provide for anticipated increases in activity and significant developments in order to cover its expenses for the examination and supervision of FAMC during a fiscal year.

The FCA received extensive comments from FAMC regarding this section of the proposed assessment regulations. FAMC's comments may be summarized as follows:

(1) FAMC's participation in the development of the proposed regulation was inequitably and unreasonably limited.

(2) The FCA's authority to assess FAMC is limited to costs incurred by the agency for regulatory activities conducted under section 8.11 of the Act.

(3) The assessment provision for FAMC is vague and arbitrarily expansive.

(4) FAMC's assessment provision should be clear, specific, and conformed to statutory limitations.

The FCA does not agree that FAMC's participation in this rulemaking has been inequitably and unreasonably limited. FAMC has exercised its right under the Administrative Procedure Act, 5 U.S.C. 551, 553, to comment on the assessment regulations as initially proposed in April, 1991, and as proposed in October, 1992, subsequent to the negotiated rulemaking. Second, the Negotiated Rulemaking Act grants the FCA discretion in matters of committee selection for negotiated rulemaking. 5 U.S.C. 581, 584–585, 590. The principal focus of the Committee was on development of an equitable assessment formula for banks and associations. The FCA denied FAMC's petition to participate on the Committee because FAMC did not represent an interest that would be "significantly affected" by the formula used to apportion assessments among banks and associations. 5 U.S.C. 585. FAMC's participation on the Committee might have been appropriate had the Committee considered FAMC assessment methodology. However, as emphasized in the proposed rules, the Committee did not deliberate or make recommendations concerning FAMC's assessment. See 57 FR 47288, 47290–91, *supra*.

FAMC asserts in its second general comment that FCA assessment authority over FAMC is strictly limited by section 8.11(d) of the Act, which authorizes the FCA to assess FAMC for its costs in carrying out its statutory duty to regulate FAMC, including "the cost of any examination." 12 U.S.C. 2279aa–11(d). The FCA sees nothing in § 607.4(b) that is inconsistent with the responsibilities and authorities set forth in sections 5.15 and 8.11 of the Act. To the contrary, the FCA views the section 8.11 language not as a limitation, but rather as a statutory requirement that the FCA assess FAMC for any regulatory activities attributable to FAMC. Furthermore, the FCA sees no inconsistency because it understands "regulatory activities" in the broad sense of all of its oversight responsibilities for FAMC.

Read with section 5.15 of the Act, section 8.11 requires the FCA to assess FAMC for all costs associated with examining, supervising, and regulating FAMC. These same statutory terms are adopted in § 607.4(b). Regulatory activities required by sections of the Act other than section 8.11, such as the requirement of section 8.32 that the FCA develop a risk-based capital test for FAMC, are encompassed by the FCA's section 8.11 authority to provide for the general supervision of the safe and sound performance of FAMC, as well as the FCA's general rulemaking power in section 8.11(a)(1)(B)(ii).

FAMC's third comment asserts that § 607.4(b) is vague and that the FCA is arbitrarily expanding the legal limits of its assessment authority over FAMC. Similarly, in its final general comment, FAMC requests greater specificity in § 607.4(b), as well as definitions of "supervision," "examination," and other terms as they relate to FAMC.

As discussed above, the FCA has used terms employed in the Act for the regulatory language of § 607.4(b), with the intent of assessing FAMC for the estimated expenses of all FCA activities related to FAMC that are required by the Act. The FCA sees no need to define, for purposes of § 607.4(b), such terms as examination and supervision. The FCA will interpret the terms of § 607.4(b) consistently with Congressional intent to ensure that FAMC is held responsible only for FCA administrative expenses fairly attributable to it and, correspondingly, that System institutions are held responsible only for FCA administrative expenses fairly attributable to them. See 12 U.S.C. 2279aa–1(a)(3).

Some of FAMC's comments requesting more specificity in the assessment regulations are more appropriately directed toward the FCA's budget/appropriations process, which, of course, is subject to the annual Congressional limitation on FCA administrative expenses. To the extent that FAMC's concerns relate to the reconciliation of the annual assessment, which, pursuant to section 5.15 of the Act, is an estimated amount based on the FCA's reasonable expectations of the cost of regulating FAMC, and the actual cost of regulation, the FCA notes that FAMC will receive an annual report of assessments and expenses pursuant to § 607.11. The report of assessments and expenses is designed to reconcile annual assessments with the FCA's administrative expenses under the Act.

The FCC also commented on the FAMC assessment provision, noting its concern that FAMC be assessed for "indirect expenses," which are defined in § 607.2(g) as expenses of the FCA that are not attributable to the performance of examinations. The FCA fully intends that FAMC will be assessed for the cost of all FCA activities connected to the regulation of FAMC as authorized by section 8.11 of the Act, including not only examination, but other authorized activities such as supervision, enforcement activities, and prescription of rules and regulations, as well as for appropriate administrative support and overhead expenses. These authorized regulatory activities and expenses fall into the category of "indirect expenses," as defined in § 607.2(g). For clarification, the FCA has added a reference to such administrative and overhead expenses in § 607.4(b).

C. Section 607.7 Late-payment Charges on Assessments

The FCC commented that the reference in proposed § 607.7(a) to "institution" should be modified by the word "System" to be consistent with the definition in § 607.2(k). The FCA adopts this suggestion.

D. Section 607.8 Reimbursements for Services to Non-System Entities

Pursuant to 12 U.S.C. 3025, the FCA is authorized and directed to examine and audit the National Consumer Cooperative Bank, doing business as the National Cooperative Bank (NCB), and receive reimbursement from the NCB for such examinations and audits. Due to the close structural relationship between the NCB and the NCB Development Corporation (NCBDC) provided for in 12 U.S.C. 3051, the FCA also examines the NCBDC as part of its examination of the NCB. The FCA currently bills the NCBDC separately for the expenses associated with its examination by the FCA.

Section 607.2 defines the NCB and the NCBDC as "non-System entities." Proposed § 607.8 provided that reimbursable billings for FCA examination of non-System entities would be based on direct expenses incurred plus a portion of indirect expenses allocated on the basis of direct expenses incurred as a percentage of total direct expenses of the FCA. Upon further consideration of the reimbursement authorization provided in 12 U.S.C. 3051, and to ensure that non-System entities are not assessed for expenses unrelated to FCA activities pertaining to such entities, the FCA has modified § 607.8 to provide for reimbursement of direct expenses plus an amount for those FCA indirect expenses reasonably related to FCA services rendered to the non-System entity. The FCA does not anticipate that this change will have any substantial effect on the assessments of either non-System entities or System institutions.

The FCC sought affirmation that non-System entities are responsible for indirect FCA expenses attributable to them even if there are no direct FCA expenses with respect to such entities. Currently, the FCA examines the NCB and the NCBDC on an annual basis. As a practical matter, therefore, the FCA does not anticipate that the situation raised in the FCC's comment letter is likely to occur.

E. Section 607.10 Adjustments for Overpayment or Underpayment of Assessments

Section 607.10 provides that credits for overpayment and charges for underpayment of assessments shall be applied to the next applicable assessment payment due date during the current or subsequent fiscal year. The FCC urged the FCA to clarify proposed § 607.10 to provide that adjustments would be made based on actual expenditures of the agency. In response to this concern, the FCA is amending § 607.10 to state that credits for overpayments or charges for underpayments shall be based on FCA administrative operating expenses incurred in the applicable fiscal year and on funds required to be maintained pursuant to section 5.15 of the Act.

F. Section 607.11 Report of Assessments and Expenses

Proposed § 607.11 would have required the FCA, by January 15 of each calendar year, to provide each assessed System institution with a statement of assessments and expenses for the preceding fiscal year showing total assessments and other income received as applied to expenses incurred by major budget category and amounts set aside for necessary reserves. The FCA noted in its proposal that this section is intended to enhance the information currently available to System institutions pursuant to § 618.8230 of this chapter, which is being replaced by new part 607.

The FCC expressed a concern that the use of the term "statement" in this section implied that the FCA would provide only a simple mathematical statement of assessments and expenses without narrative discussion and explanation. The intent of the FCA in this section, as noted above, is to provide System institutions with useful information on assessments and expenses. To this end, the FCA expects to work with System institutions to develop an effective format for annual assessments and expenses information.

In addition, to further reinforce consistency with former § 618.8230(b) of this chapter, the FCA has changed the assessments and expenses information reference in § 607.11 from "statement" to "report."

List of Subjects

12 CFR Part 607

Accounting, Agriculture, Archives and records, Banks, Banking, Claims, Credit, Finance, Government securities.

12 CFR Part 618

Agriculture, Archives and records, Banks, Banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, chapter VI, title 12 of the Code of Federal Regulations is amended by adding part 607 to subchapter A and amending part 618 as follows:

PART 607—ASSESSMENT AND APPORTIONMENT OF ADMINISTRATIVE EXPENSES

Sec.

607.1 Purpose and scope.
607.2 Definitions.
607.3 Assessment of banks, associations, and designated other System entities.
607.4 Assessment of other System entities.
607.5 Notice of assessment.
607.6 Payment of assessment.
607.7 Late-payment charges on assessments.
607.8 Reimbursements for services to non-System entities.
607.9 Reimbursable billings.
607.10 Adjustments for overpayment or underpayment of assessments.
607.11 Report of assessments and expenses.

Authority: Secs. 5.15, 5.17 of the Farm Credit Act; 12 U.S.C. 2250, 2252, 3025.

§ 607.1 Purpose and scope.

The regulations in part 607 implement the provisions of section 5.15 of the Farm Credit Act of 1971, 12 U.S.C. 2001 *et seq.* (Act) relating to Farm Credit Administration (FCA) assessments. The regulations prescribe the procedures for the equitable apportionment of FCA annual administrative expenses and necessary reserves among Farm Credit System (System) institutions. Pursuant to section 5.15(a) of the Act, the regulations also provide for the separate assessment of the FCA's costs of supervising and examining the Federal Agricultural Mortgage Corporation (FAMC). The regulations further provide for the reimbursement of expenses incurred in performing statutorily required examinations of non-System entities.

§ 607.2 Definitions.

For the purpose of this part, the following definitions shall apply:

(a) *Assessment* means the annual amount to be paid by each System institution to the Farm Credit Administration in accordance with section 5.15 of the Act.

(b) *Average risk-adjusted asset base* means the average of the risk-adjusted asset base (as determined in accordance with § 615.5210(e) of this chapter) of banks, associations, and designated other System entities, calculated as follows:

(1) For banks, associations, and designated other System entities with four quarters of risk-adjusted assets as of June 30 of each year, the sum of the average daily risk-adjusted assets as of the last day of the quarter as reported on each quarterly Call Report Schedule RC–G to the FCA for the most recent four quarters immediately preceding each September 15, divided by four;

(2) Except as provided in paragraphs (b)(3) and (b)(4) of this section, for banks, associations, and designated other System entities with less than four quarters of risk-adjusted assets as of June 30 of each year, the sum of the average daily risk-adjusted assets as of the last day of the quarter reported on each quarterly Call Report Schedule RC–G to the FCA for the quarters in which it was in existence immediately preceding September 15, divided by the number of quarters for which the Call Report Schedule RC–G was received;

(3) For banks, associations, and designated other System entities that were formed through mergers, consolidations, or transfers of direct lending authority, and have less than four quarters of risk-adjusted assets as of June 30, the sum of the average daily risk-adjusted assets as of the last day of the quarter for the most recent four quarters immediately preceding September 15 as reported on each quarterly Call Report Schedule RC–G filed by the newly chartered institution and the institutions that were merged or consolidated or that received direct lending authority, divided by four;

(4) For banks, associations, and designated other System entities chartered during the period July 1 through September 30 of each year that were not formed by the merger or consolidation of existing System institutions or the transfer of direct lending authority from another System institution, the total of the average daily risk-adjusted assets as of the last day of the quarter as reported on Call Report Schedule RC–G for the quarter ending September 30.

(c) *Composite CAMEL rating* means the composite numerical assessment of the financial condition of an institution assigned to the institution by the FCA based on its most recent examination of the institution. "CAMEL" is an acronym for capital, asset quality, management, earnings, and liquidity. The CAMEL factors are generally considered to be important indicators of an institution's financial health. Institutions are rated on each of the factors during an examination. CAMEL ratings range from 1–5, with a lower number indicating better financial condition than a higher number.

(d) *Delinquent amount* means an amount owed to the FCA that has not been paid by the date specified in the FCA's Notice of Assessment or billing.

(e) *Designated other System entities* means other System entities designated by the FCA in § 607.3(c) to be assessed on the same basis as banks and associations under § 607.3.

(f) *Direct expenses* means the expenses of the FCA attributable to the performance of examinations.

(g) *Indirect expenses* means all FCA expenses that are not attributable to the performance of examinations.

(h) *Non-System entities* means the National Consumer Cooperative Bank, the National Cooperative Bank Development Corporation, and any other entity that is required to be examined, supervised, or otherwise regulated by the FCA that is not a System institution.

(i) *Notice of Assessment* means a written notice to each System institution showing the total amount assessed and owing, the fiscal year covered by the assessment, the amounts of installment payments, and the due dates for such payments. For banks, associations, and designated other System entities, the Notice of Assessment shall also include an individualized assessment table showing the assessment under § 607.3(b)(2), where applicable.

(j) *Other System entities* means any service corporation chartered under section 4.25 of the Act, the Farm Credit System Financial Assistance Corporation, FAMC, the Federal Farm Credit Banks Funding Corporation, the Farm Credit Finance Corporation of Puerto Rico, and any other entity statutorily designated as a System institution that is not a bank or association.

(k) *System institutions* means banks, associations, and other System entities.

§ 607.3 Assessment of banks, associations, and designated other System entities.

(a) Banks, associations, and other System entities designated in paragraph (c) of this section will be assessed annually pursuant to this section for funds to cover a portion of the FCA's administrative expenses and for such funds as may be required to maintain a necessary reserve. The total amount of the annual assessment of banks, associations, and designated other System entities shall be based on the FCA budget for each fiscal year plus such amount as may be required to maintain a necessary reserve, excluding amounts to be assessed against other System entities and reimbursements received from non-System entities.

(b) The assessment shall be apportioned among the banks, associations, and designated other System entities as follows:

(1) Thirty (30) percent of the assessment under this section shall be apportioned to each bank, association, and designated other System entity on the basis of each institution's pro rata share of the total average risk-adjusted asset base.

(2) Seventy (70) percent of the assessment under this section shall be apportioned to each bank, association, and designated other System entity based upon the amounts of the institution's average risk-adjusted assets that fall within the graduated risk-adjusted asset tiers contained in the following table. An institution's total assessment under this paragraph is the sum of the amounts assessed for risk-adjusted assets falling into each applicable tier, subject to adjustment for its CAMEL rating as required in paragraphs (b)(2)(i) and (b)(2)(ii) of this section. The same assessment rate (designated as X_1 or a declining percentage of X_1 in the following table) will be applied to each dollar value of risk-adjusted assets falling within each tier, increased where applicable, by the amounts prescribed in paragraphs (b)(2)(i) and (b)(2)(ii) of this section. The actual assessment rate under this paragraph shall be determined annually based on relative average risk-adjusted asset bases, the CAMEL ratings of individual institutions, and the FCA budget as adjusted pursuant to paragraph (a) of this section, but the relationship between the rates applied to each tier shall remain constant as set forth in the following table.

Average risk-adjusted asset size range (in millions)		Assessment rate
Over	To	
$0	$25	X_1
25	50	$.85X_1$
50	100	$.75X_1$
100	500	$.60X_1$
500	1,000	$.50X_1$
1,000	7,000	$.35X_1$
7,000	10,000	$.20X_1$
10,000		$.10X_1$

Example: XYZ association has a CAMEL rating of 2 and average risk-adjusted assets of $500.4 million. The value of X_1 has been determined to be .000917, based on an FCA budget of $40.29 million.

X_1=.000917 therefore $25,000,000×.0917%	=	$22,925
$.85X_1$=.000780 therefore $25,000,000×.0780%	=	19,500
$.75X_1$=.000688 therefore $50,000,000×.0688%	=	34,400
$.60X_1$=.000550 therefore $400,000,000×.0550%	=	220,000
$.50X_1$=.000458 therefore $400,000×.0458%	=	183
Total Assessment under § 607.3(b)(2)	=	297,008

(i) If the FCA assigns a bank, association, or designated other System entity a composite CAMEL rating of 3 following its most recent examination of the institution prior to the date of assessment, the assessment provided for in paragraph (b)(2) of this section shall be increased by 20 percent.

(ii) If the FCA assigns a bank, association, or designated other System entity a composite CAMEL rating of 4 or 5 following its most recent examination of the institution prior to the date of assessment, the assessment provided for in paragraph (b)(2) of this section shall be increased by 40 percent.

(iii) Banks, associations, and designated other System entities that were formed through mergers or consolidations and have not been examined before their initial assessment under this section shall be deemed to have a composite CAMEL rating equivalent to the best composite CAMEL rating assigned to the merged or consolidated institutions in the FCA's most recent examination of the individual institutions prior to the date of merger or consolidation. Newly chartered institutions not formed through mergers or consolidations that have not been examined before their initial assessment under this section shall be deemed to have a composite CAMEL rating of 2.

(3) Each bank, association, and designated other System entity shall pay a minimum assessment of $20,000 regardless of the result of the application of the assessment formula established by paragraphs (b)(1) and (b)(2) of this section. If such a minimum assessment is apportioned to an institution, that institution's average risk-adjusted asset base shall be deducted from the total average risk-adjusted asset base, and $20,000 shall be deducted from the total assessment amount for purposes of determining the assessments of banks, associations, and designated other System entities paying more than the $20,000 minimum assessment.

(c) Other System entities designated to be assessed in accordance with this section are:

The Farm Credit Services Leasing Corporation.

(d) Assessments may be adjusted periodically to reflect:

(1) Changes in the FCA budget and necessary reserve; and

(2) Any overpayment or underpayment by a bank, association, or designated other System entity in the prior fiscal year.

§ 607.4 Assessment of other System entities.

(a)(1) Unless otherwise designated to be assessed under § 607.3, and with the exception of FAMC as provided in paragraph (b) of this section, other System entities will be assessed for estimated direct expenses plus an allocated portion of FCA indirect expenses and such amount as may be required to maintain a necessary reserve. The estimate for direct expenses shall take into account the direct expenses incurred in the most recent examination of the entity preceding each September 15 and expected increases or decreases in examination work for the next fiscal year. A proportional amount of FCA indirect expenses will be allocated to each entity based on the estimated direct expenses related to the particular entity as a percentage of the total budgeted direct expenses of the agency (excluding direct expenses under paragraph (b) of this section) for the fiscal year covered by the assessment.

(2) Assessments of other System entities under paragraph (a)(1) of this section may be adjusted periodically to reflect:

(i) Changes in the FCA budget and necessary reserve; and

(ii) Any overpayment or underpayment by such other System entity in the prior fiscal year.

(b) *Assessment of Federal Agricultural Mortgage Corporation.* The FCA shall assess FAMC for the estimated cost of FCA's regulation, supervision, and examination of FAMC, including

reasonably related administrative and overhead expenses. FAMC's assessment may be adjusted periodically to reflect changes in the FCA budget and to reconcile differences between FAMC's assessment and FCA's actual expenditures for regulation of FAMC in the prior fiscal year.

§ 607.5 Notice of assessment.

(a) Except as provided in paragraph (b) of this section, prior to September 15 of each year, the FCA shall determine the amount of assessment to be collected from each System institution for the next fiscal year under §§ 607.3 and 607.4 and shall provide each System institution with a Notice of Assessment. The total amount assessed each System institution in the Notice of Assessment shall be an obligation of each institution on October 1 of each fiscal year. The total amount assessed each System institution shall be payable not less often than quarterly in equal installments during each fiscal year, subject to adjustment pursuant to §§ 607.3(d), 607.4(a)(2), 607.4(b), and 607.10.

(b) For banks, associations and designated other System entities chartered during the period July 1 through September 30 of each year, the FCA shall, prior to December 15, determine the amount of assessment to be collected from each such institution for the remainder of the fiscal year and provide the institution with a Notice of Assessment. The total amount of the assessment becomes an obligation of the institution on January 1 and shall be payable in equal installments, subject to adjustment pursuant to §§ 607.3(d) and 607.10, not less often than quarterly for the remainder of the fiscal year. The first installment shall be due on January 1. This paragraph shall not apply to banks, associations, and designated other System entities formed by merger, consolidation, or transfer of direct lending authority.

(c) In the event of the proposed cancellation of the charter of a System institution, the unpaid installments of the total amount of the institution's assessment shall be provided for prior to the cancellation of the charter.

§ 607.6 Payment of assessment.

(a) System institutions shall pay the amounts due as scheduled in the FCA Notice of Assessment. Payment shall be made by electronic funds transfer (EFT) for credit to the FCA's account in the Department of the Treasury, by check to the FCA for deposit, or by such other means as the FCA may authorize.

(b) Payments made by EFT that are not received by the close of business on the due date shall be considered delinquent in accordance with § 607.7.

(c) Payments made by check that are not received by the FCA before the close of business on the third workday preceding the due date shall be considered delinquent in accordance with § 607.7.

§ 607.7 Late-payment charges on assessments.

(a) If any portion of a scheduled installment of a System institution's total assessment or the reimbursement billed to a non-System entity is not paid by the due date, the overdue amount shall be considered delinquent.

(b) Delinquent amounts shall be charged late-payment interest at the United States Treasury Department's current value of funds rate published in the **Federal Register**. Late payment interest shall be expressed as an annual rate of interest and shall accrue on a daily basis starting on the due date of the delinquent amount and continuing through the date payment is received by the FCA.

(c) The FCA shall waive the collection of interest on the delinquent amounts if such amounts are paid within 30 days of the date interest begins to accrue. The FCA may waive interest due on delinquent amounts upon finding no fault with the performance of the remitter.

(d) The FCA shall charge an amount necessary to cover the administrative costs incurred as a result of collection of any delinquent amount.

(e) The FCA shall charge a penalty of 6 percent per annum on any portion of a delinquent amount that is more than 90 days past due. Such penalty shall accrue from the date the amount became delinquent.

§ 607.8 Reimbursements for services to non-System entities.

Non-System entities shall be assessed for direct expenses plus an amount for FCA indirect expenses reasonably related to the services rendered to the non-System entity. Such related indirect expenses shall be calculated as a percentage of the FCA's overall indirect expenses based on the extent of FCA activities with respect to the non-System entity during the period since the entity's most recent assessment.

§ 607.9 Reimbursable billings.

The FCA shall bill the amounts due for services to non-System entities each year subsequent to the issuance of their respective Reports of Examination. Amounts billed are due in full within 30 days from the date billed. If the billed amount or any portion thereof remains unpaid at close of business on the due date, such amount or portion shall be considered delinquent in accordance with § 607.7.

§ 607.10 Adjustments for overpayment or underpayment of assessments.

Where adjustments for overpayment or underpayment of assessments are made pursuant to §§ 607.3(d), 607.4(a)(2), and 607.4(b), credits for overpayments or charges for underpayments shall be based on FCA administrative operating expenses incurred in the applicable fiscal year and on funds required to be maintained pursuant to section 5.15 of the Act. Such credits or charges shall be applied to the next applicable assessment payment due during the current or subsequent fiscal year. Where such adjustments are made, the FCA shall provide the institution with a statement of adjustment at least 15 days prior to the date when the institution's next assessment payment is due. Adjustments in assessments shall be made in principal amount only. Overdue amounts under § 607.7 are not underpayments for assessment adjustment purposes.

§ 607.11 Report of assessments and expenses.

By January 15 of each calendar year, the FCA shall provide each assessed System institution with a report of assessments and expenses for the preceding fiscal year showing total assessments and other income received as applied to expenses incurred by major budget category and amounts set aside for a necessary reserve.

PART 618—GENERAL PROVISIONS

1. The authority citation for part 618 is revised to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

Subpart F—Miscellaneous Provisions

§ 618.8230 [Removed and Reserved]

2. Subpart F is amended by removing and reserving § 618.8230.

Dated: February 17, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93-4165 Filed 2-22-93; 8:45 am]

BILLING CODE 6705-01-P

12 CFR Parts 611, 615 and 627

RIN 3052–AA92

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Title V Conservators and Receivers; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under parts 611, 615 and 627 on October 9, 1992 (57 FR 46480). The final regulation amends 12 CFR parts 611 and 615 and adds 12 CFR part 627 to reflect amendments to the Farm Credit Act of 1971 by the Agricultural Credit Act of 1987 providing that, after January 5, 1993, the Farm Credit System Insurance Corporation (Insurance Corporation) will be the exclusive entity appointed as conservator or receiver of a Farm Credit System institution. Also adopted are amendments to existing conservatorship and receivership regulations, which continue to apply in situations where the Insurance Corporation is not appointed as conservator or receiver. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 23, 1993.

EFFECTIVE DATE: The regulation amending 12 CFR parts 611 and 615 and adding 12 CFR part 627, published on October 9, 1992 (57 FR 46480) is effective February 23, 1993.

FOR FURTHER INFORMATION CONTACT:

Rebecca S. Orlich, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, or

John J. Hays, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444.

Authority: 12 U.S.C. 2252(a) (9) and (10).

Dated: February 18, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–4166 Filed 2–22–93; 8:45 am]

BILLING CODE 6705–01–P

12 CFR Part 625

RIN 3052–AB11

Application for Award of Fees and Other Expenses Under the Equal Access to Justice Act; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 625 on December 18, 1992 (57 FR 60108). The final regulation adds 12 CFR part 625 to implement the Equal Access to Justice Act (EAJA). The regulations establish conditions under which parties who prevail over the FCA in certain administrative proceedings may be awarded attorney fees and other expenses. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 23, 1993.

EFFECTIVE DATE: The regulation adding 12 CFR part 625, published on December 18, 1992 (57 FR 60108) is effective February 23, 1993.

FOR FURTHER INFORMATION CONTACT:

William L. Larsen, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, or

Richard A. Cohn, Senior Attorney, Administrative Law and Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

Authority: 12 U.S.C. 2252(a) (9) and (10).

Dated: February 18, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–4164 Filed 2–22–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 27159; Amdt. No. 1533]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPS). The complete

regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates started as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Standard instrument approaches, incorporation by reference.

Issued in Washington, DC, on February 12, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Public Law 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 92.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPS, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
01/04/93	TX	Houston	Houston-Southwest	FDC 3/0016	NDB Rwy 9 Amdt 4A.
01/19/93	OK	Muskogee	Davis Field	FDC 3/0267	NDB Rwy 31 Amdt 8.
01/21/93	OK	Norman	University of Oklahoma Westheimer Airpark.	FDC 3/0296	RNAV Rwy 3 Orig.
01/26/93	FL	St. Augustine	St. Augustine	FDC 3/0489	VOR Rwy 13 Amdt 4.
01/29/93	FL	Vero Beach	Vero Beach Muni	FDC 3/0427	VOR/DME Rwy 29L Amdt 2.
01/29/93	FL	Vero Beach	Vero Beach Muni	FDC 3/0428	VOR Rwy 11R Amdt 12.
01/30/93	MO	Cape Girardeau	Cape Girardeau	FDC 3/0447	ILS Rwy 10 Amdt 9.
01/30/93	MO	Cape Girardeau	Cape Girardeau	FDC 3/0468	NDB Rwy 10 Amdt 8.
01/30/93	MO	Farmington	Farmington Regional	FDC 3/0439	NDB Rwy 20 Amdt 2.
01/30/93	MO	Farmington	Farmington Regional	FDC 3/0450	NDB Rwy 2 Amdt 2.
01/30/93	MO	Festus	Festus Memorial	FDC 3/0448	NDB Rwy 36 Amdt 2.
01/30/93	MO	St. Louis	Lambert/St. Louis Intl	FDC 3/0442	LOC BC Rwy 6 Amdt 2A.
01/30/93	MO	St. Louis	Lambert/St. Louis Intl	FDC 3/0443	ILS Rwy 30R Amdt 6B.
01/30/93	MO	St. Louis	Lambert/St. Louis Intl	FDC 3/0469	ILS Rwy 30R (CAT II) Amdt 6B
01/30/93	MO	St. Louis	Spirit of St. Louis	FDC 3/0431	LOC Rwy 26L Amdt 3.

NFDC TRANSMITTAL LETTER—Continued

Effective	State	City	Airport	FDC No.	SIAP
01/30/93	MO	St. Louis	Spirit of St. Louis	FDC 3/0434	VOR Rwy 26L Amdt 4A.
01/30/93	MO	St. Louis	Spirit of St. Louis	FDC 3/0436	NDB Rwy 26L Orig.
01/30/93	MO	St. Louis	Spirit of St. Louis	FDC 3/0449	NDB Rwy 8R Amdt 10.
01/30/93	MO	St. Louis	Spirit of St. Louis	FDC 3/0451	ILS Rwy 8R Amdt 12A.
02/03/93	TN	Columbia/Mt Pleasant	Maury County	FDC 3/0526	SDF Rwy 23 Amdt 4A.
02/03/93	TN	Columbia/Mt Pleasant	Maury County	FDC 3/0527	NDB Rwy 23 Amdt 3A.
02/03/93	TN	Cookeville	Putnam County	FDC 3/0538	NDB Rwy 17 Amdt 5.
02/03/93	TN	Dickson	Dickson Muni	FDC 3/0537	NDB Rwy 17 Amdt 1.
02/03/93	TN	Jasper	Marion County-Brown Field	FDC 3/0532	NDB Rwy 4 Amdt 3.
02/03/93	TN	Lafayette	Lafayette Muni	FDC 3/0539	NDB Rwy 19 Amdt 2.
02/03/93	TN	Smithville	Smithville Muni	FDC 3/0540	NDB Rwy 24 Amdt 1.
02/03/93	TN	Sparta	Sparta-White County	FDC 3/0522	NDB Rwy 4 Amdt 2.
02/03/93	TN	Sparta	Sparta-White County	FDC 3/0541	SDF Rwy 4 Amdt 2.
02/03/93	TN	Tullahoma	Tullahoma Regional Airport/ Wm Northern Field.	FDC 3/0520	VOR/DME–B Amdt 3.
02/04/93	TN	Clarksville	Outlaw Field	FDC 3/0571	VOR Rwy 35 Amdt 15.
02/04/93	TN	Clarksville	Outlaw Field	FDC 3/0570	LOC Rwy 35 Amdt 5.
02/04/93	TN	Clarksville	Outlaw Field	FDC 3/0572	NDB Rwy 35 Amdt 5.
02/05/93	AK	Ketchikan	Ketchikan Intl	FDC 3/0610	ILS/DME–1 Rwy 11 Amdt 5.
02/05/93	AR	Stuttgart	Stuttgart Muni	FDC 3/0617	NDB Rwy 18 Amdt 8.
02/08/93	FL	Panama City	Panama City-Bay County	FDC 3/0649	NDB Rwy 14 Amdt 4.
02/08/93	FL	Panama City	Panama City-Bay County	FDC 3/0650	VOR or TACAN–A, Amdt 13A.
02/08/93	FL	Panama City	Panama City-Bay County	FDC 3/0651	ILS Rwy 14 Amdt 14.
02/08/93	MO	St. Louis	Lambert/St. Louis Intl	FDC 3/0647	ILS Rwy 30L Amdt 10A.
02/08/93	TX	Amarillo	Amarillo Intl	FDC 3/0661	ILS Rwy 4 Amdt 20.
02/09/93	MN	Bemidji	Bemidji-Beltrami County	FDC 3/0677	ILS Rwy 31 Amdt. 3.
02/09/93	MN	Bemidji	Bemidji-Beltrami County	FDC 3/0678	VOR/DME or TACAN Rwy 31 Amdt 12.
02/09/93	MN	Bemidji	Bemidji-Beltrami County	FDC 3/0679	NDB Rwy 31 Amdt 5.
02/09/93	MN	Bemidji	Bemidji-Beltrami County	FDC 3/0680	VOR Rwy 13 Amdt 16.
02/11/93	CA	San Francisco	San Francisco Intl	FDC 3/0734	LDA/DME Rwy 28R Amdt 2.

[FR Doc. 93–4128 Filed 2–22–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27158; Amdt. No. 1532]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the

affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on February 12, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective April 1, 1993

Little Rock, AR, Adams Field, NDB RWY 4L, Amdt. 18
Little Rock, AR, Adams Field, NDB RWY 22R, Amdt. 6
Little Rock, AR, Adams Field, ILS RWY 4L, Amdt. 24
Little Rock, AR, Adams Field, ILS RWY 22L, Amdt. 1
Little Rock, AR, Adams Field, ILS RWY 22R, Amdt. 8
Little Rock, AR, Adams Field, VOR/DME RNAV RWY 36, Amdt. 10
Hawthorne, CA, Hawthorne Muni, LOC RWY 25, Amdt. 10
Tell City, IN, Perry County Muni, NDB RWY 31, Amdt. 6, CANCELLED
Tell City, IN, Perry County Muni, NDB RWY 13, Orig.
Glasgow, KY, Glasgow Muni, VOR/DME RWY 7, Amdt. 5
Glasgow, KY, Glasgow Muni, SDF RWY 7, Amdt. 8
Glasgow, KY, Glasgow Muni, NDB RWY 7, Amdt. 9
Hawesville, KY, Hancock Airfield, VOR RWY 15, Amdt. 6
Hawesville, KY, Hancock Airfield, VOR RWY 33, Amdt. 6
Hawesville, KY, Hancock Airfield, NDB–A, Amdt. 6
Hopkinsville, KY, Hopkinsville-Christian County, LOC RWY 26, Amdt. 2
Hopkinsville, KY, Hopkinsville-Christian County, NDB RWY 26, Amdt. 5
Russellville, KY, Russellville-Logan County, VOR/DME RWY 24, Amdt.6
Morristown, NJ, Morristown Muni, NDB RWY 23, Amdt. 6
La Grande, OR, La Grande/Union County, NDB–A, Amdt. 2
Kenedy, TX, Karnes County, VOR/DME–A, Amdt. 6
Richmond, VA, Chesterfield County, VOR RWY 15, Amdt. 8, CANCELLED
Richmond, VA, Chesterfield County, VOR/DME RWY 15, Orig.
Hoquiam, WA, Bowerman, VOR RWY 6, Amdt. 13
Hoquiam, WA, Bowerman, VOR/DME RWY 24, Amdt. 4
Hoquiam, WA, Bowerman, LOC RWY 24, Amdt. 3
Olympia, WA, Olympia, VOR RWY 17, Amdt. 10A, CANCELLED
Olympia, WA, Olympia, ILS RWY 17, Amdt. 8
Olympia, WA, Olympia, VOR–A, Orig.
Olympia, WA, Olympia, VOR/DME RWY 35, Amdt. 11
Shelton, WA, Sanderson, NDB RWY 23, Orig., CANCELLED
Shelton, WA, Sanderson Field, NDB–A Orig.
Wenatchee, WA, Pangborn Memorial, VOR–A, Amdt. 5
Wenatchee, WA, Pangborn Memorial, VOR/DME–C, Amdt. 3

. . .Effective March 4, 1993

Chicago, IL, Chicago Midway, NDB RWY 31C, Amdt. 14
Chicago, IL, Chicago Midway, ILS RWY 31C, Amdt. 5
Lawrence, KS, Lawrence Muni, VOR/DME–A, Amdt. 9
Lawrence, KS, Lawrence Muni, NDB RWY 33, Orig.
Lawrence, KS, Lawrence Muni, NDB RWY 33, Orig., CANCELLED
Lawrence, KS, Lawrence Muni, ILS RWY 33, Orig.
Lawrence, KS, Lawrence Muni, VOR/DME RNAV RWY 33, Amdt. 4
Houston, TX, Houston Intercontinental, VOR/DME RWY 14L, Amdt. 15
Houston, TX, Houston Intercontinental, ILS RWY 14L, Amdt. 10
Houston, TX, William P. Hobby, VOR/DME RWY 4, Amdt. 17
Houston, TX, William P. Hobby, VOR RWY 12R, Amdt. 18
Houston, TX, William P. Hobby, VOR/DME RWY 22, Amdt. 23
Houston, TX, William P. Hobby, VOR/DME RWY 30L, Amdt. 16
Houston, TX, William P. Hobby, VOR/DME RWY 35, Amdt. 2
Houston, TX, William P. Hobby, LOC BC RWY 22, Amdt. 3
Houston, TX, William P. Hobby, NDB RWY 4, Amdt. 32
Houston, TX, William P. Hobby, ILS RWY 4, Amdt. 36
Houston, TX, William P. Hobby, ILS RWY 12R, Amdt. 11
Houston, TX, William P. Hobby, ILS RWY 30L, Amdt. 4
Nacogdoches, TX, A L Mangham Jr. Regional, NDB RWY 15, Amdt. 3, CANCELLED

Nacogdoches, TX, A L Mangham Jr. Regional, NDB RWY 18, Orig.

. . . Effective February 10, 1993

Chandler, AZ, Chandler Muni, VOR RWY 4L, Amdt. 4

. . . Effective February 5, 1993

Harrisburg, PA, Harrisburg Intl, VOR RWY 31, Amdt. 1

. . . Effective February 4, 1993

Monterey, CA, Monterey Peninsula, LOC/DME RWY 28L, Amdt. 3

[FR Doc. 93–4129 Filed 2–22–93; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Financial Reporting by Introducing Brokers; Valuation of Investments of Customer Funds by Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amended its rules to reduce certain financial reporting requirements for independent introducing brokers (IBIs). These rule amendments will assure that IBIs are not required to file two certified financial statements within a one-year period (which will provide greater relief than the six-month period set forth in the proposed rule amendments); permit IBIs to file semiannual, rather than quarterly, financial reports; and require that an IBI file notices of financial difficulties only with the National Futures Association (NFA) and futures commission merchants (FCMs) carrying or intending to carry accounts of the IBI's customers, and not also with the Commission. In light of the fact that an IBI's minimum financial requirement is lower than that of an FCM and that an IBI does not handle customer funds, the Commission believes it is appropriate to reduce some of the related reporting requirements currently applicable to IBIs. The Commission is also amending its rule governing valuation of investments of customer funds by FCMs to conform the rule to modern financial practices.

EFFECTIVE DATE: March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, at the above address. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background

On October 6, 1992, the Commission published proposed amendments to its rules to reduce certain financial reporting requirements for IBIs and to conform the rule governing valuation of investment of customer funds to modern financial practice and allowed sixty days for comment thereon.[1] The Commission received one written comment in response to the proposed rulemaking, from the National Futures Association (NFA). NFA expressed strong support for the proposed amendments, but also recommended that the Commission provide further relief to assure that IBIs are not required to file two certified financial statements within a one-year period. As proposed, the rule amendments would have provided that an IBI not be required to file two certified financial statements within a six-month period. The Commission has carefully considered this comment and, based upon that review and its own reconsideration of the issue, has determined to incorporate NFA's suggestion in the final rules. The Commission has further determined to adopt the other rule amendments essentially as proposed.

II. Financial Reporting Requirements

A. Certified Financial Reports of IBIs

The Commission has historically considered the requirement for certified financial statements to be an integral part of its minimum financial and related reporting requirements and the financial surveillance program. The requirement provides a third-party certification as to a firm's financial condition and its records. Thus, when the Commission adopted rules to govern IBs,[2] it required an applicant for registration that intends to operate as an IBI to file financial statements certified by an independent public accountant demonstrating compliance with the minimum financial requirement of $20,000 of adjusted net capital.[3] As is the case with an applicant for registration as an FCM, this requirement can be met by an IBI applicant in one of two ways: (1) By filing a Form 1–FR–IB, certified by an independent public accountant in accordance with Commission Rule 1.16, as of a date not more than 45 days prior to the date on which such report is filed; or (2) filing an uncertified Form 1–FR–IB as of a date not more than 45 days prior to the date on which such report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with Commission Rule 1.16 as of a date not more than one year prior to the date on which such report is filed.[4] Once an IBI is granted registration, it must file certified financial statements as of the close of its fiscal year. When the rules governing IBs were originally adopted, interim unaudited financial reports were to be filed quarterly by IBIs. Commission Rule 1.10(b)(1) and (2).

An applicant for registration as an IB can avoid the need to file certified financial statements if it enters into a guarantee agreement with an FCM and files such agreement along with its application for registration. As long as the guarantee agreement remains in effect, the guaranteed introducing broker (IBG) need not raise its own capital or file financial reports. The Commission is aware, however, that some applicants for IB registration submit a guarantee agreement and a certified Form 1–FR–IB. The purpose is to begin operations immediately under a temporary license available to an IBG[5] while complete fitness checks are conducted on the applicant firm and its principals. The IB and FCM enter into the agreement with the understanding that the agreement will terminate after NFA is satisfied that the IB meets the minimum fitness standards, including the financial requirements, and grants the IB full registration. After that point, the firm will operate as an IBI.[6]

Commission Rule 1.10(j)(8) previously required, however, that if an IB is party to a guarantee agreement which terminates and the IB then seeks to operate as an IBI, it must file a certified Form 1–FR–IB as of the day following the date of termination of the guarantee agreement. The type of firm referred to in the preceding paragraph may have a

[1] 57 FR 45999.

[2] 48 FR 35248 (August 3, 1983).

[3] The Commission's minimum financial requirement for an IBI remains at $20,000 of adjusted net capital. NFA, however, which is the designated self-regulatory organization for IBIs, recently increased its minimum requirement to $30,000. See NFA Financial Requirements, Section 9, effective December 31, 1992, reprinted in NFA Manual (P–H) ¶ 7049.

[4] Commission Rule 1.10(a)(2)(ii)(A) and (B). See also Commission Rule 1.10(a)(1). Commission rules referred to herein can be found in 17 CFR Ch. I (1992), unless otherwise noted.

[5] See Commission Rules 3.44–3.47. Rule 3.44 has been amended recently. 57 FR 23136, 23151 (June 2, 1992).

[6] NFA's comment letter pointed out that the delay in granting full registration so that the firm can operate as an IBI is not caused by the time necessary for NFA to review the Form 1–FR–IB and is instead normally the result of the full fitness review, including the need to obtain and review any Federal Bureau of Investigation disciplinary records relating to the applicant or its principals. The Commission has clarified its statements on this issue in this release in response to NFA's comment.

rather simple financial structure and fitness checks may be completed quickly. In such circumstances, a second certified Form 1–FR–IB would be required in a relatively brief period. For instance, if an IB applied for registration on July 1, submitting both a certified Form 1–FR–IB as of May 29 and a guarantee agreement, it could operate immediately as an IBG. If the NFA granted full registration by July 30, the guarantee agreement would terminate, and the IB would have to file another certified Form 1–FR–IB as of July 31.

The Commission has reviewed the IB financial filing requirements. Although the Commission continues to believe that it is important to have a reasonably current certified financial statement from an IBI when it begins operations, the Commission is aware that it can cost even the smallest IBI several thousand dollars to have its financial statements certified by an independent public accountant. The Commission believes that it would be unnecessary to require two certified financial statements from an IBI within a one-year period, especially in light of the fact that an IBI does not hold customer funds. The Commission also believes that a change in the rules to provide that an IBI would not be required to file certified statements twice within one year is not inconsistent with the overall financial surveillance system since, as noted above, an applicant for registration as an IB can submit a certified financial report that is up to one year old.

Accordingly, the Commission is amending Rule 1.10(j)(8)(i) so that, if an IB is changing from guaranteed to independent status, it need not file a new certified financial report if it has filed one with an "as of" date not more than one year prior to the date of termination or expiration of the guarantee agreement. This rule change should accommodate those firms referred to above that file a guarantee agreement in order to commence operations immediately and briefly as an IBG, with the understanding that they will operate as an IBI as soon as NFA grants the IB full registration.

The Commission also recognizes that there will be other IBGs whose guarantee agreements are terminated or expire that had not originally applied for registration as IBGs with the understanding that they would soon assume independent status. The Commission is adopting certain rule amendments that would simplify the financial reporting requirements for these firms as well if they wish to remain in business as IBIs rather than enter into a new guarantee agreement. As noted above, Rule 1.10(j)(8)(i) has previously required such firms to file a certified Form 1–FR–IB as of the day following the date of termination of the guarantee agreement. Since not all guarantee agreements terminate or expire near the end of a month, this could require certified financial statements as of a date other than a month-end. Such statements could be more difficult and costly to prepare for the IB and the independent public accountant, so the Commission is amending its rules to allow the "as of" date of this first certified financial report to be no later than the end of the month of termination or expiration of the guarantee agreement. A similar change has been adopted in Rule 1.10(j)(8)(ii) and in Rule 1.10(a)(3)(ii)(B) (which apply when a person that is not registered as an IB or as a securities broker or dealer succeeds to the business of an IBG).

The Commission notes that it is likely that certain firms which can take advantage of the amendments to Rule 1.10(j)(8) are also securities broker-dealers. Accordingly, the Commission is adopting a clarifying amendment to Rule 1.10(h), which provides such firms the ability to file a copy of the financial report required under the securities laws[7] in lieu of Form 1–FR, to make clear that the filing alternative applies to required financial reports under Rule 1.10(j).

The Commission is also amending Rule 1.10(b)(2) to further assure that an IBI will not need to file two certified financial reports within one year. If the IBI's first fiscal year-end following the "as of" date of its initial certified Form 1–FR–IB occurs within one year of such "as of" date, the IBI's Form 1–FR–IB as of the fiscal year-end will not need to be certified. (An uncertified Form 1–FR–IB is required to be filed as of the fiscal year-end, however.) The firm's second certified Form 1–FR–IB will not need to be filed in such circumstances until the second fiscal year-end following the "as of" date of the initial certified Form 1–FR–IB. The second certified Form 1–FR–IB must cover the period from the day following the date of the initial certified Form 1–FR–IB through the second fiscal year-end following the initial "as of" date, which would be a period of up to twenty-four months. Although IBIs should be able to avoid the need to utilize this provision by carefully designating their fiscal year when applying for registration or when first beginning to operate as an IBI, it may be more difficult for an IBI that had been operating as an IBG to accomplish this.

B. Unaudited Financial Reports by IBIs

The Commission has also reviewed the requirements for filing interim unaudited financial reports by IBIs. As noted above, Rule 1.10(b)(1) generally has required IBIs to file financial reports on a quarterly basis. However, Rules 1.10(b)(3) and 1.52 permit an IBI or an FCM to file financial reports on a semiannual basis if the rules of the firm's designated self-regulatory organization so provide. The only self-regulatory organization with an IB membership category is NFA, and all IBIs that handle customer business are members of NFA. NFA requires its member IBIs to file quarterly financial reports.[8] The Commission notes that certain contract markets only require their member FCMs to file financial reports on a semiannual basis.[9] In light of the fact that FCMs may hold customer funds and IBIs do not, it is somewhat anomalous for the latter to file financial reports more frequently than the former. Accordingly, the Commission is amending Rule 1.10(b)(1)(ii) to permit IBIs file Form 1–FR–IB semiannually rather than quarterly. Commission staff have been in contact with NFA staff and the Commission anticipates NFA will adopt a conforming change to its rules.

To recapitulate the effect of the proposed amendments discussed above, assume that an IB files its initial certified financial report in 1993 with an as of date between January 1 and March 31 and is using the calendar year as its fiscal year. The next two financial reports filed by the IB would be unaudited reports as of June 30, 1993 and December 31, 1993. In 1994, it would file an unaudited report as of June 30, 1994 and a certified report as of December 31, 1994 (covering a period of up to twenty-four months). Thus, the firm would file two certified and three unaudited financial reports during this time period under the rule amendments, while the previous rules required three certified and six unaudited reports during the same time period.

C. Maintenance of Minimum Financial Requirements by IBIs

IBIs are not subject to a financial "early warning" notice requirement as are FCMs (i.e., a requirement to give notice when adjusted net capital is less

[7] Securities broker-dealers must file the Financial and Operational Combined Uniform Single (FOCUS) Report under the Securities Exchange Act of 1934, Part II or Part IIA.

[8] NFA Financial Requirements Section 10, reprinted in NFA Manual [P–H ¶ 7050.

[9] See e.g., Commodity Exchange, Inc. Rule 7.05(a)(2).

than 150 percent of the minimum amount required). However, IBIs, as well as applicants for registration as an IBI, are required to file notice and provide certain written reports when their adjusted net capital falls below the minimum amount required, they fail to make or keep current required books and records, or they discover or are notified by an independent public accountant of a material inadequacy in their accounting system or internal accounting controls.[10] Previously, IBIs and IBI applicants have been required to file such notices and written reports with the Commission, NFA (the designated self-regulatory organization for IBIs) and with every FCM carrying or intending to carry customer accounts for the IBI or applicant for registration as an IBI.[11] The reporting requirement for IBIs with respect to those notices and reports required to be filed under Commission Rule 1.12 has been essentially the same as it is for FCMs.[12]

The Commission has reviewed this matter and believes that it is unnecessary for the Commission to directly receive Rule 1.12 notices and reports for IBIs and applicants for registration as IBIs if such notices and reports are filed with NFA and any FCMs carrying or intending to carry such firms' customer accounts. The Commission has amended Rule 1.12(g) to so provide. Such reports and notices will continue to be required by Commission regulations and, in this context, NFA will receive them on behalf of the Commission and advise the Commission if it believes any Commission action is necessary. Any notice or report filed by an IBI or applicant for registration as an IBIs with NFA pursuant to the proposed amendment to Rule 1.12(g) must be maintained by NFA on behalf of the Commission and will be deemed for all purposes to have been filed with, and to be the official record of, the Commission. In particular, the willful making of a false or misleading statement of a material fact in a notice or report filed with NFA under the amended Rule 1.12(g) will continue to be actionable under section 6(c) of the Commodity Exchange Act, 7 U.S.C. 9 (1982), as amended by section 209 of the Futures Trading Practices Act of 1992, Public Law 102–546, 106 Stat. 3590.

The Commission believes that this rule amendment is consistent with the rule amendments discussed above regarding financial reports for IBIs and not inconsistent with customer protection concerns.

D. Request for Comment

When the Commission originally adopted rules to govern IBs, it included, in response to a comment received on the proposed rules, a provision in Rule 1.10(i) that permits an IBI or applicant for registration as an IBI which is also a country elevator to file, in lieu of Form 1–FR–IB, a copy of a financial report that the country elevator would submit to the U.S. Department of Agriculture for other purposes.[13] The Commission, in its notice of proposed rulemaking, requested comment as to any other alternative financial reporting system that may exist which could be used to demonstrate effectively compliance by an IBI or applicant therefor with the minimum adjusted net capital requirement. As noted above, NFA filed the only written comment in response to the notice of proposed rulemaking, and it did not address this issue. Accordingly, the Commission is not adopting any additional filing alternatives.

III. Valuation of Investments of Customer Funds

Commission Rule 1.28 has historically required FCMs who invest customer funds in permissible investments under section 4d(2) of the Commodity Exchange Act, 7 U.S.C. 6d(2) (1988), and Commission Rule 1.25 to include such investments in segregated accounts at values no greater than the market value, determined as of the close of the market on the last preceding market day. When this rule was promulgated, an FCM was unable to obtain the bid price on permitted investments of customer funds prior to the preparation of the daily segregation record. Therefore, the rule allowed the FCM to value permitted investments of customer funds as of the close of the market on the last preceding market day.

Since the market prices for permitted investments of customer funds are now readily and immediately available to an FCM because of sophisticated electronic communication facilities, there is no longer any purpose or need for using prices as of the close of the preceding trading day when preparing the daily segregation record. The Commission is, therefore, amending Rule 1.28 to recognize the ready availability of market prices for government securities.

Commission Rule 1.32 requires the daily segregation record to be completed prior to noon on the next business day. For example, Tuesday's segregation record must be completed by noon Wednesday. Under Rule 1.28 as previously in effect, such a record could use prices as of the close of business Monday to value investments of customer funds. The amendment to Rule 1.28 will require an FCM, completing Tuesday's segregation record on Wednesday morning, to use prices as of the close of business on Tuesday.

The Commission understands that FCMs generally invest customer funds in short-term government securities whose historical cost generally does not exceed current prices under normal market conditions. Therefore, revaluation on a daily basis is usually unnecessary and this rule amendment should cause no change in current operations. The Commission specifically requested comment from any FCM that believed the rule amendment as proposed would present an undue burden, and no comments were received.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq. (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments adopted herein will affect IBIs, with the exception of the amendment to Rule 1.28 which will affect FCMs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[14] The Commission has previously determined that registered FCMs are not small entities for the purpose of the RFA.[15] Therefore, the amendment to Rule 1.28 will not have a significant economic impact on small entities.

With respect to IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected IBs should be considered to be small entities and, if so, the economic impact on them of any rule.[16] The amendments to Rules 1.10 and 1.12 adopted herein change the Commission's rules previously applicable to IBIs so as to reduce rather than increase the financial reporting requirements of those rules. The general financial reporting requirements have

[10] Commission Rule 1.12(a)-(d).

[11] IBIs filed 67 notices under Rule 1.12 during fiscal year 1992.

[12] Commission Rule 1.12(g).

[13] See 48 FR 35248, 35263 (August 3, 1983). Since this rule was adopted almost ten years ago, the filing alternative has never been utilized and Commission staff have received no inquiries on this issue.

[14] 47 FR 18618–18621 (April 30, 1982).

[15] 47 FR 18619.

[16] 48 FR 35248, 35276 (August 3, 1983).

been cut in half from quarterly to semiannually, the requirements for certified financial statements in the early stages of operations are reduced, and the need to file Rule 1.12 notices with the Commission is eliminated. The Commission believes that these rule amendments will not have a significant economic impact on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 et seq., imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission submitted these rule amendments in proposed form and their associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including these rule amendments, is as follows:

Average Burden Hours per Response.....15.25
Number of Respondents.....1,350
Frequency of Response.....On Occasion

The burden associated with these specific rule amendments is as follows:

Average Burden Hours per Response.....1.75
Number of Respondents.....240
Frequency of Response.....On Occasion

Copies of the OMB approved information collection package associated with these rules may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 1

Futures commission merchants, Introducing brokers, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 1a, 4b, 4c, 4d, 4f, 8a and 19, 7 U.S.C. 2, 6b, 6c, 6d, 6f, 12a and 23, the Commission hereby amends part 1 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24, unless otherwise stated.

2. Section 1.10 is amended by revising paragraphs (a)(2)(ii) introducing text, (a)(3)(ii)(B), (b)(1), (b)(2), (h) and (j)(8) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(a) * * *

(2) * * *

(ii) Except as provided in paragraphs (a)(3) and (h) of this section, each person who files an application for registration as an introducing broker and who is not so registered at the time of such filing, must, concurrently with the filing of such application file either:

* * * * *

(3) * * *

(ii) * * *

(B) Each such person who succeeds to and continues the business of an introducing broker which was operating pursuant to a guarantee agreement and which was not also a securities broker or dealer at the time of succession, who files an application for registration as an introducing broker, and who is not so registered in that capacity at the time of such filing, must file with the National Futures Association either a guarantee agreement or a Form 1–FR–IB with his application for registration. If such person files a Form 1–FR–IB with his application for registration, such person must also file a Form 1–FR–IB, certified by an independent public accountant, as of a date no later than the end of the month registration is granted. The Form 1–FR–IB certified by an independent public accountant must be filed with the National Futures Association not more than 45 days after the date for which the report is made.

(b) *Filing of financial reports.* (1)(i) Except as provided in paragraphs (b)(3) and (h) of this section, each person registered as a futures commission merchant must file a Form 1–FR–FCM for each fiscal quarter of each fiscal year unless the futures commission merchant elects, pursuant to paragraph (e)(2) of this section, to file a Form 1–FR–FCM for each calendar quarter of each calendar year. Each Form 1–FR–FCM must be filed no later than 45 days after the date for which the report is made: *Provided, however,* That any Form 1–FR–FCM which must be certified by an independent public accountant pursuant to paragraph (b)(2) of this section must be filed no later than 90 days after the close of each futures commission merchant's fiscal year.

(ii) Except as provided in paragraphs (b)(3) and (h) of this section, and except for an introducing broker operating pursuant to a guarantee agreement which is not also a securities broker or dealer, each person registered as an introducing broker must file a Form 1–FR–IB semiannually as of the middle and the close of each fiscal year unless the introducing broker elects pursuant to paragraph (e)(2) of this section to file a Form 1–FR–IB semiannually as of the middle and the close of each calendar year. Each Form 1–FR–IB must be filed no later than 45 days after the date for which the report is made: *Provided, however,* That any Form 1–FR–IB which must be certified by an independent public accountant pursuant to paragraph (b)(2) of this section must be filed no later than 90 days after the close of each introducing broker's fiscal year.

(2)(i) The Form 1–FR–FCM filed pursuant to paragraph (b)(1)(i) of this section, as of the close of the futures commission merchant's fiscal year, must be certified by an independent public accountant in accordance with § 1.16 of this part. A futures commission merchant who has elected to file its Forms 1–FR–FCM for each calendar quarter of each calendar year pursuant to paragraph (e)(2) of this section must nonetheless file a Form 1–FR–FCM so certified as of the close of such futures commission merchant's fiscal year.

(ii)(A) The Form 1–FR–IB filed pursuant to paragraph (b)(1)(ii) of this section as of the close of the introducing broker's fiscal year must be certified by an independent public accountant in accordance with § 1.16 of this part, except as provided in paragraph (b)(2)(ii)(B) of this section. An introducing broker who has elected to file its Forms 1–FR–IB semiannually on a calendar basis pursuant to paragraph (e)(2) of this section must nonetheless file a Form 1–FR–IB so certified as of the close of such introducing broker's fiscal year, except as provided in paragraph (b)(2)(ii)B) of this section.

(B) If an introducing broker has filed previously a Form 1–FR–IB, certified by an independent public accountant in accordance with the provisions of paragraphs (a)(2)(ii) or (j)(8) of this section and § 1.16 of this part, as of a date not more than one year prior to the close of such introducing broker's fiscal year, it need not have certified by an independent public accountant the Form 1–FR–IB filed as of the introducing broker's first fiscal year-end following the as of date of its initial certified Form 1–FR–IB. In such a case, the introducing broker's Form 1–FR–IB filed as of the close of the second fiscal year-end following as of date of its initial certified Form 1–FR–IB must cover the period of time between those

two dates and must be certified by an independent public accountant in accordance with § 1.16 of this part.

* * * * *

(h) *Filing option available to a futures commission merchant or an introducing broker which is also a securities broker or dealer.* Any applicant or registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer may comply with the requirements of this section by filing (in accordance with paragraphs (a), (b), (c), and (j) of this section) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, part II or part IIA, in lieu of Form 1–FR: *Provided, however,* That all information which is required to be furnished on and submitted with Form 1–FR is provided with such Report.

* * * * *

(j) * * *

(8)(i) An introducing broker which is a party to a guarantee agreement which has been terminated in accordance with the provisions of paragraph (j)(5) of this section, or which is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, must cease doing business as an introducing broker on or before the effective date of such termination or expiration unless, on or before 10 days prior to the effective date of such termination or expiration or such other period of time as the Commission or the designated self-regulatory organization may allow for good cause shown, the introducing broker files with its designated self-regulatory organization either a new guarantee agreement effective as of the day following the date of termination of the existing agreement, or, in the case of a guarantee agreement which is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, a new guarantee agreement effective on or before such expiration, or either:

(A) A Form 1–FR–IB certified by an independent public account in accordance with § 1.16 of this part as of a date not more than 45 days prior to the date on which the report is filed; or

(B) A Form 1–FR–IB as of a date not more than 45 days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public account in accordance with § 1.16 of this part as of a date not more than one year prior to the date on which the report is filed.

Each person filing a Form 1–FR–IB in accordance with this section must include with the financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii) Notwithstanding the provisions of paragraph (j)(8)(i) of this section or of § 1.17(a) of this part, an introducing broker which is a party to a guarantee agreement which has been terminated in accordance with the provisions of paragraph (j)(5)(ii) of this section shall not be deemed to be in violation of the minimum adjusted net capital requirement of § 1.17(a)(1)(ii) or (a)(2) of this part for 30 days following such termination. Such an introducing broker must cease doing business as an introducing broker on or after the effective date of such termination, and may not resume doing business as an introducing broker unless and until it files a new agreement or either:

(A) A Form 1–FR–IB certified by an independent public account in accordance with § 1.16 of this part as of a date not more than 45 days prior to the date on which the report is filed; or

(B) A Form 1–FR–IB as of a date not more than 45 days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public account in accordance with § 1.16 of this part as of a date not more than one year prior to the date on which the report is filed.

Each person filing a Form 1–FR–IB in accordance with this section must include with the financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

* * * * *

3. Section 1.12 is amended by revising paragraph (g) to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

(g)(1) Every notice and written report required to be given or filed by this section (except for notices required by paragraph (f) of this section) by a futures commission merchant, an applicant for registration as a futures commission merchant or a self-regulatory organization must be filed with the regional office of the Commission nearest the principal place of business of the applicant or registrant (except that an applicant, registrant or self-regulatory organization under the jurisdiction of the Commission's Western Regional Office must file such notices and reports with the Southwestern Regional Office), with the designated self-regulatory organization, if any, with the Securities and Exchange Commission, if such applicant or registrant is a securities broker or dealer, and with the National Futures Association, if the firm is an applicant. In addition, every notice required to be given by this section must also be filed with the principal office of the Commission in Washington, DC. Each statement of financial condition, each statement of the computation of the minimum capital requirements pursuant to § 1.17 of this part, and each schedule of segregation requirements and funds on deposit in segregation required by this section must be filed in accordance with the provisions of § 1.10(d) of this part unless otherwise indicated.

(2) Every notice and written report which an introducing broker or applicant for registration as an introducing broker is required to give or file by paragraphs (a), (c) and (d) of this section must be filed with the National Futures Association (on behalf of the Commission), with the designated self-regulatory organization, if any, and with every futures commission merchant carrying or intending to carry customer accounts for the introducing broker or applicant for registration as an introducing broker. Any notice or report filed with the National Futures Association pursuant to this paragraph (g) shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

4. Section 1.28 is revised to read as follows:

§ 1.28 Appraisal of obligations purchased with customer funds.

Futures commission merchants who invest customer funds in obligations described in § 1.25 of this part shall include such obligations in segregated account records and reports at values which at no time exceed current market value, determined as of the close of the market on the date for which such computation is made.

Issued in Washington, DC on February 16, 1993 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–4019 Filed 2–22–93; 8:45 am]

BILLING CODE 6351–01–M

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17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC"), subject to the conditions specified below, is authorizing certain option contracts traded on the Tokyo Grain Exchange (the "Exchange" or "TGE") to be offered or sold to persons located in the United States; and granting an exemption to designated members of the Exchange from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority.

This Order is issued pursuant to Commission rule 30.3(a), 17 CFR 30.3(a), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States, and rule 30.10, 17 CFR 30.10, which allows certain persons to petition the Commission for exemption from the application of certain of the rules set forth in part 30 and authorizes the Commission to grant such petition if the exemption is not otherwise contrary to the public interest or to the purposes of the provisions from which exemption is sought.

EFFECTIVE DATE: March 25, 1993.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Francey L. Youngberg, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order under CFTC rule 30.3 permitting option contracts traded on the Tokyo Grain Exchange to be offered or sold in the United States and under CFTC rule 30.10 exempting designated members of the Tokyo Grain Exchange from the application of certain of the foreign futures and option rules the later of thirty days after publication of the order herein in the **Federal Register** or after the filing of relevant notices under rules 30.3 or 30.10 as more particularly set forth herein.

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which are codified in part 30 of the Commission's regulations, 17 CFR part 30, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to United States customers by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

With respect to foreign options, in view of the history of abuses in the options markets prior to the imposition of the options ban,[1] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission.[2] In adopting the final rules which implement that procedure, the Commission stated that notwithstanding part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer or sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States.[3] As a consequence, rule 30.3(a) permits the Commission to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange as part of its decision to authorize transactions in specific foreign exchange-traded options.[4]

In issuing orders under rule 30.3(a), the Commission has considered: (1) The existence of information sharing arrangements relevant to preventing abuses in the trading of option contracts on the exchange; (2) the arrangements in place for assuring that sales practice abuses in such options do not occur, including that sales practice compliance audits commensurate with those which apply to domestic products will be conducted with respect to firms engaged in the offer or sale of the exchange's option products in the United States; (3) the arrangements for United States customers to redress grievances with respect to matters directly pertaining to the conduct of trading or other activities relevant to the offer or sale of such products; and (4) the regulatory environment in which the options are traded.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, the Commission, among other things, considered the potential extraterritorial impact of such a program and the desirability of avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission rule 30.10, determined to permit persons located outside the United States and subject to a comparable regulatory structure in the jurisdiction in which they are located to seek an exemption from certain of the requirements imposed by the part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.[5]

In issuing orders under rule 30.10, the Commission has evaluated whether the particular foreign regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Commission rule 30.10, the elements of which are set forth in appendix A to part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under Section 30.10 of Its Rules" ("Appendix A"). 17 CFR part 30, appendix A. These elements include: (1) Registration, authorization or other form of licensing, fitness review or

[1] See 51 FR 12104 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination of whether orders for options had in fact been executed or whether they simply had been "bucketed". See 43 FR 16155 (April 17, 1978).

[2] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("CEA" or the "Act") has been removed, see Futures Trading Act of 1986, Pub. L. No. 99–641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission rule 32.11, 17 CFR 32.11, adopted pursuant to section 4c(b) of the CEA, remains in effect.

[3] 52 FR 28980 (August 5, 1987). Notwithstanding the prohibition in Commission rule 30.3(a), nondomestic exchange-traded options which are traded pursuant to the trade option exemption in Commission rule 32.4(a), 17 CFR 32.4(a), may continue to be offered and sold.

[4] 51 FR 12104, 12105 (April 8, 1986).

[5] On October 28, 1992, the Commission issued an order pursuant to which, upon application of the regulatory or self-regulatory organization to which rule 30.10 relief has been granted, the Commission may permit firms with confirmed relief under 30.10 to engage in limited marketing activities from locations in the U.S. 57 FR 49644 (November 3, 1992).

qualification of persons (both individuals and firms) through which customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) minimum sales practice standards, including the disclosure of the risks of futures transactions; (5) recordkeeping and reporting requirements; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) the existence of appropriate information-sharing arrangements.

Moreover, the Commission specifically stated in adopting rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Consensually submit to jurisdiction in the United States by designating an agent for service of process in the United States with respect to transactions subject to part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to make their books and records available in the United States to Commission and Department of Justice representatives; and (3) notify NFA of the commencement or termination of business in the United States.[6]

By letter dated August 14, 1992, counsel for the Exchange requested that the Commission authorize the offer and sale of options contracts traded on the Exchange to persons located in the United States under rule 30.3(a) and requested that the Commission exercise its authority to exempt certain members of the Exchange from compliance with part 30's registration and other requirements with respect to their marketing of the Exchange's futures and options products in the United States under rule 30.10.[7]

Based upon its review of the Petition,[8] supporting materials filed by the Exchange and the memorandum from the Division of Trading and Markets dated February 5, 1993 (the "Staff Memorandum") and subject to the conditions set forth below, the Commission has determined to issue this Order which:

(a) As to matters subject to rule 30.3(a), will become effective thirty days after publication of the terms and conditions of the particular Exchange option contract in the **Federal Register**;[9] and

(b) As to matters subject to rule 30.10, will become effective the later of thirty days after publication of this Order in the **Federal Register** or the filing of consents by members of the Exchange and the Exchange to the terms and conditions of the Order herein.

In particular, pursuant to Commission rule 30.3(a), the Commission authorizes the offer and sale in the United States of options traded on the Exchange subject to the conditions described below:

(1) Except as otherwise permitted under the Act and regulations thereunder, that no offer or sale of any TGE option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order;

(2) That the Ministry of Agriculture, Forestry and Fisheries ("MAFF") and TGE represent that all transactions with respect to the option(s) referenced in such **Federal Register** notice will be governed by the Japanese Commodity Exchange Law ("CEL") and related statutes and TGE rules as more particularly discussed in the Staff Memorandum and that the MAFF and/or TGE will provide the Commission with information as to all material changes thereto promptly;

(3) That options on futures on stock indices[10] and options on futures on foreign government debt securities[11] will not be permitted to be offered or sold hereunder absent certain additional procedures;

(4) That options traded pursuant to this Order may only be offset on the TGE or another market with respect to which the Commission has issued an order under Commission rule 30.3(a) authorizing its option products to be offered or sold in the United States; and

(5) That options traded pursuant to this Order herein may only be offered or sold by persons registered in the appropriate capacity under the Act or by persons who have been granted an exemption from registration under rule 30.10 based on comparability of regulation, provided such persons also provide customers resident in the United States with the options risk disclosure statement in Commission rule 33.7, 17 CFR 33.7.

Furthermore, subject to the conditions set forth below, the Commission concludes that the standards for relief set forth in Commission rule 30.10 and, in particular, appendix A thereof, have generally been satisfied and that compliance with the CEL and TGE and CFAJ rules may be substituted for compliance with those sections of the Act more particularly set forth herein. By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the rule 30.10 relief granted herein from:

(1) Registration with the Commission;

(2) The separate account requirement contained in Commission rule 30.7, 17 CFR 30.7; and

(3) Certain sections of part 1 of the Commission's rules relating to financial regulations and books and records that apply to foreign futures and options sold in the United States as set forth in part 30;

based upon substituted compliance by such persons with the applicable statutes and relevant exchange and other rules in effect in Japan.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons trading on the Exchange who would be exempted hereunder provides:

(1) A system of qualification or licensing of firms and persons who deal in transactions subject to regulation under part 30 that includes, for example, "conditions" or criteria and procedures for granting, monitoring, suspending and revoking licensees, and provisions for requiring and obtaining access to information about licensees;

(2) Financial requirements for licensees;

(3) A system for the protection of customer funds that applies to all customers and which precludes the use of customer funds to satisfy house obligations or contrary to customer instructions, requires the separate accounting for such funds, the phasing in of a requirement for the physical segregation of such funds, augmented by various funds designed to compensate customers who have suffered a loss as a result of fraud or insolvency or other failure of an Exchange member,

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation;

(5) Sales practice standards for licensees which include, for example, required disclosures to prospective customers and prohibitions on (a) certain representations,

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[6] 52 FR 28980, 28981 and 29002.

[7] Letter dated August 14, 1992, from John V. Rainbolt, Esq., to Jean A. Webb, Commission, Re: Petition for Authorization of the Offer and Sale in the United States of Futures and Options Contracts Traded on the TGE (hereinafter "Petition"). *See also* preliminary letter of application dated July 16, 1991.

[8] Although the Commission in the past has issued separate orders under rules 30.3(a) and 30.10 as requested by the petitioners, there are many issues common to the consideration of the two types of petitions such that the review of one would facilitate the review of the other.

[9] The option contract which initially will be offered or sold pursuant to this Order, a summary of the terms and conditions for which are attached hereto as Exhibit A, are options on the soybean contracts.

[10] See 52 FR 28980, 28982 n. 6 and section 2a(1) of the CEA.

[11] See section 2a(1) of the CEA, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder. The Securities and Exchange Commission has designated the government debt securities issued by the government of Japan as exempted securities. See 17 CFR 240.3a 12–8(a)(1)(iii) and 51 FR 25996 (July 18, 1986).

(b) unapproved advertising, and (c) improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, a surveillance program designed to ensure just and equitable principles of trade and the existence of broad powers to conduct investigations and to impose sanctions; and

(7) Mechanisms for sharing information between the Exchange and the Commission on an "as needed" basis including, without limitation, confirmation data, data necessary to trade funds related to trading futures and options products subject to regulation in Japan, position data, data on firms' standing to do business and financial condition, and mechanisms for cooperating with the Commission in inquiries, compliance matters, investigations and enforcement proceedings.[12]

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the antifraud provision in Commission rule 30.9, 17 CFR 30.9, or the disclosure provisions of Commission rules 30.6 and 33.7, 17 CFR 30.6 and 33.7. Moreover, the relief granted is directed to brokerage activities on or subject to the rules of the TGE undertaken by TGE member firms authorized to do business in Japan and does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading in United States markets for its own account would be subject to the Commission's large trader reporting requirements. See *e.g.*, 17 CFR part 18. Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers. See *e.g.*, 17 CFR parts 17 and 21. The relief herein is inapplicable where the firm solicits United States customers for transactions on United States markets.

The eligibility of any firm to seek rule 30.10 relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firm with the regulatory requirements described in the rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Japan; such firm is engaged in business with customers located in Japan as well as in the United States; and, such firm would not be statutorily disqualified from registration under section 8a(2) of the Act, 7 U.S.C. 12(a)(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) All transactions on the Exchange with respect to customers resident in the United States will be made on or subject to the rules of the Exchange and the Commission will receive prompt notice of all material changes in such rules;

(d) Customers resident in the United States will be provided no less stringent regulatory protection than Japanese customers under all relevant provisions of Japanese law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the part 30 rules, including sharing the information specified in appendix A to the part 30 rules on an "as needed" basis in accordance with the agreed information sharing arrangement and will use its best efforts to notify the Commission if it becomes aware of any information which in its judgment affects the financial or operational viability of an Japanese-domiciled firm doing business in the United States under the exemption granted by this Order.

(2) Each firm seeking rule 30.10 relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act and files a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission rule 30.5, 17 CFR 30.5;

(b) Acknowledges that it can be required by the Exchange to provide the Exchange immediate access to its books and records related to transactions under part 30 required to be maintained under the applicable laws and Exchange rules in effect in Japan and that the Exchange will cooperate in providing access to such books and records to the Commission in accordance with the agreed upon information sharing arrangement;

(c) Represents that no principal of such firm would be disqualified from directly applying to do business in the United States under section 8a(2) of the Act, 7 U.S.C. 12a(2), and notifies the Commission promptly of any change in that representation based on a change in control as generally defined in Commission rule 3.32, 17 CFR 3.32;

(d) Consents to maintain as part of its regulatory capital, in assets which would qualify as current assets under Commission rule 1.17, 17 CFR 1.17, and in separate accounts on behalf of customers located in the U.S., an amount which is equal to four percent of the secured amount as defined in Commission rule 1.3(rr), 17 CFR 1.3(rr);

(e) Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (*e.g.*, banks and broker/dealer affiliates) and provides a brief description of such subsidiary's or affiliate's principal business in the United States;

(f) Consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under part 30, and consents to notify customers resident in the United States of the availability of such a program; *Provided, however,* That until the Exchange adopts a procedure for an "on the papers" hearing applicable to all Exchange arbitrations, consents to notify such customers that if they elect Exchange arbitration, they or their agent could be required to appear personally at a hearing, and if the customer elects NFA arbitration, consents to participate in such proceeding even in circumstances where the dispute arises primarily out of delivery, clearing, settlement of floor practices; and

(g) Undertakes to comply with the applicable provisions of Japanese law and Exchange and CFAJ rules which form the basis upon which this exemption from certain provisions of the Act is granted.

Upon filing of the notice required under paragraph (1)(b) as to any such firm, the rule 30.10 relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and the Exchange and/or any applicable regulatory or self-regulatory organization.

Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for issuance of an order under Commission rules 30.3(a) and 30.10, including appendix A of rule 30.10, have generally been satisfied.

Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm or product, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm or product, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. If necessary, provisions will be made for servicing existing client positions.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign futures and options.

Accordingly, 17 CFR part 30 is amended as set forth below:

[12] By letter dated December 9 and 25, 1992, respectively, and subject to certain agreed upon principles set forth therein, the Exchange and its regulator, MAFF, have provided assurances to the Commission regarding the availability of information relevant to Part 30 on an "as needed" basis.

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by adding the following entry alphabetically:

APPENDIX B—OPTION CONTRACTS PERMITTED TO BE OFFERED OR SOLD IN THE U.S. PURSUANT TO § 30.3(a)

Exchange	Type of contract	FR date and citation
* * *	* * *	* * *
Tokyo Grain Exchange.	Option contracts on the TGE U.S. Soybean futures contract.	February 23, 1993, 58 FR 10957.
* * *	* * *	* * *

3. Appendix C to part 30 is amended by adding the following entry to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

* * * * *

Firms designated by the Tokyo Grain Exchange.

February 23, 1993, 58 FR 10957.

Issued in Washington, DC, on February 17, 1993.

Jean A. Webb,

Secretary of the Commission.

Exhibit A—Contract Specifications

[This Exhibit will not appear in the Code of Federal Regulations.]

Options on the Soybean Contract

Trading Unit: One TGE U.S. soybean futures contract.

Trading Hours: Opening Session 10 a.m. to 10:30 a.m.; Continuous Session 10:30 a.m. to 2:15 p.m.; Closing Session 2:15 p.m. to 2:30 p.m.

Contract Months: February, April, June, August, October, December.

Strike Price Interval: Multiples of 100 yen per 60 kg. when strike price is less than 4,000 yen per 60 kg.; 200 yen per 60 kg. when strike price is greater than or equal to 4,000 yen per 60 kg.

Minimum Price Fluctuation: 5 yen per 60 kg.

Last Trading Day: 15th of the previous month of the futures delivery month (if this day falls on a holiday, then it is moved to the nearest business day).

Expiration: 2:30 p.m. of the last trading day.

[FR Doc. 93–4059 Filed 2–22–93; 8:45 am]

BILLING CODE 6351–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–02–01–5149; A–1–FRL–4525–1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; New Source Review, Stack Heights, PM_{10}, Ambient Impact Analysis Guideline, CEM, and Other Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Connecticut. The Connecticut Department of Environmental Protection (DEP) submitted these revisions to satisfy the federal new source review (NSR) requirements for the preconstruction permitting of new sources and modifications in both attainment and nonattainment areas and related requirements for stack heights, dispersion techniques, and PM_{10}. In addition Connecticut made nonregulatory revisions to update its Ambient Impact Analysis Guideline. Finally, Connecticut's revisions include continuous emission monitoring (CEM) requirements for State plans as well as other minor miscellaneous revisions. The intended effect of this action is to approve the State's request to amend its SIP to satisfy these federal requirements. This action is being taken under section 110 of the Clean Air Act (the Act).

EFFECTIVE DATE: This rule will become effective on March 25, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: For those revisions related to NSR, CEM, and related revisions, please contact Lynne A. Hamjian, (617) 565–3250; and for those revisions related to stack heights and Connecticut's Ambient Impact Analysis Guideline, please contact Ian D. Cohen, (617) 565–3229.

SUPPLEMENTARY INFORMATION: On September 29, 1989 (54 FR 40130), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed approval of Connecticut's NSR and related requirements, Connecticut's Ambient Impact Analysis Guideline, and CEM requirements which were submitted to EPA on January 19, 1989. The NPR required the Connecticut DEP to amend its Ambient Impact Analysis Guideline and regulations to make them consistent with the current federal requirements. On July 28, 1989, the Connecticut DEP submitted a revised guideline, and on January 26, 1990 it submitted amended regulations which include all of the provisions required in the NPR.

This notice is divided into eight separate sections for clarity. Section I discusses the revisions to Connecticut's NSR regulations including the State's newly adopted regulations for the prevention of significant deterioration (PSD). Section II discusses the revisions to Connecticut's stack height and dispersion techniques regulations which satisfy the PSD-related requirements for PM_{10}. Section III discusses Connecticut's PM_{10} provisions related to the revised NSR regulations. Section IV discusses nonregulatory revisions to Connecticut's Ambient Impact Analysis Guideline. Section V discusses miscellaneous minor revisions to certain Connecticut SIP regulations to ensure that they remain consistent with their original intent as approved by EPA. Section VI discusses revisions which satisfy the CEM requirements for State plans. Section VII discusses the public comments on this action and EPA's response. Section VIII discusses the impact of the Clean Air Act Amendments of 1990 on Connecticut's SIP revisions.

I. NSR/PSD

A. Background

In 1979 and 1980, the Connecticut Department of Environmental Protection adopted NSR regulations for permitting new and modified sources in nonattainment areas to satisfy the requirements of part D of the Act and 40 CFR 51.160 through 51.165. EPA conditionally approved these regulations on December 23, 1980 (45 FR 84769). Pursuant to corrective actions taken by the State of

Connecticut, EPA removed the conditions of its approval of these regulations on January 7, 1982 (47 FR 762).

On June 19, 1978, EPA promulgated the PSD regulations of 40 CFR 52.21(b) through (v) into the Connecticut SIP at 40 CFR 52.382 and federally implemented the PSD program in Connecticut. On August 7, 1980, EPA revised these regulations pursuant to a court decision (*Alabama Power Company et al.* v. *Costle*, 636 F.2d 323 (DC Cir. 1979)). On July 14, 1982, the Connecticut DEP requested a partial delegation of authority to implement the PSD regulations of 40 CFR 52.21. On September 29, 1982, EPA approved this partial delegation, and the Connecticut DEP began issuing PSD permits.

On December 27, 1988, the Connecticut DEP adopted revisions to its NSR regulations to make them consistent with the requirements of Part D of the Clean Air Act of 1977 and 40 CFR 51.160 through 51.165. These revisions to Connecticut's NSR rules also include newly adopted PSD regulations to satisfy Part C of the Act and the requirements of 40 CFR 51.166 for SIPs. Upon the effective date of this final action, the State will have the authority to implement and enforce the PSD program through its SIP. This final action removes the federal implementation Plan (FIP) for PSD at 40 CFR 52.382 with the exception of the NO_2 increments and related requirements. Since Connecticut has not adopted the NO_2 increments into its regulations, EPA will retain these provisions in the FIP until such time as the State adopts them. In addition, except for the NO_2 increments, this action terminates the delegation agreement between EPA and the Connecticut DEP.

B. Summary of Connecticut's Submittal Including Changes That Were Necessary Prior to Final Rulemaking

On January 19, 1989 and January 26, 1990, the Connecticut DEP submitted new and amended regulations to EPA as revisions to its SIP. The revisions include changes to section 22a–174–1, "Definitions," and section 22a–174–3, "Permits to Construct and Permits to Operate Stationary Sources or Modifications," of Connecticut's regulations. In addition, the revisions include an updated version of Connecticut's nonregulatory SIP narrative entitled "New Source Review," which explains the process the Connecticut DEP follows in the review of new or modified stationary sources in accordance with its regulations.

These revisions also include a letter from the Connecticut DEP dated May 12, 1989 which states that the Connecticut DEP is implementing a "Top Down" approach in determining Best Available Control Technology (BACT) and will continue to do so in all future BACT determinations.

EPA's NPR published on September 30, 1989 (54 FR 40130) required three changes to the Connecticut DEP's SIP submittal prior to final rulemaking. The Connecticut DEP made the following changes which were outlined in EPA's NPR:

1. The Connecticut DEP defined the term "begin actual construction" as defined in 40 CFR 51.166(b)(11).

2. The Connecticut DEP revised the PSD monitoring regulations to include all of the provisions of 40 CFR 51.166(m).

3. The Connecticut DEP committed to adhere to EPA's "Recommended Policy on the Control of Volatile Organic Compounds (VOC)" (42 FR 31314, July 8, 1977).

EPA has evaluated these revisions and found that they are equivalent to, or in some instances, more stringent than, the requirements in 40 CFR 51.160 through 51.166. Connecticut's regulations for NSR/PSD and EPA's evaluation are detailed in a memorandum dated May 1, 1990 entitled "Technical Support Document—Connecticut New Source Review Revisions."[1]

EPA has concluded that the overall effect of Connecticut's revised nonattainment area NSR program will ensure reductions equivalent to those obtained by the old NSR program. A memorandum dated March 21, 1991 entitled, "Connecticut's Nonattainment Area New Source Review Regulations" compares Connecticut's old NSR provisions in its SIP with the new NSR provisions EPA is approving today.[2] Connecticut's revised NSR regulations are also much more enforceable than its old NSR regulations. Lastly, in all cases Connecticut's regulations, as discussed above, are at least as stringent as, and in many cases more stringent than EPA's current NSR requirements in 40 CFR § 51.165. Therefore, EPA believes that approving Connecticut's nonattainment area NSR revisions is consistent with the ACT.

[1] This Technical Support Document explains the specific changes Connecticut submitted as revisions to its NSR/PSD SIP and is available in the docket at the location in the ADDRESSES section. One change, the definition of the term "premise" appears to adopt EPA's "plantwide" definition of source. The structure of Connecticut's NSR regulations, however, is different from that of EPA's program, and the "plantwide" definition of "premise" in Connecticut's regulations has a very limited effect. Minor stationary sources may avoid becoming a major source by balancing emission increases at a facility against emission decreases. But Connecticut's NSR regulations prohibit major stationary sources from "netting out" of NSR using the new definition of premise.

[2] A copy of this document is available in the docket at the location in the ADDRESSES section.

II. Stack Height Revisions

A. Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Act. These regulations were challenged in the U.S. Court of Appeals for the DC Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc. and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 710 F.2d 436 (DC Cir. 1983). On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition, 104 S. Ct. 3571 (1984), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985. Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 344878) and finalized on July 8, 1985 (50 FR 27892).

The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2)(B) of the Clean Air Act Amendments of 1977 (Pub. L. 95–95), all States were required to (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credits and dispersion techniques in accordance with the revised regulations; and (2) review all existing emission limitations to determine whether any of these limitations have been effected by stack height credits above GEP or any other dispersion techniques. For any limitations so effected, States were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA, as required by section 406. Subsequently,

EPA issued detailed guidance on the performance of the required reviews.

On January 22, 1988, the U.S. Court of Appeals issued a decision in *NRDC v. Thomas*, 838 F.2d 1224 (DC Cir. 1988), regarding EPA's revised July 8, 1985 stack height regulations. Subsequent petitions for rehearing were denied. The Court remanded three provisions to EPA that may potentially bear on State actions now being taken pursuant to EPA's July 8, 1985 regulations. However, since EPA is currently in the process of reconsidering the remanded provisions and the outcome is as yet unknown, our review of Connecticut's January 19, 1989 submittal addresses its consistency with the July 8, 1985 regulations only. If EPA further revises its regulations in response to the remand at some future date, Connecticut will, at that time, be required to revise its regulations accordingly. Sources may have to have their permits amended and/or be required to submit new demonstrations that applicable ambient standards are met if affected by such revisions.

B. Summary of Connecticut's Submittal

Connecticut's January 19, 1989 and January 26, 1990 SIP submittals include revisions to section 22a–174–1 "Definitions," and section 22a–174–3, "Permits to Construct and Permits to Operate Stationary Sources or Modifications," of Connecticut's regulations which limit stack height credits and dispersion techniques. These revisions are adequate and meet the current requirements in 40 CFR 51.100 and 51.118.

EPA's evaluation of Connecticut's stack height and dispersion techniques requirements is detailed in a memorandum entitled "Technical Support Document—Connecticut's Stack Height Regulations," dated March 14, 1989.

III. PM_{10} Revisions

A. Background

On July 1, 1987, EPA promulgated a revised national ambient air quality standard (NAAQS) for particulate matter (52 FR 2463). EPA revised the old definition of the NAAQS from total suspended particulate (TSP) to a new definition. The new definition applies to particulate matter with aerodynamic diameters of 10 micrometers or less.

B. Summary of Connecticut's Submittal

On January 19, 1989 and January 26, 1990, the Connecticut DEP submitted amended regulations to EPA as revisions to its SIP. These revisions incorporate PSD-related PM_{10} requirements which include changes to section 22a–174–1, "Definitions," and section 22a–174–3, "Permits to Construct and Permits to Operate Stationary Sources or Modifications," of Connecticut's regulations. These amendments include the relevant definitions and PSD provisions for PM_{10}. These amendments do not include the definitions of "particulate matter emissions" and "PM_{10} emissions," the PM_{10} National Ambient Air Quality Standards, or the provisions related to significant harm levels and emergency episode plans for PM_{10}. Future action by the State of Connecticut is required to address these definitions and provisions. The PSD revisions included in these submittals meet the current federal PSD requirements in 40 CFR 51.166 for PM_{10}.

Connecticut's PSD regulations for PM_{10}, and EPA's evaluation are detailed in a memorandum dated April 28, 1989 entitled "Technical Support Document—Connecticut's PM_{10} Regulations."

IV. Connecticut's Ambient Impact Analysis Revisions

A. Background

On August 28, 1981 (46 FR 43418), EPA approved Connecticut's New Source Ambient Analysis Guideline as a nonregulatory addition to the Connecticut SIP. This guideline was approved for demonstrating protection of the NAAQS for sulfur oxides by projecting the ambient air quality impacts of temporary increases of sulfur oxide emissions. These temporary revisions of the Connecticut SIP's sulfur-in-fuel limits were approved for sources to develop energy conservation measures. Since the time of EPA's approval, the Connecticut DEP has expanded the scope of its modeling guideline to provide uniform guidance for stationary-source modeling of nonreactive pollutants, and updated it to reflect developments and changes in EPA's modeling policies.

B. Summary of Connecticut's Submittal Including Changes That Were Necessary Prior to Final Rulemaking

Connecticut's January 19, 1989, July 28, 1989, and January 26, 1990 SIP submittals include nonregulatory revisions to its New Source Ambient Analyses Guideline. The revised guideline is now entitled Ambient Impact Analysis Guideline and is specified in the narrative portion of the SIP submittal for use in all NSR-related ambient impact analyses conducted by the Connecticut DEP.

EPA has evaluated Connecticut's guideline and found that it is consistent with EPA's Guideline on Air Quality Models (Revised) (dated July, 1986 as supplemented January, 1988) as required in 40 CFR 51.166(1).

The Connecticut DEP's approach for conducting impact analyses is described fully in its Ambient Impact Analysis Guideline, and EPA's review of the guideline is contained in memoranda dated April 28, 1989 and April 5, 1990 entitled "Technical Support Document—Connecticut's Ambient Impact Analysis Guideline," and "Technical Support Document—Connecticut's Revised Ambient Impact Analysis Guideline," respectively.

EPA's NPR published on September 30, 1989 (54 FR 40130) required four changes to the Connecticut DEP's SIP submittal prior to final rulemaking. The Connecticut DEP made the following changes which were outlined in EPA's NPR:

1. The Connecticut DEP amended Section 5.2.2, "Sources," of the guideline to require maximum actual short-term emission rates rather than average actual emissions based on annual actual emissions.

2. The Connecticut DEP revised Section 5.3.2, "Meteorology for Refined Modeling," of the guideline to require applicants to discuss meteorological data with the Connecticut DEP. The Connecticut DEP and the applicant will discuss whether the use of off-site meteorological data is acceptable. The NPR stated that Connecticut's guideline must allow for consistency with EPA policy for on-site meteorological data for refined modeling which states that on-site data (a minimum of one year, up to 5 if possible) are always preferable to off-site data. This revised portion of the guideline meets EPA's guidance.

3. The Connecticut DEP amended the guideline to allow it to require preconstruction monitoring, if existing State monitoring data are deemed nonrepresentative.

4. The Connecticut DEP amended the guideline to include figures showing the most recent 3 years of monitored data available must be used by the source. The figures will be updated annually, and applicants are advised to contact Connecticut DEP to obtain the most recent monitored data.

EPA has evaluated these changes and found that they are consistent with the requirements in EPA's Guideline on Air Quality Models (Revised).

V. Other Miscellaneous Revisions

A. Background

Many of Connecticut's current federally approved SIP regulations

apply based on a stationary source's "actual emissions." EPA was able to approve these regulations because Connecticut's definition of that term (i.e., the definition in the SIP at that time) was equivalent to the federal definition of the term "potential to emit." Connecticut has now adopted definitions of the terms "actual emissions" and "potential emissions" which are equivalent to the current federal definitions in 40 CFR part 51. Connecticut's newly adopted definitions of "actual emissions" and "potential emissions" could not be approved by EPA unless all of the current regulations in its SIP were also appropriately amended to incorporate the applicable terms consistent with the revised definitions.

B. Summary of Connecticut's Submittal

Connecticut's January 19, 1989 and January 26, 1990 submittal include revisions to sections 22a–174–1 through 22a–174–100 of Connecticut's regulations to correctly use the terms "actual emissions" and "potential emissions" as described above. These revisions do not have any substantive effect in that they do not change the scope of these regulations' applicability and they do not make these regulations more or less stringent. The revisions are wording changes to ensure that the regulations in Connecticut's SIP remain consistent for applicability purposes and in intent as originally approved by EPA.

VI. CEM Revisions

A. Background

Forty CFR 51.214 and 40 CFR part 51, appendix P contain CEM requirements which require existing stationary sources to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions and to provide other information as specified in 40 CFR part 51, appendix P. The CEM provisions of 40 CFR 51.214 and 40 CFR part 51, appendix P apply to non-NSPS subject fossil-fuel-fired steam generators, sulfuric acid plants, nitric acid plants, and fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries.

B. Summary of Connecticut's Submittal Including Changes That Were Necessary Prior to Final Rulemaking

On January 19, 1989 and January 26, 1990, the Connecticut DEP submitted revisions to section 22a–174–4, "Source Monitoring, Recordkeeping, Reporting, and Authorization of Inspection of Air Pollution Sources," of Connecticut's regulations. These revisions incorporate the applicable opacity CEM requirements for fossil-fuel-fired steam generators set forth in 40 CFR 51.214 and 40 CFR part 51, appendix P. Connecticut's revisions do not include SO_2 and NO_x CEM requirements for fossil fuel-fired steam generators, and the regulations do not include CEM requirements for sulfuric acid plants, nitric acid plants and fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries.

Connecticut's CEM regulation and EPA's evaluation are detailed in a memorandum dated May 11, 1990 entitled "Technical Support Document—Connecticut's Continuous Emission Monitoring Regulation."

As stated above, Connecticut's revisions only include requirements for opacity monitors at fossil-fuel-fired steam generators. The Connecticut DEP has informed EPA that no other applicable sources are located in the State. The NPR required that the Connecticut DEP clarify the applicability and scope of its CEM regulation by certifying that there were none of the following:

1. Sulfuric acid plants of greater than 300 tons per day production capacity in the State of Connecticut,
2. Nitric acid plants of greater than 300 tons per day production capacity in the State of Connecticut,
3. Fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries in the State of Connecticut,
4. Fossil-fuel-fired steam generators of greater than 250 million BTU per hour heat input which have installed sulfur dioxide pollutant control equipment in the State of Connecticut, and
5. NO_x control strategy areas in the State of Connecticut.

On January 26, 1990, the Connecticut DEP submitted a certification which meets all of the requirements outlined in EPA's NPR with two exceptions. Connecticut has two fossil-fuel-fired steam generators that will require SO_2 monitors under EPA's requirements:

1. The Mid-Connecticut Facility in Hartford which is a resource recovery facility with SO_2 control equipment and which is limited by a federally enforceable restriction (contained in a PSD permit issued by EPA) to 249.9 million BTU per hour heat input of fossil fuel; and

2. The AES Thames plant in Montville which is a source regulated under subpart Da of 40 CFR part 60.

Both sources have federally enforceable permits which require continuous emission monitoring for SO_2 and which include the proper monitoring and reporting requirements. Since both of these sources have federally enforceable SO_2 monitoring requirements and because there are no applicable sources in the State of Connecticut, no SO_2 monitoring regulation for fossil-fuel-fired steam generators is necessary. EPA is approving Connecticut's CEM requirements for opacity monitors at fossil-fuel-fired steam generators, and is approving Connecticut's January 26, 1990 certification of no sources.

VII. Public Comments

On September 30, 1989 (54 FR 40130), EPA published a notice of proposed rulemaking (NPR) proposing to approve revisions to Connecticut's NSR, Stack Heights, PM_{10}, Ambient Impact Analysis Guideline and CEM requirements and other Miscellaneous revisions. EPA received comments from three parties during the public comment period which ended on October 30, 1989: Ford, Bacon and Davis Utah, Inc., the American Paper Institute/ National Forest Products Association, and the Motor Vehicles Manufacturers Association. Because all of the comments concern the same language in the preamble to EPA's proposal, a summary of the comments, and a single response to these comments appear below.

A. Comments

1. Ford, Bacon and Davis Utah, Inc.

Ford, Bacon and Davis Utah, Inc. (FBDU) requested clarification of language in EPA's preamble which contained EPA's view of the relationship between EPA and the States under the Act, and of the legal effect of EPA's approval of SIP measures implementing various programs under the Act. See 54 FR 40130, 40133. FBDU commented that EPA should clarify whether or not this language applies only to the Connecticut SIP or if it is intended to be a broader policy statement. In addition, FBDU requested that EPA clarify what "fundamental changes" in the administration of NSR would require amendments to 40 CFR part 51, and by what criteria does EPA differentiate between "fundamental" and "non-fundamental" changes, (which could be accomplished without such amendments).

2. American Paper Institute/National Forest Products Association

The American Paper Institute stated that it strongly objects to the preamble language also cited by FBDU. The company stated that it objects to EPA's alleged use of the SIP revision approval process as a vehicle to circumvent well-

established principles of regulatory due process. The American Paper Institute stated that EPA's views on PSD/NSR permitting could affect its member companies' ability to engage in new construction, delay planned plant modernization, increase compliance costs by millions of dollars, and significantly increase paper work and other burdens associated with an already complex permitting process—all without begin subject to rulemaking proceedings. The company urged EPA to eliminate this language from the proposed rule or preamble. Finally, the American Paper Institute stated that it objected to Connecticut's letter certifying that it is implementing the "Top Down" approach in determining BACT and it also objected to EPA and the State using this certification to claim that the "Top Down" approach is an enforceable legal requirement, despite the absence of rulemaking procedures at either the State or federal level.

On December 18, 1989 (after the close of the public comment period), the American Paper Institute supplemented its comments with a copy of a letter from the Director of the Division for Air Quality of the Kentucky Department of Environmental Protection. It was issued on November 17, 1989 and was sent to the American Paper Institute after the close of Connecticut's public comment period. However, the company stated that this letter raises several important concerns about the language in question and should be included as part of its comments on Connecticut's SIP revision. Kentucky objected to EPA's statement that it comply with future guidelines and policies adopted by EPA. The State further claimed that such statements are unnecessary, inaccurate, and potentially confusing. Kentucky also stated that agreeing to such a commitment would be a delegation of legislative power prohibited by the State constitution. The State commented that it will review future policies and guidance to determine if the requirements are different than those in Kentucky's regulations. If they are different, Kentucky will amend its regulations. The state strongly urged EPA to refrain from using policies and guidelines to implement substantive changes to regulatory and statutory requirements.

3. Motor Vehicle Manufacturers Association (MVMA)

The MVMA also objected to the preamble language cited by the other commenters. The MVMA stated that the policy and legal positions announced in EPA's statements represent a radical departure from the Federal-State relationship envisioned by the Act and an unprecedented assertion of federal authority over State and local affairs. The MVMA stated that these statements are legally untenable and are inconsistent with the governing executive policy on Federalism. The MVMA stated that the approach to the Federal-State relationship in the SIP process must be thoroughly reviewed, that the assertions in the Connecticut SIP must be deleted, and that EPA clarify these statements.

The company further stated that EPA cannot require the States (or private parties) to adhere to unpromulgated policies and guidance documents. Specifically, the MVMA cited the "Top Down" BACT guidance as an example. The company stated that the notice treats this "guidance" document as though its adoption by the State were a precondition for SIP approval. It further stated that this document never went through a rulemaking process even though, in MVMA's view, it fundamentally changes the approach to BACT.

The MVMA additionally stated that the notion that EPA's future guidance documents can unilaterally alter the effect of the SIP is completely at odds with the cooperative structure of the SIP process. The company further stated that if anything, EPA should defer to the State interpretation of its SIP, not *vice versa*. The MVMA requests that EPA clarify what constitutes a "fundamental change." In addition, the company requested that EPA articulate what is left for the State role in its view of the SIP process, and how EPA's approach provides even minimal due process protection for affected sources.

The MVMA stated as well that there is no statutory authority that enables EPA to supersede State interpretations. The company asserted that a SIP call is the appropriate mechanism. Finally, the company stated that EPA's enforcement authority under section 167 of the Act is limited to permits that are inconsistent with the statute of duly promulgated regulations, not guidance documents. The MVMA commented that EPA already has broad authority under the Act to impose requirements through regulations and to disapprove SIPs.

In conclusion, the MVMA requested that EPA reconsider its statements and issue a revised determination on the effect of SIP approvals.

B. EPA's Response

EPA today clarifies that it did not intend to suggest that Connecticut is required to follow EPA's interpretations and guidance issued under the Act in the sense that those pronouncements have independent status as enforceable provisions of the Connecticut SIP, such that mere failure to follow such pronouncements would constitute a violation of the Act. Rather, as discussed below, EPA's intent is merely to place the State and the public on notice of EPA's duty under the Clean Air Act to continue to oversee the NSR provisions of the Act following approval of a State program. The language in question is neither part of nor a condition of EPA's approval of Connecticut's SIP, and has no binding effect. Rather than creating new rights or obligations, it advises the public of EPA's views regarding obligations that already exist by operation of the applicable statutory and regulatory provisions.

The issuance of PSD permits and other actions by the State in the administration of the federal Act must conform to requirements of the Act and the SIP. See e.g., sections 167 and 113, 42 U.S.C. 7477 and 7413 (EPA's enforcement authority in overseeing state implementation). In making judgments as to what constitutes compliance with the Act and regulations issued thereunder, EPA looks to (among other sources) its policy statements and interpretive rulings in effect at the time of EPA's action regarding those statutory and regulatory requirements. It follows that State actions implementing the federal Clean Air Act which do not conform to the Act may lead to potential enforcement action by EPA. However, in defending against such an enforcement action, a party is free to assert that EPA has not reasonably interpreted the underlying statutory and regulatory provisions.

EPA's approval of a State NSR program or some portion of it does not divest the Agency of the duty to continue a vigorous oversight and enforcement role under sections 113 and 167. For example, section 167 provides that EPA shall take whatever enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Thus, as to PSD, the purpose of the preamble language in the September notice was to advise Connecticut of EPA's view that approval of a State's PSD program does not bar EPA from deciding whether a State-issued PSD permit conforms to the Act's PSD requirements. In addition, Section 113(a)(5) (as amended) grants EPA similar authority in both PSD and nonattainment areas.

However, in other instances EPA action approving a SIP revision can act

to adopt interpretations of the statute, regulations, or implementation plans as part of the revised SIP. As to matters of particular importance, EPA may urge the States to take steps to agree to specific interpretations and policies through the SIP approval process. States may also do this their own volition. This process has been followed in today's action. Prior to proposed approval of the Connecticut PSD SIP, Connecticut indicated that it would follow a top-down methodology when determining BACT. See letter dated May 12, 1989 from Leonard Bruckman, former Director of the Connecticut Department of Environmental Protection's Air Compliance Unit to Louis Gitto, former Director of EPA's Air, Pesticides, and Toxics Management Division. This letter merely confirmed Connecticut's established practice of using a "Top Down" approach to determining BACT.)

Two commenters objected to this reference and argued that implementing "Top Down" BACT guidance is a fundamental change which requires rulemaking. However as of this date, EPA has not altered its existing BACT regulations, and has not altered the BACT requirements for any source. Nor does EPA mandate that states follow a top-down approach to BACT, although as noted Connecticut is continuing to do so in this case. In addition, the commenters procedural concerns are being addressed. In 1989, industry groups petitioned EPA to conduct rulemaking to rescind the top-down policy and initiate a rulemaking on BACT determinations based on similar concerns. The EPA denied this request, explaining that the top-down approach was not at variance with, nor a revision of, the PSD regulations, and that no rulemaking was required. Litigation was commended, resulting in a judicial settlement agreement. See 56 FR 34202 (announcing proposed settlement). In so doing, EPA has agreed to issue a proposed rule to revise or clarify the regulations defining BACT, see 40 CFR 51.166(i) and 52.21(i), and to clarify EPA policy regarding BACT.

Following SIP approval, then, EPA remains as the congressionally designated agency with primary responsibility to reasonably interpret the applicable federal law under the Act and to base its enforcement actions on those interpretations. If EPA determines that a state-issued permit does not conform to the Act's NSR requirements, EPA will decide whether to sue the State and/or the source to redress the violation. See sections 113(a)(5), 167.

EPA acknowledges that States have the primary role in administering and enforcing the various components of the NSR program. For the most part, the States have been successful in this effort, and EPA's involvement in interpretative and enforcement issues is limited to only a small number of cases. Consequently, EPA's continuing oversight role under the Clean Air Act leaves Connecticut and other States with considerable discretion to implement the NSR program as they see fit. First, as noted in the September 29, 1989 notice, EPA may not fundamentally change the requirements set forth in its own regulations or SIPs through interpretative rulings or policy statements. The creation of new rights or obligations can only be accomplished by enactment of legislation or revisions to the regulations in 40 CFR parts 51 and 52 and by SIP revisions, in accordance with applicable rulemaking procedures. Second, EPA's interpretations often are intended in whole or in part to guide only EPA Regional Offices, and in such instances they have no implications whatsoever for a State's administration of its program.

Thus, EPA believes that the language in question in the September 29, 1989 notice, as clarified here, accurately describes the legal relationship between EPA and the State of Connecticut with respect to the NSR program.

VIII. Clean Air Act Amendments of 1990

EPA has reviewed these revisions for conformance with the provisions of the Clean Air Act Amendments enacted on November 15, 1990. As is discussed, an accommodation has been made for all of the immediately applicable NSR requirements of the Amendments. This approval in no way relieves Connecticut of the obligation to submit further revisions to its SIP to meet the Act's new requirements according to the schedule contained in the Act. In addition, EPA is currently developing revised federal NSR regulations and Connecticut will adopt these new requirements and submit them in a separate submittal. EPA has decided to approve these revisions today in order to strengthen the SIP and conform it to existing requirements during this transition period. EPA has determined, however, that certain statutory changes have immediate effect and may impact Connecticut's NSR revisions. The paragraphs below summarize these provisions and discuss the impact on Connecticut's SIP revisions.

1. The Clean Air Act Amendments of 1990 add a new section 302(z) of the Clean Air Act defining the term "stationary source" as any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216. EPA's initial view is that the definition of stationary source in the federal regulations is flexible enough to accommodate the new section 302(z) without requiring regulatory revisions. Section 22a–174–1 of Connecticut's regulations defines the term "premise" and "stationary source." As implemented, these definitions conform to the new section 302(z) definition in the Clean Air Act Amendments. If in the future, EPA promulgates standards for certain nonroad engines and nonroad vehicles, EPA will require that Connecticut amend its definitions to exclude these engines and vehicles as appropriate. Therefore, this change in the Clean Air Act Amendments of 1990 does not immediately impact this SIP revision.

2. The Clean Air Act Amendments of 1990 revise section 169(3) of the Clean Air Act to specify that "clean fuels" should be considered in a BACT analysis, and to provide that a source utilizing clean fuels or any other means to comply with the BACT requirement shall not be allowed to increase above levels that would have been required under section 169(3) prior to the 1990 Amendments. EPA has interpreted the new statutory language regarding clean fuels as merely codifying present practice under the Act, under which clean fuels are an available means of reducing emissions to be considered along with other approaches in identifying BACT-level controls. See Letter from William G. Rosenberg, Assistant Administrator, to Henry Waxman, Chairman, Subcommittee on Health and the Environment, U.S. House of Representatives, October 17, 1990. Accordingly, EPA believes that no regulatory revisions at this time are necessary in order to implement these statutory changes.

Furthermore, in a letter dated May 12, 1989, the Connecticut Department of Environmental Protection committed to implementing BACT in accordance with EPA policy and in accordance with the BACT guidance document issued by the Northeast States for Coordinated Air Use Management (NESCAUM) dated October, 1988. NESCAUM's BACT guidance document includes consideration of clean fuels in the BACT analysis.

3. Title III of the Clean Air Act Amendments of 1990 added a new section 112(b)(6) that excludes the hazardous air pollutants listed in section 112(b)(1) of the revised Act (as

well as any pollutants that may be added to the list) from the PSD (and other) requirements of Part C. Thus, because they are on the initial Title III hazardous air pollutants list, the following pollutants are now exempt from Federal PSD applicability: arsenic, asbestos, benzene (including benzene from gasoline), beryllium, mercury, radionuclides (including radon and polonium) and vinyl chloride. The Title III exemption applies to final federal PSD permits issued on or after November 15, 1990. For federal PSD permit applications now under review, PSD permit requirements do not apply to those pollutants listed under Title III.

Note that pursuant to section 116 and the preservation clause in section 112(d)(7) of the amended Act, states with an approved PSD program may continue to regulate the Title III hazardous air pollutants now exempted from federal PSD, if the state PSD regulations provide an independent basis to do so. These state rules would remain in effect unless a state revised them to provide similar exemptions. Additionally, the Title III pollutants continue to be subject to any other applicable state and federal rules; the exclusion is only for Part C requirements.

Connecticut's regulations include the following pollutants which are now exempt from federal PSD applicability: asbestos, beryllium, mercury, and vinyl chloride. The Connecticut DEP is currently regulating these pollutants under the PSD program and will continue to do so.[3]

EPA has evaluated these provisions of the Clean Air Act Amendments of 1990 and their impact on Connecticut's NSR SIP revisions in a memorandum entitled "Technical Support Document—Impact of New Source Review Provisions in the Clean Air Act Amendments of 1990 which May Have an Immediate Effect on Connecticut's Permitting Regulations," dated January 28, 1992. With respect to the statutory changes discussed above, EPA plans to undertake national rulemaking in the near future to adopt clarifying changes to its regulations. Upon final adoption of those regulations, EPA will call upon states with approved NSR and PSD programs, including Connecticut,[4] to make corresponding changes in their SIPs.

[3] The State will continue to regulate these pollutants in the near term. If, in the future, the State decides not to regulate these pollutants under PSD, it will revise its regulations.

[4] Upon final EPA action on these SIP revisions, Connecticut will have an approved PSD program.

Final Action

EPA is approving several revisions to Connecticut's SIP. EPA is approving section 22a–174–1, "Definitions," and section 22a–174–3, "Permits to Construct and Permits to Operate Stationary Sources or Modifications" of the Regulations of the Connecticut State Agencies Concerning Abatement of Air Pollution. EPA is also approving changes to Connecticut's SIP narrative entitled "New Source Review." These revisions satisfy the current federal NSR and PSD requirements (including PM_{10}) of 40 CFR 51.160 through 51.166, and stack height and dispersion techniques requirements of 40 CFR 51.1(e), 51.100, and 51.118. With the exception of the NO_2 increments and related requirements, EPA is removing the FIP at 40 CFR 52.382. In addition, EPA is approving the revised version of Connecticut's Ambient Impact Analysis Guideline. The guideline satisfies the current requirements in EPA's Guideline on Air Quality Models (Revised) dated July, 1986, as supplemented January 1988, as required in 40 CFR 51.166(l). EPA is approving minor revisions to section 22a–174–1 through 22a–174–100 of Connecticut's Regulations to correctly use the term "actual emissions" and "potential emissions" as described in Section V above. These revisions do not have any substantive effect in that they do not change the scope of these regulations' applicability and they do make these regulations more stringent or less stringent. The revisions are wording changes to ensure that the regulations in Connecticut's SIP remain consistent for applicability purposes and in intent as originally approved by EPA. Lastly, EPA is approving revisions to section 22a–174–4, "Source Monitoring, Recordkeeping, Reporting, and Authorization of Inspection of Air Pollution Sources" of Connecticut's regulations. These revisions incorporate opacity CEM requirements in accordance with 40 CFR 51.214 and 40 CFR part 51, appendix P.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 26, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: December 19, 1992.

William K. Reilly,

Administrator.

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

PART 52—AMENDED

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

Authority: 42 U.S.C. 7401–7671q.

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(56) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(56) Revisions of the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on January 19, 1989, July 28, 1989, and January 26, 1990 (with attached letter of November 28, 1989).

(i) *Incorporation by reference.*

(A) Letters from the Connecticut Department of Environmental Protection dated January 19, 1989, July 28, 1989, and January 26, 1990 (with attached letter of November 28, 1989) submitting revisions to the Connecticut State Implementation Plan.

(B) Section 22a–174–1 of the Regulations of the Connecticut State Agencies Concerning Abatement of Air Pollution entitled "Definitions," effective in the State of Connecticut on October 3, 1989.

(C) Subsection 22a–174–3(k) of the Regulations of the Connecticut State Agencies Concerning Abatement of Air Pollution entitled "Requirements for the Prevention of Significant Deterioration (PSD) Program," effective in the State of Connecticut on October 3, 1989.

(D) Section 22a–174–2, subsections 22a–174–3(a) through (j) and (l),

subsection 22a–174–8(c), subsection 22a–174–20(ee), and subsection 22a–174–4(d) of the Regulations of the Connecticut State Agencies Concerning Abatement of Air Pollution entitled "Permits to Construct and Permits to Operate Stationary Sources or Modifications," effective in the State of Connecticut on February 1, 1989.

(E) Connecticut's Ambient Impact Analysis Guideline dated July, 1989 as revised by letter on January 26, 1990.

(ii) *Additional materials.*

(A) State Implementation Plan narrative entitled "New Source Review."

(B) Letter from the Connecticut Department of Environmental Protection regarding implementation of BACT.

(C) Nonregulatory portions of the State Submittal.

* * * * *

3. Section 52.382 is revised to read as follows:

§ 52.382 Significant deterioration of air quality.

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met, since the plan does not include approvable provisions for the NO_2 increments under the prevention of significant deterioration program.

(b) The increments for nitrogen dioxide and related requirements promulgated on October 17, 1988 (53 FR 40671) to 40 CFR 52.21(b) through (w) are hereby incorporated and made part of the applicable State Implementation Plan for the State of Connecticut.

[FR Doc. 93–4154 Filed 2–22–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[MA–04–01–5158; A–1–FRL–4524–9]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; New Source Review Plantwide Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision will replace the existing definition of stationary source in the Massachusetts SIP with the plantwide definition of stationary source in the preconstruction permitting program for new major stationary sources and major modifications locating in nonattainment areas. The intended effect of this action is to approve a State's request to amend its SIP in accordance with section 110 of the Clean Air Act (the Act).

EFFECTIVE DATE: This rule will become effective on March 25, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th Floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC; Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lynne A. Hamjian, (617) 565–3250.

SUPPLEMENTARY INFORMATION: On March 29, 1988 (53 FR 10105), EPA published a Notice of Proposed Rulemaking (NPR) proposing to approve a SIP revision for the Commonwealth of Massachusetts. This revision includes a change from the existing definition of stationary source in the Massachusetts SIP to the plantwide definition of stationary source in the preconstruction permitting program for new major stationary sources and major modifications locating in nonattainment areas. The preconstruction permitting process is commonly referred to as new source review (NSR). The formal SIP revision was submitted by the Massachusetts Department of Environmental Protection (DEP) on August 27, 1982, June 22, 1987, and December 27, 1989.

Background

On October 14, 1981 (46 FR 50766), EPA revised the NSR regulations in 40 CFR part 51 to allow adoption and use of the "plantwide" definition of stationary source in nonattainment areas. In this rulemaking, EPA defined stationary source as any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act. The reason this is a "plantwide" definition is that the four terms *building, structure, facility, or installation* are defined as a single term, meaning all of the pollutant-emitting activities which belong to the same industrial grouping (i.e., same two-digit SIC code), are located on one or more contiguous or adjacent properties, and are under the control of the same person.

The so-called "dual" definition also defines stationary source as any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act. Under this definition, the three terms *building structure, or facility* are defined, like the plantwide definition, as a single term meaning all of the pollutant-emitting activities which belong to the same industrial grouping (i.e., same two-digit SIC code), are located on one or more contiguous or adjacent properties, and are under the control of the same person. However, the fourth term, installation, has a separate definition meaning an identifiable piece of process equipment. Therefore, under the dual definition, a stationary source is all of the buildings, structures, or facilities (plantwide), and also each installation (piece of equipment). That is, the whole plant and each identifiable piece of process equipment are stationary sources.

The difference between these two definitions largely comes into play in determining to what extent netting may be used for defining whether a modification is major. A detailed explanation of the differences between these two definitions was outlined in the NPR and will not be restated here.

In the October 1981 **Federal Register** notice, EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–69). In its view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of Part D of the Act; on the one hand, reasonable further progress (RFP) and timely attainment of national ambient air quality standards (NAAQS), and on the other, maximum State flexibility and economic growth. The EPA recognized that use of the plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this generally would not interfere with RFP and timely attainment primarily because the States under the demands of Part D eventually would have adequate SIPs in place. The EPA also pointed out that under the plantwide definition, new equipment would still be subjected to any applicable new source performance standards and that wholly new plants, as well as any modifications that resulted in a significant net emissions increase, would still be subject to NSR. Thus, EPA saw no significant disadvantage in the plantwide definition from the environmental standpoint, as against the advantages from the standpoints of State flexibility and economic growth. It regarded the plantwide definition as presenting, at the very worst, environmental risks that were manageable because of the independent impetus to create adequate Part D plans that would attain the NAAQS on a timely basis.

As a result, EPA ruled that a State wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one condition on that discretion. If a State had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that EPA later approved, then the State would have to revise its attainment strategy as necessary to accommodate reduced NSR permitting of major modifications under the plantwide definition (46 FR 50767 col. 2, 50769 col. 1).

In 1984, the Supreme Court upheld EPA's action as a reasonable accommodation of the conflicting purposes of Part D of the Act, and hence within EPA's broad discretion. *Chevron, U.S.A., Inc.* v. *NRDC*, 104 S. Ct. 2778 (1984). Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing State flexibility and allowing reasonable economic growth. Likewise, the Court recognized that EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (see 104 S. Ct. at 2792). EPA today generally reaffirms the rationales stated in the 1981 rulemaking. Those rationales were left undisturbed by the Supreme Court decision.

Massachusetts' Revision

On August 27, 1982, the Commonwealth of Massachusetts submitted revisions to its preconstruction permitting program for new major stationary sources and major modifications locating in nonattainment areas. This package of changes to Massachusetts' NSR rules overhauled the program, making it consistent with EPA's program and, in some instances, going beyond EPA's requirements. One important example is the requirement that any proposed construction or substantial reconstruction shall install best available control technology (BACT). This BACT requirement goes well beyond the minimum federal requirements. The revisions also included a change to the plantwide definition of stationary source from the existing definition of stationary source in the Massachusetts SIP. The existing definition of stationary source in the State SIP is contained in the January 16, 1979 Emission Offset Interpretive Ruling (EOIR) under the terms "source" and "facility." The January 16, 1979 EOIR defined the term "source" as any structure, building, facility, equipment, installation or operation (or combination therof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control). The term "facility" is defined in the EOIR as an identifiable piece of process equipment. The definition of facility further states that "a stationary source is composed of one or more pollutant-emitting facilities." The definitions of these two terms have a similar effect on applicability (providing less opportunity for netting) as the dual definition promulgated on August 7, 1980 (45 FR 52676, 52697). The major differences between the definition in Massachusetts' existing SIP and the dual definition promulgated on August 7, 1980 (45 FR 52676) are the following:

(A) The dual definition does not contain the terms "equipment" and "operation" and the phrase "(or combination thereof)" pursuant to the decision in *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979), and

(B) The dual definition contains the criteria of using the standard industrial classification codes for distinguishing between sets of activities on the basis of their functional interrelationships.

These distinctions were not noted in EPA's March 29, 1988 NPR on this SIP revision. Because of these differences, the definition in Massachusetts' SIP is not as explicit and could be, at times, difficult to enforce.

On January 10, 1984, EPA published a final rulemaking notice (FRN) which approved most of the Massachusetts August 27, 1982 SIP revision but took no action on the definitions of "source" and "building, structure, facility or installation" in nonattainment areas, leaving the existing definition of source contained in Massachusetts' SIP in effect (January 16, 1979 EOIR). EPA decided to take no action on the revised definition in the January 10, 1984 rulemaking because the definition of "source" was the subject of a pending appeal from the decision *Natural Resources Defense Council* v. *Gorsuch*, 685 F.2d 718 (D.C. Cir. 1982). In 1984, as previously discussed, the Supreme Court reversed the Court of Appeals' decision and upheld the use of the plantwide definition of stationary source in nonattainment area NSR. *Chevron, U.S.A., Inc.* v. *NRDC*, 104 S. Ct. 2778 (1984).

On February 27, 1987, EPA issued guidance for approving the plantwide definition of stationary source in State NSR regulations for nonattainment areas. The guidance lists specific criteria for approving the plantwide definition. According to that guidance, if a State has a fully adopted and approved part D SIP for each primary nonattainment area and is not subject to a call by EPA for a SIP revision, the plantwide definition is approvable so long as the State did not rely on a dual or similar definition in its attainment demonstration(s). The February 27, 1987 guidance requires additional criteria for a State that does not have a fully-approved part D plan(s), is subject to a SIP call by EPA, or that did rely on the use of a dual definition in its attainment demonstration(s).

On June 22, 1987, the Commonwealth of Massachusetts resubmitted its request to revise its SIP to substitute a plantwide definition of stationary source for the existing definition of source in its nonattainment NSR regulations. EPA previously approved the Commonwealth's part D plans for relevant nonattainment areas including attainment demonstrations. In addition, the Massachusetts DEP has certified that it did not rely on any reductions from the operation of the existing NSR program in those demonstrations, and EPA's examination of the demonstrations confirms these certifications. Therefore, EPA proposed to approve the switch to the plantwide definition in the Massachusetts SIP.

On November 24, 1987 (54 FR 45044), EPA proposed a policy for approving post-1987 ozone and carbon monoxide SIP revisions for areas not attaining the NAAQS. Appendix A of the proposed policy listed potential 1988 SIP call areas (i.e., areas which could be subject to an EPA required revision of the SIP for those areas). At the time of the March 29, 1988 NPR, because the post-1987 policy was proposal rather than a final policy, EPA continued to treat the Massachusetts Ozone Attainment Demonstration as an approved SIP. However, the March 29, 1988 NPR stated if, prior to the time of final rulemaking Massachusetts is subject to a SIP call (or other criteria are no longer being met), then the Commonwealth will have to meet the additional criteria for such states as outlined in the February 27, 1987 guidance.

On May 25, 1988, EPA issued a letter which notified the former Governor Dukakis that, pursuant to section 110(a)(2)(H) of the Act, 42 U.S.C. 7410(a)(2)(H), the Massachusetts SIP is substantially inadequate to achieve the ozone and carbon monoxide NAAQS and therefore requires a revision. Therefore, prior to final rulemaking, the Massachusetts DEP had to submit written assurances that it is making reasonable efforts to develop a complete approvable SIP; that it intends to adhere to a schedule for such development as called for in EPA's May 25, 1988 letter;

and that approval of the plantwide definition will not interfere with the Massachusetts DEP's ability to develop a SIP. Specifically in response to the SIP call, the Massachusetts DEP stated in a letter dated December 27, 1989 that it:

(A) has submitted amendments to EPA dated August 17, 1989 to correct deficiencies in its volatile organic compound (VOC) regulations,

(B) has submitted a draft Post 1987 emissions inventory in November of 1989,

(C) intends to further amend two of its regulations in response to the SIP call by September of 1990, and

(D) has begun adopting and implementing regulations and programs to reduce VOC in a continuing effort to attain the ozone NAAQS and will be submitting these regulations as SIP revisions.

Since submittal of the December 27, 1989 letter, the Massachusetts DEP has submitted its draft 1990 base year inventory in May of 1992. In addition, it has submitted revisions in August of 1989 and in June of 1991 to complete the correction of deficiencies in its VOC regulations. To address ozone nonattainment, Massachusetts also has moved to adopt several measures earlier than the EPA requirements which, in some cases, go beyond the minimum federal requirements. These measures include fuel volatility limits, stage II vapor recovery, and California automobile tailpipe emission standards.

In addition, Massachusetts stated that it intends to completely revise its SIP to achieve final compliance with the ozone and carbon monoxide NAAQS.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. The Agency has reviewed this request for a SIP revision for conformance with the provisions of the 1990 Amendments. EPA has determined that this action conforms with EPA's current SIP requirements, despite the fact that the submittal preceded the date of enactment. While this revision does not meet all the future requirements under the Amendments for NSR programs, it is consistent with all of EPA's current requirements. This approval in no way relieves Massachusetts of the obligation to submit further revisions to its SIP to meet the Act's new requirements according to the schedule contained in the Act.

Pursuant to the new section 193 of the Act, the "general savings clause," EPA must determine whether this revision to the Massachusetts NSR program insures equivalent or greater emission reductions of nonattainment area pollutants. In conducting this analysis, EPA is examining the impact of the entire package of NSR program changes Massachusetts submitted in 1982. Massachusetts clearly submitted the change to a plantwide definition of source as part of a complete overhaul of its NSR program in 1982. EPA took no action on the plantwide definition of source when approving the balance of that package into the Massachusetts SIP in 1984 because of pending litigation challenging the legality of the plantwide definition in nonattainment areas. But Massachusetts intended the plantwide definition of source to operate within the context of its updated NSR program.

As a result, EPA finds that this change to the Massachusetts NSR program will insure equivalent reductions when compared with Massachusetts' prior NSR program. While the change to a plantwide definition of source represents a relaxation of the program, many other elements of the 1982 overhaul strengthened the requirements of the program. For example, Massachusetts' revised NSR regulations do not contain many of the exemptions as in the old NSR regulations. Furthermore, Massachusetts' revised NSR regulations are much more enforceable than its old NSR regulations. Lastly, Massachusetts' revised regulations require BACT on all sources (including minor sources in nonattainment areas). Taken as a whole, Massachusetts' NSR program achieves reductions equivalent to the reductions required under its NSR program prior to 1982. A memorandum dated April 12, 1991 entitled "Supplemental Technical Support Document for Massachusetts New Source Review Plantwide Definition" compares Massachusetts' old NSR provisions with the revised NSR provisions EPA approved in 1984.[1]

Public Comments

EPA received comments on its NPR from two parties during the public comment period which ended on April 28, 1988: the Conservation Law Foundation of New England and the Natural Resources Defense Council. Because the comments from both parties are similar, EPA has prepared one general response to all of the comments.

Conservation Law Foundation of New England, Inc. (CLF)

The CLF urged EPA not to approve Massachusetts' plantwide definition of stationary source for new source review. CLF stated that such a change is inappropriate given that the December 31, 1987 attainment deadline has passed and Massachusetts remains in violation of the ozone standard. Because Massachusetts did not attain the NAAQS for ozone months after December 31, 1987, CLF disagreed with the rationale outlined in EPA's February 27, 1987 guidance for approving the plantwide definition of stationary source which stated that the Act would operate independently to generate Part D plans that would assure reasonable further progress and timely attainment. CLF stated that EPA must articulate a new rationale as to why such a regulatory change will not interfere with progress toward attainment.

CLF further stated that the plantwide definition in Massachusetts can result in higher emissions which represent:

- The difference between emissions under the Best Available Control Technology (BACT) requirement applicable to source modifications that do not qualify as major and emissions under the Lowest Achievable Emission Rate (LAER) applicable to new or modified major stationary sources in nonattainment areas;
- The loss of offsets that would have been required of a major new source beyond those represented by the amount used to net the plant out of the definition of major stationary source; and
- The failure to capture emission reductions from other plants in the Commonwealth operated by the same company that would have had to be in compliance in order for the new or modified plant to get a new source permit.

CLF stated that any increase in emissions is unacceptable in a nonattainment area at this point in time.

Finally, CLF stated that EPA should give up on this attempt to further weaken its already ineffective SIP requirements and focus instead on devising a regulatory scheme that will produce attainment as expeditiously as practicable in Massachusetts and elsewhere.

Natural Resources Defense Council (NRDC)

NRDC commented that EPA's proposed approval of the plantwide definition in Massachusetts fails to comply with the requirements of the Clean Air Act as construed by EPA in the 1981 plantwide definition rulemaking and by the Supreme Court in *Chevron U.S.A.* v. *NRDC*, 467 U.S. 837 (1984). NRDC stated that in the 1981 rulemaking, EPA expressly conditioned a state's adoption of the plantwide definition in lieu of the more inclusive dual definition on the State's demonstrating that the SIP as revised continues to demonstrate that the NAAQS will be attained within the statutory deadlines. NRDC stated that

[1] A copy of this document is available in the docket at the location in the ADDRESSES section.

the Supreme Court expressly referred to this condition in the Chevron case. NRDC further commented that Massachusetts has not, and cannot meet this condition for the simple reason that it has in fact failed to attain the national ambient air quality standard for ozone despite the passing of the attainment deadline; therefore, EPA has no authority to approve the plantwide definition.

First, NRDC discussed the operation and effect of the plant wide definition. It specifically stated that the plantwide definition allows the vast bulk of large new industrial projects to escape new source review and increase overall pollution (according to EPA statistics obtained by NRDC during the 1981 rulemaking, more than 90 percent of the industrial projects subject to NSR under the dual definition can "net out" of NSR under the plantwide definition). NRDC stated that the units excluded from new source review escape compliance with LAER and do not have to provide emission offsets to improve air quality, and that the companies which build them evade the requirement to bring their existing sources into compliance as a precondition of permitting.

Second, NRDC discussed the conditions on the use of the plantwide definition imposed by EPA in 1981. NRDC quoted the following from the 1981 rulemaking: "States choosing to delete the dual definition must demonstrate that their plans, as revised, continue to demonstrate RFD and attainment. * * * States changing from a dual to a plantwide definition must therefore reassess their general attainment strategies and revise them as necessary to ensure RFP and attainment by the statutory deadlines." (46 FR 50767). NRDC further stated that this condition was also an essential part of EPA's defense of its position before the Supreme Court. Brief for the Administrator of the EPA in the Chevron case at 41. NRDC further quoted two references to this condition in the Chevron decision itself.

Third, NRDC discussed when the condition of demonstrating reasonable further progress (RFP) and timely attainment cannot be met, the plantwide definition is not approvable. NRDC stated that it is obvious that Massachusetts cannot meet the condition that it demonstrate RFP and timely attainment of the ozone standard; therefore, under the condition on adoption of the plantwide definition imposed in 1981, relied on by EPA in the Supreme Court, and reflected in the Chevron decision, the proposed SIP revision in Massachusetts must be disapproved. NRDC stated that after the ozone attainment deadline has passed, no feasible control measure can legally be excused as unnecessary to securing timely attainment. It stated that under the doctrine of both *Train* v. *NRDC*, 95 S. Ct. 1470 (1975), and *Chevron*, EPA cannot, at this point, legally approve the relaxation of the Massachusetts SIP.

Fourth, NRDC discussed that the proposal gives no legally acceptable rationale for approval. It questioned EPA's rationale outlined in its February 27, 1987 guidance. Specifically, NRDC stated that contrary to the 1981 condition that the SIP must continue to demonstrate RFP and timely attainment, the guidance asserts that EPA may ignore the present inadequacy of the SIP's RFP and attainment demonstrations when passing on the approvability of a relaxation of source definitions. NRDC disagreed with the requirements of a Category C State which is an area subject to a SIP call. It stated that written assurances are unacceptable. NRDC stated that after the deadline has passed, EPA has no basis for approving a SIP revision which constitutes the abandonment of a control measure in the current SIP. In addition, it stated that no such measure can legally be excused absent adoption of another path to timely attainment. Finally, NRDC stated that reliance on the 1987 guidance memorandum for areas which have received a SIP call is doubly untenable now that EPA has abandoned the reasonable extra efforts program.

Fifth, NRDC stated that it disagrees with EPA's unsupported claim that the dual definition retards pollution control. NRDC stated that in the 1981 rulemaking, the proposition that the dual definition retards modernization and thereby slows pollution control has no empirical support. It requested that EPA examine the evidence in Massachusetts on this issue. In addition, NRDC requested that EPA examine two other factors: (1) How much cleaner would those sources be under the dual definition? and (2) How much extra pollution would result from exempting sources under the plantwide definition from nonattainment area new source review requirements?

In summary, NRDC called upon EPA promptly to take the following actions:

- disapprove Massachusetts' use of the plantwide definition,
- commence enforcement actions, under the existing federally-approved SIP, against sources which have constructed without a permit as required under the dual definition,
- commence a proceeding to issue a federal rule readopting the dual definition into the Massachusetts' SIP,
- issue a call for comprehensive revision of the Massachusetts SIP in light of the continuing post 1987 nonattainment.

EPA's Response

EPA's 1981 Rulemaking

On October 14, 1981 (46 FR 50766), EPA promulgated the plantwide definition of stationary source in nonattainment areas. Among other things, EPA pointed out that the plantwide definition allowed States much greater flexibility in developing their nonattainment area NSR programs and attainment demonstrations. Therefore, EPA concluded that the dual definition was unnecessarily burdensome, and should be deleted. The final rulemaking notice included specific requirements for States choosing to delete the dual definition. The notice stated the following (see 46 FR 50767 Col. 2):

> States choosing to delete the dual definition must demonstrate that their plans, as revised, continue to demonstrate RFP and attainment. Many State plans are based in part upon a projection of reductions in emissions obtained through the State's NSR program. This projection in turn rested upon an anticipated number of permit applications. Use of a plantwide definition would mean that many sources will no longer need a permit. Unless counterbalanced by other consequences of the deletion (e.g., more rapid construction of new clean emission units), this may result in the loss of reductions originally expected by the State. In other instances, where RFP demonstrations were more general in nature, States relied on the NSR program to assist in their enforcement efforts and to identify additional more efficient means to control emissions. In either case, a State's RFP demonstration, which was predicated on those assumptions for NSR coverage, might no longer apply; and the State might have to obtain or guarantee those reductions in other ways (such as requiring additional reductions from existing sources and stepping up enforcement efforts). States changing from a dual to a plantwide definition must therefore reassess their general attainment strategies and revise them as necessary to ensure RFP and attainment by the statutory deadlines.

This excerpt listed requirements for States which relied on a dual definition of source in their attainment demonstration (i.e., took credit for reductions in emissions obtained throughout the State's NSR program). The FRN requires States to reassess their general attainment strategies and revise them as necessary to ensure RFP and attainment by the statutory deadlines. EPA did not restrict a State's ability to adopt a plantwide definition in any other respect based on the premise that the Act would operate independently to generate Part D plans that would assure

RFP and timely attainment (see 46 FR 50767 Col. 2, 50769 Col. 1).

EPA's February 27, 1987 Guidance

On February 27, 1987, EPA issued guidance on the preparation of Federal Register notices proposing action on pending plantwide definition SIP submittals. That guidance expanded on EPA's 1981 rulemaking in three specific categories:

Category A: Adequate SIP, No Prior Reliance on Dual Definition,
Category B: Adequate SIP Prior Reliance on Dual Definition,
Category C: Inadequate SIP.

EPA's 1987 memorandum is consistent with its 1981 rulemaking. It offers specific guidance on what States must do to reassess their general attainment strategies and to make any necessary revisions to assure RFP and attainment by the statutory deadlines. The guidance requires specific assurances to support EPA's conclusion that the Act would independently generate adequate attainment plans.

Supreme Court Decision

NRDC stated in its comments that the Chevron decision expressly references the condition that a State's SIP (as revised with the plantwide definition) continues to demonstrate that the NAAQS will be attained by the statutory deadlines. NRDC specifically stated that the Supreme Court quoted with approval this condition. Although the Supreme Court quoted this condition in two places, it did not do so with approval. Both references were presented in the decision as background from EPA's rulemakings. The Supreme Court did not agree or disagree with this specific condition in its decision. In fact, the Court stated the following:

> Our review of the EPA's varying interpretations of the word "source"—both before and after the 1977 Amendments—convinces us that the agency primarily responsible for administering this important legislation has consistently interpreted it flexibly—not in a sterile textural vacuum, but in the context of implementing policy decisions in a technical and complex arena. The fact that the agency has from time to time changed its interpretation of the term "source" does not, as respondents argue, lead us to conclude that no deference should be accorded the agency's interpretation of the statute. An initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis. Moreover, the fact that the agency has adopted different definitions in different contexts adds force to the argument that the definition itself is flexible, particularly since Congress has never indicated any disapproval of a flexible reading of the statute.

Chevron, 104 S. Ct. at 2792. Finally, the Supreme Court held that "EPA's definition of the term "source" is a permissible construction of the statute which seeks to accommodate progress in reducing air pollution with economic growth." *Id.* at 2793. The Court did not attach any conditions or limit the scope of the use of the plantwide definition.

Massachusetts' Revision

Massachusetts' SIP submittals meet the requirements in EPA's 1981 rulemaking and subsequent guidance. In its original submittal, it certified that it did not rely on a dual or similar definition of source in its attainment demonstrations. Therefore, its attainment demonstration before the 1988 SIP call operated independently from its NSR program. Furthermore the State has committed to completely revise its SIP to achieve final compliance with the ozone and carbon monoxide NAAQS. In addition, Massachusetts expects to reevaluate its NSR program as required by the Clean Air Act Amendments of 1990.

Although a SIP revision approving the plantwide definition of source is a relaxation of one aspect of Massachusetts' NSR program, taken as a whole, Massachusetts' NSR program does not interfere with timely attainment of the NAAQS and it meets all of the current EPA requirements. In addition, the Massachusetts SIP contains a requirement (more stringent than the minimum federal requirements for permitting minor sources) that any proposed construction or substantial reconstruction install BACT. BACT is defined as an emission limitation based on the maximum degree of reduction achievable which is determined on a case-by-case basis taking into account energy, environmental, and economic impacts. Under this definition, the Massachusetts DEP must consider the environmental impacts, along with other impacts, of the emissions from the new or modified source in a nonattainment area. In addition, the reviewing authority must determine BACT and LAER on a case-by-case basis. For these reasons, it is impossible to quantify the difference in emissions between the application of BACT and the application of LAER. Moreover, Massachusetts' NSR program applies BACT to more sources than would be required to install BACT under the minimum federal requirements. To the extent that LAER is a more stringent emission limit than BACT, the broader coverage of the BACT standard in Massachusetts' program may compensate for applying LAER to fewer sources than under the dual definition.

With respect to the comments on statewide compliance, it is unclear what effect the plantwide definition has on this requirement. Under the plantwide definition, fewer sources may be required as part of their permit applications to certify that all of their major sources in the State are in compliance with (or on a compliance schedule to meet) emission limits and standards under the Act. However, EPA's compliance monitoring strategy sets Class A sources (including major sources in nonattainment areas) as a national priority. Massachusetts' source inspection plan must address national priorities. In addition, Class A1 sources (sources whose actual or potential controlled emissions greater than or equal to 100 TPY) must be inspected annually. Therefore, the States and EPA closely track the compliance status of major sources in nonattainment areas. Lastly, Massachusetts has recently submitted a draft SIP revision for EPA approval which requires each source required to obtain a construction permit make an affirmative demonstration that all sources in the state, owned or operated by such person, are in compliance with all applicable state regulations. EPA is reviewing the submittal and plans to publish an NPR in the near future.

The Clean Air Act Amendments of 1990

Massachusetts' plantwide definition of source is consistent with the NSR requirements for ozone nonattainment areas in the Clean Air Act Amendments of 1990. Massachusetts is classified as a "serious" ozone nonattainment area statewide. *See* 56 FR 56694. As such, the attainment date for Massachusetts is now nine years following enactment of the 1990 Amendments (*see* section 181(a)), and Massachusetts must meet an independent requirement to reduce VOC emissions by fifteen percent in the first six years after enactment and three percent per year thereafter (*see* 182 (b)(1) and (c)(2)(B)). While Massachusetts must account for the impact of its plantwide definition of source in the attainment and reasonable further progress demonstrations it submits under the 1990 Amendments, it is clear that Congress anticipated States could use the plantwide definition of source when devising such plans. The 1990 Amendments include provisions regulating the application of the plantwide definition of source, including a special rule for serious and severe ozone nonattainment areas for determining "de minimis" net increases in VOC emissions from source

modifications (section 182(c)(6)). It is clear that Congress anticipates states will continue to employ EPA's plantwide definition of source in ozone nonattainment areas (except in extreme areas, *see* section 182(e)(2)), provided the states can also meet the new reasonable further progress requirements in the Act. In addition, it is important to point out that the 1990 amendments' adoption of new future attainment deadlines for ozone and CO has mooted NRDC's argument that missing the 1987 attainment deadlines makes it improper for Massachusetts to adopt a plantwide definition. The new deadlines are years away and Congress also gives Massachusetts additional time to submit a revised SIP to provide for attainment by the revised deadlines.

Massachusetts has not only committed to assembling a new ozone nonattainment area SIP consistent with its obligations under the Amendments, it has proven through its actions that it is committed to reducing VOC emissions in the Commonwealth. For example, as noted earlier, Massachusetts has repeatedly adopted VOC control measures earlier than (and in some cases beyond) the minimum federal requirmeents. As a result, EPA is prepared to accept the Commonwealth's commitment to account for this plantwide definition of source in its ozone SIP under the Amendments.

In summary, EPA's February 27, 1987 guidance is consistent with its 1981 rulemaking on the plantwide definition. The Supreme Court held that EPA's plantwide definition is a permissible construction of the statute. In addition, the Massachusetts' revision meets all of the federal regulations and guidance. The 1990 Amendments accommodate a plantwide definition of source and provide additional time for Massachusetts and other states to adopt revised SIPs to meet the newly revised attainment deadlines. Finally, the State has certified that its previous attainment demonstration did not rely on NSR reductions from the dual definition and it has certified that it making reasonable efforts to develop a complete and approvable SIP to achieve compliance with the ozone and carbon monoxide NAAQS. Therefore, EPA is approving this SIP revision.

EPA has reviewed these revisions for conformance with the provisions of the Clean Air Act Amendments enacted on November 15, 1990. As is discussed, an accommodation has been made for all of the immediately applicable NSR requirements of the Amendments. This approval in no way relieves Massachusetts of the obligation to submit further revisions to its SIP to meet the Act's new requirements according to the schedule contained in the Act. Massachusetts will adopt any necessary requirements and submit them to EPA in a separate submittal in the future. EPA has decided to approve these revisions today in order to conform it to existing requirements during this transition period. EPA has determined, however, that one statutory change has an immediate effect and may impact Massachusetts' NSR revisions. The paragraphs below summarize this provision and discuss the impact on Massachusetts' SIP revisions.

The Clean Air Act Amendments of 1990 add a new section 302(z) of the Clean Air Act defining the term "stationary source" as any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216. EPA's initial view is that the definition of stationary source in the federal regulations is flexible enough to accommodate the new section 302(z) without requiring regulatory revisions. Massachusetts regulations contain a definition of the term stationary source (310 CMR 7.00). As implemented, this definition conforms to the new section 302(z) definition in the Clean Air Act Amendments. If in the future, EPA promulgates standards for certain nonroad engines and nonroad vehicles, EPA will require that Massachusetts amend its definition of source to exclude these engines and vehicles as appropriate. Therefore, this change in the Clean Air Act Amendments of 1990 does not immediately impact this SIP revision.

Final Action

EPA is approving a revision to the Massachusetts SIP which replaces the existing definition of stationary source in its SIP with the plantwide definition of stationary source in the State's nonattainment area NSR regulations. Specifically, EPA is replacing the definitions of "source" and "facility" in Massachusetts' SIP (contained in the January 16, 1979 EOIR) with the definitions of "stationary source" and "building, structure, facility, or installation" in Massachusetts' Regulation 310 CMR 7.00, "Definitions."

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 26, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone.

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

Dated: December 19, 1992.

William K. Reilly,

Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(84) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(84) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on August 27, 1982, June 22, 1987, and December 27, 1989.

(i) *Incorporation by reference.*

(A) Letter from the Massachusetts Department of Environmental Protection dated August 27, 1982, submitting a revision to the Massachusetts State Implementation Plan.

(B) Amendments to 310 CMR 7.00, "Definitions" effective in the Commonwealth of Massachusetts on June 18, 1982 which add the definitions of the terms "stationary source" and "building, structure, facility, or installation."

(ii) *Additional materials.*

(A) Letter from the Massachusetts Department of Environmental Protection dated June 22, 1987 certifying that it did not rely on a dual definition in its attainment demonstration.

(B) Letter from the Massachusetts Department of Environmental Protection dated December 27, 1989 submitting additional assurances that it is making reasonable efforts to develop a complete and approve SIP.

(C) Nonregulatory portions of the submittal.

* * * * *

3. In § 52.1167 Table 52.1167 is amended by adding a new entry to "310 CMR 7.00" to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	FEDERAL REGISTER citation	52.1120 (c)	Comments/unapproved sections
•	•	•	•	•	•	•
310 CMR 7.00	Definitions ...	8/27/82, 6/22/87, 12/27/89.	[Insert date of publication in FR].	[Insert page citation from published date].	84	Approving the definitions of "stationary source" and "building, structure, facility, or installation."
•	•	•	•	•	•	•

[FR Doc. 93–4155 Filed 2–22–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[NM–13–1–5584; FRL–4557–9]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Particulate Matter Regulatory Revisions for Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This action approves a revision to the New Mexico State Implementation Plan (SIP) to include revisions to Albuquerque/Bernalillo County Air Quality Control Board (AQCB) Regulation 8—*Airborne Particulate Matter,* as filed with the State Records and Archives Center on February 17, 1983. AQCB Regulation 8 was initially approved by EPA on April 10, 1980. EPA is approving the February 17, 1983, revisions in order to make Federally enforceable certain topsoil disturbance permit restrictions which were not included in the original Federally-approved SIP version of Regulation 8. The Governor of New Mexico submitted these revisions to EPA by cover letter dated June 16, 1992.

DATES: This action will become effective on April 26, 1993, unless notice is received within 30 days of publication that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue; Dallas, Texas 75202–2733.

Mr. Jerry Kurtzweg (ANR–443), Environmental Protection Agency, 401 M Street, NW., Washington, DC 20460.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION: In order to Federally enforce the topsoil disturbance permit restrictions in Regulation 8, EPA requested that the City of Albuquerque submit the revisions to Regulation 8 as filed on February 17, 1983. Regulation 8 was initially approved by EPA at 45 FR 24460, but the City did not submit the 1983 revisions to EPA. This notice will approve the 1983 revisions to Regulation 8 as part of the Federally enforceable New Mexico SIP for Albuquerque/Bernalillo County outside the boundaries of Indian Lands.

Analysis of City Submission

1. Procedural Background

The Clean Air Act (Act) requires States to observe certain procedural requirements in developing implementation plans for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(1) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565]. The EPA's completeness criteria for SIP submittals are set out at 40 Code of Federal Regulations (CFR) part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The City of Albuquerque first held a public hearing on October 13, 1982, to entertain public comment on proposed revisions to Regulation 8 addressing topsoil disturbance permit restrictions. Public comments were received and addressed before the revisions were adopted by the Albuquerque/Bernalillo County AQCB. In order to now make these revisions Federally enforceable, the City of Albuquerque held another public hearing on June 10, 1992, to entertain public comment on the 1983 revisions to Regulation 8. No public comments were received. Following the public hearing the SIP revision was adopted by the Albuquerque/Bernalillo County AQCB and signed by the Governor on June 16, 1992. The SIP revision was received by EPA on July 6, 1992.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991). The submittal was found to be complete on July 29, 1992, and a letter dated July 29,

1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to by taken in the review process. As noted in today's action, EPA is approving revisions to Albuquerque/Bernalillo County AQCB Regulation 8, as filed with the State Records and Archives Center on February 17, 1983.

2. Revisions to Regulation 8

The revisions to Regulation 8 being approved today in this notice are found in section 8.03, entitled "Soil Disturbance". This section contains eight subsections, each of which is briefly discussed below.

8.03.1

This subsection stipulates that no person shall disturb, move or remove soil from, or place soil onto, more than 3/4 acre (32,670 square feet) of surface area without a valid permit from the Albuquerque Environmental Health Department (AEHD). Areas zoned and used for agriculture are exempt from these requirements. The language in this subsection is similar to language found in the 1979 SIP-approved Regulation 8.

8.03.2

This new subsection establishes a 10% opacity limit on airborne particulate matter, as measured against surrounding airborne background particulate matter. The opacity limit applies to on-site wind speeds up to 28 miles per hour. Emission measurements are made in accordance with Test Method 9 from 40 CFR part 60, appendix A.

8.03.3

This subsection expands upon the language found in the 1979 SIP-approved Regulation 8 regarding requirements for permit application contents.

8.03.4

This new subsection specifies that the AEHD shall, within 10 days of receipt of a completed permit application, either grant or deny the permit.

8.03.5

This new subsection establishes reasons why the AEHD may deny a permit.

8.03.6

This new subsection states that the granting of a permit does not relieve the person from compliance with applicable regulations.

8.03.7

This new subsection specifies the grounds for cancellation of a permit.

8.03.8

This new subsection specifies appeal procedures for applications that have been denied or for permits that have been cancelled.

In conclusion, the revisions to Regulation 8 as filed with the State Records and Archives Center on February 17, 1983, expand upon the 1979 SIP-approved Regulation 8. The revisions clarify the procedures for obtaining soil disturbance permits and specify performance requirements (i.e., compliance with a 10% opacity limit) regarding dust suppression control measures.

Final Action: The EPA is today approving revisions to Albuquerque/Bernalillo County AQCB Regulation 8, as filed with the State Records and Archives Center on February 17, 1983. The revisions to Regulation 8 expand upon the 1979 SIP-approved Regulation 8. The revisions clarify the procedures for obtaining soil disturbance permits and specify performance requirements (i.e., compliance with a 10% opacity limit) regarding dust suppression control measures. Regulation 8 is applicable to Bernalillo County outside the boundaries of Indian Lands.

The EPA has reviewed these revisions to the New Mexico SIP and is approving them as submitted. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective April 26, 1993, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 26, 1993.

EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments (CAAA) enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 26, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

Executive Order 12291: This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 4, 1993.

W.B. Hathaway,

Acting, Regional Administrator (6A).

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(49) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(49) A revision to the New Mexico State Implementation Plan (SIP) to include revisions to Albuquerque/Bernalillo County Air Quality Control Board Regulation 8—*Airborne Particulate Matter,* as filed with the State Records and Archives Center on February 17, 1983, and submitted by the Governor of New Mexico by letter dated June 16, 1992.

(i) *Incorporation by reference.*

(A) Albuquerque/Bernalillo County Air Quality Control Board Regulation 8—*Airborne Particulate Matter,* Section 8.03, "Soil Disturbance," Subsections 8.03.1, 8.03.2, 8.03.3, 8.03.4, 8.03.5, 8.03.6, 8.03.7, and 8.03.8, as filed with the State Records and Archives Center on February 17, 1983.

[FR Doc. 93–4157 Filed 2–22–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[OR19–1–5511; FRL–4559–5]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to OAR Chapter 340 Division 30 (Specific Air Pollution Control Rules For Areas With Unique Air Quality Control Needs) as revisions to the State of Oregon State Implementation Plan. The Director of the State of Oregon Department of Environmental Quality submitted on October 13, 1989 and November 15, 1991, these revisions for the limited purpose of advancing the national ambient air quality standards (NAAQS) related air quality protection goals for the Clean Air Act (CAA).

EFFECTIVE DATE: April 26, 1993.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Air & Radiation Branch, Environmental Protection Agency, Docket # OR19–1–5511, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

Oregon Department of Environmental Quality, 811 S.W. Sixth, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, Telephone: (206) 553–6510.

SUPPLEMENTARY INFORMATION

I. Background

On July 1, 1987 (52 FR 24634) the Environmental Protection Agency revised the National Ambient Air Quality Standards (NAAQS) for particulate matter. Total suspended particulate matter or "TSP" was replaced as an indicator for particulate matter for the ambient standard by a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10).

To implement the revised NAAQS, EPA promulgated revisions to 40 CFR parts 51 and 52 also on July 1, 1987 (52 FR 24672). As described below, these actions established requirements for the preparation, adoption, and submittal of State Implementation Plans (SIPs) necessary to protect the revised NAAQS.

On August 7, 1987 (52 FR 29383), EPA categorized areas of the Nation into three groups based on the likelihood that the existing SIP would require revision in order to protect the PM–10 NAAQS. The Grants Pass Urban Growth Boundary area (UGB) and the Medford-Ashland Air Quality Maintenance Area (AQMA) were identified as areas with a strong likelihood of violating the PM–10 NAAQS and requiring substantial SIP revisions. Therefore, they were listed as Group I areas.

In response to this action, the Oregon Department of Environmental Quality (ODEQ) revised Chapter 340 Division 30 of the Oregon Administrative Rules, applicable to the Medford-Ashland and Grants Pass Group I areas, and submitted revisions to EPA on October 13, 1989.

Congress then revised the Clean Air Act by passage of the Clean Air Act Amendments of 1990 (Pub. L. No. 101–549, 104 Stat. 2399, November 15, 1990). The revised Act designated, by operation of law, existing PM–10 Group I areas as moderate PM–10 nonattainment areas. See sections 107(d)(4)(B)(i) and 188(a) of the CAA, 42 U.S.C. 7407(d)(4)(B)(i) and 7513(a). In addition, section 107(d)(4)(B)(ii) required that "any area containing a site for which air quality monitoring data show a violation of the national ambient air quality standard for PM–10 before January 1, 1989 (as determined under part 50, appendix K of title 40 of the Code of Federal Regulations) is hereby designated nonattainment for PM–10." This action resulted in the La Grande Urban Growth Boundary area as being designated a moderate nonattainment for PM–10. See 56 FR 56694, 56820 (Nov. 6, 1991) (codification of Oregon PM–10 nonattainment areas). The Act also imposed new SIP requirements for moderate PM–10 nonattainment areas. See generally 57 FR 13498 (April 16, 1991) and 57 FR 18070 (April 28, 1992).

The revised Act required, among other things, that the State of Oregon submit to EPA by November 15, 1991, provisions to assure that Reasonably Available Control Measures (RACM) (including Reasonably Available Control Technology (RACT) applicable to stationary sources of PM–10 be implemented by December 10, 1993, for the three nonattainment areas and that the State demonstrate either that the PM–10 NAAQS will be attained in the areas by December 31, 1994, or that attainment by such date is not practicable (hereafter the "demonstration" requirement). *Id;* sections 172(c)(1) and 189(a) of the CAA. Because EPA construes RACT to apply to existing stationary sources in a nonattainment area that are reasonable to control in light of the attainment needs of the area (and the feasibility of the controls) (see 57 FR at 13,540–44), EPA will evaluate the Division 30 Rules in reference to the specific PM–10 RACM (including RACT) requirement during EPA's review of the full control strategies and associated PM–10 demonstration requirement for each of the three areas.

To address the designation of La Grande as a nonattainment area and in

response to previous EPA comments on the 1989 submittal, ODEQ again revised the Division 30 Rules and submitted the revision on November 15, 1991. The Division 30 Rules, as submitted on November 15, 1991, now apply to the Grants Pass, Medford-Ashland and La Grande PM–10 nonattainment areas. The preceding analysis applies with equal force to the November 15, 1991, submittal.

II. Technical Evaluation

OAR Chapter 340, Division 30—On October 13, 1989, ODEQ submitted a revision to OAR Chapter 340, Division 30 (retitled as—Specific Air Pollution Control Rules For Areas With Unique Air Quality Control Needs) by revising sections –005, –010, –015, –025, –040, –043, –044, –050, –055 and –065. In addition, sections –021, –046, –067 and –111 were added and section –045 was deleted. This revision was submitted to reduce PM–10 emissions from specific industrial sources in Oregon's Medford-Ashland and Grants Pass Group I PM–10 areas.

In general, application of the existing rules was expanded to include industrial sources in the Grants Pass Group I area. However, during EPA's review of the 1989 submittal, several problems were discovered.

In response to EPA's comments on the 1989 submittal, ODEQ corrected the deficient sections except for –015(3)(c) and resubmitted them on November 15, 1991.

The 1989 and the 1991 submittals also made the following changes to the Division 30 Rules:

(1) The applicability of the rules was expanded to include the La Grande PM–10 nonattainment area.

(2) Section –050, which requires the monitoring of PM–10 emissions and other parameters was added. This requirement is applicable to the wood products industries.

(3) Section –115, which requires a dual fuel feasibility study for large wood-waste boilers in the Medford-Ashland AQMA was added and

(4) Sections 200 to 230, new rules for controlling particulate matter emissions specific to the La Grande PM–10 nonattainment area, were added.

III. Response to Comment

EPA received no comments on its November 9, 1992 (57 FR 53304) **Federal Register** proposal to approve revisions to OAR Chapter 340 Division 30 (Specific Air Pollution Control Rules For Areas With Unique Air Quality Control Needs) as revisions to the State of Oregon State Implementation Plan.

IV. Summary of Action

EPA is today approving the following revisions to the State of Oregon Implementation Plan for OAR 340 Division 30 (Specific Air Pollution Control Rules for Areas With Unique Air Quality Control Needs) –005, –010, –012, –015 (except for (3)(c)), –021, –025, –030, –040, –043, –045, –046, –050, –055, –060, –065, –067, –115, –200, –205, –210, –215, –220, –225, and –230.

EPA's action today does not in any manner constitute an approval of a specific PM–10 nonattainment planning requirement applicable to the PM–10 nonattainment areas in Oregon affected by these rules. In addition, EPA is not taking action on OAR 340–30–015(3)(c), and OAR 340–30–111.

The above revisions to the State of Oregon's Air Quality Control Plan Volume 2 (the Federal Clean Air Act State Implementation Plan and other State Regulations) were made to support Oregon's PM–10 Nonattainment Area control strategy(ies) required by, among other things, sections 110 and 172 of the CAA, 42 U.S.C. 7410 and 7502. The Division 30 regulations target industrial sources in the Grants Pass, Medford-Ashland, and La Grande PM–10 nonattainment areas in the State of Oregon. However, these industrial source control measures are not the sole PM–10 control measures relied upon to demonstrate attainment of the PM–10 NAAQS in these areas nor are they accompanied with a demonstration of timely attainment in the affected areas. Accordingly, this action does not contain a determination that the specific requirement that the State of Oregon submit provisions assuring that reasonably available control measures or "RACM" (including reasonably available control technology) or "RACT" are implemented in these areas no later than December 10, 1993 has been met nor does it analyze the specific attainment needs for the three nonattainment ares. See sections 172(c)(1) and 189(a) of the CAA. The adequacy of the industrial source regulations to achieve the expected emission reductions will be evaluated during EPA's review of the PM–10 attainment plan for each of the three areas.

V. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

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

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for permanent waiver for Table 2 and 3 revisions. OMB has agreed to continue to temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 26, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: January 13, 1993.

Dana A. Rasmussen,

Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1972.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(97) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(97) On October 13, 1989 and November 15, 1991 the Director of the Department of Environmental Quality submitted revisions to OAR chapter 340 Division 30 (Specific Air Pollution Control Rules for Areas With Unique Air Quality Control Needs) as revisions to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air State Implementation Plan and Other State Regulations).

(i) *Incorporation by reference.*

(A) October 13, 1989 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(B) November 15, 1991 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(C) Oregon Administrative Rule 340 Division 30 (Specific Air Pollution Control Rules for Medford-Ashland Air Quality Maintenance Area and the Grants Pass Urban Growth Area) –010 (Definitions); –015 (Wood Waste Boilers) (except for (3)(c)); –025 (Air Conveying Systems); –040 (Charcoal Producing Plants); –043 (Control of Fugitive Emissions (Medford-Ashland AQMA Only); –044 (Requirement for Operating and Maintenance Plans (Medford-Ashland AQMA Only); –045 (Compliance Schedules); –046 (Emission Limits Compliance Schedules); –050 (Continuous Monitoring); –055 (Source Testing; –065 (New Source); –067 (Rebuilt Sources); as adopted by the Environmental Quality Commission on September 7, 1989 and effective on September 7, 1989.

(D) Oregon Administrative Rule 340 Division 30 (Specific Air Pollution Control Rules for Areas with Unique Air Quality Control Needs) section –005 (Purpose and Application; –010 (Definitions); –012 (Application); –015 (Wood Waste Boilers) (except for (3)(c)); –021 (Veneer Dryer Emission Limitations); –030 (Wood Particle Dryers At Particleboard Plants); –043 (Control of Fugitive Emissions (Medford-Ashland AQMA Only); –044 (Requirements for Operating and Maintenance Plans (Medford-Ashland AQMA Only); –046 (Emission Limits Compliance Schedules); –050 (Continuous Monitoring); –055 (Source Testing); –065 (New Sources); –067 (Rebuilt Sources); –115 (Dual Fuel Feasibility Study for Wood-Waste Boilers); –200 (Application), –205 (Compliance Schedule for Existing Sources), –210 (Woodwaste Boilers); –215 (Wood Particle Dryers At Particleboard Plants); –220 (Hardboard Manufacturing Plants); –225 (Air Conveying System), and –230 (Fugitive Emissions) as adopted by the Environmental Quality Commission on November 8, 1991 and effective on November 13, 1991.

3. Section 52.1977 is revised to read as follows:

§ 52.1977 Content of approved State submitted implementation plan.

The following sections of the State air quality control plan (as amended on the dates indicated) have been approved and are part of the current state implementation plan.

STATE OF OREGON

AIR QUALITY CONTROL PROGRAM

Volume 2—The Federal Clean Air Act Implementation Plan (and Other State Regulations)

Section

1. Introduction (1–86)

2. General Administration (1–86)

2.1 Agency Organization (1–86)
2.2 Legal Authority (1–86)
2.3 Resources (1–86)
2.4 Intergovernmental Cooperation and Consultation (1–86)
2.5 Miscellaneous Provisions (1–86)

3. Statewide Regulatory Provisions

3.1 Oregon Administrative Rules—Chapter 340 (1–86)

Division 12—Civil Penalties

Sec. 030 Definitions (11–8–84)
Sec. 035 Consolidation of Proceedings (9–25–74)
Sec. 040 Notice of Violation (12–3–85)
Sec. 045 Mitigating and Aggravating Factors (11–8–88)
Sec. 050 Air Quality Schedule of Civil Penalties (11–8–84)
Sec. 070 Written Notice of Assessment of Civil Penalty; When Penalty Payable (11–8–84)
Sec. 075 Compromise or Settlement of Civil Penalty by Director (11–8–84)

Division 14—Procedures for Issuance, Denial, Modification, and Revocation of Permits (4–15–72)

Sec. 005 Purpose (4–15–72)
Sec. 007 Exceptions (6–10–88)
Sec. 010 Definitions (4–15–72), except (3) "Director" (6–10–88)
Sec. 015 Type, Duration, and Termination of Permits (12–16–76)
Sec. 020 Application for a Permit (4–15–72), except (1), (4)(b), (5) (6–10–88)
Sec. 025 Issuance of a Permit (4–15–72), except (2), (3), (4), (5), (6) (6–10–88)
Sec. 030 Renewal of a Permit (4–15–72)
Sec. 035 Denial of a Permit (4–15–72)
Sec. 040 Modification of a Permit (4–15–72)
Sec. 045 Suspension or Revocation of a Permit (4–15–72)
Sec. 050 Special Permits (4–15–72)

Division 20—General

Sec. 001 Highest and Best Practicable Treatment and Control Required (3–1–72)
Sec. 003 Exceptions (3–1–72)

Registration

Sec. 005 Registration in General (9–1–70)
Sec. 010 Registration Requirements (9–1–70)
Sec. 015 Re-registration (9–1–70)

Notice of Construction and Approval of Plans

Sec. 020 Requirement (9–1–70)
Sec. 025 Scope (3–1–72)
Sec. 030 Procedure (9–1–72), except (4)(a) Order Prohibiting Construction (4–14–89)
Sec. 032 Compliance Schedules (3–1–72)

Sampling, Testing, and Measurement of Air Contaminant Emissions

Sec. 035 Program (9–1–70)
Sec. 037 Stack Heights & Dispersion Techniques (4–25–86)
Sec. 040 Methods (9–11–70)
Sec. 045 Department Testing (9–1–70)

Sec. 046 Records; Maintaining and Reporting (10–1–72)
Sec. 047 State of Oregon Clean Air Act, Implementation Plan (9–30–85)

Air Contaminant Discharge Permits

Sec. 140 Purpose (1–6–86)
Sec. 145 Definitions (1–6–76)
Sec. 150 Notice Policy (6–10–88)
Sec. 155 Permit Required (5–31–83)
Sec. 160 Multiple-Source Permit (1–6–76)
Sec. 165 Fees (3–14–86)
Sec. 170 Procedures For Obtaining Permits (1–11–74)
Sec. 175 Other Requirements (6–29–79)
Sec. 180 Registration Exemption (6–29–79)
Sec. 185 Permit Program For Regional Air Pollution Authority (1–6–76)

Conflict of Interest

Sec. 200 Purpose (10–13–78)
Sec. 205 Definitions (10–13–78)
Sec. 210 Public Interest Representation (10–13–78)
Sec. 215 Disclosure of Potential Conflicts of Interest (10–13–78)

New Source Review

Sec. 220 Applicability (9–8–81)
Sec. 225 Definitions (10–16–84)
Sec. 230 Procedural Requirements (10–16–84), except (3)(d) (6–10–88)
Sec. 235 Review of New Sources and Modifications for Compliance With Regulations (9–8–81)
Sec. 240 Requirements for Sources in Nonattainment Areas (4–18–83)
Sec. 245 Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (10–16–85)
Sec. 250 Exemptions (9–8–81)
Sec. 255 Baseline for Determining Credit for Offsets (9–8–81)
Sec. 260 Requirements for Net Air Quality Benefit (4–18–83)
Sec. 265 Emission Reduction Credit Banking (4–18–83)
Sec. 270 Fugitive and Secondary Emissions (9–8–81)
Sec. 275 Repealed
Sec. 276 Visibility Impact (10–16–85)

Plant Site Emission Limits

Sec. 300 Policy (9–8–81)
Sec. 301 Requirement for Plant Site Emission Limits (9–8–81)
Sec. 305 Definitions (9–8–81)
Sec. 310 Criteria for Establishing Plant Site Emission Limits (9–8–81)
Sec. 315 Alternative Emission Controls (9–8–81)
Sec. 320 Temporary PSD Increment Allocation (9–8–81)

Stack Heights and Dispersion Techniques

Sec. 340 Definitions (4–18–83)
Sec. 345 Limitations (4–18–83)
Sec. 350 Purpose and Applicability (1–2–91)
Sec. 355 Definitions (1–2–91)
Sec. 360 Planned Startup and Shutdown (1–2–91)
Sec. 365 Scheduled Maintenance (1–2–91)
Sec. 370 Upsets and Breakdowns (1–2–91)
Sec. 375 Reporting Requirements (1–2–91)
Sec. 380 Enforcement Action Criteria (1–2–91)

Division 21—Industrial Contingency Requirements for PM–10 Nonattainment Areas

Sec. 200 Purpose (11–13–91)
Sec. 205 Relation to Other Rules (11–13–91)
Sec. 210 Applicability (11–13–91)
Sec. 215 Definitions (11–13–91)
Sec. 220 Compliance Schedule for Existing Sources (11–13–91)
Sec. 225 Wood-Waste Boilers (11–13–91)
Sec. 230 Wood Particulate Dryers at Particleboard Plants (11–13–91)
Sec. 235 Hardboard Manufacturing Plants (11–13–91)
Sec. 240 Air Conveying Systems (11–13–91)
Sec. 245 Fugitive Emissions (11–13–91)

Division 22—General Gaseous Emissions Sulfur Content of Fuels

Sec. 005 Definitions (3–1–72)
Sec. 010 Residual Fuel Oils (8–25–77)
Sec. 015 Distillate Fuel Oils (3–1–72)
Sec. 020 Coal (1–29–82)
Sec. 025 Exemptions (3–1–72)

General Emission Standards for Sulfur Dioxide

Sec. 050 Definitions (3–1–72)
Sec. 055 Fuel Burning Equipment (3–1–72)
Sec. 300 Reid Vapor Pressure for Gasoline, except that in Paragraph (6) only sampling procedures and test methods specified in 40 CFR Part 80 are approved (6–15–89)

Division 23—Rules for Open Burning

Sec. 022 How to Use These Open Burning Rules (9–8–81)
Sec. 025 Policy (9–8–81)
Sec. 030 Definitions (6–16–84) (15) "Disease and Pest Control" (11–13–91)
Sec. 035 Exemptions, Statewide (6–14–84)
Sec. 040 General Requirements Statewide (9–8–81)
Sec. 042 General Prohibitions Statewide (6–16–84)
Sec. 043 Open Burning Statewide (11–13–91)
Sec. 045 County Listing of Specific Open Burning Rules (9–8–81)
Sec. 090 Coos, Douglas, Jackson and Josephine Counties (11–13–91)

Open Burning Prohibitions

Sec. 055 Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties (9–8–81)
Sec. 060 Benton, Linn, Marion, Polk, and Yamhill Counties (6–16–84)
Sec. 065 Clackamas County (6–16–84)
Sec. 070 Multnomah County (6–16–84)
Sec. 075 Washington County (6–16–84)
Sec. 080 Columbia County (9–8–81)
Sec. 085 Lane County (6–16–84)
Sec. 090 Coos, Douglas, Jackson and Josephine Counties (9–8–81)
Sec. 100 Letter Permits (6–16–84)
Sec. 105 Forced Air Pit Incinerators (9–8–81)
Sec. 110 Records and Reports (9–8–81)
Sec. 115 Open Burning Control Areas (6–16–84)

Division 24—Motor Vehicles

Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards

Sec. 300 Scope (4–1–85)
Sec. 301 Boundary Designations (9–9–88)
Sec. 305 Definiations (4–1–85)
Sec. 306 Publicly Owned and Permanent Fleet Vehicle Testing Requirements (12–31–83)
Sec. 307 Motor Vehicle Inspection Program Fee Schedule (8–1–81)
Sec. 310 Light Duty Motor Vehicle Emission Control Test Method (9–9–88)
Sec. 315 Heavy Duty Gasoline Motor Vehicle Emission Control Test Method (12–31–83)
Sec. 320 Light Duty Motor Vehicle Emission Control Test Criteria (9–9–88)
Sec. 325 Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria (9–9–88)
Sec. 330 Light Duty Motor Vehicle Emission Control Cutpoints or Standards (8–1–81) Subpart (3) (9–12–86)
Sec. 335 Heavy Duty Gasoline Motor Vehicle Emission Control Emission Standards (9–12–86)
Sec. 340 Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates (12–31–83)
Sec. 350 Gas Analytical System Licensing Criteria (9–9–88)

Division 25—Specific Industrial Standards Construction and Operation of Wigwam Waste Burners

Sec. 005 Definitions (3–1–72)
Sec. 010 Statement of Policy (3–1–72)
Sec. 015 Authorization to Operate a Wigwam Burner (3–1–72)
Sec. 020 Repealed
Sec. 025 Monitoring and Reporting (3–1–72)

Hot Mix Asphalt Plants

Sec. 105 Definition (3–1–73)
Sec. 110 Control Facilities Required (3–1–73)
Sec. 115 Other Established Air Quality Limitations (3–1–73)
Sec. 120 Portable Hot Mix Asphalt Plants (4–18–83)
Sec. 125 Ancillary Sources of Emission—Housekeeping of Plant Facilities (3–1–73)

Primary Aluminum Plants

Sec. 255 Statement of Purpose (6–18–82)
Sec. 260 Definitions (6–18–82)
Sec. 265 Emission Standards (6–18–82)
Sec. 270 Special Problem Areas (12–25–73)
Sec. 275 Highest and Best Practical Treatment and Control Requirement (12–25–73)
Sec. 280 Monitoring (6–18–82)
Sec. 285 Reporting (6–18–82)

Specific Industrial Standards

Sec. 305 Definitions (11–13–91)
Sec. 310 General Provisions (5–30–86)

Sec. 315 Veneer and Plywood Manufacturing Operations (11–13–91)
Sec. 320 Particleboard Manufacturing Operations (5–30–86)
Sec. 325 Hardboard Manufacturing Operations (5–30–86)

Regulations for Sulfite Pulp Mills

Sec. 350 Definitions (5–23–80)
Sec. 355 Statement of Purpose (5–23–80)
Sec. 360 Minimum Emission Standards (5–23–80)
Sec. 365 Repealed
Sec. 370 Monitoring and Reporting (5–23–80)
Sec. 375 Repealed
Sec. 380 Exceptionss (5–23–80)

Laterite Ore Production of Ferronickel

Sec. 405 Statement of Purpose (3–1–72)
Sec. 410 Definitions (3–1–72)
Sec. 415 Emission Standards (3–1–72)
Sec. 420 Highest and Best Practicable Treatment and Control Required (3–1–72)
Sec. 425 Compliance Schedule (3–1–72)
Sec. 430 Monitoring and Reporting (3–1–72)

Division 26—Rules for Open Field Burning (Willamette Valley)

Sec. 001 Introduction (7–3–84)
Sec. 003 Policy (3–7–84)
Sec. 005 Definitions (3–7–84)
Sec. 010 General Requirement (3–7–84)
Sec. 011 Repealed
Sec. 012 Registration, Permits, Fees, Records (3–7–84)
Sec. 013 Acreage Limitations, Allocations (3–7–84)
Sec. 015 Daily Burning Authorization Criteria (3–7–84)
Sec. 020 Repealed
Sec. 025 Civil Penalties (3–7–84)
Sec. 030 Repealed
Sec. 031 Burning by Public Agencies (Training Fires) (3–7–84)
Sec. 035 Experimental Burning (3–7–84)
Sec. 040 Emergency Burning, Cessation (3–7–84)
Sec. 045 Approved Alternative Methods of Burning (Propane Flaming) (3–7–84)

Division 27—Air Pollution Emergencies

Sec. 005 Introduction (5–20–88)
Sec. 010 Episode State Criteria for Air Pollution Emergencies (5–20–88)
Sec. 012 Special Conditions (5–20–88)
Sec. 015 Source Emission Reduction Plans (10–24–83)
Sec. 020 Repealed
Sec. 025 Regional Air Pollution Authorities (10–24–83)
Sec. 035 Operation and Maintenance Manual (10–24–83)

Division 30—Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area

Sec. 005 Purposes and Application (11–13–91)
Sec. 010 Definitions (11–13–91)
Sec. 012 Application (11–13–91)
Sec. 015 Wood Waste Boilers (11–13–91) except (3)(c)
Sec 020 Veneer Dryer Emission Limitations (1–28–80)
Sec. 021 Veneer Dryer Emission Limitations (11–13–91)
Sec. 025 Air Conveying Systems (9–7–89)
Sec. 030 Wood Particle Dryers at Particleboard Plants (11–13–91)
Sec. 031 Hardwood Manufacturing Plants (5–6–81)
Sec. 035 Wigwam Waste Burners (10–29–80)
Sec. 040 Charcoal Producing Plants (9–7–89)
Sec. 043 Control of Fugitive Emissions [Medford-Ashland Only] (11–13–91)
Sec. 044 Requirement for Operation and Maintenance Plans [Medford-Ashland Only] (11–13–91)
Sec. 045 Compliance Schedules (9–7–89)
Sec. 046 Emission Limits Compliance Schedules (11–13–91)
Sec. 050 Continuous Monitoring (11–13–91)
Sec. 055 Source Testing (11–13–91)
Sec. 060 Repealed
Sec. 065 New Sources (11–13–91)
Sec. 067 Rebuilt Sources (11–13–91)
Sec. 070 Open Burning (4–7–78)
Sec. 115 Dual Fuel Feasibility Study for Wood-Waste Boilers (11–13–91)
Sec. 200 Application (11–13–91)
Sec. 205 Compliance Schedule for Existing Sources (11–13–91)
Sec. 210 Woodwaste Boilers (11–13–91)
Sec. 215 Wood Particle Dryers At Particleboard Plants (11–13–91)
Sec. 220 Hardboard Manufacturing Plants (11–13–91)
Sec. 225 Air Conveying Systems (11–13–91)
Sec. 230 Fugitive Emissions (11–13–91)

Division 31—Ambient Air Quality Standards

Sec. 005 Definitions (3–1–72)
Sec. 010 Purpose and Scope of Ambient Air Quality Standards (3–1–72)
Sec. 015 Suspended Particulate Matter (3–1–72)
Sec. 020 Sulfur Dioxide (3–12–72)
Sec. 025 Carbon Monoxide (3–1–72)
Sec. 030 Ozone (1–29–82)
Sec. 035 Hydrocarbons (3–1–72)
Sec. 040 Nitrogen Dioxide (3–1–72)
Sec. 045 Repealed
Sec. 050 Repealed
Sec. 055 Ambient Air Quality Standard for Lead (1–21–83)

Prevention of Significant Deterioration

Sec. 100 General (6–22–79)
Sec. 110 Ambient Air Increments (6–22–79)
Sec. 115 Ambient Air Ceilings (6–22–79)
Sec. 120 Restrictions on Area Classifications (6–22–79)
Sec. 125 Repealed
Sec. 130 Redesignation (6–22–79)

Division 34—Residential Wood Heating

Sec. 001 Purpose (11–13–91)
Sec. 005 Definitions (11–13–91)
Sec. 010 Requirements for Sale of Woodstoves (11–13–91)
Sec. 015 Exemptions (11–13–91)
Sec. 020 Civil Penalties (11–13–91)
Sec. 050 Emission Performance Standards & Certification (11–13–91)
Sec. 055 Efficiency Testing Criteria & Procedures (11–13–91)
Sec. 060 General Certification Procedures (11–13–91)
Sec. 065 Changes in Woodstove Design (11–13–91)
Sec. 070 Labelling Requirements (11–13–91)
Sec. 075 Removable Label (11–13–91)
Sec. 080 Label Approval (11–13–91)
Sec. 085 Laboratory Accreditation Requirements (11–13–91)
Sec. 090 Accreditation Criteria (11–13–91)
Sec. 095 Application for Laboratory Efficiency Accreditation (11–13–91)
Sec. 100 On-Site Laboratory Inspection and Stove Testing Proficiency Demonstration (11–13–91)
Sec. 105 Accreditation Application Deficiency, Notification and Resolution (11–13–91)
Sec. 110 Final Department Administrative Review and Certification of Accreditation (11–13–91)
Sec. 115 Revocation and Appeals (11–13–91)
Sec. 150 Applicability (11–13–91)
Sec. 155 Determination of Air Stagnation Conditions (11–13–91)
Sec. 160 Prohibition on Woodburning During Periods of Air Stagnation (11–13–91)
Sec. 165 Public Information Program (11–13–91)
Sec. 170 Enforcement (11–13–91)
Sec. 175 Suspension of Department Program (11–13–91)
Sec. 200 Applicability (11–13–91)
Sec. 210 Removal and Destruction of Uncertified Stove Upon Sale of Home (11–13–91)
Sec. 215 Home Seller's Responsibility to Disclose (11–13–91)

3.2 Lane Regional Air Pollution Authority Regulations

Title 11 Policy and General Provisions

11–005 Policy (10–9–79)
11–010 Construction and Validity (10–9–79)

Title 12 General Duties and Powers of Board and Director

12–005 Authority of the Agency (11–8–83)
12–010 Duties and Powers of the Board of Directors (11–8–83)
12–020 Duties and Function of the Director (11–8–83)
12–025 Conflict of Interest (9–9–88)
12–035 Public Records and Confidential Information (11–8–83)

Title 14 Definitions (7–12–88)

Title 15 Enforcement Procedure and Civil Penalties

15–001 Policy (5–25–90)
15–005 Definitions (5–25–90)
15–010 Consolidation of Proceedings (5–25–90)
15–015 Notice of Violation (5–25–90)
15–020 Enforcement Actions (5–25–90)
15–025 Civil Penalty Schedule Matrices (5–25–90)
15–030 Civil Penalty Determination Procedure (Mitigating and Aggravating Factors) (5–25–90)
15–035 Written Notice of Assessment of Civil Penalty—When Penalty Payable (5 25–90)

15–040 Compromise or Settlement of Civil Penalty by Director (5–25–90)
15–045 Stipulated Penalties (5–25–90)
15–050 Air Quality Classification of Violation (5–25–90)
15–055 Scope of Applicability (5–25–90)
15–060 Appeals (5–25–90)

Title 32 Emission Standards

32–005 General (9–14–82)
32–010 Restriction on Emission of Visible Air Contaminants; Including Veneer Dryers (9–14–82)
32–025 Exceptions—Visible Air Contaminant Standards (9–14–82)
32–030 Particulate Matter Weight Standards (9–14–82)
32–035 Particulate Matter Weight Standards-Existing Sources (9–14–82)
32–040 Particulate Matter Weight Standards-New Sources (9–14–82)
32–045 Process Weight Emission Limitations (9–14–82)
32–055 Particulate Matter Size Standard (9–14–82)
32–060 Airborne Particulate Matter (9–14–82)
32–065 Sulfur Dioxide Emission Limitations (9–14–82)
32–100 Plant Site Emission Limits Policy (9–14–82)
32–101 Requirement for Plant Site Emission Limits (9–14–82)
32–102 Criteria for Establishing Plant Site Emission Limits (9–14–82)
32–103 Alternative Emission Controls (Bubble) (9–14–82)
32–104 Temporary PSD Increment Allocation (11–8–83)
32–800 Air Conveying Systems (1–8–85)
32–990 Other Emissions (11–8–83)

Title 33 Prohibited Practices and Control of Special Classes

33–020 Incinerator and Refuse Burning Equipment (5–15–79)
33–025 Wigwam Waste Burners (5–15–79)
33–030 Concealment and Masking of Emissions (5–15–79)
33–045 Gasoline Tanks (5–15–79)
33–055 Sulfur Content of Fuels (5–15–79)
33–060 Board Products Industries (5–15–79)
33–065 Charcoal Producing Plants (5–15–79)
33–070 Kraft Pulp Mills (9–14–82)

Title 34 Air Contaminant Discharge Permits

34–001 General Policy and Discussion (1–9–90)
34–005 Definitions (1–9–90)
34–010 General Procedures for Obtaining Permits (1–9–90)
34–015 Special Discharge Permit Categories (1–9–90)
34–020 Discharge Permit Duration (1–9–90)
34–025 Discharge Permit Fees (1–9–90)
34–030 Source Emission Tests (1–9–90)
34–035 Upset Conditions (1–9–90)
34–040 Records (1–9–90)
34–045 General Procedures for Registration (1–9–90)
34–050 Compliance Schedules for Existing Sources Affected by New Rules (1–9–90)

Title 38 New Source Review

38–001 General Applicability (7–12–88)
38–005 Definitions (7–12–88)
38–010 General Requirements for Major Sources and Major Modifications (7–12–88)
38–015 Additional Requirements for Major Sources or Major Modifications Located in Nonattainment Areas (7–12–88)
38–020 Additional Requirements for Major Sources or Major Modifications in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (7–12–88)
38–025 Exemptions for Major Sources and Major Modifications (7–12–88)
38–030 Baseline for Determining Credits for Offsets (7–12–88)
38–035 Requirements for Net Air Quality Benefit for Major Sources and Major Modifications (7–12–88)
38–040 Emission Reduction Credit Banking (7–12–88)
38–045 Requirements for Non-Major Sources and Non-Major Modifications (7–12–88)
38–050 Stack Height and Dispersion Techniques (7–12–88)

Title 47 Rules for Open Outdoor Burning

47–001 General Policy (8–14–84)
47–005 Statutory Exemptions from These Rules (8–14–84)
47–010 Definitions (8–14–84)
47–015 Open Burning Requirements (8–14–84)
47–020 Letter Permits (8–14–84)
47–025 Records and Reports (8–14–84)
47–030 Summary of Seasons, Areas, and Permit Requirements for Open Outdoor Burning (8–14–84)

Title 50 Ambient Air Standards

50–005 General (7–12–88)
50–015 Suspended Particulate Matter (7–12–88)
50–025 Sulfur Dioxide (7–12–88)
50–030 Carbon Monoxide (7–12–88)
50–035 Ozone (7–12–88)
50–040 Nitrogen Dioxide (7–12–88)
50–045 Lead (7–12–88)

Title 51 Air Pollution Emergencies

51–005 Introduction (7–12–88)
51–010 Episode Criteria (7–12–88)
51–015 Emission Reduction Plans (7–12–88)
51–020 Preplanned Abatement Strategies (7–12–88)
51–025 Implementation (7–12–88)

4. Control Strategies for Nonattainment Areas (1–86)

4.1 Portland-Vancouver AQMA—Total Suspended Particulate (12–19–80)
4.2 Portland-Vancouver AQMA—Carbon Monoxide (7–16–82)
4.3 Portland-Vancouver AQMA—Ozone (7–16–82)
4.4 Salem Nonattainment Area—Carbon Monoxide (7–79)
4.5 Salem Nonattainment Area—Ozone (9–19–80)
4.6 Eugene-Springfield AQMA—Total Suspended Particulate (1–30–81)
4.7 Eugene-Springfield AQMA—Carbon Monoxide (6–20–79)
4.8 Medford-Ashland AQMA—Ozone (1–85)
4.9 Medford-Ashland AQMA—Carbon Monoxide (8–82)
4.10 Medford-Ashland AQMA—Particulate Matter (4–83)
4.11 Grants Pass Nonattainment—Carbon Monoxide (10–84)

5. Control Strategies for Attainment and Nonattainment Areas (1–86)

5.1 Statewide Control Strategies for Lead (1–83)
5.2 Visibility Protection Plan (10–24–86)
5.3 Prevention of Significant Deterioration (1–86)

6. Ambient Air Quality Monitoring Program

6.1 Air Monitoring Network (1–86)
6.2 Data Handling and Analysis Procedures (1–86)
6.3 Episode Monitoring (1–86)

7. Emergency Action Plan (1–86)

8. Public Involvement (1–86)

9. Plan Revisions and Reporting (1–86)

OAR Chapter 629–43–043 Smoke Management Plan Administrative Rule (12–12–86)

Directive 1–4–1–601 Operational Guidance for the Oregon Smoke Management Program (12–86)

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40 CFR Part 52

[NM–15–1–5622; FRL–4593–4]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revision to the State Implementation Plan for Permit Streamlining for Qualified Internal Combustion Compressor Engines and Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This document approves a revision to the New Mexico State Implementation Plan (SIP) to include Part Four of Air Quality Control Regulation (AQCR) 702—Source Class Permit Streamlining. The new provisions allow for a streamlined permitting procedure for certain internal combustion compressor engines and turbines which qualify. For these qualified sources, the new streamlining process shortens the time required to obtain a permit, providing an incentive to install air pollution control equipment to meet the emission limits specified for the sources in AQCR 702, Part Four. The permit streamlining process does not include major sources or any sources subject to Section 113 of the Clean Air Act, National Emissions Standards for Hazardous Air Pollutants

(NESHAP) or subject to New Mexico AQCR 702, Part Three—Permits for Toxic Air Pollutants, and the National Ambient Air Quality Standards (NAAQS), New Mexico Ambient Air Quality Standards (NMAAQS), and Prevention of Significant Deterioration (PSD) increments must be protected. In addition, all applicable Federal (including applicable New Source Performance Standards (NSPS)) and State regulations must continue to be met by the qualified sources. AQCR 702, Part Four, was filed with the State Records and Archives Center on May 12, 1992, and was submitted by the Governor to EPA by cover letter dated June 16, 1992.

DATES: This action will become effective on April 26, 1993 unless notice is received by March 25, 1993 that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Mr. Jerry Kurtzweg (ANR–443), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, room So. 2100, Santa Fe, New Mexico 87503.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION: The State of New Mexico (New Mexico Environmental Improvement Board) adopted a new section to AQCR 702 (Permits), entitled Part Four—Source Class Permit Streamlining, on April 22, 1992. The new provisions allow for a streamlined permitting procedure for certain internal combustion (IC) compressor engines and turbines which qualify. The permit review process will take less time than normal permit processing under AQCR 702, Parts One and Two. Normal permit processing under AQCR 702, Parts One and Two, provides that the New Mexico Environment Department (Department) will process permits in 120 days, or 180 days if a public hearing is held. For qualified sources under AQCR 702, Part Four, the new streamlining process shortens the time required to obtain a permit, providing an incentive to install air pollution control equipment to meet the emission limits specified for the sources in AQCR 702, Part Four. It is important to note that the public notice requirements for the source class permit streamlining procedures for qualified internal combustion compressor engines and turbines in AQCR 702, Part Four, were met by the public hearing held on April 9, 1992. This allowed for a general source class category permit (i.e., for qualified internal combustion compressor engines and turbines only) to be reviewed by the public. The permit streamlining process does not include major sources, any sources subject to section 112 of the Clean Air Act NESHAP, or subject to New Mexico AQCR 702, Part Three—Permits for Toxic Air Pollutants, and the NAAQS, NMAAQS and PSD increments will be protected. In addition, all applicable Federal and State regulations must continue to be met by the qualified sources. AQCR 702, Part Two, Section O, entitled "Source Class Exemption Process (Permit Streamlining)", provides the authority for the development of Part Four. The latest revisions to Parts One and Two of AQCR 702 were approved by EPA pursuant to section 110 of the Federal Clean Air Act on November 12, 1991, at 56 FR 57492–57495. Part Three of AQCR 702, concerning permits for air toxics, has not been submitted to EPA for inclusion into the New Mexico SIP.

The Governor of New Mexico submitted Part Four of AQCR 702 to EPA by cover letter dated June 16, 1992. The intent of Part Four is to: (1) Expedite the processing of permit applications for those facilities which do not significantly impact the air quality of New Mexico; (2) improve air quality with technology incentives; (3) reduce nuisance complaints by restricting sources from locating near residential areas, recreational areas and schools; and (4) allow the State to focus more resources on other more substantial air quality management issues. AQCR 702, Part Four, covers only simple compressor stations in low emission areas which do not have significant air quality impacts. For sources qualifying under AQCR 702, Part Four, for permit streamlining, the 120 days time limit for permit processing is reduced to 60 days (90 days if a public hearing is held) or 30 days (for stations with de minimis air quality impacts). The provisions of AQCR 702, Part Four, discussed in detail in the Technical Support Document, are briefly outlined below.

Analysis of State Submission

1. Procedural Background

The Clean Air Act (Act) requires States to observe certain procedural requirements in developing implementation plans for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The State of New Mexico held a public hearing on April 9, 1992, to entertain public comment on the proposed provisions to AQCR 702 for source class permit streamlining. Public comments of support for the provisions were received by the State. Following the public hearing and consideration of public comments, the SIP revision was adopted by the State and filed with the State Records and Archives Center on May 12, 1992. The SIP revision was submitted by the Governor to EPA by cover letter dated June 16, 1992.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991). The submittal was found to be complete on September 16, 1992, and a letter dated September 16, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. As noted in today's action, EPA is approving this New Mexico SIP submittal because the provisions fully comply with Federal new source review requirements and will ensure

attainment and maintenance of the NAAQS and PSD increments.

2. Review of AQCR 702, Part Four

The State of New Mexico has adopted AQCR 702, Part Four, in order to provide a new section for permit streamlining. As previously cited, AQCR 702, Part Two, Section O, entitled "Source Class Exemption Process (Permit Streamlining)", provides the authority for the development of AQCR 702, Part Four. Section O of AQCR 702 allows permit streamlining with certain caveats. These caveats include no exemptions from PSD, nonattainment, NESHAPS, and NSPS requirements, include review and approval by EPA of specific streamlining provisions (i.e., AQCR 702, Part Four), include the requirement of substantial knowledge of the specific source classes proposed for streamlining, and include protection of all NAAQS and PSD increments. AQCR 702, Part Four, describes certain types of sources (in this case limited to reciprocating internal combustion engines including portable or temporary engines, and turbines) which could qualify for permit streamlining, and outlines permit streamlining requirements. The New Mexico Environment Department has substantial experience permitting these source classes, which have sufficiently common characteristics of operation, process technology, emissions, and emission control technology. The provisions of AQCR 702, Part Four, adequately meet the requirements outlined in section O of AQCR 702, Part Two, for a permit streamlining process (general source category permit process). For a detailed explanation of each subsection in AQCR 702, Part Four, being approved today, please refer to the Technical Support Document. A brief summary of the provisions is presented in the following paragraphs.

AQCR 702, Part Four, is applicable only for qualified reciprocating internal combustion engines, including portable or temporary engines, and for qualified turbines. Major stationary sources as defined by PSD and any source located in Bernalillo County or within 15 kilometers (km) of the County line, do not qualify for the streamlined permitting process under AQCR 702, Part Four. The qualified source must be remote, must be located outside of, or must not affect a nonattainment area, and must insignificantly affect ambient air quality. In addition, the source must comply with one of the following three criteria:

A. The total potential to emit of each regulated contaminant from all sources at the facility must be less than 40 tons per year; or

B. The total potential to emit of each regulated contaminant from all emission sources at the facility must be less than 100 tons per year and the impact on the ambient air from all sources at the facility must be less than ambient significance levels; or

C. (i) The maximum modeled ambient impact from the total potential emissions at the facility must be less than 50% of each applicable PSD increment (for those areas where the baseline has been triggered for the specific PSD increments) and State and Federal ambient air quality standards; and

(ii) There shall be no adjacent sources emitting the same regulated air contaminant(s) as the source within 2.5 km of the modeled nitrogen dioxide (NO_2) impact area; and

(iii) The sum of the potential emissions for nitrogen oxides (NO_x) from all adjacent sources within 15 km of the NO_2 impact area (determined by modeling) is less than 740 tons per year; and

(iv) The sum of the potential emissions for NO_x from all adjacent sources within 25 km of the NO_2 impact area (determined by modeling) is less than 1540 tons per year.

If a source qualifies for permit streamlining, special requirements apply. For both internal combustion engines and turbines, the gas fuel used shall be produced natural gas, sweet natural gas, liquid petroleum gas, or fuel gas. The gas must contain less than or equal to 0.1 grain of total sulfur per dry standard cubic foot. Liquid fuel shall not consist of any blends containing waste oils or solvents and shall contain less than 0.3% sulfur by weight. Internal combustion engines and turbines must also, within 90 days of initial start-up, perform NO_x and carbon monoxide performance tests. In addition, there are further special requirements for internal combustion engines operating with a nonselective catalytic converter.

The State of New Mexico also included a modeling demonstration in their SIP submittal which showed that the provisions of Part Four pertaining to qualified reciprocating internal combustion engines and turbines would attain and maintain all applicable ambient air quality standards and PSD increments for NO_2. All terrain situations were evaluated, and the ozone limiting algorithm was employed. The Industrial Source Complex Short-term (ISCST) and SCREEN models were used in the evaluation. Using conservative assumptions, the modeling results showed that the total adjacent source contribution would be less than 50% of either the PSD NO_2 increment (25 $\mu g/m^3$), New Mexico, or Federal Ambient Air Quality Standard for NO_2 (the New Mexico NO_2 24-hour average standard equals 168 $\mu g/m^3$ and the Federal NO_2 annual average standard equals 100 $\mu g/m^3$). The permit streamline process assures that the proposed source concentration is less than 50% of either the PSD increments or State or Federal Ambient Air Quality Standards.

Final Action

The EPA is today approving a revision to the New Mexico SIP to include Part Four of AQCR 702—Source Class Permit Streamlining. These provisions allow for a streamlined permitting procedure for qualified internal combustion compressor engines and turbines. The permit streamlining process does not include major sources or any sources subject to Section 112 of the Clean Air Act (National Emissions Standards for Hazardous Air Pollutants) or subject to New Mexico AQCR 702, Part Three—Permits for Toxic Air Pollutants, and the NAAQS, NMAAQS, and PSD increments will be protected. In addition, all applicable Federal (including NSPS) and State regulations must continue to be met by the qualified sources. AQCR 702, Part Four, was filed with the State Records and Archives Center on May 12, 1992, and was submitted by the Governor to EPA by cover letter dated June 16, 1992.

The EPA has reviewed these revisions to the New Mexico SIP and is approving them as submitted pursuant to Section 110 of the Clean Air Act. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective April 26, 1993 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 26, 1993.

EPA has reviewed this request for revision of the Federally-approved SIP

for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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

Regulatory Process

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 26, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

Executive Order 12291

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 24, 1992.

B.J. Wynne,

Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(47) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(47) A revision to the New Mexico State Implementation Plan (SIP) to include Part Four of Air Quality Control Regulation 702, entitled "Source Class Permit Streamlining," as filed with the State Records and Archives Center on May 12, 1992, and submitted by the Governor of New Mexico by letter dated June 16, 1992.

(i) *Incorporation by reference.*

(A) New Mexico Air Quality Control Regulation 702—*Permits*, "Part Four—Source Class Permit Streamlining," Section A, "Definitions;" Section B, "Applicability;" Section C, "Contents of Application;" Section D, "Public Notice and Participation;" Section E, "Permit Decisions;" Section F, "General Requirements;" Section G, "Source Class Requirements;" and Table 2, "Permit Streamlining Source Class Categories," as filed with the State Records and Archives Center on May 12, 1992.

[FR Doc. 93–4156 Filed 2–22–93; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[TN–097–5645 and 091–1–5420; FRL–4592–6]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Source-Specific Revisions to Refined Metals Permit in Memphis-Shelby County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA approves operating permits for Refined Metals located in Memphis-Shelby County, Tennessee, which were officially submitted by the State on July 3, 1991, and June 15, 1992. The revised permit provisions reduce total lead emissions by 4.14 tons per year, thereby setting allowable lead emissions at 3.5 tons per year.

DATES: This action will be effective April 26, 1993, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the material submitted by Memphis-Shelby County, Tennessee, may be examined during normal business hours at the following locations:

Public Information Reference Unit, ATTN: Jerry Kurtzweg (AN–443), Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Division of Air Pollution Control, Tennessee Department of Conservation and Environment, L&C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

Air Pollution Control Section, Memphis-Shelby County Health Department, 814 Jefferson Avenue, room 347, Memphis, Tennessee 38105.

FOR FURTHER INFORMATION CONTACT: Leslie Cox of the EPA Region IV Air Programs Branch at 404–347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On July 3, 1991, the State of Tennessee, through

the Tennessee Department of Conservation and Environment, officially submitted permits for the four processes at Refined Metals located in Memphis-Shelby County—one each for the battery receiving and breaking, the reverberatory furnace, the blast furnace/dust furnace, and the refining kettles/casting area. On April 23, 1992, the Memphis-Shelby County Health Department requested that the permits for the reverberatory furnace and the blast furnace/dust furnace submitted on July 3, 1991, be replaced with a single permit. On June 15, 1992, the State of Tennessee, through the Department of Environment and Conservation, submitted a revised permit for the blast furnace and reverbatory furnace. These modifications to the operating permits for Refined Metals were made as a result of the desire of the company to increase production through their blast furnace while shutting down their reverberatory furnace.

The original permits for the blast furnace and the reverbatory furnace at the Refined Metals plant allowed lead emissions, in aggregate, of 7.64 tons per year. The revised permits for the blast furnace/dust furnace allows Refined Metals to increase production through its blast furnace, while prohibiting the operation of the reverberatory furnace. Although oxygen will be added to the combustion air on the blast furnace to increase the melting rate, lead emissions will not increase because they will be offset by the shutdown of the reverberatory furnace. The increase in metal output per quarter equals the increase in processed weight rate (PWR). This change reduces the plant's total lead emissions by 4.14 tons per year. The modified Refined Metals' operating permits are being incorporated into the SIP in order to make it, as well as the shutdown of the reverbatory furnace, federally enforceable.

On November 6, 1991, EPA published a **Federal Register** notice designating Shelby County as one of the areas that does not meet the National Ambient Air Quality Standards (NAAQS) for lead.

This designation became effective on January 6, 1992. Upon designation, Tennessee was notified that it had 18 months (July 1993) to submit a lead State Implementation Plan (SIP) for the Refined Metals nonattainment area.

Although the revised Refined Metals permit was not submitted to EPA to satisfy the lead SIP requirements, the resulting emissions reduction is a significant step toward reducing the lead emissions in Shelby County. Additional air quality modeling data may demonstrate that further modifications to the operating permits for Refined Metals are necessary. Today's notice, incorporating the three operating permits of Refined Metals into the SIP, does not preclude the Memphis-Shelby County Air Pollution Control Section from requiring future reductions from the source.

Final action: EPA is today approving the Refined Metals operating permits as a revision to the Memphis portion of the Tennessee SIP. The permits are consistent with Agency requirements. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 26, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).]

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

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

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

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

The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: January 14, 1993.

D. Guinyard,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671(q).

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(108) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(108) Revisions to the Memphis-Shelby County portion of the Tennessee

SIP submitted on July 3, 1991, and June 15, 1992, by the State of Tennessee through the Tennessee Air Pollution Control Board.

(i) *Incorporation by reference.*

(A) Permit for battery receiving and breaking operation for Refined Metals Corporation which became effective on June 12, 1991: Permit No. 0212–01P.

(B) Permit for the refining kettles/casting area for Refined Metals Corporation which became effective on June 12, 1991: Permit No. 0212–04P.

(C) Permit for the blast furnace/dust furnace for Refined Metals Corporation which became effective on June 10, 1992: Permit No. 0212–03P(R).

(ii) *Other material.*

(A) None.

[FR Doc. 93–4159 Filed 2–22–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[VA 4–1–5689; A–1–FRL–4596–1]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Issuance of Federally Enforceable Operating Permits Under the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision would add Subsection 120–08–04, entitled, Permits—Operating, Part VIII—Permits for Stationary Sources, Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution to the Virginia SIP. The intended effect of this action is to approve a SIP revision request by the Commonwealth of Virginia to approve and incorporate regulations for the issuance of federally enforceable operating permits. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective March 25, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; and the Virginia Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23240.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, (215) 597–4713.

SUPPLEMENTARY INFORMATION: On July 18, 1991, the Virginia Department of Air Pollution Control (VDAPC) submitted a revision to the Commonwealth of Virginia's State Implementation Plan (SIP) for the approval and incorporation of regulations for the issuance of federally enforceable operating permits. The revision consists of the addition of Subsection 120–08–04, entitled, Permits—Operating, Paragraphs A.—S., Part VIII—Permits for Stationary Sources, Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution.

The Commonwealth of Virginia adopted these regulations in order to have the authority to issue federally enforceable operating permits under its SIP. It must be clearly noted that the Commonwealth of Virginia did not adopt the operating permit regulations of Subsection 120–08–04 or submit them as a SIP revision to satisfy the requirements of title V of the Clean Air Act Amendments of 1990 (CAAA). The Commonwealth commenced the adoption of Subsection 120–08–04 in July of 1990, prior to the passage of the CAAA on November 15, 1990. The formal letter dated July 18, 1991, officially submitting the Commonwealth's SIP revision request, clearly indicates that the Subsection 120–08–04 operating permit regulations were not submitted to meet the title V requirements of the CAAA.

Note: EPA has promulgated the requirements for State Operating Permit Programs pursuant to title V on July 21, 1992 at 40 CFR part 70, (57 FR 32250). The Commonwealth's July 18, 1991 submittal correctly states that the operating permit program required by title V of the CAAA is not due to EPA until November 15, 1993, and that EPA has a year to take action on that title V operating permit program submittal.

The Commonwealth's principal purpose for adopting the operating permit regulations of subsection 120–08–04 is to have a federally enforceable means of expeditiously reducing allowable emissions and/or mitigating the air quality impacts from existing sources to protect the national ambient air quality standards (NAAQS) while allowing for the construction, and operation of new and modified industrial sources in the Commonwealth.

The modeling analyses required by the permitting process for new and modified sources reveals, at times, that the allowable emissions (although not necessarily the actual emissions) of existing sources cause or significantly contribute to violations of the NAAQS. Until this is remedied by federally enforceable measures, a new source or modification which would significantly impact the same area may not be allowed to operate. Unless the SIP expressly provides for the issuance of federally enforceable operating permits, the only mechanism available to impose federally enforceable requirements on an existing source is by a source-specific SIP revision. The Commonwealth adopted the regulations of subsection 120–08–04 for incorporation into its SIP to have a more expeditious means to impose federally enforceable requirements on existing sources for protection of the NAAQS, and to manage its air quality resources by providing for the construction and operation of new sources in Virginia.

Background

On June 28, 1989 (54 FR 27285), EPA promulgated amendments to 40 CFR part 51, subsection 51.165 (a)(1)(xiv), the definition of the term "federally enforceable" to include all limitations and conditions of regulations approved pursuant to 40 CFR part 51, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under that program. In the same Federal Register, cited above, EPA provides its rationale for allowing States to incorporate regulatory programs in their SIPs for the issuance of federally enforceable operating permits. That notice also lists five criteria for approval of State operating permit programs (54 FR 27282), clearly stating that EPA considers operating permits as federally enforceable if they are issued pursuant to permitting programs (approved into the SIP) that meet the five criteria.

On September 21, 1992 (57 FR 43425), EPA published a notice of proposed rulemaking (NPR) which provided a detailed discussion of each of the five criteria, Virginia's regulation, and EPA's rationale for proposing approval of that regulation. That information will not be restated here. EPA is solicited public comments on the issues discussed in the NPR and on other relevant matters. EPA received one letter which offered three comments.

EPA's Responses to Public Comments Received on the NPR

Although the NPR stated that public comments must be received by October 21, 1992, Virginia Power submitted a letter of comment dated October 21 which was received by EPA on October 27, 1992. Although they were received after the close of public comment period, EPA considered the comments received from Virginia Power. Virginia Power commented that EPA should not

approve Virginia's SIP revision request because:

(1) Confusion and problems with legal technicalities would arise from the conversion of the "interim permit program" to a title V program,

(2) The VADAPC lacks the resources to implement the program, and

(3) It would impair the flexibility under current regulations to change fuel specifications and increase utilization of generating facilities which would be inconsistent with the intent to title IV of the CAAA.

EPA does not agree with the comments made by Virginia Power for the following reasons:

(1) The Commonwealth adopted and submitted subsection 120–08–04 as a SIP revision prior to enactment of the CAAA of 1990 which established the title V operating permit program requirements. The VADAPC has clearly stated that subsection 120–08–04 was neither adopted by the Commonwealth nor submitted to EPA to satisfy the requirements of title V of the CAAA. Unlike the operating permit program required by title V of the CAAA, it is an operating permit program established in the SIP to provide the Commonwealth an expeditious means of imposing federally enforceable conditions on existing sources of criteria air pollutants (criteria air pollutants are those for which NAAQS have been established). EPA finds no reason to consider it an "interim permit program." Further EPA finds no reason to believe that the approval of subsection 120–08–04 will interfere with the ability of the Commonwealth to develop and adopt regulations to satisfy title V of the CAAA or the ability of sources to comply with those regulations.

(2) Currently when the VADAPC finds that an existing source's SIP allowable emissions would cause a violation of a NAAQS, the only means available to impose federally enforceable conditions to reduce the source's impact is via a source-specific SIP revision. That process is more lengthy and resource-intensive than the process for issuing an operating permit under subsection 120–08–04.

(3) The provisions of subsection 120–08–04, in and of themselves, do not impair sources' flexibility to change fuel specifications and/or increase utilization of generating facilities. Sufficient flexibility exists in the provisions of subsection 120–08–04 for sources to implement the provisions of title IV of the CAAA as intended. Subsection 120–08–04 is absolute in requiring that no operating permit be issued with standards or conditions which would result in a violation of a NAAQS. This is in no way inconsistent with the intent of title IV of the CAAA. The flexibility provided for implementation of title IV does not extend to allowing operating scenarios which would cause NAAQS violations.

Final Action: EPA is approving the July 18, 1989 request by the Commonwealth of Virginia to amend its SIP to add Subsection 120–08–04, entitled, Permits—Operating, Part VIII, Permits for Stationary Sources, Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action approving Virginia's operating permit regulation, subsection 120–08–04, as a SIP revision must be filed in the United States Court of Appeals for the appropriate circuit by April 26, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not effect the finality of the rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Authority: 42 U.S.C. 7401–7671.

Dated: February 3, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(94) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(94) Addition of Section 120–08–04 (Permits—operating) to Part VIII of the Virginia Regulations for the Control and Abatement of Air Pollution submitted on July 18, 1991 by the Virginia Department of Air Pollution Control:

(i) *Incorporation by reference.*

(A) Letter of July 18, 1991 from the Virginia Department of Air Pollution Control transmitting a revision to the Virginia State Implementation Plan.

(B) Regulation 120–08–04 (Permits—operating) of Part VIII, Virginia Regulations for the Control and Abatement of Air Pollution, effective July 1, 1991.

(ii) *Additional material.*

(A) Remainder of July 18, 1991 State submittal.

* * * * *

[FR Doc. 93–4160 Filed 2–22–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 525 and 530

[Docket No. 92–29]

Free Time and Demurrage Charges on Import Property at the Port of New York; Truck Detention at the Port of New York

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is removing its rules on free time and demurrage charges on import property at the port of New York ("Port") and suspending its rules on truck detention at the Port. Significant changes that have occurred in the handling of cargoes between ocean carriers and motor carriers at the Port since these rules were adopted, and current conditions at the Port, appear to have rendered the existing regulations unnecessary. The suspension of the truck detention rules will allow the Commission to re-evaluate the proposal to remove them after a period of one year.

EFFECTIVE DATES: 46 CFR part 525 is removed effective February 23, 1993. 46 CFR part 530 is suspended indefinitely effective February 23, 1993.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission") initiated this proceeding by publishing a Notice of Proposed Rulemaking in the Federal Register on October 14, 1992 (57 FR 47025) ("NPR"). The NPR solicited comment on a proposal to remove 46 CFR part 525, Free Time and Demurrage Charges on Import Property at the Port of New York and 46 CFR part 530, Truck Detention at the Port of New York.

No comments were filed with respect to part 525. The only filing with respect to part 530 was received from the New Jersey Motor Truck Association ("Association"). The Association claims that there is a continuing need for part 530, and that the removal of part 530 would have detrimental effects on independent motor carriers. The Association submits that the problems addressed by part 530 do not relate to the efficiency of intermodal operations. It argues that the rule protects independent motor carriers from potential discriminatory behavior, and its resultant anticompetitive effects, on the part of ocean carriers and terminal operators.[1]

The Association also takes exception to the Commission's assertion that those facing transportation-related obstacles to efficient operation had recourse to other agencies, such as the Federal Highway Administration. Independent motor carriers are said not to have the financial resources to petition another agency to assume the regulatory program now contained in part 530.

While the Association asserts that certain benefits result from part 530, it has neither offered specific examples of such benefits nor provided an explanation of the unique circumstances at the Port which would require special Federal regulation. For these reasons, the record does not appear to justify retention of the rule, or even provide a basis for the Association's request for a hearing.

However, in light of the Association's assessment that removal of the rule would detrimentally affect motor carriers, the Commission has determined to suspend the rule at this time rather than remove it. While the suspension is for an indefinite period, the Commission intends to review the matter after a year's experience without the rule. Interested parties may then offer comments on whether the rule should be retained or removed. Such comments must be submitted no later than one year after the date of the rule's suspension. Comments should include detailed factual support for the position being espoused and not merely state a preferred disposition of the matter.

As noted above, the Commission did not receive any comments on the proposed removal of part 525. The Commission notes that part 525 does not apply to containerized cargo and that such cargo now comprises the majority of liner cargo movements into the Port. Therefore, it would appear that the underlying conditions that existed when part 525 was promulgated have fundamentally changed and retention of the rule is no longer necessary.

In summary, the final rule removes 46 CFR part 525 and suspends 46 CFR part 530.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed this final rule in terms of this Order and has determined that the rule is not a "major rule" 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 effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations. The Commission does not believe that the removal of part 525 and suspension of part 530 for the reasons set forth above will result in either significant impact or impact upon a substantial number of small entities.

This final rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 525

Freight, Harbors, Maritime carriers, Motor carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 530

Freight, Harbors, Maritime carriers, Motor carriers, Penalties, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; sections 17 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 816, 841(a)); sections 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709, 1716); parts 525 and 530 of title 46 of the Code of Federal Regulations are amended as follows:

PART 525—[REMOVED]

Part 525 is removed.

PART 530—TRUCK DETENTION AT THE PORT OF NEW YORK

Part 530 is suspended indefinitely.

* * * * *

By the Commission.*

Joseph C. Polking,

Secretary.

[FR Doc. 93–4047 Filed 2–22–93; 8:45 am]

BILLING CODE 6730–01–M

[1] The Association also sought a hearing and additional time within which to compile and submit further comments with respect to the removal of part 530. The Association's request for extension of time did not receive the number of votes necessary for approval. Its request for a hearing is denied.

* Chairman Koch not participating.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107 and 171

[Docket No. HM-208; Notice No. 93-6]

RIN 2137-AB43

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Filing requirements.

SUMMARY: The Hazardous Materials Registration Program is now in effect. Persons who transport or offer for transportation certain hazardous materials are required to annually file a registration statement and pay a fee to the Department of Transportation.

FOR FURTHER INFORMATION CONTACT: David W. Donaldson, Office of Hazardous Materials Planning and Analysis (202-366-4109), Hazardous Materials Safety, 400 Seventh Street SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: This notice is intended to serve as a further notification to persons who transport or offer for transportation certain hazardous materials of an annual requirement to register with the Department of Transportation. A final rule implementing this requirement was published in the Federal Register on July 9, 1992 (57 FR 30620-20633), a clarification on July 28, 1992 (57 FR 33416-33417), editorial revisions on August 21, 1992 (57 FR 37900-37902), and a formal interpretation of the terms "offeror" and "transporter" on October 28, 1992 (57 FR 48739-48741). The final rule required that after September 15, 1992, each person, as defined by the Hazardous Materials Transportation Act, who engages in any of the specified activities relating to the transportation of hazardous materials register annually with the Department of Transportation and pay a fee. Proceeds will be used to fund grants to State and Indian tribal governments for emergency response planning and training.

The persons affected by this rule include those who offer or transport in commerce any of the following materials:

A. Any highway route-controlled quantity of a Class 7 (radioactive) material;

B. More than 25 kilograms (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

C. More than one liter (1.06 quarts) per package of a material extremely toxic by inhalation (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A);

D. A hazardous material in a bulk packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids; or

E. A shipment of 2,268 kilograms (5,000 pounds) gross weight or more (in other than a bulk packaging) of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class.

The requirement that a copy of the registration certificate, or another document carrying the Registration Number, be carried in each motor vehicle transporting a covered hazardous material is now in effect.

These registration regulations are now in effect. Any person engaging in any of the specified activities who has not filed a registration statement and paid the associated fee of $300.00 should contact RSPA to obtain the required form (DOT F 5800.2). Persons who engage (or have engaged since September 16, 1992) in any of the specified activities but fail to register for the registration year in which that activity occurred are subject to civil penalties for each day a covered function is performed. The legal obligation to register for a year in which any of the specified activities was conducted does not end with the registration year. Registration after the completion of a registration year may also involve the imposition of a late fee and interest in addition to a civil penalty.

The 1992-93 registration year ends on June 30, 1993. The 1993-94 registration year will commence on July 1, 1993, and end on June 30, 1994. Persons who register during the 1992-93 year will be sent a registration statement form and explanatory information in April 1993 by RSPA. Others wishing to obtain the form and any other information relating to this program should contact the program number given above. RSPA will accept 1993-94 registrations beginning April 15, 1993. Registrants should use the 1993-94 registration statement form, which incorporates several revisions from the 1992-93 form. Registrants should file a registration statement and pay the associated fee in advance of July 1, 1993. They need to ensure that a 1993-94 Registration Number has been provided by that date to comply with the recordkeeping requirements, including the requirement that the number be made available on board each truck and truck tractor (not including trailers and semi-trailers) used to transport hazardous materials subject to the registration requirements. A Certificate of Registration is generally mailed within three weeks of RSPA's receipt of a Registration Statement.

Dated: February 16, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93-4040 Filed 2-22-93; 8:45 am]

BILLING CODE 4910-60-M

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49 CFR Part 198

[Docket No. PS-119; Amdt. 198-1]

RIN 2137-AC12

Allocation Formula for State Grants

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule codifies the formula for allocating federal pipeline safety grants to states. Codification is particularly appropriate at this time, as the formula is undergoing major revision to make it predominantly performance based. Formula revisions are being phased in over several years, allowing states time to take steps to meet performance factors. These factors cover state field operations as well as procedural compliance with federal requirements. A particularly critical component of performance is state assumption of safety jurisdiction over all intrastate pipeline facilities subject to the minimum federal pipeline safety regulations. A performance-based formula should lead to improved program effectiveness and, ultimately, to increased public safety.

EFFECTIVE DATE: This rule takes effect March 25, 1993.

FOR FURTHER INFORMATION CONTACT: G. Tom Fortner, 202-366-4564, or Karen Sagett, 202-366-4577.

SUPPLEMENTARY INFORMATION:

Background

The Natural Gas Pipeline Safety Act of 1968 (NGPSA), as amended, and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA), as amended, authorize DOT to provide up to 50 percent of the cost of personnel, equipment, and activities reasonably required by a state to carry out a pipeline safety program. From 1971 through 1980, grant appropriations were sufficient to fund 50 percent of each state's program

request. In 1981 and subsequent years, requests exceeded appropriations, and methods of allocation were developed to support state programs with the funds available. (A detailed description of the formula between 1981 and 1990 appears in an Advance Notice of Proposed Rulemaking (ANPRM), Allocation Formula for State Grants, published in the February 25, 1991, **Federal Register** (56 FR 7636).)

Initially, funds were allocated to assure all states adopted the minimum federal pipeline safety regulations and had basic programs in place. In 1985, a factor was added to the allocation formula as an incentive to encourage states to improve state program performance and to take on more responsibility for pipeline safety. This performance factor accounted for 20 percent of the grant allocation. In 1986, the performance factor was increased to 25 percent, and in 1992 it was further increased to 50 percent.

The February 25, 1991, ANPRM solicited ideas on revising the allocation formula to encourage states to enhance pipeline safety, improve the effectiveness of their programs, and assume jurisdictional responsibility over all intrastate pipeline operators. The ANPRM specifically requested comments on the best mix of performance factors and appropriate weights to be assigned to each. Additionally, the ANPRM sought reaction to issues such as defining a minimum level of performance, protecting states from an abrupt drop in funding, and phasing in the revised formula. Fourteen comments were received in response to the ANPRM. Thirteen of the 14 were from state agencies and one was from a trade association. Eleven of the 14 were generally supportive of revising the allocation formula. Of the remaining three, two said the current system of allocating the funds seemed reasonable and should be continued. The other commenter wanted to return to the formula first used in 1981.

RSPA issued a Notice of Proposed Rulemaking (NPRM) on March 4, 1992, (57 FR 7705), which (1) summarized the 14 comments received in response to the ANPRM, (2) proposed an approach for phasing in a performance-based allocation formula over a multi-year period, and (3) proposed language to codify the grant allocation formula. The NPRM described the proposed allocation formula for use in 1992 and 1993 in some detail. In contrast, proposed language to be included in the regulation was general, since RSPA is still refining objective performance yardsticks that take into account state differences. Additionally, RSPA needs to retain some flexibility to target changing priorities and national concerns and does not want to revise the regulation each time the formula changes.

RSPA will continue to finetune performance factors. A key aspect of this further refinement will be hiring "state liaisons" in each of the five pipeline safety Regional Offices to conduct the annual state program evaluations which are instrumental in assessing state performance. The liaisons will also provide technical assistance, support, and hands-on training upon state request. As such, their observations and insights should be useful in defining performance.

State agency comments will be sought in advance of making any changes to the formula. Proposed changes will be mailed to state agencies for discussion at subsequent National Association of Pipeline Safety Representatives (NAPSR) and National Association of Regulatory Utility Commissioners (NARUC) meetings held throughout the year. RSPA places high priority on the continuing involvement of the state partners as work proceeds on finetuning the allocation formula. RSPA will provide documentation on proposed changes and actual allocations to the public upon written request.

Comments Received

RSPA received 12 comments in response to the NPRM: Seven from state agencies, two trade associations, two from gas pipeline operators, and one from a state interest group. Seven of the 12 commenters were generally supportive of revising the allocation formula to place more emphasis on state performance; all seven had suggestions on the mechanics of the allocation process, state constraints in meeting various performance factors, or the performance factors to be included. Four commenters did not specifically comment positively or negatively about moving toward a performance-based formula but rather zeroed in on one or two issues. One commenter totally opposed the current and proposed formulas, saying they measure procedural compliance, *not* performance. RSPA believes that procedural compliance is very much a part of overall state program performance.

Mechanics of the Allocation Process

The February 25, 1991, ANPRM raised a number of issues related to the mechanics of the grant allocation process (e.g., defining a base level of performance, ensuring equity between large and small programs, setting aside funds for special projects). A number of commenters in responding to the NPRM addressed these mechanics.

Three states supported defining what constitutes adequate state performance at a baseline program level. One of these states suggested developing specific criteria for measuring full, partial, or inadequate performance. The work of the NAPSR Staffing Formula Committee to develop a model for projecting the appropriate state technical staffing level given extent of jurisdictional responsibilities, miles of pipeline, number of inspection units, and other factors is a step toward defining a baseline program. RSPA is currently reviewing the Committee's proposed approach. Continuing efforts to define performance will further lead to a working definition of baseline-level program.

Three states commented on the inequity in the current formula as well as the proposed formulas for 1992 and 1993 which may negatively impact large programs. One state with a large program said it would lose even more funding in 1993 when 75 percent of the allocation will be based on performance (compared to 50 percent in 1992). That state recommended establishing a 100-point scale for assigning performance points to allow for a wider point spread among states, better reflecting program performance than the current 27 points.

RSPA is attempting to assure that all states are treated equitably in the distribution of funds. However, until the full 50 percent of state program costs is appropriated, there will not be adequate funds to assure each state receives the maximum funding for which it is eligible. RSPA will adopt a 100-point scale for assigning performance points as proposed. Beginning in 1993, a state will be eligible to receive a maximum of 100 performance points. Fifty points will be based on information provided in the state's annual certification/agreement attachments which document activities for the past year and 50 points will be based on the state's rating on its annual program evaluation conducted by the RSPA regional pipeline safety office. The certification/agreement attachments will be used primarily to measure state procedural compliance in meeting national program objectives, while the evaluation will be used to assess state field operations. Together, these two instruments will provide an indication of overall state program performance.

RSPA will provide state agencies with information on actual performance factors and the number of points assigned to each factor well in advance

of the allocation of funds, in mailings transmitting the annual certification/agreement and program evaluation.

Two states commented on how funds would be prorated if state requests exceed available appropriations. One state agreed with RSPA that available funds should be prorated equally so larger programs do not have to absorb a disproportionate reduction. The other state asked for clarification on whether all grants would be reduced by the same percentage or whether a sliding scale would be used based on program size. The state remarked that reduced grants are disproportionately burdensome for smaller programs, a consideration which was taken into account in developing the original grant allocation formula. As noted above, RSPA is exploring alternatives for assuring equitable treatment of small and large programs alike when available appropriations are insufficient to fund state requests.

The state interest group was concerned that too rapid an increase in the percentage of funding based on performance might trigger unwanted reductions in good, small state programs. To avoid this occurrence, the interest group proposed that the word "maximum" be inserted in § 198.13(a): "The *maximum* percent of each state agency allocation that is based on performance * * *" RSPA agrees that the transition to a performance base formula could disrupt small state programs and has inserted "maximum" in the final rule.

Three states were concerned about not having enough lead time to anticipate changes in the formula. One of these states agreed with the need for flexibility in the regulation but recommended notifying states of any changes as far in advance as possible. Another of these states said varying performance criteria/weight from year to year could have a disruptive effect on the ability of the state to meet RSPA criteria and adversely impact the funding level. RSPA will notify states as far in advance as possible about changes in the formula. Proposed changes will be discussed at NAPSR and NARUC meetings in the year prior to the change. Every effort will be made to lessen any hardship related to formula changes. RSPA has revised the wording in § 198.13(e) to provide written notice of changes 9 months prior to allocating funds instead of 6 months as proposed in the NPRM.

One state believed it would be a good idea to use additional grant funds for special projects and extraordinary expenses as long as the regular allocation was not touched. Historically, every year a number of states spend less money than anticipated at the beginning of the year (e.g., staff may resign and not be immediately replaced), and funds have to be deobligated at the end of the year. To the extent permitted by law, RSPA will consider earmarking deobligated funds for special projects.

State Constraints

At least five state agencies alluded to their lack of control over getting their legislatures to adopt federal requirements and the inequity of reducing their grant allocation when they had done everything within their power to secure passage but failed because of resistance in the legislature. States proposed a number of creative ways to deal with program deficiencies resulting from the lack of legislative authority. One state suggested that bonus points be assigned for extra safety activities above the minimum (e.g., more stringent code, additional jurisdiction, operator training program) and that these points be used to offset points lost in other areas.

RSPA is making an effort to assist states having difficulty in adopting necessary federal safety requirements because of legislative resistance. The state liaisons will be available to assist states develop strategies for overcoming opposition to safety requirements. With respect to the assignment of bonus points, RSPA does not think it would be fair to states that have already achieved the baseline level program to give extra points to states that go beyond the basics in certain areas to offset deficiencies in other areas. States need to focus their efforts on achieving the baseline level program.

Another state suggested the first year a deficiency is identified the state should be issued a warning; a probation period would be established but the funding level would not be affected. If the deficiency was not corrected the second year, the funding level would be reduced somewhat. If still no correction were made by the third year, the funding level would be further reduced. Funding would be restored when corrective action was taken. While RSPA appreciates the intent of this suggestion, RSPA believes that tracking the status of deficiencies for 50 states over a 3-year period would be an administrative burden and therefore will not adopt it. Rather, RSPA will consider giving partial credit in instances where states are taking steps to remedy a deficiency or adopt required standards.

Two states made a case for providing sufficient time for adoption of federal requirements. The NGPSA and HLPSA both require a state to demonstrate that within 120 days after a federal safety regulation goes into effect, the state is taking steps to adopt the regulation. RSPA believes it is reasonable to allow a state 24 months, or two general sessions of the state legislature, whichever is longer, to adopt a federal regulation before reducing that state's grant allocation. If the state does not adopt the regulation within 24 months (or two general sessions of the legislature), its grant allocation will be reduced. Regardless of whether or not a state has adopted a particular safety regulation, pipeline operators must still comply with the regulation.

Specific Performance Factors

A number of commenters singled out certain performance factors they wanted included in the formula.

Damage Prevention/One-Call Systems

Three commenters mentioned the one-call damage prevention program. Two of these commenters (the two trade associations) were most supportive of strong damage prevention laws and giving significant weight to states having adopted or taking steps to adopt such laws in allocating funds. Both associations believe state damage prevention programs should include mandatory requirements for a true one-call system, where all owners-operators of buried underground utility facilities are required to participate (natural gas and hazardous liquid pipelines, as well as water mains, storm sewers, sanitary sewers, steam pipelines, electronic power cables, telephone cables, fiber optic cables, and cable television). While these two associations recognized that RSPA regulates only natural gas and hazardous liquid pipelines, they nevertheless urged RSPA to place significant weight in allocating funds on whether all types of underground utility facilities are included in one-call systems. These two associations want stiff penalties and vigorous enforcement of damage prevention laws except in emergency excavations and demolition activities.

Only one state commented on the one-call notification system, saying it should be included as a performance factor in the formula but ranked "low" to "medium." RSPA will include state adoption of minimum requirements for a one-call notification system as a performance factor in the allocation formula.

Enforcement/Civil Penalties

Two commenters mentioned enforcement and use of civil penalties in regard to pipeline safety in general.

One of these, a state, thought enforcement of regulations should be included as a performance factor with a "medium" ranking but that assessment of civil penalties should not be included at all. One gas pipeline operator said giving weight to assessment of penalties was not evidence of a good program. The use of fines as a measure for funding would create undue incentives for regulators and lead to adversarial relationships with operators. The operator felt that safety can best be promoted through a cooperative relationship without the threat of costly fines. States participating in the pipeline safety program under NGPSA and HLPSA are required to have injunctive and monetary sanctions substantially the same as RSPA. RSPA believes the use of civil penalties is an effective deterrent action, especially in situations involving repeat violations or gross noncompliance. Accordingly, RSPA will include use of civil penalties as a performance factor in the allocation formula.

Inspection Person-Days

Two commenters mentioned inspection person-days. A state said the existing inspection person-day requirement (85 days per year) is reasonable and should be retained. A gas pipeline operator, in its only comment, felt increasing requirements such as the number of inspection person-days would increase an operator's cost of doing business but not necessarily increase safety, and that an increase in requirements could possibly strain industry's ability to compete in the energy market. RSPA has no current plans for increasing the number of inspection person-days a state must meet. RSPA will include inspection person-days as a performance factor in the allocation formula.

One state was opposed to the current and proposed formulas on the grounds that these formulas did not measure performance. The state provided examples of the types of actions important to measuring performance of a state pipeline safety program including state prohibition against installation of new cast iron pipe; state program for cast iron/bare steel pipe removal; state requirement that utilities leak survey their whole systems with electronic equipment annually, business districts twice a year, and all buildings used for public gatherings annually; lost and unaccounted-for natural gas held effectively at zero; requirement that all defects on steel pipe such as dents and scratches be removed or repaired; state program encouraging utilities to actively share pipeline safety information.

Other states mentioned additional performance factors such as pursuing legislation to prohibit master meter systems, active state promotion of programs to prevent damage by outside force, and on-the-job training. RSPA will consider these additional measures of performance as it refines the formula in future years.

Several commenters agreed with the shift to program performance, but they were concerned that funds should not be allocated solely on the basis of performance as it could create a negative incentive for some states. While funds will be allocated based on state performance, the formula will also take into account the level of the state request for funds (i.e., large state programs will need more funds to cover their program costs than small state programs).

RSPA believes a performance-based formula will be a positive incentive for states to improve program effectiveness. The Senate Committee on Appropriations supported the merits of a performance-based allocation formula in approving RSPA's FY 1992 budget request for the pipeline safety grant program. The Committee urged RSPA to move expeditiously toward a performance-based approach in awarding grant funds and to ensure that participating states take full authority over intrastate pipeline facilities as contemplated in NGPSA and HLPSA.

By defining a baseline-level program with clear performance factors, RSPA will set forth what is expected of states to be eligible for maximum grant funding. State agencies administering the program can, in turn, use this information to strengthen the case to secure necessary authority from the state public service commission or state legislature for adoption of federal requirements.

Regulatory Analysis and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

This final rule is not major under Executive Order 12291 (46 FR 13193; February 19, 1981) and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), as the rule merely formalizes an existing administrative procedure. No regulatory evaluation is required because the rule deals with the allocation of grant funds and does not impose costs on any state or regulated entity.

Paperwork Reduction Act

Information submitted by a state in conjunction with its annual certification/agreement under section 5(a) or 5(b) of NGPSA and section 205 or 205(b) of HLPSA is used in part to allocate grant funds. This information collection imposes a reporting burden on the state and, as such, has been approved by the Office of Management and Budget (OMB) under OMB No. 2137–0584, in accordance with 44 U.S.C. chapter 35.

None of the comments received in response to the March 4, 1992, NPRM addressed any concerns associated with overly burdensome paperwork requirements. Rather, the comments focused on programmatic matters such as the mechanics of the grant allocation process, state constraints in meeting federal performance criteria, and the merits of various performance factors.

Regulatory Flexibility Act

Based on the facts available concerning the impact of this rule, I certify under section 605 of the Regulatory Flexibility Act that it would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612

This action would not have substantial direct effects on states, on the relationship between the federal 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 (52 FR 41685; October 30, 1987), RSPA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 198

Grant programs, Formula, Pipeline safety.

In consideration of the foregoing, RSPA amends 49 CFR part 198 as follows:

PART 198—[AMENDED]

1. The authority citation for part 198 continues to read as follows:

Authority: 49 App. U.S.C. 1674, 1687, and 2004; 49 CFR 1.53.

2. New subpart B is added to 49 CFR part 198 as follows:

Subpart B—Grant Allocation

Sec.

198.11 Grant authority.

198.13 Grant allocation formula.

Subpart B—Grant Allocation

§198.11 Grant authority.

Section 5(d)(1) of the Natural Gas Pipeline Safety Act and section 205(d)(1) of the Hazardous Liquid Pipeline Safety Act authorize the Administrator to pay out of funds appropriated or otherwise made available up to 50 percent of the cost of the personnel, equipment, and activities reasonably required for each state agency to carry out a safety program for intrastate pipeline facilities under a certification or agreement with the Administrator or to act as an agent of the Administrator with respect to interstate pipeline facilities.

§198.13 Grant allocation formula.

(a) Beginning in calendar year 1993, the Administrator places increasing emphasis on program performance in allocating state agency funds under §198.11. The maximum percent of each state agency allocation that is based on performance follows: 1993—75 percent; 1994 and subsequent years—100 percent.

(b) A state's annual grant allocation is based on maximum of 100 performance points derived as follows:

(1) Fifty points based on information provided in the state's annual certification/agreement attachments which document its activities for the past year; and

(2) Fifty points based on the annual state program evaluation.

(c) The Administrator assigns weights to various performance factors reflecting program compliance, safety priorities, and national concerns identified by the Administrator and communicated to each State agency. At a minimum, the Administrator considers the following performance factors in allocating funds:

(1) Adequacy of state operating practices;

(2) Quality of state inspections, investigations, and enforcement/compliance actions;

(3) Adequacy of state recordkeeping;

(4) Extent of state safety regulatory jurisdiction over pipeline facilities;

(5) Qualifications of state inspectors;

(6) Number of state inspection person-days;

(7) State adoption of applicable federal pipeline safety standards; and

(8) Any other factor the Administrator deems necessary to measure performance.

(d) Notwithstanding these performance factors, the Administrator may, in 1993 and subsequent years, continue funding any state at the 1991 level, provided its request is at the 1991 level or higher and appropriated funds are at the 1991 level or higher.

(e) The Administrator notifies each state agency in writing of the specific performance factors to be used and the weights to be assigned to each factor at least 9 months prior to allocating funds. Prior to notification, RSPA seeks state agency comments on any proposed changes to the allocation formula.

(f) Grants are limited to the appropriated funds available. If total state agency requests for grants exceed the funds available, the Administrator prorates each state agency's allocation.

Issued in Washington, DC, on February 17, 1993.

Rose A. McMurray,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93–4089 Filed 2–22–93; 8:45 am]

BILLING CODE 4910–60–M

Federal Transit Administration

49 CFR Part 665

[Docket No. 89–B]

Bus Testing Program; Modification to Interim Final Rule; Delay in Application Date for Small Vehicles

AGENCY: Federal Transit Administration, DOT.

ACTION: Interim final rule.

SUMMARY: On July 28, 1992, the Federal Transit Administration (FTA) published an interim final rule on its bus testing program. Among other things, the rule adds two new vehicle types (small vehicles with service lives of 4 and 5 years) to the vehicles subject to testing at the FTA-sponsored testing facility at Altoona, Pennsylvania. On October 13, 1992, the FTA postponed the effective date of the rule as it applied to these types of vehicles for 120 days, until February 10, 1993. Today's document postpones the effective date until October 1, 1993. The delay is due to numerous requests from commenters to the docket. The additional time is needed for the FTA to seek additional comments on particular issues to determine whether further changes need to be made to the rule.

DATES: *Effective date:* February 23, 1993.

Comment due date: June 23, 1993. Comments received after this date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: For technical issues, Steven A. Barsony, Director, Office of Engineering Evaluations, Office of Technical Assistance and Safety, (202) 366–0090; for legal issues, Richard L. Wong, Attorney-Advisor, Office of the Chief Counsel, (202) 366–1936.

SUPPLEMENTARY INFORMATION:

Background

The Surface Transportation and Uniform Relocation Assistance Act of 1987 required the FTA to establish a bus testing facility for the testing of a model of any new bus model purchased with FTA financial participation. The FTA issued its first interim final rule implementing this program in 1989 and announced it would phase-in the program, applying the testing requirements to different-sized vehicles over a multi-year period. The first interim final rule, published on August 23, 1989 (54 FR 35158), established three categories of vehicles subject to testing: Heavy duty large buses with a service life of 12 years or 500,000 miles; heavy duty small buses with a service life of ten years or 350,000 miles; and purpose-built medium duty buses with a service life of seven years or 200,000 miles. The second interim final rule, published on October 9, 1990 (55 FR 41174), extended the testing requirements to the medium duty body-on-chassis category by combining the purpose-built and body-on-chassis subdivisions into one inclusive medium-duty bus category.

On July 28, 1992 (57 FR 33394) the FTA issued its third interim final rule to apply the testing requirements to the final two categories of vehicles requiring testing: Light duty mid-size buses with a service life of five years or 150,000 miles; and light duty small buses with a service life of four years or 100,000 miles. Although the third interim final rule went into effect on August 27, 1992, the FTA suspended on October 13, 1992 (57 FR 46814), the effective date as applied to the two categories of vehicles until February 10, 1993.

I. Suspension of the Effective Date and Comment Period Extension

Today's action again suspends the effective date as it applies to the remaining categories of vehicles that must be tested until October 1, 1993. This suspension retroactively applies to bids or solicitations for the two affected categories of vehicles issued between February 10, 1993, and the publication date of this rule. In addition, the FTA is reopening the docket to receive comments on the questions raised below until June 23, 1993.

II. Request for Comments on Particular Issues

Docket comments, as well as the FTA's separate evaluation, indicate that implementing testing of small vehicles would burden the Altoona facility. This is due in part to the nature of the small

vehicle industry. A vehicle model is often built in a variety of configurations by the same manufacturer, potentially resulting in a significantly large number of vehicles subject to testing, essentially at the same time under the existing rule. This burden on the facility will prevent recipients of Federal funds from expending those funds for vehicles until the facility has completed testing of the vehicle and provided a test report to the manufacturer.

Accordingly, the FTA again is suspending the effective date of the rule as it applies to small vehicles in order to receive further information on this and other issues.

The FTA specifically seeks comments on whether the testing requirement for small vehicles should be phased in over a period of time to avoid having a significant number of vehicles subject to testing at the same time. If so, the FTA seeks comment on the most efficient manner of phasing in the testing of such vehicles. For example, the existing rule categorizes the remaining types of vehicles to be tested based upon service life expectancy. The first category includes vehicles with a minimum of five years or 150,000 miles, typically light duty, mid-sized buses, approximately 25–35 feet in length. The remaining category includes vehicles with a minimum service life of four years or 100,000 miles, typically light duty small buses, cutaways, or modified vans, 16–28 feet in length.

The FTA seeks comment on whether these two categories of small vehicles can readily be divided into further subcategories for phasing in purposes, and whether subcategories would be a logical way to separate and distinguish small vehicles for purposes of testing.

III. Regulatory Matters

The FTA does not consider the extension of the effective date of the rule an action which requires an additional notice of proposed rulemaking (NPRM). Since its initial NPRM, the FTA's intent has remained clear—to implement the statutory mandate in the most effective and efficient manner. The FTA has carried out this policy through a multi-staged implementation schedule using a series of interim final rules.

This rule is not a major rule under Executive Order 12291. It is, however, a significant rule because it is related to a significant rule under the Department of Transportation's Regulatory Policies and Procedures. The extension of time to comply, the primary focus of today's notice, imposes no additional costs on the affected public. In fact, the extension of the effective date will delay costs to small vehicle manufacturers for the period of the extension. Since the economic impact of this extension is minimal, no regulatory evaluation has been prepared. There are no Federalism effects sufficient to warrant preparation of a Federalism assessment. The FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)).

List of Subjects in 49 CFR Part 665

Vehicle testing, Grant programs—transportation, Mass transportation.

For the reasons cited above, 49 CFR part 665 is amended as set forth below:

PART 665—BUS TESTING

1. The authority citation for part 665 continues to read as follows:

Authority: Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*; 1608(h), section 317, Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR 1.51.

2. Paragraph (d) of § 665.3 is revised as set forth below:

§ 665.3 Scope.

* * * * *

(d) The provisions in §§ 665.11(e)(4) and (5) concerning the last two categories of buses which must be tested, apply to advertisements for bids or requests for proposals for buses issued on or after October 1, 1993.

Issued this 17th day of February 1993 at Washington, DC.

Robert H. McManus,

Acting Administrator.

[FR Doc. 93–4072 Filed 2–22–93; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 930234–3034]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS publishes this emergency interim rule to reopen the commercial fishery for Gulf group king mackerel in the exclusive economic zone (EEZ) off the east coast of Florida between the Volusia/Flagler and Monroe/Dade County boundaries. The commercial fishery will remain open under a possession limit of 25 fish per vessel per day through March 31, 1993, or until 259,000 pounds (117,482 kg) of king mackerel under the vessel limit are landed, whichever is earlier. The intended effect of this rule is to respond to social and economic emergencies in the commercial fishery for Gulf group king mackerel off the east coast of Florida.

EFFECTIVE DATES: February 18, 1993, through March 31, 1993.

ADDRESSES: Copies of documents supporting this action may be obtained from Mark F. Godcharles, Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic resources (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The commercial fishery for Gulf group king mackerel in the eastern zone was closed January 13, 1993. Catch figures for the eastern zone show disproportionate catches between Florida's east and west coast fisheries, caused in part by a judicial ruling that prevented Florida from enforcing its trip/landing limits and regional closures that would have divided equally the Federal eastern zone quota of Gulf king mackerel between east and west coast commercial fisheries.

The subsequent record low catch of east coast king mackerel for the 1992/93 fishing year constitutes social and economic emergencies. Accordingly, the South Atlantic Fishery Management Council requested that NMFS implement this emergency interim rule to reopen the commercial king mackerel fishery in the EEZ off the east coast of Florida between the Volusia/Flagler and Monroe/Dade County boundaries. The commercial fishery will remain open under a possession limit of 25 fish per vessel per day through March 31, 1993, or until 259,000 pounds (117,482 kg) of king mackerel are harvested from the open area, whichever is earlier.

Income to the east coast fishery during this emergency reopening of the commercial king mackerel fishery is expected to offset negative socioeconomic impacts of the record low catch. The additional catch allowed under this rule is not expected to jeopardize rebuilding of the overfished Gulf group king mackerel resource. If necessary, the Councils will reduce subsequent years' total allowable catches for the Gulf group king mackerel to ensure that the target date for rebuilding the resource is met. To avoid future emergency situations based on unforeseen events, the Councils are initiating action that will ensure an equitable distribution of the catch between Florida's east and west coasts of the eastern zone commercial quota for Gulf group king mackerel.

The Councils and NMFS have concluded that the present situation qualifies as an emergency because:

(1) Fishermen in the commercial fishery for Gulf group king mackerel fishery off the east coast of Florida will suffer undue social and economic hardships unless timely action is taken to allow additional king mackerel catches during this 1992/93 fishing year. A substantial portion of their annual income is earned during the winter (November–March) king mackerel fishing season. Record low catches this season, the lowest in 23 years, have provided insufficient revenues to meet living and business expenses.

(2) Opportunities to offset lost income by prosecuting other fisheries are limited and not readily available. Other fisheries in which presently owned gear could be used or converted for use are mostly overcapitalized and/or overfished.

(3) Events and circumstances that caused the disproportionately low catches of king mackerel on Florida's east coast were essentially unforeseen and uncontrollable. Inordinate and sustained unfavorable weather conditions precluded safe passage to offshore fishing grounds, scattered fish, and muddied the waters, making the detection of fish difficult. The judicial decision that prevented Florida from enforcing its trip landing limits and regional closures was unexpected and untimely.

(4) The disproportionate catches between Florida's east and west coast fisheries was an unfortunate and inequitable occurrence. During the 1991/92 fishing year, the Florida program effectively divided the Gulf group king mackerel catch in the eastern zone equitably between east and west coast commercial fisheries. Equal sharing of this resource by east and west coast fisheries is clearly evident in historical landings. Yearly and average landing estimates for the past 23 years both before and after implementation of Federal quota management indicate that, despite some disproportionate yearly catches, the east/west coast catches trend toward parity.

(5) Relief for social and economic emergencies is not available through other more protracted rulemaking processes, which require advance notice and public comment.

The Councils believe that emergency action is the only means to provide expedient relief from the current social and economic emergencies. NMFS concurs. Accordingly, NMFS publishes this emergency interim rule, effective from February 18, 1993, through March 31, 1993, as authorized by section 305(c) of the Magnuson Act.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency interim rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for public comment.

The Assistant Administrator prepared an environmental assessment (EA) for this action, which concludes that there will be no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**).

The Assistant Administrator determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Florida, the only State involved. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This emergency interim rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator for good cause under section 553(b)(B) of the Administrative Procedure Act (APA) finds that the need to relieve social and economic hardships makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Similarly, to implement measures to relieve the economic hardship in a timely manner, the Assistant Administrator finds for good cause under section 553(d)(3) of the APA that the effective date of this rule should not be delayed.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 17, 1993.

William W. Fox, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

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

2. In § 642.7, paragraph (u) is added, effective from February 18, 1993, through March 31, 1993, to read as follows:

§ 642.7 Prohibitions.

* * * * *

(u) During the opening of the commercial fishery for Gulf group king mackerel, possess aboard or land from a vessel more than 25 king mackerel per day or transfer at sea king mackerel, as specified in § 642.31 (a) and (b).

3. A new § 642.31 is added, effective from February 18, 1993, through March 31, 1993, to read as follows:

§ 642.31 Opening of the commercial fishery for Gulf group king mackerel.

(a) Other provisions of this part 642 notwithstanding, the commercial fishery for Gulf group king mackerel is opened through March 31, 1993, unless closed earlier in accordance with paragraph (c) of this section, in the EEZ off the east coast of Florida between the Volusia/Flagler County boundary (29°25′N. latitude) and the Dade/Monroe County boundary (25°20.4′N. latitude), the "open area."

(b) During the opening of the commercial fishery for Gulf group king mackerel specified in paragraph (a) of this section—

(1) Aboard a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4, no more than 25 king mackerel per day may be possessed in, or from, the open area or landed in a Florida port between the Volusia/Flagler County and Dade/Monroe County boundaries;

(2) A king mackerel in or from the open area may not be transferred at sea;

(3) The provisions of § 642.24(a)(4) regarding sale of fish after a closure do not apply to king mackerel harvested in the open area and landed in a Florida port between the Volusia/Flagler County and Dade/Monroe County boundaries; and

(4) The provisions of § 642.26(b) regarding fishing for, retention of, and sale of fish after a closure do not apply to king mackerel harvested in the open area and landed in a Florida port between the Volusia/Flagler County and Dade/Monroe County boundaries.

(c) The Assistant Administrator, by publication of a notice in the Federal Register, will close the commercial fishery for king mackerel in the open area when 259,000 pounds (117,482 kg) of king mackerel have been harvested, or are projected to be harvested, from that area during this opening of the commercial fishery.

[FR Doc. 93–4085 Filed 2–18–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 34
Tuesday, February 23, 1993

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001 and 1002

[DA-93-02]

Milk in the New England and New York-New Jersey Marketing Areas; Proposed Suspension of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend certain provisions of the New England and New York-New Jersey milk orders. The suspension actions were requested by cooperative associations that represent producers who provide much of the milk supply for both markets.

The proposed suspension actions would suspend the seasonal production incentive payment provisions of the two orders for 1993. The cooperatives' request states that the suspensions are necessary to ameliorate the impending plunge of farm-level milk prices in the two marketing areas by eliminating the deductions from producer prices in the months of March through June that would be made under the orders' seasonal incentive payment plans. The suspensions would also eliminate the fall incentive payments for the fall months of 1993

DATES: Comments are due no later than March 2, 1993.

ADDRESSES: Comments (four copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2357.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on dairy farmers and would have no impact on regulated handlers.

This proposed rule has been reviewed by the 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 suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action 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 608(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 established in accordance with law and requesting a modification of an order or an exemption from the order. A handler is afforded the opportunity for a hearing on petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the orders regulating the handling of milk in the New England and New York-New Jersey marketing areas is being considered for the months of March through November 1993.

1. In § 1001.62, suspension of paragraphs (c) and (d).
2. In § 1002.61, suspension of paragraphs (d) and (e).

All persons who want to send written data, views or arguments about the proposed suspension should send four copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures before seasonal incentive plan deductions would be required on payments for milk produced in March 1993.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would suspend for 1993 the provision of the New England and New York-New Jersey Federal milk orders that require deductions from and additions to producer blend/uniform prices to be made for the purpose of encouraging dairy farmers to level out their production through the course of the year. The provisions provide for the deduction of 20 cents per hundredweight from the blend/uniform price paid to producers to be made for the month of March, 30 cents for April, and 40 cents for May and June. The funds retained from these deductions are then added to the pooled milk values under the two orders in the amounts of 25, 30, and 30 percent of the total deducted for the months of August, September, and October respectively. The remaining 15 percent plus interest earned on the aggregate funds is added for the month of November. By artificially depressing producer income in the spring and enhancing it above otherwise prevailing levels in the fall, the provisions provide an incentive to producers to level out the seasonality of milk production to more closely reflect fluid milk demand patterns.

The suspension actions were requested by cooperative associations representing dairy farmers shipping to handlers regulated by the Federal milk

marketing orders for the New England and New York-New Jersey marketing areas.

The basis for the suspension request is the collapse of the blend prices paid to producers anticipated by the cooperatives for the spring months of 1993. The cooperatives state that the expected blend prices, if adjusted by the "Louisville plan" deductions, will be even further below dairy farmers' cash costs than the unadjusted prices would be. In addition, the adjustment would occur at a time when farmers will need money for planting and other expenses.

The cooperatives state that the further reduction of pay prices to producers this spring due to operation of the seasonal incentive plan, beyond that resulting from anticipated supply-demand conditions and occurring at a time when farm cash requirements are at their seasonal peak, would accentuate the financial crunch expected from the plunge in milk prices in the coming spring. The cooperatives state that there will be some price recovery in the coming fall to a level near that of last fall, thereby providing for the seasonal price swings intended under the "Louisville" plan.

List of Subjects in 7 CFR Parts 1001 and 1002

Milk marketing orders/

The authority citation for 7 CFR parts 1001 and 1002 continues to read as follows:

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

Dated: February 17, 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–4062 Filed 2–22–93; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 093CE, Notice No. 23–ACE–61]

Special Conditions; Advanced Aerodynamics and Structures, Inc.; Jetcruzer 450 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: These special conditions are proposed for the Advanced Aerodynamics and Structures, Inc. (AASI) Jetcruzer 450 airplane. The airplane will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards of 14 CFR part 23 of the Federal Aviation Regulations (FAR). These novel and unusual design features include the use of composite materials for primary flight structure, engine location, and certain electronic systems, for which the regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of part 23.

DATES: Comments must be received on or before March 25, 1993.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 093CE, room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 093CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Norman R. Vetter, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the specified closing date for comments will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 093CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Type Certification Basis

The type certification basis for the AASI Jetcruzer 450 is: FAR part 23, effective February 1, 1965, as amended by amendments 23–1 through 23–38, effective October 26, 1989; § 23.1309(e) of amendment 23–41 for protection of electrical/electronic systems from indirect effects of lightning; part 34, effective September 10, 1990; part 36, effective December 1, 1969, as amended by amendment 36–1 through the amendment effective on the date of type certification; exemptions, if any; and the special conditions that may result from this proposal.

Background

On March 20, 1990, AASI of 10703 Vanowen Street, North Hollywood, California 91605, made application for normal category type certification of the Jetcruzer 450 airplane. The Jetcruzer 450 is a single engine, unpressurized turborprop-powered monoplane with a three-blade pusher propeller, a canard configuration, and a fuselage fabricated of composite material. Maximum takeoff weight is to be 4500 pounds with a maximum of six occupants.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, in accordance with § 21.17(a)(2).

The proposed type design of the Jetcruzer 450 airplane contains novel and unusual design features not envisaged by the applicable part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of part 23 do not contain adequate or appropriate safety standards for the novel and unusual design features of the airplane.

Composite Material

The Jetcruzer 450 fuselage is made of composite material and is assembled by the extensive use of bonding. Composite materials as used in airplane airframes

at this time are typically more susceptible, than commonly used aluminum structure, to damage from intrinsic and discrete sources that might adversely influence strength properties. Because of this and other factors, it is generally agreed that damage tolerance criteria should be used to show that composite material structure can withstand the repeated loads of variable magnitude expected in service. Furthermore, because of the lack of a service experience base for these new materials and their mechanical properties characteristics, there is a need to apply special requirements such as (a) residual strength loan with large area manufacturing defects (e.g., understrength bonds) and impact damage from discrete sources, and (b) ability to carry ultimate load with realistic impact damage below the threshold of detectability and material environmental exposure effects.

Propeller Ice and Exhaust Gas Impingement Protection

Because of the aft propeller location, ice shed from the wing leading edges, engine air inlet, and other parts of the airplane may impact the propeller blades. Impact of these shed ice fragments may have an adverse effect on the strength and fatigue characteristics of the propeller. Additionally, because the propeller is located aft of the engine, if exhaust gases are discharged into the propeller disc, they may adversely affect the strength and fatigue characteristics of the propeller material. A special condition is proposed to provide the requisite level of safety.

Propeller Ground Clearance

The FAA has determined that § 23.925 is not adequate to address propeller clearance for the Jetcruzer 450 because of the aft location of the propeller. Existing § 23.925 requires at least seven inches of clearance between the propeller and the ground in the normal takeoff attitude and a positive clearance with the critical tire deflated and the strut bottomed. In addition to those regulations, the FAA proposes to require that a positive clearance exist between the propeller and the ground when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings.

Propeller Markings

Because of the aft propeller location, passengers and ground personnel may be less aware of the proximity of the propeller blades. Therefore, in the absence of specific regulations, a special condition is needed to require that the propeller blades be marked so that both sides of the propeller disc are conspicuous under normal daylight ground conditions.

Fire Detection

Early detection of a fire in an engine mounted aft on the fuselage is unlikely given that the installation is not visible from the cockpit. This may lead to a fire spreading and damaging other portions of the airplane before the crew detects and reacts to such a fire. A special condition is proposed to provide for prompt detection of fire in the engine compartment.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF incident on the external surface of the aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisaged when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

The combined effect of the technological advances in aircraft design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the aircraft. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems.

The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph (1) or, as an alternative, to a fixed value using laboratory tests, in paragraph (2), as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

Or,

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions can withstand a peak electromagnetic field strength of 100 volts per meter or the external HIRF environment, whichever is less, in a frequency range of 10KHz to 18GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the aircraft. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to the critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis,

models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed above for the Jetcruzer model 450 airplane the following special conditions are proposed. This action is not a rule of general applicability and affects only the model of airplane identified in the proposed special condition.

List of Subjects in 14 CFR Part 23

Air transportation, Aircraft, Aviation safety, and Safety.

Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the AASI Jetcruzer 450 airplane:

1. Evaluation of Composite Structure

Instead of complying with § 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in a catastrophic loss of the airplane must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (i) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (j) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (g) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The structure of the fuselage must be shown by residual strength tests, or by analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(g) Instead of a non-destructive inspection technique that assures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraph (f) of this special condition must be determined by analysis, test, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof-testing must be conducted on each production article that will apply the critical limit design load to each critical bonded joint.

(h) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(i) The airplane must be shown by analysis to be free from flutter to V_D with the extent of damage for which residual strength is demonstrated.

(j) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components that may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

2. Propeller Ice and Exhaust Gas Impingement Protection

(a) All areas of the airplane forward of the propellers that are likely to accumulate and shed ice into the propeller disc during any operating condition must be suitably protected to prevent ice formation, or it must be shown that any ice shed into the propeller disc will not create a hazardous condition.

(b) If the engine exhaust gases are discharged into the propeller disc, it must be shown by tests, or analysis supported by tests, that the propeller material is capable of continuous safe operation.

3. Propeller Ground Clearance

In addition to the propeller clearance requirements of § 23.925, the following apply:

(a) The airplane must be designed such that the propeller will not contact the runway surface when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings; and

(b) If a tail bumper or an energy absorption device is provided to show compliance with paragraph (a) of this special condition, the following apply:

(1) Suitable design loads must be established for the tail bumper or energy absorption device; and

(2) The supporting structure of the tail bumper or energy absorption device must be designed to withstand the loads established in subparagraph (b)(1) of this special condition. Inspection/replacement criteria must be established for the tail bumper or energy absorption device and provided as part of the information required by § 23.1529.

4. Propeller Marking

Each propeller must be marked so that both sides of the disc are conspicuous under normal daylight ground conditions.

5. Fire Detector System

(a) There must be means to ensure the prompt detection of fire in the engine compartment.

(b) Each fire detector must be constructed and installed to withstand the vibration, inertia, and other loads to which it may be subjected in operation.

(c) No fire detector may be affected by any oil, water, other fluids, or fumes that might be present.

(d) There must be means to allow the crew to check, in flight, the functioning of each fire detector electric circuit.

(e) Wiring and other components of each fire detector system in the engine compartment must be at least fire resistant.

6. Protection of Electrical and Electronic Systems From High Intensity Radiated Fields

(a) Each system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

(b) For the purpose of this special condition a critical function is a function whose failure would contribute to or cause a

failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on February 2, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 93–4162 Filed 2–22–93; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 307

Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Commission has extended for 30 days the time period within which comments will be received on the proposed amendments to § 307.12(b) of the Commission's Regulations under the Comprehensive Smokeless Tobacco Act of 1986. The proposed language concerns the rotation of health warnings for promotional materials for smokeless tobacco products. The original request for comments was announced in the Federal Register on January 15, 1993 (58 FR 4875).

DATES: Written comments will be accepted on or before March 25, 1993.

ADDRESSES: Send comments to Secretary, Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip S. Priesman, (202) 326–2484, or Judith P. Wilkenfeld, (202) 326–3150, Division of Advertising Practices, Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission has received a request for a 30-day extension of the comment period from the Smokeless Tobacco Council to allow its members time to provide complete responses to the proposed revisions. The Commission has determined to grant the extension. Accordingly, comments from any interested party will be accepted until March 25, 1993.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–4150 Filed 2–22–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–18–90]

RIN 1545–AQ54

Notice of Proposed Rulemaking Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to proposed regulations.

SUMMARY: This document contains corrections to proposed regulations (CO–18–90), which was published in the Federal Register on Thursday, November 5, 1992 (57 FR 52743). The proposed regulations relate to rules treating options as exercised in certain circumstances, for the purpose of determining whether a loss corporation has an ownership change, within the meaning of section 382.

FOR FURTHER INFORMATION CONTACT: Annette M. Ahlers, telephone 202–622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction amend Income Tax Regulations (26 CFR part 1) under section 382 of the Internal Revenue Code.

Need for Correction

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

Correction of Publication

Accordingly, the publication of the proposed regulations (CO–18–90), which was the subject of FR Doc. 92–26160, is corrected as follows:

1. On page 52744, column 2, in the preamble under the heading "C. Abusive Principal Purpose", first paragraph, lines 8 and 9, the language "ownership of the amount of stock covered by the option, or (2) facilitating" is corrected to read "ownership of all or part of the amount of stock covered by the option (through the option alone or in combination with one or more related arrangements), or (2) facilitating".

2. On page 52744, column 3, in the preamble under the heading "D. Definition of Option", third paragraph, line 4, the language "Statement of Procedural Rules), in their" is corrected to read "Statement of Procedural Rules for availability of Cumulative Bulletins (C.B.)), in their".

3. On page 52745, column 2, in the preamble under the heading "K. Public Comments Requested", second line from the bottom of the column, the language "requirements of section 382 ( )(5) are" is corrected to read "requirements of section (l)(5) are".

4. On page 52748, column 2, § 1.382–4(h)(2)(iv)(A), line 3, the language "for any testing date after November 5," is corrected to read "for any testing date on or after November 5,".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–4041 Filed 2–22–93; 8:45 am]

BILLING CODE 4830–01–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Union Dues Regulations

AGENCY: National Labor Relations Board.

ACTION: Proposed rule; notice of change in dates for oral argument.

SUMMARY: The National Labor Relations Board gives notice that it is rescheduling oral argument on the proposed rulemaking for the implementation of the United States Supreme Court's decision in *Communications Workers of America* v. *Beck*, 487 U.S. 735 (1988).

DATES: Oral argument will be held on March 15, 16, and 22, 1993. Persons wishing to be heard at the oral argument should notify the Office of the Executive Secretary by close of business Monday, March 1, 1993. Thereafter, the Board will notify interested persons of the time and place of the oral argument and those who will be scheduled to participate.

ADDRESSES: Persons wishing to be heard at the oral argument should notify the Office of the Executive Secretary, 1717 Pennsylvania Avenue NW., Washington, DC 20570. Telephone: (202) 254–9430.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary. Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION:

Background

The Board's notice of proposed rulemaking and original notice of oral argument was published in the Federal

Register (57 FR 43635) on September 22, 1992. The notice provided that the period for comment ended at the close of business on October 22, 1992, and that oral argument would be held on November 5, 1992. On October 14, 1992, the Board published in the Federal Register (57 FR 47023) a notice extending the time for filing comments until the close of business on Monday, November 30, 1992, but also advised that it would adhere to the date of November 5, 1992, for the purpose of hearing oral argument. Oral argument was held on that date. The Board subsequently extended the time for filing comments to close of business on December 4, 1992 (57 FR 55491). Thereafter, the Board decided to hear additional oral argument on the proposed rule on March 8, 15, and 16, 1993. (58 FR 7199).

The American Federation of Labor and Congress of Industrial Organizations submitted a letter to the Board on February 11, 1993, requesting that the Board commence the oral argument on March 15, 1993; reschedule the balance of the hearing dates accordingly; and extend the time for requesting an opportunity to be heard from February 16, 1993, to March 1, 1993. The AFL–CIO cites the coordinating role it undertook in the first round of proceedings on the proposed *Beck* rules, wishes to undertake that same coordinating role in the upcoming *Beck* hearings, and refers to the scheduling difficulties introduced by the regular mid-winter meetings now being held by the governing boards of the AFL–CIO and its affiliates.

The Board has decided to hold the scheduled oral arguments on March 15, 16, and 22, 1993. The March 15 session will focus on issues raised by the notice and information provisions of the proposed rule contained in §§ 103.40(e) 103.40(f) (1) and (2). The March 15 argument also will concern the model union security clause set forth in § 103.42 and the Appendix to that section. On March 16 the Board will focus on the financial aspects of the proposed rule raised by § 103.41, including but not limited to unit-by-unit accounting and chargeability issues. Finally, the March 22 session will focus on the procedural aspects of the proposed rule, such as those contained in §§ 103.40(f) (3) and (4) and 104.30(g).

Persons wishing to be heard at any of these sessions should notify the Office of the Executive Secretary by close of business March 1, 1993, and specify in which session or sessions they wish to participate. The Board will thereafter give notice of the time and place of the oral argument, those persons who will be scheduled to participate, and the time periods for each participant.

Dated Washington, DC, February 17, 1993.

By direction of the Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 93–4061 Filed 2–22–93; 8:45 am]

BILLING CODE 7545–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–5–1–5295; A–1–FRL–4599–2]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; RACT for Dartmouth Finishing Corporation in New Bedford

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from fabric printing and fabric finishing operations at Dartmouth Finishing Corporation (Dartmouth) in New Bedford, Massachusetts. The intended effect of this action is to propose approval of a source-specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 ozone attainment plan. This action is being taken in accordance with section 110 of the Clean Air Act.

DATES: Comments must be received on or before March 25, 1992.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, (617) 565–3249.

SUPPLEMENTARY INFORMATION: On May 15, 1991, the State of Massachusetts submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consisted of a plan approval issued by the Massachusetts Department of Environmental Protection (DEP) which imposed VOC control measures as RACT for Dartmouth Finishing Corporation located in New Bedford, Massachusetts. This notice is divided into three parts:

I. Background Information
II. Summary of SIP Revision
III. Final Action

I. Background Information

On November 9, 1983 (48 FR 51480), EPA approved Massachusetts Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)", as part of the Commonwealth of Massachusetts 1982 ozone attainment plan. This regulation requires the Massachusetts DEP to determine and impose RACT on all facilities with the potential to emit one hundred tons per year or more of VOC that are not already subject to Massachusetts' regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents.

On January 10, 1991, the Massachusetts DEP submitted a proposed SIP revision consisting, in part, of a draft NON–CTG RACT Approval defining VOC control requirements for Dartmouth. EPA reviewed the document for enforceability, completeness and technical sufficiency, and provided written comments to the state on February 13, 1991. Massachusetts incorporated EPA's proposed changes and submitted a final SIP revision on May 15, 1991.

II. Summary of SIP Revision

Dartmouth's VOC emissions have been reduced from 304 tons per year in 1984 to a maximum of 28 tons per year, resulting in a 90.8% percent reduction based on typical production. Dartmouth achieved its emissions reductions by reformulating its printing pastes. The DEP's Plan Approval incorporates these changes and the use of the reformulated print pastes as enforceable requirements. The May 15, 1991 Plan Approval imposes a daily VOC emission cap on Dartmouth of 0.14 tons per day (280 pounds per day). The Plan Approval also limits the content of Dartmouth's print pastes to 0.35 pounds of VOC per pound of solids, and requires that fabric finishing mixtures utilized by Dartmouth not exceed 0.115 pounds of VOC per pound of solids.

A CTG does not exist for the fabric printing and fabric finishing operations at Dartmouth. However, the CTG

covering graphic arts printing covers a printing process which is similar to the fabric printing and finishing operations at Dartmouth. The Graphic Arts CTG recommends a 65% overall reduction in VOC emissions from packaging rotogravure and a 75% overall reduction for publication rotogravure when using add-on controls. Furthermore, EPA has determined that 0.5 pounds of VOC per pound of solid is RACT for flexographic and packaging rotogravure printing. The emission reductions achieved by Dartmouth through reformulation of its print pastes are consistent with the reductions anticipated for either add-on controls or through reformulation at facilities required to meet the emission limits suggested by EPA's Graphic Arts CTG. For these reasons, the DEP has imposed emission limits of 0.35 pounds of VOC per pound of solids for print pastes, and a limit of 0.115 pounds of VOC per pound of solids for fabric finishing mixtures used by Dartmouth. Additionally, an emissions cap of 0.14 tons per day (280 pounds per day) will ensure that a 90.8% reduction in annual VOC emissions is achieved by Dartmouth.

EPA's review of this material indicates that the VOC emission reductions achieved by Dartmouth represent RACT. EPA is proposing to approve the Massachusetts SIP revision for Dartmouth, which was submitted on May 15, 1991. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

III. Proposed Action

EPA is proposing to approve the Massachusetts' Amend Plan Approval dated and effective May 13, 1991 as a revision to the Massachusetts SIP. The Amended Plan Approval imposes RACT consisting of an emission limit of 0.35 pounds of VOC per pound of solids for print pastes and 0.115 pounds of VOC per pound of solids for fabric finishing mixtures, and a daily emissions cap of 280 pounds of VOC for Dartmouth Finishing Corporation in New Bedford, Massachusetts.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). Under 5 U.S.C. Section 605(b), the Administrator certifies that SIP approvals under sections 107, 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals do not create any new requirements but simply approve requirements that are already State law. SIP approvals, therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds.

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP Revisions. OMB has agreed to continue to temporary waiver until such time as it rules on EPA's request.

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

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.)

Dated: February 8, 1993.

Patricia L. Meaney,

Acting Regional Administrator Region I.

[FR Doc. 93–4118 Filed 2–22–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 228

[FRL–4595–3]

Ocean Dumping; Proposed Designation of Site

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing designation of a dredged material disposal site in Massachusetts Bay. This action is necessary to provide an acceptable ocean disposal site to be considered as an alternative for the current and future disposal of dredged material.

DATES: Comments must be received by March 31, 1993.

ADDRESSES: Send comments to: Kymberlee Keckler, U.S. Environmental Protection Agency, Region I, JFK Federal Building (WQE), Boston, MA 02203–2211.

The files supporting this proposed site designation are available for public inspection at the above location.

FOR FURTHER INFORMATION CONTACT: Kymberlee Keckler, (617) 565–4432.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection Research and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et. seq.* ("MPRSA"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dredged material disposal sites to Regional Administrators. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter 1, subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et. seq.*) and was last extended on August 19, 1985 (50 FR 33338 *et. seq.*). That list established an interim site near Marblehead, MA and extended its period of use until July 31, 1988, or until final rulemaking is completed. EPA is proposing to move the site boundary toward the southwest (approximately 1 nautical mile westward and ½ nautical mile southward).

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires

that Federal agencies prepare an EIS on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to incorporate careful consideration of all environmental aspects of proposed actions into the decision-making processes.

It is EPA's voluntary policy to prepare EISs for site designations under the MPRSA (39 FR 16187 (May 7, 1974)), and EPA has prepared draft, supplemental, and final EISs entitled "Evaluation of Continued Use of the Massachusetts Bay Dredged Material Disposal Site," "Alternative Site Screening," and "Designation of an Ocean Dredged Material Disposal Site in Massachusetts Bay" respectively. On September 29, 1989, a notice of availability of the draft EIS for public review and comment was published in the **Federal Register** (54 FR 40177). On July 6, 1990, a notice of availability of the draft SEIS for public review and comment was published in the **Federal Register** (55 FR 27886). On July 24, 1992, a notice of availability of the final EIS for public review and comment was published in the **Federal Register** (57 FR 32988). The public comment period on the draft EIS closed November 13, 1989, August 20, 1990 on the SDEIS, and August 28, 1992 on the FEIS. Several reviewers commented on these EISs.

The action currently being proposed is the final designation for continued use of an environmentally acceptable ocean dredged material disposal site in Massachusetts Bay. However, site designation does not indicate approval to dispose dredged material passing the criteria (40 CFR part 227). Material disposition is determined on a case-by-case basis as part of the U.S. Army Corps of Engineers' ("COE") permit-issuing process.

The EISs discuss the need for the action and examine ocean disposal site alternatives to the proposed action. Information needed to evaluate the suitability of ocean areas for final designation is presented. Regional land based alternatives were rejected because of the lack of available land area near dredging proposals, the lack of information on possible construction of marshlands, and increased costs. Additional analysis of specific land-based alternatives will be performed as part of any application for a permit to use the site. The environmental studies and final designation process are being conducted in accordance with requirements of the MPRSA, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Proposed Site Designation

The proposed site has been used since the 1940s for the ocean disposal of dredged material and industrial waste.

The center coordinate proposed for the MBDS is located 42°25.1' N. and 70°35.0' W., which is approximately 1 nautical mile westward and ½ nautical mile southward of the existing interim site (North American Datum of 1983). The site is approximately 22 nautical miles offshore from Boston and is two nautical miles in diameter. Water depths average 90 meters.

D. Regulatory Requirements

Pursuant to an Office of Water policy memorandum dated October 23, 1989, EPA has evaluated the proposed site designation for consistency with the State's approved coastal zone management program. EPA has determined that the designation of the proposed site is consistent to the maximum extent practicable with the State coastal management program and has submitted this determination on July 2, 1992 to the State for review in accordance with EPA policy. On November 13, 1992, the Massachusetts CZM office determined that the MBDS designation is consistent with State policies provided that disposal of contaminated sediments will not occur under any circumstances. It should be noted that EPA's EISs made clear that based on current information, EPA questions the efficacy of capping at a site such as the MBDS and believes that if capping pilot studies are proposed, they should utilize clean dredged material to ensure the protection of the marine environment in case of failure. In addition, as part of the NEPA process, EPA has consulted with the State regarding the effects of the dumping at the proposed site on the Massachusetts coastal zone.

The general criteria for the selection of sites are given in § 228.5 of the EPA Ocean Dumping Regulations. Five general criteria are used in the selection and approval for continued use of an ocean disposal site. Selection of sites incorporates minimizing interference with other marine activities, preventing any temporary perturbations from the dumping from causing impacts outside the disposal site, and monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. Based on the information presented in the EISs, EPA has determined that no environmental benefit would be obtained by selecting a site off the Continental Shelf versus that proposed in this action. The proposed site conforms to the five general criteria. If at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

EPA established 11 factors, at 40 CFR 228.6, to use in evaluating a proposed disposal site to ensure that the general criteria are met and to assess the impact of the site for disposal. The criteria are used to make comparisons between sites and are the bases for final site selection. The characteristics of the proposed site are reviewed below in terms of the 11 factors. Detailed information is presented in the EISs.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast (40 CFR 228.6(a)(1))

The site's center coordinate, size, and distance from shore are listed under Part C, Proposed Site Designation. Water depths at the site average 90 meters. The sediment composition in Massachusetts Bay is dominated by heterogeneous sediments composed primarily of glacial till. The floor of Massachusetts Bay is characterized by outcroppings of bedrock interspersed with areas of cobble, gravel, and sand, with some of the deeper areas grading into fine mud with a high clay content. The MBDS is located within the northwestern corner of the Stellwagen Basin, an area dominated by fine silts and clays. Because of its depth, the basin is not significantly affected by waves and currents and is considered a low-energy environment. Consequently, disposed dredged material is likely to remain in the immediate area.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult and Juvenile Phases (40 CFR 228.6(a)(2))

Areas for breeding, spawning, nursery and/or passage of commercially and recreationally important finfish and shellfish species occur on a seasonal basis across the western shelf of the Gulf of Maine. Past disposal of dredged material at the site has not caused detectable, significant or irreversible adverse impacts on living marine resources.

Most species spawn during a period of several months, and over a wide geographical area. Species common to Massachusetts Bay include American plaice, silver hake, witch flounder, and Atlantic mackerel.

The present MBDS is located on the western edge of an apparent whale migratory corridor extending from

George's Bank north to Jeffrey's Ledge. The area directly east of the site appears to be used on a regular basis by both humpback and finback whales. Both the National Marine Fisheries Service and the U.S. Fish and Wildlife Service have determined that designation of the MBDS will not jeopardize any threatened or endangered species.

Impacts of dredged material disposal on demersal fish at the site are expected to be restricted to temporary changes in abundance, numbers of species, mean size, and food preferences. It is unlikely that disposal activities will interfere with commercially valuable fish because of their mobility and the limited area in which disposal occurs. Two species of commercial fish that lay demersal eggs are not expected to be adversely affected since the substrate and offshore locale of the site are not preferred spawning areas for these fish.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

Use of the MBDS is not considered to have any potential for coastal impacts because the site is approximately 15 miles from the nearest beach and has a very low probability of resuspension. Distance from shore, water depth, configuration of the basin, and net southeast transport are factors that minimize the possibility of dredged material reaching beaches or other amenity areas. Studies reported in the EIS indicate that virtually all of the dredged material disposed at the site remains within the disposal area.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any (40 CFR 228.6(a)(4))

Dredged Material release at approved sites must conform to the EPA criteria in the ocean dumping regulations (40 CFR part 227). Sediments presently being dredged from the Massachusetts coastal area are composed of fine sand, silt, and clay, and are similar in grain size to natural sediments in the central basin of the proposed disposal site. The dredged material is transported in bulk by a barge equipped with a bottom dump mechanism. Future dredging projects may contribute approximately three million cubic yards of dredged material to the MBDS in the next decade.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

The COE currently conducts on-board surveillance to ensure that disposal operations occur at the proper location. Monitoring by EPA, the COE, and permittees will continue for as long as the site remains active. In order to detect any transport of dredged material outside the site, sediments will be monitored at the site and along transects of possible transport. Benthic communities will be monitored to detect changes that extend beyond the site.

Periodic bioaccumulation analyses of benthic invertebrates and fishes collected from the disposal site and bioassays will be used to determine whether dredged material disposal has adversely affected any marine resources. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to restrict to terminate dumping at the site.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction, and Velocity, If Any (40 CFR 228.6(a)(6))

Current velocities range from 0 to 30 centimeters per second at the site. Currents are influenced by tides in a rotational manner, but net water movement is to the southeast. The COE reports that regional dredged material (primarily fine sand, silt, and clay) is cohesive. As a result, rapid settling of the released sediments should occur. Minimal horizontal mixing or vertical stratification of disposal materials should occur, resulting in low suspended sediment concentrations.

Previous studies have demonstrated the relative immobility of dredged material at the site.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

Several industrial and municipal discharges are located in Massachusetts Bay. Although the closest proposed discharge is approximately 13 nautical miles from the proposed site, it represents the closest point source discharge of pollutants. Because of the distance involved and dilution factors associated with mixing, discharges in Massachusetts Bay are not expected to have a measurable effect on the site.

Previous dredged material disposal at the existing site has not produced any significant adverse effects on sediment or water quality. Changes in water quality as a result of disposal operations have been of short duration (minutes) and have been confined to relatively small areas. No major differences in finfish and/or shellfish species or numbers were found in recent surveys within and adjacent to the site.

Recent disposal of dredged material has produced minor localized and reversible impacts of smothering of the benthos, and possible temporary impacts on demersal fish.

Sediment collected by EPA and the COE from the disposal area in 1985, 1986, and 1987 contain higher levels of chromium, copper, lead, zinc, and polychlorinated biphenyls than do sediments at control stations near the site. These higher trace metal and hydrocarbon concentrations probably reflect contaminants present in dredged material previously disposed at the site. However, concentrations of these contaminants at the site were not shown to cause any adverse ecological or human health effects. Trace metal concentrations in tissues of benthic organisms collected at the site were well below FDA action levels.

8. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

Extensive shipping, fishing, recreational activities, and scientific investigations take place in the Gulf of Maine throughout the year. However, previous dredged material disposal operations are not known to have interfered with these activities. The Bureau of Land Management has not announced plans to lease any areas on the nearshore Continental Shelf adjacent to the site for oil and gas exploration. Mineral extraction, desalination, and aquaculture activities do not presently occur near the site.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9))

Investigations of dredged material disposal operations at the site have not indicated that disposal has had any significant adverse effects on water quality (e.g., dissolved nutrients, trace metals, dissolved oxygen, or pH).

Diatoms, nannoplankton, and phytoflagellates are the major types of phytoplankton within the coastal areas of Massachusetts Bay, and their population dynamics are closely correlated and with annual cycles of nutrients and light energy. Population cycles of zooplankton often are closely correlated with seasonal cycles of phytoplankton since many zooplankters use phytoplankton as food. Zooplankton numbers peak in July and October in the coastal ares of the Gulf of Maine.

The infaunal community at the disposal site is highly variable because

of dredged material disposal. Each area is in a different stage of recovery. Some epibenthic invertebrates do occur at MBDS associated with rocky surfaces is dominated by attached suspension primarily crustaceans, assorted shellfish, and sea stars. Many fish frequent the area, but several species of demersal fish dominate the population.

Site surveys have detected no significant differences in water quality or biological characteristics among areas within the site and adjacent reference areas. Therefore, dredged material disposal at the site does not appear to significantly alter water quality or ecology.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

There are no known components of this dredged material or consequences of its disposal which would attract or result in recruitment or development of nuisance species at the site. Previous surveys at the site did not detect the development or recruitment of nuisance species, and the similarity of the dredged material with the existing sediments suggests that the development or recruitment of nuisance species is unlikely.

11. Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

The Massachusetts Board of Underwater Archeology reported that no known historical shipwrecks exist at or near the site.

E. Proposed Action

The MBDS has been used for ocean disposal activities since the 1940s. In 1977, EPA promulgated the ocean dumping regulations, and subsequently granted interim site designation status to sites which have been historically used.

Alternative ocean sites which were rejected from consideration were approximately 25 nautical miles further offshore and approximately 15 nautical miles south of the proposed location. Disposing dredged material in these sites would not have any appreciable benefits. Alternative deepwater sites on the Continental Shelf beyond the Gulf of Maine were rejected from consideration because the greater distance from shore (approximately 250 nautical miles) increases the potential for short dumping due to possible emergencies during adverse weather conditions. Greater water depth (over 200 meters) would result in the deposition of dredged materials over a larger area than projected for the proposed site. Costs to transport the dredged material would be excessive.

EPA has concluded that the proposed site is compatible with the general criteria and specific factors used for site evaluation. Designating a site other than the proposed site offers no clear environmental benefit or economic advantage. The proposed site has been previously used without apparent significant adverse effects.

The designation of the MBDS as an EPA Approved Ocean Dumping Site is being published as proposed rulemaking. Management authority of this site will be a joint responsibility of EPA, Region I and the COE, New England Division. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address previously given.

Final site designation will serve to clarify the site's status for the long-term, including its availability as an ocean disposal alternative to consider during case-by-case permit reviews for future dredging projects. It should be emphasized that if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of dredged material at the site. Before ocean dumping of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. Federal projects are also evaluated in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the MPRSA have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule.

Consequently, this proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: February 5, 1993.

Paul G. Keough,

Acting Regional Administrator, Region I.

In consideration of the foregoing subchapter H of chapter I of title 40 is proposed to be amended as set forth below:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by revising the section heading; by removing from paragraph (a)(3) the dredged material disposal site for "Marblehead, MA"; and by adding paragraph (b)(92) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(92) Massachusetts Bay Disposal Site, Region I

Center coordinates (NAD 1983):
43° 25.1′ north latitude
70° 35.0′ west longitude
Size: 2 nautical mile diameter
Depth: Average 90 meters
Exclusive Use: Dredged material
Period of Use: Continuing
Restriction: Disposal shall be limited to dredged material which meets the requirements of the MPRSA and its accompanying regulations, as implemented by the national and regional testing protocols

[FR Doc. 93–3985 Filed 2–22–93; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 372

[OPPTS–400066A; FRL–4572–1]

Sulfuric Acid and Hydrochloric Acid; Toxic Chemical Release Reporting; Community Right-To-Know; Notice of Public Meeting; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: This notice revises the meeting time for the 1-day public meeting on issues raised by public commenters on a recent proposal to modify the listing for sulfuric acid on the list of toxic chemicals that are subject to reporting under section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 and section 6607 of the Pollution Prevention Act of 1990. In a notice published in the **Federal Register** of February 1, 1993 (58 FR 6609), it was stated that the 1-day public meeting would occur on March 3, 1993, at 1 p.m. and adjourn by 4 p.m. The time for the 1-day public meeting has been changed to 2 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., Washington, DC 20460, Toll free number: 800–535–0202, Toll number: 703–920–9877, TDD Toll free number: 800–553–7672, TDD Toll number: 703–486–3323.

Dated: February 11, 1993.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–4123 Filed 2–22–93; 8:45 am]

Billing Code 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–07; Notice 1]

RIN 2127–AE21

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to establish stopping distance performance requirements in Standard No. 105, Hydraulic Brake Systems, for trucks, buses, and multipurpose passenger vehicles (MPVs) with gross vehicle weight ratings (GVWRs) over 10,000 pounds that are equipped with hydraulic brake systems. These proposed requirements would be applicable to 60 mph stops on a high coefficient of friction surface. The agency has decided to propose different stopping distance requirements for different truck configurations.

This notice is one part of a comprehensive effort by the agency to improve the braking ability of heavy vehicles. In another NPRM published elsewhere in today's **Federal Register**, the agency is proposing the identical stopping distance requirements for heavy vehicles that are equipped with air brake systems. In a June 1992 ANPRM, the agency announced that it plans to consider lateral stability and control requirements for 30 mph stops on low and split coefficient of friction surfaces. That notice sets forth the agency's other long-term considerations about improving the safety of braking systems on heavy vehicles.

DATES: Comments must be received on or before May 24, 1993.

The proposed amendments would become effective two years after publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. George Soodoo, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5892).

SUPPLEMENTARY INFORMATION:

Background

Regulatory History

As initially promulgated in 1972, Standard No. 105, Hydraulic Brake Systems (49 CFR 571.105), set performance requirements for all motor vehicles with hydraulic service brakes. (37 FR 17970, September 2, 1972.) Hydraulic brakes are used on most single unit vehicles with gross vehicle weight ratings (GVWRs) of 26,000 pounds or less and on many medium and heavy duty trucks and buses (hereinafter referred to as "heavy vehicles") with GVWRs between 26,000 pounds and 33,000 pounds. Hydraulic brakes are available on single unit vehicles with GVWRs up to 46,000 pounds, but are used to a lesser degree with such vehicles. Heavy vehicles not equipped with hydraulic brakes use air brake systems. Among other provisions, the 1972 rule required vehicles with GVWRs greater than 10,000 pounds to stop from 60 mph within 245 feet when in the lightly loaded condition and within 553 feet under partial failure conditions. In adopting these requirements, the agency explained that stopping distance is perhaps the most important indication of brake performance and thus crash avoidance.

In response to petitions for reconsideration challenging the stopping distance requirements, the agency noted that in many crashes, a more effective service brake system would have lessened the severity of the crash or even avoided it. (38 FR 13017, May 18, 1973.) Accordingly, the agency concluded that stopping distance requirements can serve to reduce deaths, injuries, and property damage. Some petitions for reconsideration also challenged the more stringent stopping distance requirements for hydraulically braked vehicles as compared with the requirements for air-braked vehicles in Standard No. 121, Air Brake Systems (49 CFR 571.121). While the initial stopping distance requirement of 245 feet in Standard No. 121 was identical to Standard No. 105's requirement, Standard No. 121 was revised to require stopping within 258 feet (and then 293 feet). As a result of the stopping distance requirements, many manufacturers considered redesigning their vehicles to have larger brake systems, antilock systems, brake proportioning systems, or new types of split systems.

NHTSA subsequently amended Standard No. 105 to make it applicable only to passenger cars equipped with hydraulic brake systems. (40 FR 18411, April 28, 1975). This amendment served to rescind the standard's applicability to multipurpose passenger vehicle's (MPVs), trucks, and buses equipped with hydraulic brake systems. The notice stated that requirements for those vehicles could not be justified in light of the costs. The agency's review of the comments confirmed that the costs to attain compliance with the standard could range from $54 to $775 per unit. This led NHTSA to conclude that, at that time, the costs were not justified in view of the achievable safety benefits. Notwithstanding this decision, the agency emphasized that "truck braking is in many cases substantially poorer than passenger car braking, and that the generally longer stopping distances and the greater severity of truck accidents justify a safety standard for these vehicles."

Since narrowing Standard No. 105's applicability, the agency has issued several amendments extending the standard's applicability to certain types of vehicles. In 1976, the Standard's applicability was extended to all school buses. (41 FR 2391, January 16, 1976.)

In 1981, its applicability was extended on a general basis (with some modifications) to trucks, all types of buses, and MPVs with a GVWR of 10,000 pounds or less. (46 FR 55, January 2, 1981.) As for trucks, buses, and MPVs with a GVWR greater than 10,000 pounds, the 1981 notice extended the requirements for braking with partial hydraulic system failures and power booster unit failures. However, the service and parking brake performance requirements, including those for stopping distances, have not been re-adopted for hydraulically braked trucks and non-school buses with GVWRs over 10,000 pounds.

As explained in detail in a companion notice issued elsewhere in today's edition of the **Federal Register**, the stopping distance requirements for air-braked vehicles have received a great deal of agency and judicial attention. Briefly stated, along with certain other provisions, the stopping distance requirements for air-braked vehicles were invalidated by the United States Court of Appeals decision in *PACCAR* v. *NHTSA*, 573 F.2d 632, (9th Cir. 1978) *cert. denied* 439 U.S. 862 (1978). Along with this NPRM, the agency is publishing in today's edition of the **Federal Register**, an NPRM proposing to reestablish stopping distance requirements for air-braked vehicles consistent with the *PACCAR* decision. The reader should refer to this companion notice for more extensive discussions about various issues relating to the braking performance of heavy vehicles, especially in terms of stopping distance. In addition, on June 8, 1992, the agency published an ANPRM addressing possible requirements for lateral stability and control for heavy vehicles (52 FR 24212).

Brake Designs and Equipment

As explained in detail in the NPRM about air-braked vehicles published elsewhere in today's **Federal Register**, designing heavy vehicle braking systems for the many vehicle configurations and loading conditions is very complex. As a result, manufacturers have developed several devices related to the braking of heavy vehicles, including load proportioning systems which change the brake proportioning to the drive axle after mechanically sensing the vehicle's load; and antilock braking systems (ABS) which automatically control the amount of braking pressure applied to a wheel so as to prevent wheel lockup, thus increasing stability and control in emergency stops by preventing wheel lockup and loss of control. As explained in the companion NPRM and later in this notice, these devices can significantly reduce stopping distances as well.

Heavy Vehicle Crashes

In 1990, there were an estimated 319,000 police-reported crashes involving heavy vehicles. Of these approximately 107,000 involved vehicles other than combination units or truck-tractors. In 1990, heavy vehicle crashes resulted in 5,254 fatalities (Fatal Accident Reporting System (FARS)). In addition, crashes involving heavy vehicles result in more expensive and severe property damage.

Because numerous factors play a role in causing crashes, a single factor can be very rarely regarded the cause of a crash. One of the most important vehicle-related contributing factors involves the brake system's performance. Crashes in which braking was a contributing factor can be further subdivided into (1) crashes due to brake failures or defective brakes, (2) runaways on downgrades, due to maladjusted or overheated brakes, (3) crashes in which vehicles were unable to stop in time (i.e., brakes were not defective or ineffective due to heat but simply did not provide the stopping force necessary to avoid the crash), and (4) skidding or loss-of-control crashes due primarily to locked wheels during braking. This notice and the other NPRM focus on crashes attributable to the vehicle being unable to stop in time. The ANPRM published earlier this year considers ways to reduce braking-induced loss-of-control crashes.

Crashes in which vehicles are unable to stop before collisions are very difficult to quantify. In these crashes, the heavy vehicle's brakes function, but do not stop the vehicle quickly enough to avoid a crash. This type of crash might be reduced if heavy vehicle stopping performance (i.e., controlled stopping distances) were improved. Even if crashes of this type were not totally prevented, improvements in stopping performance would reduce collision impact speeds, thereby reducing crash severity.

Based on NHTSA's 1990 General Estimates System (GES), the agency estimates that between 12,491 and 16,783 of the between 100,476 and 122,582 non-alcohol-related heavy single-unit truck crashes that occurred in 1990 could be classified as "unable-to-stop-in-time" crashes. Most injuries and fatalities from these crashes were sustained by occupants in other-involved vehicles. The GES estimates for 1990 were 11 fatalities and between 1,576 and 3,032 injuries of heavy vehicle occupants and 243 fatalities and between 6,139 and 9,177 injuries of occupants of other-involved vehicles resulting from these crashes.

The agency emphasizes that not all of these unable-to-stop-in-time crashes are preventable. Nevertheless, it is likely that some can be prevented and many can be reduced in severity by improvements to heavy vehicle brake systems. If heavy vehicles were capable of higher braking decelerations without loss of control, collision impact speeds would be reduced, resulting in decreases of the incidence and severity of crash injuries and property damage.

Vehicle Research and Test Center Report #4

As part of its review of heavy vehicle braking, NHTSA issued a report entitled "NHTSA Heavy Duty Vehicle Brake Research Program Report No. 4—Stopping Capability of Hydraulically Braked Vehicles" (DOT HS 806 860, October 1985). That report was based on a comprehensive testing of twelve hydraulically braked vehicles ranging in weight from 14,800 to 46,000 pounds in both the empty and loaded conditions. The straight line stopping distance tests measured the shortest possible stop within a 12 foot wide land without locking more than one wheel per axle or two wheels per tandem axle at speeds greater than 20 mph. At 60 mph, stopping distances ranges from 214 feet to 396 feet. Among other things, the agency found that the ability to stop in a short distance without loss of control is primarily a function of front/rear braking force distribution. Vehicles with brake force distributions closest to their dynamic weight distributions were the best performers.

Heavy Vehicle Safety Report to Congress

In response to section 9107 of the Truck and Bus Regulatory Reform Act of 1988, the agency submitted a report to Congress entitled "Improved Brake Systems for Commercial Vehicles." (PB91–182600) which may be examined at the agency's Technical Reference Office, room 5108, at no charge. It is available from the National Technical Information Service (NTIS), Springfield, VA 22161 for a small charge. While the report focuses on air brakes systems, much of the information is relevant to heavy hydraulically braked vehicles. After discussing crash data concerning heavy vehicle brake systems, the report explains factors related to braking effectiveness and stability and control during braking. The report mentioned that stopping distances and vehicle stability could be improved by equipping heavy vehicles with load-sensing proportioning valves and ABS.

Agency Proposal

Stopping Distance Requirements

Based on the available information, NHTSA has decided to propose establishing stopping distance performance requirements for trucks, buses, and MPVs with GVWR's over 10,000 pounds that are equipped with hydraulic brake systems. The agency's long-term objective is to upgrade the braking efficiency of heavy vehicles while making controlled, stable stops, under all loading and road surface conditions. As illustrated in the chart below, the agency plans to introduce the following stopping distance requirements.

PROPOSED STOPPING DISTANCE REQUIREMENTS

[60 mph stops on high coefficient of friction surface]

Vehicle type	In feet
Loaded and Unloaded Buses	280
Loaded Single Unit Trucks	310
Empty Single Unit Trucks	335

Anticipated Lateral Stability Requirements

Lateral stability requirements for 30 mph stops on low coefficient of friction surfaces. (Considered in the ANPRM for a future proposal.)

In this notice and in the companion notice published today on Standard No. 121, the agency is proposing to establish stopping distance requirements for 60 mph stops on high coefficient of friction surfaces for all heavy vehicles. This notice proposes stopping distance requirements for vehicles equipped with hydraulic brake systems consistent with the stopping distance requirements for air-braked heavy vehicles proposed elsewhere in today's edition of the Federal Register. Stopping distance requirements would be introduced two years after the final rule takes effect with different stopping distance requirements for different types of vehicles and loading conditions. As explained below, the agency has decided not to propose the first effectiveness test which involves the preburnish condition. The second effectiveness test would be run when the vehicle is at its GVWR to assure full braking power. The third effectiveness test would be run while the vehicle is in the lightly loaded vehicle condition to assure reasonable brake balance.

The agency has decided to propose different stopping distance requirements for different heavy vehicle configurations. The agency tentatively concludes that one stopping distance requirement for all heavy vehicles with fully operational service brakes would be inappropriate. As explained below, a single requirement would be too stringent for unloaded single unit trucks and thus extremely costly and potentially impracticable. Conversely, such a single requirement might not be stringent enough for buses. The agency notes that these differences are more significant for air-braked vehicles.

The agency is also considering the establishment of lateral stability and control requirements for 30 mph stops on surfaces with low coefficients of friction (i.e., slippery surfaces typical of wet asphalt). Such requirements could have the effect of requiring antilock brakes on many heavy vehicles. The previously published ANPRM explains the agency's long term goals in this area.

The primary purpose for proposing to reinstate stopping distance requirements for heavy vehicles is to decrease the disparity of stopping performance between heavy vehicles and passenger cars, while assuring that the costs of any requirement are reasonable. A secondary, but still important, consideration is to have consistent requirements for similar vehicles, regardless of whether the vehicle is air-braked or hydraulically braked, provided that achieving consistency does not undermine the safety benefits of the stopping requirements. Given that test data indicate that stopping performance of heavy vehicles is similar for air-braked and hydraulically braked vehicles, the agency tentatively concludes that having the same stopping distance requirements in Standard Nos. 105 and 121 is appropriate. The agency initially adopted this policy of making the requirements in Standard No. 105 identical to Standard No. 212 where appropriate, in response to comments in the 1973 rulemaking when the standards had different stopping distance requirements. (38 FR 13017, May 18, 1973.) Based on the above, the agency is proposing the same stopping distances in Standard Nos. 105 and 121. The agency welcomes comments about this issue.

The agency based the proposed stopping distances on its engineering analysis of the available data, especially the stopping distance results in the VRTC reports. The agency is proposing to establish stopping distances for those vehicle types that were found, by testing, to reasonably demonstrate the capability. The agency believes that such an approach could be reasonably and safely achieved with available technology. As mentioned above, most hydraulically braked heavy vehicles are single unit trucks. Therefore, some of the configurations such as bobtail would not be applicable to these vehicles.

In the loaded condition, eleven of the twelve hydraulically braked vehicles tested in the VRTC Report #4 met the proposed stopping distance requirement of 310 feet for loaded single unit trucks. In the unloaded condition, ten of the twelve vehicles met the proposed requirement of 335 feet for unloaded single unit trucks. Therefore, the agency anticipates that most manufacturers would not have to make significant changes to the hydraulic braking systems of their vehicles to comply with the proposed stopping distance requirement.

Even though the stopping distance requirements apparently would not affect current hydraulically braked vehicles, the agency believes that establishing stopping distance requirements for hydraulically braked heavy vehicles and reinstating them for air braked heavy vehicles is a desirable first step in its overall plan to improve heavy vehicle safety. In subsequent rulemakings, the agency may propose requirements concerning stopping on more slippery surfaces to improve vehicle braking performance. The agency further believes that such stopping distance requirements are necessary to establish minimum requirements to ensure a level of compatibility between heavy vehicles and lighter vehicles.

The agency welcomes comments about various aspects of this proposal, including the need for stopping distance requirements for hydraulically braked heavy vehicles and the reasonableness of the various proposed distances and categories of vehicles.

Schoolbuses

As mentioned above, the stopping distance requirements in Standard No. 105 apply primarily to vehicles with a GVWR of 10,000 pounds or less. School buses comprise the only vehicle type with a GVWR greater than 10,000 pounds currently subject to Standard No. 105's stopping distance requirements (including the first, preburnished, effectiveness test). A vehicle must comply with these performance requirements under the test conditions prescribed in S6 when tested according to the procedures set forth in S7 (see S7.3).

The proposal is intended to extend the applicability of the stopping distance requirements to all heavy vehicles. It is not intended to affect the requirement's current applicability. Accordingly, the first effectiveness test would continue to be applicable to school buses. The agency made those

requirements applicable to school buses in response to the Motor Vehicle and Schoolbus Safety Act of 1974 (Pub. L. 93–492), which directed the agency to issue safety standards for school bus operating systems. (41 FR 2391, January 16, 1976.) Given this Congressional mandate and the "stop-and-go" duty cycle of school buses, the agency believes that the first effectiveness test should still be applicable to schoolbuses, even though this requirement would not be applied to other vehicles with a GVWR greater than 10,000 pounds. The agency requests comments on this matter.

Nevertheless, the proposal would amend certain test conditions (e.g., the road surface in S6.9, the vehicle position in S6.10, and the initial brake temperature in S6.10) to create two classes of test conditions based on a vehicle's weight: vehicles with a GVWR of 10,000 pounds or less and vehicles with a GVWR greater than 10,000 pounds. Since a 15,000 pound school bus is more similar to a 15,000 pound single unit truck than a 7,500 pound vehicle, the agency tentatively concludes that school buses should be tested under the new test conditions applicable to other heavy vehicles rather than the current conditions to which school buses are now tested. The agency requests comments about how to treat school buses under the proposal.

Preburnish Test

The first effectiveness test in Standard No. 105 (commonly known as the "preburnish test") concerns brake performance very early in a vehicle's life. After reviewing the need for such a test, NHTSA has decided not to propose applying the preburnish test to heavy vehicles for the following reasons. First, the agency is not aware of any evidence that crashes involving hydraulically braked heavy vehicles have been caused by "green" brake linings. Second, given the absence of a preburnish test in Standard No. 121 and the proposed Standard No. 135, it would be inconsistent to propose such a test for heavy vehicles subject to Standard No. 105. Third, in the supplemental notice of proposed rulemaking (SNPRM) to adopt Standard No. 135, the agency decided not to propose the preburnish testing requirements because few vehicles are driven any length of time in an unburnished condition (56 FR 30528, July 3, 1991). Based on the above, the agency has decided not to propose applying Standard No. 105's first (preburnish) effectiveness test to vehicles with a GVWR greater than 10,000, except for school buses. Nevertheless, the agency solicits comments as to whether there should be such a requirement.

Second Effectiveness Test

The second effectiveness test in Standard No. 105 concerns brake performance when a vehicle is in its loaded condition. As explained earlier in this notice, NHTSA has decided to propose extending this test to hydraulically braked heavy vehicles. The agency notes that this situation replicates one of the most common use situations for heavy vehicles, especially loaded trucks. In fact, most heavy vehicles are designed to provide optimum brake balance when fully loaded. Accordingly, the agency tentatively concludes that it would be in the interests of safety to establish stopping distance requirements for hydraulically braked heavy vehicles in this situation.

Third Effectiveness Test

The third effectiveness test in Standard No. 105 concerns brake performance when a vehicle is in its unloaded condition. The agency notes that it decided not to apply this test to vehicles with a GVWR of 8,000 pounds to 10,000 pounds because of potential problems for final stage manufacturers. (46 FR 55, January 2, 1981.) However, the agency has decided to propose extending the third effectiveness test to all hydraulically braked heavy vehicles. The agency believes that to be consistent with Standard No. 121, a lightly loaded test condition should be required for all heavy vehicles. In addition, the test condition is appropriate because the lightly loaded condition provides relatively poor braking performance that may be detrimental to safety. The agency believes that given the typically longer stopping distances for heavy vehicles in the lightly loaded condition, it would be beneficial to propose a separate requirement reflecting these differences.

As for possible compliance problems faced by final stage manufacturers, the agency believes that a certification of compliance based on adherence to the incomplete vehicle document would constitute the exercise of due care. (See 43 48646, October 19, 1978.) The agency notes that the proposal would not change the situation for the final stage manufacturer that resulted in the amended regulation in October 1978.

Fourth Effectiveness Test

The fourth effectiveness test in Standard No. 105 concerns the brake system's ability after being subjected to fade and recovery testing under S5.1.4. Neither the fade and recovery tests nor the fourth effectiveness tests are applicable to school buses with a GVWR greater than 10,000 pounds because the agency determined that this test would be redundant for a heavy vehicle (41 FR 2391, January 16, 1976.) Based on this earlier rulemaking, the agency has decided not to propose requiring heavy vehicles to comply with the fourth effectiveness test. Nevertheless, the agency invites comments on this matter.

Road Test Surface

In light of *PACCAR*, the agency has considered better ways to state the adhesion characteristics of test surfaces. Elsewhere in today's **Federal Register**, the NPRM proposing stopping requirements for air-braked vehicles explains in detail the agency's proposal about the road test surface. Briefly stated, instead of specifying road test surfaces in terms of skid numbers, these proposals specify road surfaces in terms of "peak coefficient of friction." The agency tentatively concludes that PFC is more relevant for the stopping distance tests required by the proposed standard because, unlike a skid number, the maximum attainable deceleration in a non-locked wheel stop is directly related to PFC. In addition, the agency believes that "round robin" testing of PFC indicate that such a test procedure would be practicable. Accordingly, NHTSA is proposing that the primary 60 mph stopping distance tests be performed on a test surface with a PFC of 0.9, a surface typical of dry concrete or asphalt. The agency requests comments on this issue.

Time Intervals Between Tests

In light of *PACCAR*, the agency has considered more objective ways to state the time interval between tests. Elsewhere in today's **Federal Register**, the NPRM proposing stopping requirements for air-braked vehicles explains in detail the agency's proposal about time intervals between tests. Briefly stated, the agency has decided to propose a time interval based on higher initial brake temperatures based on additional study by the VRTC. Specifically, the average brake lining temperature of the hottest axle would have to be between 250° and 300 °F before a stopping test could be initiated. The agency believes that this provision would allow tests on heavy vehicles to be conducted with a reasonable time between tests at temperatures representative of in-service conditions.

Costs

As explained in detail in the PRE, the costs associated with the rulemaking

involve additional testing costs and hardware/equipment costs. The agency estimates the minimum initial testing costs associated with establishing stopping distance requirements for all heavy hydraulic braked vehicles would be about $1 million. Assuming the industry continues to produce about 110,000 hydraulic braked heavy vehicles per year, the testing cost per vehicle would be less than $10. Since, as mentioned earlier, the agency does not anticipate any changes in the braking systems of hydraulic braked heavy vehicles in response to these requirements, the agency does not anticipate any cost impact resulting from necessary vehicle modification.

The agency welcomes comments about the anticipated cost of this proposal. In particular, the agency invites comments about the number of vehicles affected by the proposal and the unit cost of equipment needed to comply with the proposed requirements.

Leadtime

NHTSA believes that the major manufacturers have the facilities necessary to test, evaluate, and if necessary, upgrade their brake systems within two years. As previously stated, the agency further believes that many vehicles can already meet the proposed requirements without being upgraded and that those vehicles requiring upgraded designs can do so by selecting a more effective combination of readily available on-the-shelf brake components. Accordingly, the agency believes that two years should provide an adequate amount of leadtime for all vehicle manufacturers to comply with the proposed requirements. Vehicles would have until two years after the final rule is issued to allow for the additional modifications necessary to comply with the requirements. The agency requests comments on the adequacy of the leadtime in general and specifically about any types of vehicles or brake systems which would require extensive redesign.

Section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days or later than one year from the date the order is issued unless "good cause" is shown that an earlier or later effective date is in the public interest. Given the complexity of braking systems, especially those on heavy vehicles, the agency believes that there is "good cause" to propose leadtime of greater than one year.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A PRE setting forth the agency's detailed analysis of the economic effects of this proposal (along with the other notice issued today) has been prepared and been placed in the docket. This rulemaking is based on the PRE and all additional data available to the agency.

As previously discussed, no improvements in the braking performance of current hydraulic brake equipped trucks will be necessary for those vehicles to comply with the proposed requirements. As such, no benefit is anticipated for these vehicles. However, the agency concludes that these proposed requirements, along with those for air brake equipped trucks, would improve safety by ensuring an equivalent level of safety for all heavy vehicles regardless of the brake system.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. As mentioned above, most heavy vehicles would comply with the proposed requirements without the need for significant changes. In addition, the agency is not aware of any manufacturer of heavy vehicles or hydraulic brake systems that would be considered a small entity. The added cost of modifying a vehicle is small in comparison to the overall cost of a brake system and very small in comparison to the overall price of a vehicle. Therefore, these changes would not significantly affect purchase decisions. The industry test cost per vehicle to assure compliance with the proposal would be very small in comparison to the vehicle's overall price. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles would not be significantly affected by the proposed requirements. Accordingly, no regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

National Environmental Policy Act

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment. No changes in existing production or disposal processes would result. Nor should production and disposal processes have a significant adverse affect on the environment.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A

request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Standard No. 105, Hydraulic Brake Systems, in title 49 of the Code of Federal Regulations at part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

2. In § 571.105, S4 would be amended by adding the following definitions to be placed in the proper alphabetical location:

§ 571.105 Standard No. 105; Hydraulic brake systems.

* * * * *

Limited lockup means a lockup of not more than one wheel per axle or two wheels per tandem."

* * * * *

Peak Friction Coefficient or *PFC* means the ratio of the maximum value of braking test wheel longitudinal force to the simultaneous vertical force occurring prior to wheel lockup, as the braking torque is progressively increased, when measured in accordance with ASTM E1337–90 test procedure as ASTM E1136 tire at 40 mph, without water delivery.

* * * * *

Permissible Wheel Lockup means a lockup of one or more wheels at 100 percent slip for one second or less.

* * * * *

3. In § 571.105, S5.1 would be revised to read as follows:

S5.1 *Service brake systems.* Each passenger car and each multipurpose passenger vehicle, truck, and bus with a GVWR of 10,000 pounds or less, and each school bus with a GVWR of greater than 10,000 pounds shall be capable of meeting the requirements of S5.1.1 through S5.1.6 under the conditions prescribed in S6, when tested according to the procedures and in the sequence set forth in S7. Each multipurpose passenger vehicle, truck, and bus (other than a school bus) with a GVWR greater than 10,000 pounds shall be capable of meeting the requirements of S5.1.1, S5.1.2, and S5.1.3 under the conditions prescribed in S6, when tested according to the procedures and in the sequence set forth in S7. Except as noted in S5.1.1.2 and S5.1.1.4, if a vehicle is incapable of attaining a speed specified in S5.1.1, S5.1.2, S5.1.3, or S5.1.6, its service brakes shall be capable of stopping the vehicle from the multiple of 5 mph that is 4 to 8 mph less than the speed attainable in 2 miles, within distances that do not exceed the corresponding distances specified in Table II. If a vehicle is incapable of attaining a speed specified in S5.1.4 in the time or distance interval set forth, it shall be tested at the highest speed attainable in the time or distance interval specified.

TABLE II.—STOPPING DISTANCES

Vehicle test speed (miles per hour)	Stopping distances in feet for tests indicated														
	I–1st (prebumished) & 4th effectiveness; spike effectiveness check				II–2d effectiveness			III–3d (lightly loaded vehicles) effectiveness				IV–Inoperative brake power and power assist unit; partial failure		
	(a)	(b)	(c)	(d)	(a)	(b) & (c)	(d)	(a)	(b)	(c)	(d)	(a)	(b) & (c)	(d)
30	[1]57	[1,2]65	69 (1st)[1,2] ... 65 (4th[1,2] .... and spike).											
	.....	.....	[1]72	[1,2]88	[1]54	[1]57	[1,2]78	51	57	65	84	114	130	170
35	74	83	91	132	70	74	106	67	74	83	114	155	176	225
40	96	108	119	173	91	96	138	87	96	108	149	202	229	288
45	121	137	150	218	115	121	175	110	121	137	189	257	291	358
50	150	169	185	264	142	150	216	135	150	169	233	317	359	435
55	181	204	224	326	172	181	261	163	181	204	281	383	433	520
60	[1]216	[1]242	267[1]	[1,2]388	[1]204	[1]216	[1]310	[1]194	[1]216	[1]242	[1]335	[1]456	[1]517	[1]613
80	[1]405	[1]459	510[1]	NA	[1]383	NA	NA	NA	NA	NA	NA	NA	NA	NA
95	[1]607	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
100	[1]673	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

[1] Distance for specified tests:
[2] Applicable to school buses only. NA=Not applicable.

NOTE: (a) Passenger cars; (b) vehicles other than passenger cars with GVWR of less than 8,000 lbs; (c) Vehicles with GVWR of not less than 8,000 lbs and not more than 10,000 lbs; (d) vehicles with GVWR greater than 10,000 lbs.

* * * * *

4. In § 571.105, S5.1.1 would be revised to read as follows:

* * * * *

S5.1.1 Stopping distance.

(a) The service brakes shall be capable of stopping each vehicle with a GVWR

of 8,000 pounds or less, and each school bus with a GVWR between 8,001 pounds and 10,000 pounds in four effectiveness tests within the distances and from the speeds specified in S5.1.1.1, S5.1.1.2, S5.1.1.3, and S5.1.1.4.

(b) The service brakes shall be capable of stopping each vehicle with a GVWR of between 8,000 pounds and 10,000 pounds, other than a school bus, in three effectiveness tests within the distances and from the speeds specified in S5.1.1.1, S5.1.1.2, and S5.1.1.4.

(c) The service brakes shall be capable of stopping each vehicle with a GVWR greater than 10,000 pounds, other than a school bus, in two effectiveness tests within the distances and from the speeds specified in S5.1.1.2 and S5.1.1.3.

(d) The service brakes shall be capable of stopping each school bus with a GVWR of greater than 10,000 pounds in three effectiveness tests within the distances and from the speeds specified in S5.1.1.1, S5.1.1.2 and S5.1.1.3.

* * * * *

In § 571.105, S5.1.1.2 would be revised to read as follows:

* * * * *

S5.1.1.2 In the second effectiveness test, each vehicle with a GVWR of 10,000 pounds or less and school buses with a GVWR greater than 10,000 pounds shall be capable of stopping from 30 mph and 60 mph, and each vehicle with a GVWR greater than 10,000 pounds (except for school buses) shall be capable of stopping from 60 mph, within the corresponding distances specified in Column II of Table II. If the speed attainable in 2 miles is not less than 84 mph, a passenger car or other vehicle with a GVWR of 10,000 pounds or less shall also be capable of stopping from 80 mph within the corresponding distances specified in Column II of Table II.

* * * * *

6. In § 571.105, S6.9 would be revised to read as follows:

* * * * *

S6.9 *Road Surface.* Road tests are conducted on a 12-foot-wide, level roadway, having a skid number of 81 for vehicles with a GVWR of 10,000 pounds or less, or having a peak friction coefficient of 0.9 for vehicles with a GVWR greater than 10,000 pounds. Burnish stops are conducted on any surface. The parking brake test surface is clean, dry, smooth, Portland cement concrete. Peak friction coefficient is measured using an American Society for Testing and Materials (ASTM) E 1336 standard reference test tire, in accordance with ASTM Method E 1337–90, at a speed of 40 mph, without water delivery.

* * * * *

7. In § 571.105, S6.10 would be revised to read as follows:

* * * * *

S6.10 Vehicle Position. The vehicle is aligned in the center of the roadway at the start of each brake application. Stops, other than spike stops, are made without any part of the vehicle leaving the roadway. Except as noted below, stops are made without lockup of any wheel at speeds greater than 10 mph. There may be controlled lockup of an antilock-equipped axle, and lockup of not more than one wheel per vehicle, uncontrolled by an antilock system. (Dual wheels on one side of an axle are considered a single wheel. For vehicles with a GVWR greater than 10,000 pounds, limited lockup is permitted at speeds above 20 mph, and permissible lockups are allowed at any speed. Locked wheels at speeds greater than 10 mph are also allowed during spike stops (but not spike check stops), partial failure stops and inoperative brake power or power assist unit stops.

* * * * *

8. In § 571.105, S6.12 would be revised to read as follows:

* * * * *

S6.12 Initial brake temperature. Unless otherwise specified, the initial brake temperature is between 150° F. and 200° F. for vehicles with a GUWR of 10,000 pounds or less, and between 250° F. and 300° F. for vehicles with a GVWR greater than 10,000 pounds.

* * * * *

Issued on February 12, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–3940 Filed 2–22–93; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 571

[Docket No. 93–06; Notice 1]

RIN 2127–AD07

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to reinstate stopping distance performance requirements in Standard No. 121, Air Brake Systems, for trucks and buses that are equipped with air brake systems. These proposed requirements would be applicable to 60 mph stops on a high coefficient of friction surface. The agency has decided to propose different stopping distance requirements for different heavy vehicle configurations. This notice also proposes threshold pressure requirements for tractors and trailers to improve the compatibility of combination vehicles.

This notice is one part of a comprehensive effort by the agency to improve the braking ability of heavy vehicles. In another NPRM published elsewhere in today's **Federal Register**, the agency is proposing the identical stopping distance requirements for heavy vehicles that are equipped with hydraulic brake systems. In a June 1992 ANPRM, the agency announced that it plans to consider lateral stability and control requirements during braking for 30 mph stops on low coefficient of friction surfaces. That notice set forth the agency's other long-term considerations about improving the safety of braking systems on heavy vehicles.

DATES: *Comments.* Comments must be received on or before May 24, 1993.

Proposed effective date. The proposed amendments in this notice would become effective two years after publication of a final rule in the **Federal Register.**

Incorporation by reference. The incorporation by reference of certain publications listed in the regulations would be approved by the Director of the Federal Register as of the publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. George Soodoo, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5892).

SUPPLEMENTARY INFORMATION:

Background

Regulatory History

NHTSA has been concerned about the safety of medium and heavy duty vehicles (hereinafter referred to as "heavy vehicles") equipped with air-brakes since the agency's inception. On October 11, 1967, the predecessor of NHTSA announced its intention to promulgate a standard for air-braked trucks, tractor trailers, and buses. (32 FR

14279). The initial notice of proposed rulemaking (NPRM) proposed various requirements about air-braked systems, including requiring vehicles equipped with such systems to stop within certain distances, from certain speeds, without leaving a 12-foot wide lane and without lockup of any wheel "more than momentarily." (35 FR 10368, June 25, 1970) That notice proposed that air-braked vehicles would have to stop from 60 mph within 216 feet on a surface with a skid number of 75. A skid number is the frictional resistance of a pavement. A high skid number such as 75 represents a dry, non-slippery surface. The "no lockup" provision was intended to minimize skidding, spinning, and jackknifing due to wheel lockup and loss of lateral stability.

In the final rule establishing Standard No. 121, Air Brake Systems (49 CFR § 571.121), the agency decided to increase the 60 mph stopping distance from 216 feet to 245 feet. (36 FR 3817, February 27, 1971). That notice explained that the less stringent stopping distance was being required to reflect more accurately the surface's friction characteristics. The standard was to become effective on January 1, 1973.

In responding to several petitions for reconsideration requesting that the stopping distances be lengthened, the agency stated that the distances specified were reasonable and well within the state-of-the-art and that greater distances would increase the disparity between heavy vehicles and cars and thus be contrary to the interests of safety (37 FR 3905, February 24, 1972). The agency did extend the effective date until September 1, 1974. Because the required stopping distances were shorter than the former stopping distances achieved by certain heavy vehicles, new braking systems were necessary for those vehicles. Most manufacturers adopted "antilock" devices because the standard required stops to be made without more than momentary lockup of wheels.

In a subsequent notice, the agency amended the stopping distance requirements, extending the 60 mph stopping distance requirements to 258 feet (39 FR 17550, May 17, 1974). The agency explained that the requirements were lengthened five percent to compensate for production variations. The notice delayed the standard's effective date until January 1, 1975 for trailers and until March 1, 1975 for trucks and buses.

In response to petitions for reconsideration of the May 1974 final rule, NHTSA extended the 60 mph stopping distance requirements to 277 feet. These requirements were to be effective until January 1, 1978, at which time the previous 258 foot requirement was to be reinstated. The agency explained that data submitted by manufacturers indicated that variability of performance of certain braking and related components could in some vehicles necessitate more aggressive brake packages than were desirable to achieve the stopping distances contemplated in development of the standard (40 FR 38160, August 27, 1975). The agency then announced a public meeting to explore the safety of antilock systems, which had been questioned by manufacturers (40 FR 43049, September 18, 1975). As a result of the meeting, the agency suspended the standard's applicability to buses for one year (40 FR 52856, November 13, 1975).

After further consideration, the agency amended the standard by extending the 60 mph stopping distance requirement to 293 feet, as requested by Freightliner in its petition (41 FR 8783, March 1, 1976). The notice explained that the most important measures to improve heavy vehicle braking were more effective brakes to reduce the disparity between passenger cars and heavy vehicles and a provision against wheel lockup during braking to prevent the vehicle from skidding out of control. The agency reasoned that this requirement would permit the "depowering" of steering axle brakes sufficiently to improve handling characteristics. In that rulemaking, Oshkosh commented that because the problems raised in the public meeting apply to buses and tractor trailers (but not single unit trucks), a stopping distance of 277 feet would be sufficient to ensure the safe stopping of single unit trucks.

In June 1987, NHTSA issued a final rule suspending the stopping distance requirements in Standard No. 121 for buses other than school buses. (52 FR 20602, June 2, 1987.) Because school buses equipped with air brakes had already been excluded from the stopping distance requirements, these requirements are currently not applicable to any heavy vehicles.

Judicial Considerations

In January 1975, PACCAR (a truck manufacturer), the American Trucking Association (ATA), and the Truck Equipment and Body Distributors Association (TEBDA) sued the agency, challenging the stopping distance requirements in Standard No. 121 which they believed required the use of anti-lock systems. The petitioners argued that the agency failed to demonstrate a safety need for the standard and that the testing procedures were nonobjective, impracticable, and unreasonable. TEBDA objected to the standard's certification requirements.

In response to the suit, the stopping distance and "no lockup" requirements in Standard No. 121, along with certain other provisions, were invalidated by the United States Court of Appeals in *PACCAR* v. *NHTSA*, 573 F.2d 632, (9th Cir. 1978) *cert. denied* 439 U.S. 862 (1978). The court held that NHTSA was justified in promulgating a standard requiring improved air brake systems and stability mechanisms. However, after reviewing the record about reliability problems with antilock brake systems then in use, the court further held that the standard was "neither reasonable nor practicable at the time it was put into effect." Among the court's other findings were that the agency had a responsibility (1) to examine the results of its rulemakings by investigating more fully the safety of vehicles in use, (2) to assure that the new systems it requires are reliable when placed in use, and (3) to determine that its regulations do not produce a more dangerous highway environment than that which existed prior to government intervention. Based on these findings, the court stated that

> * * * those parts of the Standard requiring heavier axles and the antilock device should be suspended. The evidence indicates that this can be accomplished if we hold, as we do, that the stopping distance requirements from 60 mph are invalid * * * We hold only that more probative and convincing data evidencing the reliability and safety of vehicles that are equipped with antilock and in use must be available before the agency can enforce a standard requiring its installation.

The court also ruled on the objectivity and practicability of the testing procedures in Standard No. 121. First, the court stated that road surface skid numbers used for testing certified vehicles were "ill-chosen" where they assumed the use of a particular tire no longer in production. Second, the skid number method of testing was objective. Third, the testing procedure was not practicable because fluctuations in skid numbers on a given road surface made it impracticable for manufacturers to conduct tests that assure that their vehicles will exactly meet the objective standard when tested by NHTSA. Fourth, manufacturers are entitled to testing criteria that they can rely on with certainty. Fifth, the standard failed to specify formal and reasonably specific testing criteria about the time intervals between tests, the duration of permissible wheel lockup during tests.

and the amount of curving in testing track roadways. Sixth, the agency's suggestions of alternative methods of satisfying the Safety Act's "due care" provision were inadequate since such alternatives were not set forth in the regulations.

The court remanded the matter to NHTSA to clarify certain provisions in Standard No. 121. In response to *PACCAR*, the agency issued several notices amending the standard to be consistent with the decision. (43 FR 39390, September 5, 1978; 43 FR 48646, October 19, 1978; 43 FR 58820, December 18, 1978; 44 FR 46849, August 9, 1979). In the September 1978 notice, the agency amended the standard to specify test procedures and conditions for frictional characteristics of the test track surface, duration of time intervals between road tests, duration of permissible wheel lockup during road tests, the amount of curving in the test track, and the means for establishing the frictional resistance of the road test surface. In the October 1978 notice, the agency set forth its interpretation of the *PACCAR* holdings to guide continuing compliance with the standard. Specifically, the notice explained that the court invalidated the "no lockup" provisions in S5.3.1 and S5.3.2. as they apply to trucks and trailers, along with the related stopping distances established for 60 mph stopping tests for heavy vehicles. That notice also amended the requirements to provide for "due care certification." In the December 1978 notice, the agency responded to petitions for reconsideration commenting on certain matters in the September 1978 notice, including vehicle exclusions and road test procedures. The changes to specification of initial brake temperatures, skid number ranges, and duration of wheel lockup that were made in the September notice were withdrawn. In the August 1979 notice, the agency further clarified its interpretation of certain findings of *PACCAR*.

Brake Designs and Equipment

Designing braking systems for the many heavy vehicle configurations and loading conditions is very complex. Heavy vehicles may be operated as a single unit (i.e., a straight truck), part of a tractor trailer combination, a longer combination vehicle (e.g., an LCV which may be a double or triple combination with up to nine axles), or in the bobtail configuration (i.e., a tractor operated with a trailer). Because heavy vehicles operate under greatly varying loading situations, heavy vehicle brakes must be designed to handle vehicle loaded weights which range up to three times more than empty weights. Heavy vehicles are typically designed to achieve their best braking performance when operating in the fully loaded condition. Accordingly, a vehicle with a brake system designed to operate ideally in the fully loaded condition has a tendency to lockup prematurely (i.e., one axle will lockup before the other axles achieve maximum braking) when operating in the lightly loaded condition. Another factor affecting stopping distance is the vehicle's wheelbase. Vehicles with shorter wheelbases tend to have longer stopping distances because of greater dynamic weight transfer (to the smaller front brakes) during braking. In addition, brake force needs to be distributed proportionally among the vehicle's axles.

Manufacturers have developed several devices related to the braking of heavy vehicles, including automatic front axle limiting valves (ALVs), bobtail proportioning valves (BPVs), load-sensing proportioning valves (LSVs), and antilock braking systems (ABS).

ALVs automatically limit the amount of braking pressure applied at steering axle brakes. They are typically installed to allay the concern of some drivers about loss of steering control during hard braking, which may result from wheel lockup. However, as the test data explained below indicate, these valves can actually compromise stopping performance, especially when lightly loaded or empty vehicles operate on slippery roads because the front axle brakes are not doing their share of the braking. With the ALV installed, lockup of the drive axles occurs at a lower rate of deceleration. Thus drivers must apply the brakes lightly when stopping the vehicle under these conditions, or the drive axle brakes will lock, causing the vehicle to become unstable. As a result of the light brake application, stopping distances increase. Accordingly, the use of ALVs may be contrary to the agency's long-range goal of improving stopping performance.

BPVs automatically reduce brake application pressure to the drive axles of a truck tractor when it is operating bobtail, thereby allowing greater use of the vehicle's steering-axle braking power. By automatically apportioning more brake pressure to the steering axle, the likelihood of premature drive-axle wheel lockup and loss-of-control is reduced. As a result, stopping performance is enhanced. The agency's long-range goal is to promulgate performance requirements for shorter stopping distances. Given the potential safety problems resulting from the significantly longer stopping distances for truck tractors in the bobtail configuration, the use of BPVs would be encouraged. Bobtails demonstrate the worst stopping capability of all vehicle types, primarily because the tractors are designed to stop ideally when connected to a loaded trailer. Without the trailer, the lack of load on the tractor drive axles can cause premature wheel lockup and reduced stopping capability. For instance, an agency study found that on average, bobtail tractors take approximately 122 feet more to stop than loaded truck tractors ("NHTSA Heavy Duty Vehicle Brake Research Program Report No. 1, "Stopping Capability of Air Braked Vehicles," (DOT HS 806 738, April 1985) and Report No. 9, "Stopping Distances of 1988 Heavy Vehicles.") However, significantly shorter stops have been obtained when bobtails are equipped with BPVs.

LSVs function by mechanically sensing drive-axle suspension deflection that results from cargo load. When the load is low on the drive-axle (i.e., the vehicle is operating lightly loaded or empty), brake proportioning is changed to apportion more of the braking to the steering axle. Because of problems keeping the device calibrated and maintained properly, most U.S. manufacturers do not equip vehicles with these devices. Accordingly, the agency does not plan to require their use on U.S. vehicles.

ABS automatically controls the amount of braking pressure applied to a wheel so as to prevent wheel lock, thus increasing stability and control in emergency stops by preventing skidding, spinouts, and jackknifes. Vehicles equipped with ABS also usually have shorter stopping distances compared to the same vehicle without ABS, particularly on low mu surfaces. Given the potential safety problems resulting from unstable stops, the agency published an advance notice of proposed rulemaking that explores whether the agency should propose braking stability and control requirements that would necessitate ABS on certain vehicles. [57 FR 24212, June 8, 1992]

Heavy Vehicle Crashes

Estimates based on the 1990 General Estimates Systems (GES) indicate that between 384,000 and 440,000 police-reported crashes involved heavy vehicles. Of these, approximately 252,000 and 294,000 involved combination units or truck-tractors. In 1990, heavy vehicle crashes resulted in 5,254 fatalities according to the Fatal Accident Reporting System (FARS). In

addition, crashes involving heavy vehicles result in more expensive and severe property damage.

Because numerous factors play a role in causing crashes, a single factor can very rarely be regarded as the cause of a crash. One of the most important vehicle-related contributing factors involves the brake system's performance. Crashes in which braking was a contributory factor can be further subdivided into (1) crashes due to brake failures or defective brakes, (2) runaways on downgrades, due to maladjusted or overheated brakes, (3) crashes in which vehicles were unable to stop in time (i.e., brakes were not defective or ineffective due to heat but simply did not provide the stopping force necessary to avoid the crash), and (4) skidding, jackknifing, or loss-of-control crashes due primarily to locked wheels during braking. This notice and the other NPRM focus on crashes attributable to the vehicle's inability-to-stop-in-time. The ANPRM mentioned above focuses on ways to reduce braking-induced loss-of-control crashes, although a vehicle equipped with ABS would also usually experience improved stopping distances.

Crashes in which vehicles are unable to stop before collisions are very difficult to quantify. In these crashes, the heavy vehicle's brakes function, but do not stop the vehicle quickly enough to avoid a crash. The number of these crashes might to reduced if heavy vehicle stopping performance (i.e., controlled stopping distances) were improved. Even if crashes of this type were not totally prevented, improvements in stopping distance performance would reduce collision impact speeds, thereby reducing crash severity.

Based on NHTSA's 1990 General Estimates System (GES) which is based on data transcribed from a nationally representative sample of state police accident reports (PARs), the agency estimates that between 30,225 and 39,609 of the between 236,500 to 280,000 total non-alcohol-related combination-heavy vehicle crashes that occurred in 1990 could be classified as heavy vehicle "unable-to-stop-in-time" crashes. Most injuries and fatalities from these crashes were sustained by occupants in other-involved vehicles. The GES estimates for 1990 were 69 fatalities and between 1,780 and 3,322 injuries of heavy vehicle occupants and 810 fatalities and between 11,232 and 15,582 injuries of occupants of other-involved vehicles resulting from these crashes. The Preliminary Regulatory Evaluation (PRE) provides greater detail about how these rulemakings would reduce injuries and fatalities resulting from such crashes.

The agency emphasizes that not all of these unable-to-stop-in-time crashes are preventable. Nevertheless, as explained above, it is likely that some can be prevented and many can be reduced in severity by improvements to heavy vehicle brake systems.

Vehicle Research and Test Center Reports #1 and 9

As a part of its review of heavy vehicle braking, NHTSA has issued two reports on the stopping distance capability of several different types of heavy air braked vehicles at various loading conditions. ("NHTSA Heavy Duty Vehicle Brake Research Program Report No. 1, "Stopping Capability of Air Braked Vehicles," (DOT HS 806 738, April 1985) and Report No. 9, "Stopping Distances of 1988 Heavy Vehicles." DOT HS 807 531, February 1990) The agency also tested some vehicles equipped with ALVs, BPVs, and ABS, thus allowing comparisons about stopping distances with and without these devices. These vehicles were equipped with new tires and with new original equipment brake system components to provide consistency in test results. The tests were conducted on various vehicles (school buses, transit buses, single unit trucks, tractor trailers) at the loaded and empty conditions and with various equipment (with ABS activated and deactivated, and with and without ALVs and BPVs). The PRE contains detailed information about the test results.

Among the conclusions reached from the test data were, (1) ALVs significantly degrade straight line stopping performance, especially in the bobtail configuration (with stopping distances as much as 531 feet), (2) BPVs are effective in reducing the stopping distances of bobtail tractors (with stopping distances reduced by as much as 118 feet over the base vehicle), (3) ABS are very effective in providing short stable stops in all operating conditions, (4) ABS provided the greatest performance gain in the bobtail configuration where stable stops as short as 233 feet and 248 feet were obtained, (5) braking performance of bobtail tractors and empty single unit trucks could be improved by removing ALVs on both vehicle types and installing BPVs on bobtails, and (6) a stopping distance performance requirement for truck tractors with empty trailers would not provide any additional performance benefits that could not be achieved through specifying requirements for either the bobtail or loaded condition.

Heavy Vehicle Safety Report to Congress

In response to section 9107 of the Truck and Bus Regulatory Reform Act of 1988, the agency submitted a report to Congress entitled "Improved Brake Systems for Commercial Vehicles" (PB91–182600). This report may be examined at the agency's Technical Reference Office, room 5108, at no charge. It is available from the National Technical Information Service (NTIS), Springfield, VA 22161 for a small charge. After discussing crash data concerning heavy vehicle brake systems, the report explains factors related to braking effectiveness, stability and control during braking, and braking system compatibility. The report indicates that stopping distances and vehicle stability could be improved by not equipping heavy vehicles with ALVs and instead equipping them with BPVs, load-sensing proportioning valves, and ABS.

Agency Proposal

Stopping Distance Requirements

Based on the available information, especially the results from the VRTC studies, NHTSA has decided to propose reinstating stopping distance performance requirements for trucks, truck tractors, and buses that are equipped with air brake systems. The agency's long-term objective is to upgrade the braking efficiency of heavy vehicles while making controlled, stable stops, under all loading and road surface conditions. If adopted, such requirements would reduce the disparity in braking ability between heavy vehicles and passenger cars. As illustrated in the chart below, the agency anticipates introducing stopping distance, and control and stability requirements.

Proposed Stopping Distance Requirements

[60 mph Stops on High Coefficient of Friction Surface]

Vehicle type:	
Loaded and Unloaded Buses	280 ft.
Loaded Truck Tractors with Braked Control Trailer.	280 ft.
Loaded Truck Tractors with Unbraked Control Trailer.	355 ft.
Loaded Single-Unit Trucks	310 ft.
Empty Single-Unit Trucks & Truck Tractors (Bobtail).	335 ft.

Anticipated Lateral Stability Requirements

Lateral stability requirements for 30 mph stops on low coefficient of friction surfaces. (Considered in the ANPRM for a future proposal).

In this notice and in the companion notice published today on Standard No. 105, the agency is proposing to reinstate the stopping distance requirement for 60 mph stops on high coefficient of friction

surfaces (i.e., a non-slippery surface typical of dry concrete) for all heavy vehicles. Stopping distance requirements would become effective two years after the final rule is issued. The agency tentatively concluded that many vehicles currently comply with the proposed requirements with existing brake systems or can be brought into compliance by adding BPVs or eliminating ALVs; however, on some vehicles a more extensive redesign of the foundation brakes would be required. The agency anticipates that manufacturers could comply with these requirements without the need for ABS. The proposed stopping distance requirements for vehicles equipped with air-braked systems are consistent with the stopping distance requirements for hydraulic braked heavy vehicles proposed elsewhere in today's edition of the Federal Register.

The agency has decided to propose different stopping distance requirements for different heavy vehicle configurations. The agency tentatively concludes that one stopping distance requirement for all heavy vehicles with fully operational service brakes would be inappropriate. As explained below, a single requirement would be too stringent for bobtail tractors and unloaded single unit trucks and thus extremely costly and potentially impracticable. Conversely, such a single requirement might not be stringent enough for buses and for tractor trailers in the loaded condition, because these vehicles are capable of significantly shorter stops than can be reasonably expected of bobtails and other vehicles.

The agency is also considering the establishment of lateral stability and control requirements for 30 mph stops on surfaces with low coefficients of friction (i.e., slippery surfaces typical of wet asphalt.) Such requirements could in effect require antilock brakes on many heavy vehicles. The previously published ANPRM explains the agency's long term goals in this area.

The primary purpose for proposing to reinstate stopping distance requirements for heavy vehicles is to decrease the disparity of stopping performance between heavy vehicles and passenger cars, while assuring that the costs of any requirement are reasonable. A secondary, but still important, consideration is to have consistent requirements for similar vehicles, regardless of whether the vehicle is air-braked or hydraulically braked, provided that achieving consistency does not undermine the safety benefits of the stopping requirements. Given that test data indicate that stopping performance of heavy vehicles is similar for air-braked and hydraulically braked vehicles, the agency tentatively concludes that having the same stopping distance requirements in Standard Nos. 105 and 121 is appropriate. The agency initially adopted this policy of making the requirements in Standard No. 105 identical to Standard No. 121 where appropriate, in response to comments in the 1973 rulemaking when the standards had different stopping distance requirements. (38 FR 13017, May 18, 1973). Based on the above, the agency is proposing the same stopping distances in Standard Nos. 105 and 121. The agency welcomes comments about this issue.

The agency has decided to propose the stopping distances based on its analysis of the data in the VRTC reports. While the VRTC data are limited, the agency believes that they are representative of heavy vehicle braking performance. In ideal braking situations, the brake force distribution on a vehicle ensures that, during braking, each axle is doing a share of the total braking that is commensurate with the load on that axle. However, in actual braking, the rear axles typically exert a disproportionate amount of braking force, with the front axles doing very little braking. This situation results in longer stopping distances.

The agency is proposing an approach in which stopping distance requirements would be reinstated for those vehicle types that were found, by testing, to reasonably demonstrate the stopping capability for the requirement. The agency believes that such an approach could be reasonably and safely achieved with available technology without imposing excessive costs.

To achieve this end, the agency has decided to propose requirements for three separate classes of vehicles: "class one" would include loaded and unloaded buses and loaded truck tractors with a braked control trailer, "class two" would include loaded single-unit trucks, and "class three" would include empty truck tractors (bobtails) and empty single-unit trucks. Vehicles in class one—loaded and unloaded buses and loaded truck tractors with a braked control trailer—would have to stop within 280 feet. Loaded single-unit trucks would have to stop within 310 feet, and empty truck tractors and empty single-unit trucks would have to stop within 335 feet. This approach differs from the one taken in the rule invalidated by *PACCAR* in which all air-braked vehicles were required to comply with one stopping distance requirement. As explained in the section on control trailers, if an unbraked control trailer were required, loaded truck tractors would have to meet a 355 feet stopping distance requirement. The agency welcomes comments about its proposal to establish different stopping distance requirements for different types of vehicles.

The proposed 280 foot stopping distance for loaded and unloaded buses and loaded truck tractors with a braked control trailer is based on reinstating a stopping distance slightly below the previous requirement in Standard No. 121. The agency believes that such a requirement is appropriate given that all three of the post-121 buses, in both the unloaded and loaded conditions, and 13 of 14 post-121 truck tractors in the loaded condition in the VRTC reports Nos. 1 and 9 met this proposed requirement.

As for loaded single-unit trucks, the proposed 310 foot stopping distance appears appropriate in comparison to the typical stopping distances of these vehicles, as reported in the VRTC reports, and given the agency's expectations of future improvements in single unit truck brake performance, particularly an increase in front brake torque capability. In response to the proposed regulations and an increased awareness among heavy vehicle manufacturers and users of higher torque front brakes, the agency anticipates that such brake system upgrades would also produce a higher percentage of front axle braking which typically shortens stopping distances in the unloaded vehicle condition.

As for empty truck tractors, the proposed 335 foot stopping distance appears reasonable in light of the VRTC data, especially when such vehicles are equipped with BPVs and are not equipped with ALVs. These bobtail tractors demonstrate the poorest stopping capability of all vehicle types, because tractors are designed to stop ideally when connected to a loaded trailer. Without the trailer, the lack of load on the tractor drive axles can cause premature wheel lockup and reduced stopping capability. The poor braking performance of these vehicles provides the greatest opportunity for achieving the safety benefits through improved braking performance. These configurations account for a disproportionately large number of vehicle crashes. As the VRTC data indicate, while bobtails with ALVs stopped within 348 feet to 531 feet, the same vehicles when equipped with BPVs and no ALVs stopped within 275 feet to 359 feet. The proposed 335 foot stopping distance for these vehicles appears reasonable given the VRTC data

and the agency's expectations of future improvements in bobtail brake performance, including the use of BPVs. The agency further notes that although these stopping distance requirements would not require ABS, even greater improvements in stopping distance performance could be achieved by equipping vehicles with ABS.

As for empty single unit trucks, the proposed 335 foot stopping distance appears reasonable in light of the VRTC data. Based on these data, the agency believes that the braking characteristics of empty single unit trucks are sufficiently similar to bobtail tractors to be grouped in the same category with the same proposed stopping distance requirements. While most of the tested vehicles appear to be able to meet these requirements in their current condition, some would need to have their brake systems upgraded to produce a higher percentage of front axle braking to comply with the proposed stopping distance requirements. In addition, because empty single unit trucks equipped with ALVs have stopping distances longer than the proposed requirement, vehicles might have to be modified to eliminate these devices.

As for truck tractors operating with an empty trailer, the agency has tentatively decided that establishing requirements for them is unnecessary based on the VRTC data. These data indicated that, in most cases, empty tractor trailers equipped with ALVs required longer stopping distances than the baseline vehicles, but shorter distances than the trailerless bobtail tractors equipped with ALVs. The stopping distance for this configuration averaged 285 feet (with a range from 263 feet to 319 feet.) Accordingly, the agency believes that establishing such requirements would provide no additional benefits that could not be achieved with the proposed requirements in the loaded and bobtail conditions. In addition, there have never been requirements for tractor trailer combinations operating in the empty condition.

As for the testing conditions, the agency has decided to propose that the straight line stopping distance test must be conducted within a 12 foot wide lane without locking more than one wheel per axle or two wheels per tandem at speeds greater than 20 mph. Unlimited lockup would be allowed below 20 mph. The agency has proposed the following definition of permissible wheel lockup for testing purposes: "Permissible wheel lockup" would mean 100 percent slip of one or more wheels for a duration of one second or less. The agency requests comments about the proposed definition. NHTSA believes that this limited lockup provision combined with permissible wheel lockup ensures a safe and reasonably repeatable test condition while providing an indication of the vehicle braking performance up to its stability limit. Limitations on wheel lockup are discussed at length on pages 8 and 9 of "Stopping Capability of Air Braked Vehicles" (DOT HS 806 738, April 1985).

The agency is aware that braking performance tests could be conducted in other ways, including allowing unrestricted wheel lockup of test vehicles. The agency has compiled limited test data indicating that allowing unrestricted lockup could result in shorter stopping distances, perhaps as low as 300 feet for all vehicle types, including bobtails and unloaded single unit trucks. However, permitting unrestricted lockup would have corresponding problems. With unrestricted wheel lockup, the test becomes more sensitive to factors such as driver skill, crown, cross-slope, or other irregularities of the roadway, and wind speed and direction. These sensitivities would make the tests less repeatable, and therefore less practicable. In addition, the limited lockup provision offers some assurance of vehicle stability and driver safety during the tests, in the absence of a more definitive stability requirement. For these reasons, the agency has decided not to propose this testing approach. Nevertheless, the agency emphasizes that even though this notice is not proposing a test procedure in which unrestricted lockup is allowed, the agency could in the final rule conceivable adopt such a testing approach with corresponding stopping requirements as short as 300 feet, if the docket comments and further agency research indicated that this approach was superior to the proposal to allow only limited lockup and the inherent problems mentioned above could be solved. For purposes of developing a possible final rule based on this NPRM, the agency requests comments about the most appropriate way to test vehicles in terms of wheel lockup and the appropriate stopping distance requirements for each test procedure.

NHTSA welcomes comments about all aspects of this proposal, including the need for stopping distance requirements for heavy vehicles, test data about the stopping ability of heavy vehicles, the reasonableness of the various proposed distances and testing procedures, the three proposed classes of vehicles, and as discussed in the previous paragraph, the testing methods.

Even though the proposed stopping distance requirements do not appear to affect significantly most current vehicles, the agency believes that reinstating stopping distance requirements is a necessary step in its overall plan to improve heavy vehicle safety. As discussed in the ANPRM, the agency may also propose requirements concerning stopping on more slippery surfaces to improve vehicle braking performance. The agency further believes that such stopping distance requirements are desirable to establish minimum requirements to improve the performance of the poorest performing heavy vehicles, thus increasing the level of compatability between heavy vehicles and lighter vehicles. The proposed requirements would also discourage the use of ALVs that tend to reduce the stopping performance of many heavy vehicles.

Threshold Pressure Requirement

NHTSA notes that while this proposal about threshold pressure was being formulated, Congress passed the Motor Carrier Act of 1991 which directs the Secretary of Transportation to initiate rulemaking concerning methods for improving braking performance of new commercial motor vehicles [i.e., those vehicles with a gross vehicle weight rating of 26,001 or more pounds] for, among other things, the means of improving brake compatibility. (section 4012).

Brake force compatibility between tractor and trailer(s) affects a combination vehicle's availability to achieve stopping distances that are close to ideal for a given condition. Nevertheless, many tractor and trailer brake systems are not compatible, primarily because they are manufactured separately without any design guidelines in the heavy vehicle industry or Federal requirements about brake compatibility.

The concept of "compatibility" refers to the ability of the brakes of a tractor to work together with those on a trailer(s) when the units are mated to create a combination vehicle. If a combination unit is compatible, the tractor and trailer(s) brakes work together, resulting in a quick, controlled stop. If a combination unit is incompatible, brakes on the tractor may apply at an application pressure lower than the brakes on the trailer, or vice versa. Along with decreasing brake effectiveness, brake system incompatibility compromises vehicle stability during braking and may cause uneven brake wear problems. These problems include excessive brake lining and drum wear, brake drum cracking,

and the need to adjust brakes more frequently on the "overbraked" unit in the combination.

Compatibility is primarily a function of brake force distribution between the axles on the combination. One measure of compatibility is the threshold pressure differential between tractor and trailer. The threshold pressure, which is primarily determined by pneumatic valve characteristics, is the brake application pressure at which the brakes actually begin to generate braking torque. Threshold pressures are relatively easy to measure and are relatively easy to control through the proper selection of pneumatic valves in air brake systems. These valves take finite pressure (i.e., "crack pressure") to open due to internal friction and return spring resistance to the valve.

There are currently no industry design guidelines or Federal standards for tractor-trailer threshold pressure. Nevertheless, in support of the efforts by the Society of Automotive Engineers (SAE) Brake Systems Subcommittee to develop an SAE recommended practice for compatibility performance, the VRTC has collected data on threshold pressure. That study found that the average threshold pressure for 15 truck tractors was 6.1 psi and the average threshold pressure for 27 trailers/dollies was 4.9 psi. The difference of threshold pressure between the drive axles and trailer axles for 15 combination vehicles ranged from as little as zero to as high as 4.9 psi. The generally high front axle brake threshold pressures indicated that the front axles generally do less than their fair share of the braking in low pressure applications. This situation places more of the braking on the tractor drive axles and trailer axles causing them possibly to overheat more and wear out faster. (Flick, M., and Radlinski, R., "Tractor and Trailer Brake System Compatibility," SAE Technical Paper Series 861942, November 1986.)

The agency notes that the industry has developed a recommended practice (SAE J1854) which established 6 psi as an appropriate threshold pressure for tractor trailer combination vehicles. Despite lack of widespread adherence to the recommended practice by industry, it is generally agreed that compatibility would be improved if the threshold pressure for truck tractors and trailers were around 6 psi range and if the pressure differential between tractors and trailers were less than 4.0 psi. A differential of 4.0 psi represents the differential at which braking performance of a combination vehicle is degraded considerably due to a large brake temperature difference between the tractor and trailer brakes.

Based on the above considerations, the agency has decided to propose a requirement establishing threshold pressure levels for both tractors and trailers. Accordingly, the threshold pressures for tractors and trailers would be set at 6.0 ± 0.5 psi. The agency believes that such a requirement would improve brake performance by better ensuring the compatibility of tractors and trailers. Specifically, the proposal would improve the brake balance on combination vehicles and reduce the potential for vehicle instability when lightly loaded. The agency notes that the proposal about threshold pressures is not applicable to single unit trucks and buses since they do not have the problem of pneumatic imbalance experienced by combination units. The agency welcomes comments about the needs for establishing threshold pressures and whether the proposed threshold pressure and its range are appropriate and feasible.

Road Test Surface

In past rulemakings about braking requirements, the agency defined road test surfaces by specifying skid numbers. A skid number is the frictional resistance of a pavement measured in accordance with the American Society for Testing and Materials (ASTM) Method E–274–70. However, given the fluctuations of skid numbers on a given surface, the *PACCAR* ruling invalidated certain aspects of Standard No. 121's reliance on this measure based on its potential impracticability.

As a result of *PACCAR*, the agency has considered ways to better state the adhesion of test surfaces. In the rulemaking proposing Standard No. 135, *Passenger Car Brake Systems*, several commenters advocated specifying the "peak coefficient of friction" (PFC) as an alternative measure of a test surface's adhesion. The agency tentatively concludes that PFC is more relevant for the stopping distance tests required by the proposed standard because, unlike a skid number, the maximum attainable deceleration in a non-locked wheel stop is directly related to PFC.

The agency also conducted "Round Robin" testing to understand further how fluctuations of PFC affected the stopping performance of heavy vehicles. Among the observations drawn from this data for dry, high coefficient of friction surfaces were that:

(1) The six test surfaces each had similar PFCs, with the largest variation from the average being 3 percent,

(2) PFC measurements made a week apart indicated only negligible variations,

(3) Variation of the average stopping distances for the six different surfaces was small, with the deviation from the average being only 5 feet, and

(4) Variability in average stopping performance is more likely due to variation in the performance of the vehicle than to variability of the surfaces.

Based on the above, NHTSA is proposing that the primary 60 mph stopping distance tests be performed on a test surface with a PFC of 0.9, which is typical of dry concrete. In the June 1992 ANPRM, the agency is considering whether to propose lateral stability requirements on test surfaces with a low PFC to represent stops on wet or slippery pavement.

The agency has considered whether the proposed test surface specification raises any practicability or objectivity concerns in light of *PACCAR*. *PACCAR*'s first concern about road surface skid number being based on an out-of-production tire is not relevant to the proposal here, which specifies a currently produced tire. The proposal complies with *PACCAR*'s second concern about the testing method's objectivity because the peak coefficient of friction is an objective measure.

The proposal specifying test surfaces in terms of PFC rather than skid numbers complies with *PACCAR*'s third concern about practicability problems caused by skid number fluctuations. Because surfaces measured by PFC may experience some fluctuation, the agency considered whether the fluctuation was significant enough to invalidate the proposal. In an earlier rulemaking about Standard No. 208, *Occupant Crash Protection*, the agency explained that because some variability in test procedures is inherent, the agency need only be concerned about preventing "unreasonable" or "excessive" variability to avoid manufacturers from "overdesigning" vehicles to exceed the minimum levels of protection specified by the Federal safety standards (49 FR 20465, May 14, 1984; 49 FR 28962, July 17, 1984.) The above mentioned data about high coefficient of friction test surfaces indicate that the variability in the test surfaces is reasonable because such test surfaces do not present significant fluctuations. Therefore, specifying a test surface with a high PFC would appear to be reasonable and would not be a major source of variability in the stopping distance tests. Notwithstanding this tentative determination, commenters are asked to specify what they believe to be a reasonable range of variability of the test surface, within the meaning of *PACCAR*.

The proposed requirements comply with *PACCAR*'s fourth consideration that manufacturers are entitled to testing criteria that they can rely on with certainty. The proposed requirements also comply with *PACCAR*'s other consideration that all ways to comply with the requirement are set forth in the regulation.

In evaluating the proposal's practicability, NHTSA has also considered possible difficulties with respect to building and maintaining test surfaces with a PFC of 0.9, and whether stopping distances vary when the same vehicle is tested on different test tracks with a PFC of 0.9. Those interested in building and maintaining a test surface should refer to NHTSA's "Manual for the Construction and Maintenance of Skid Surfaces," (DOT HS 800 814). After reviewing the matter, NHTSA does not believe that the proposed test surface specification raises any such concerns.

As explained above, recent testing related to research about heavy vehicle braking by the agency and others on several test tracks indicates that the proposed test surface specification does not raise practicability or objectivity concerns. Specifically, the expected minor variability of a high coefficient of friction surface appears to have a small impact on the stopping distance performance of vehicles tested to comply with the proposed requirements. The test data are being placed in the docket for this notice. The agency specifically requests comments on the proposed test surface specification.

Control Trailers

Section S6 of Standard No. 121 sets forth the test conditions under which the agency conducts its compliance tests for vehicles equipped with air-braked systems. Section S6.1.10 specifies that a truck-tractor is tested at its GVWR by coupling it to a flatbed semi-trailer, known as the control trailer. Under the current requirements, the control trailer is equipped with service brakes (hereafter referred to as a "braked control trailer") capable of stopping the combination without assistance from the tractor brakes within a certain distance, pursuant to a mathematical formula that considers the vehicle's speed, the weight on all the combination's axles and the weight on the trailer's axles, and a constant factor. For instance, at 60 mph, the weight ratio is multiplied by the constant of 245. The purpose of this test condition is to simulate the stopping capability of tractor trailer combinations.

Testing conducted by the VRTC indicates that the current requirement for a braked control trailer is not representative of the stopping performance of trailers being produced today. Specifically, the braking torque levels required on control trailers appear to exceed the torque levels found with some currently produced trailers (i.e., the test control trailers provide more of the braking in a combination vehicle than real-world combinations.) The VRTC's test results on control trailers are contained in the agency's Heavy Vehicle Brake Report #9 which has been submitted to the docket.

As a result of this situation, NHTSA is considering two alternative approaches to improve the test conditions associated with control trailers. Under the first alternative which involves a braked control trailer, the agency is proposing to revise the factor in S6.1.10.6 for 60 mph tests from 245 to 290 to reduce the braking torque levels required on the control trailer. This would result in a lesser potential for premature wheel lockup on the control trailer. Under the second alternative which involves an unbraked control trailer, the agency is proposing to replace the current braked control trailer with an unbraked control trailer. After reviewing comments and test data, the agency will decide which approach to adopt in the final rule.

The first alternative, which would rely on a braked control trailer, is similar to the current test condition. Among the advantages of having a braked control trailer are that it better simulates the braking capability of on-the-road tractor trailers, provides a realistic real-world test for axle loading during braking of the tractor and trailer, provides easily understood and readily comparable stopping distance requirements for a loaded truck tractor, and allows the true benefits of a stopping distance requirement to be determined by specifying real-world stopping distances.

Nevertheless, there are some disadvantages with this approach. These include minor variability in control trailer performance stemming from brake lining variability and resulting in variable test results and inconsistent brake torque levels. Notwithstanding this variability, the agency tentatively believes the requirement would be objective and practicable.

NHTSA notes that with a braked control trailer, the potential for wheel lockup may be alleviated by equipping the control trailer with an ABS. The agency requests comments about whether ABS on the control trailer should be required. Because ABS performance for the control trailer may have to be specified to ensure uniform results when testing truck tractors, the agency proposes a revision to S6.1.10 to require ABS on the control trailer. The agency also invites comments about how ABS should be defined.

The second alternative, which would rely on an unbraked control trailer, differs from the current test condition. In addition, if this approach were adopted, the proposed stopping distance requirement for a loaded truck tractor would be revised to 355 feet to accommodate testing with the unbraked control trailer. Such a modification would be necessary because stopping distances with an unbraked trailer are approximately 20 to 30 percent longer than with a fully braked control trailer. The major advantage of the second approach is that compliance testing by manufacturers would be easier because it would be less costly and less time consuming to use an unbraked control trailer. This approach eliminates repeatability problems associated with the braked control trailer. This approach would also eliminate the need to specify the control trailer's foundation brakes and antilock system.

The agency is aware of certain potential disadvantages with testing with an unbraked control trailer. First, there is only a limited amount of data on testing stopping distances with an unbraked control trailer. Second, the dynamic axle loading of truck tractors during braking with an unbraked control trailer differs from the axle loading with a braked control trailer and does not precisely represent an on-the-road combination with normal operating brakes. Third, the unbraked trailer weight of 4500 pounds imposes an extra load on the truck tractor's brakes, thus causing the rear axles to do more braking than normal. For these reasons, the stopping distances with an unbraked control trailer would be increased to 355 feet. A stopping distance of this length, although technically defensible, may be difficult to explain to the public to who this topping distance will appear significantly longer than the stopping distance requirements invalidated by *PACCAR*.

At this stage of the rulemaking, the agency believes that the requirements about the control trailer need to be modified. However, the agency is not certain which alternative would provide the better approach. Accordingly, the agency welcomes comments and test data addressing whether the control trailer should be braked or unbraked.

Initial Brake Temperature

In invalidating Standard No. 121, of the *PACCAR*'s criticisms was that the time interval between tests was not

specified. The time interval between tests may affect brake temperature and thus brake lining performance. In response, the agency initially specified that tests would be separated by the time needed to reach any initial brake temperature in the range of 150° F and 200° F. (43 FR 39390, September 5, 1978). However, in response to petitions for reconsideration, the agency revoked this provision which commenters believed was inappropriate. (43 FR 58820, December 18, 1978).

Based on additional study by the VRTC, the agency has decided to propose a time interval based on higher initial brake temperatures. ("Heavy Duty Vehicle Brake Research Program—Report No. 1). Specifically, the average brake lining temperature of the hottest axle would have to be between 250° and 300° F before a stopping test could be initiated. The agency believes that this provision would allow tests on heavy vehicles to be conducted with a reasonable time between measurements at temperatures representative of in-service conditions. The agency has tentatively decided not to specify a time period between tests because such a requirement would be subject to an external variable, the ambient temperature. In addition, such an approach would result in invalidating entire test sequences if interruptions occurred, because a specified time requirement would prohibit interruptions in a test series. The agency invites comments about the appropriateness of specifying the initial brake temperature.

Costs

As explained in detail in the PRE, the costs associated with the rulemaking involve additional testing costs and hardware/equipment costs. The agency estimates the minimum initial testing costs associated with reinstating stopping distance requirements for all heavy air-braked vehicles would be about $6 million. Assuming the industry continues to produce about 187,000 heavy Class 5–8 air-braked vehicles per year (which are the largest heavy vehicles and tractor trailers), the testing cost per vehicle would be about $32.

The hardware and equipment costs of meeting the proposed stopping distance requirements for air braked heavy vehicles are based on the anticipated improvements to heavy vehicles. The agency notes that most changes made to meet these requirements would affect vehicles operating in the bobtail and lightly loaded configurations. Among the possible improvements are equipping vehicles with BPVs, removing ALVs, and using more effective front brakes. For purposes of calculating the overall industry-wide cost of installing BPVs on most new manufactured tractors, the agency estimates that 88,000 tractors would need to be equipped with these devices at an increase in cost of $10 per tractor. For purposes of calculating an industry cost savings by elimination of ALVs from most new manufactured vehicles, the agency estimates that approximately 20,000 currently produced tractors are still being equipped with ALVs. Replacing an ALV with a standard quick release valve would save about $13 per vehicle. Therefore, the total cost of installing BPVs and eliminating ALVs on new tractors would have a net cost of approximately $620,000. [(88,000×$10—(20,000×$13).]

The improvements in braking performance achieved by substituting air chambers, slack adjusters and brake linings are estimated to be necessary on about 104,000 air brake vehicles, including both truck tractors and single-unit trucks. The average cost per vehicle of these changes is estimated to be $50, resulting in a total cost of $5.2 million. As mentioned earlier, a small number of vehicles, estimated to be 3,000, would require extensive brake system improvements. The agency estimates that the cost of these improvements would be less than $700 per vehicle, resulting in an estimated cost of $2.1 million. The total cost estimate for vehicle modifications is $7.92 million, which includes $620,000 net cost associated with the elimination of ALVs and the incorporation of BPVs, $5.2 million associated with minor improvements of front brake capability on most of the vehicles that require changes, and $2.1 million associated with the major improvements in brake performance needed for the poorest performing vehicles.

The total estimated cost impact of this proposal is $13.92 million ($6.0 million in compliance test costs plus $7.92 million in vehicle modification costs), which for an estimated annual production of 187,000 air braked equipped vehicles, is an average of less than $75 per vehicle.

The agency welcomes comments about the anticipated cost of this proposal. In particular, the agency invites comments about the number of vehicles affected by the proposal and the unit cost of equipment needed to comply with the proposed requirements.

Leadtime

NHTSA believes that the major manufacturers have the facilities necessary to test, evaluate, and if necessary, upgrade their brake systems as necessary to meet the proposed stopping distance requirements within two years. As previously stated, the agency further believes that some vehicles can already meet the proposed stopping distance requirements without being upgraded and that those vehicles requiring upgraded designs can do so by selecting a more effective combination of readily available on-the-shelf brake components. Accordingly, the agency believes that two years should provide an adequate amount of leadtime for all vehicle manufacturers to comply with the proposed requirements. The agency requests comments on the adequacy of the leadtime in general and specifically about any types of vehicles or brake systems which would require more extensive redesign.

Section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days or later than one year from the date the order is issued unless "good cause" is shown that an earlier or later effective date is in the public interest. As mentioned above, the agency has decided to propose the stopping distance requirements by having the requirements effective two years after the issuance of the final rule. The agency believes such an approach for reestablishing stopping distance requirements would allow manufacturers time to evaluate and, if necessary, redesign their braking systems. Accordingly, NHTSA believes that there is "good cause" to propose leadtime of greater than one year for these requirements.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A PRE setting forth the agency's detailed analysis of the benefits and costs of this proposal (along with the other proposal issued today) has been prepared and been placed in the docket. This rulemaking is based on the PRE and all additional data available to the agency. The agency estimates that the proposed stopping distance requirements for Standard No. 121 would result in approximately 28 lives saved and between 776 and 916 injuries prevented. As mentioned above, the agency estimates that the costs attributable to these requirements would be approximately $13.92 million ($6 million for compliance testing and $7.92 million for net equipment costs.)

Based on its analysis, the agency concludes that the proposed requirements would improve safety by ensuring that all heavy vehicles are capable of stopping within a specified distance. The agency believes that implementing the stopping distance requirements for heavy vehicles would not result in significant costs since most of these vehicles currently would comply with the proposed requirements. For those vehicles that do not currently comply with the proposed requirements, the agency believes that they could be upgraded with currently produced braking components. Since these components are not significantly more expensive than those used on poorer performing brake systems, the net cost of substituting these components would not be significant.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. As mentioned above, most heavy vehicles would comply with the proposed requirements without the need for significant changes. In addition, the agency is not aware of any manufacturer of heavy vehicles or air-brake systems that would be considered a small entity. The added cost of a BPV on a tractor is small in comparison to the overall cost of a brake system and very small in comparison to the overall price of a tractor. Therefore, these changes would not significantly affect purchase decisions. The industry test cost per vehicle to assure compliance with the proposal would be very small in comparison to the vehicle's overall price. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles would not be significantly affected by the proposed requirement. Accordingly, no regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

National Environmental Policy Act

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment. No changes in existing production or disposal processes would result, except that there would be a reduction resulting from the removal of the ALV. There would be an increase of a few pounds per tractor with the installation of a BPV on tractors, but such a small weight increase should not have any significant effect on fuel consumption. Nor should production and disposal processes have a significant adverse affect on the environment.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Standard No. 121, *Air Brake Systems,* in title 49 of the Code of Federal Regulations at part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. In § 571.121, S3 would be amended by deleting the last sentence, which states "Notwithstanding any language to the contrary, sections S5.3.1, S5.3.1.1, S5.3.2, S5.3.2.1, S5.3.2.2, S5.7.1, S5.7.3(a) and S5.7.3(b) of this standard are not applicable to trucks and trailers, and section S5.3.1 of this standard is not applicable to buses."

3. In § 571.121, S4 would be amended by adding the following definitions to be placed in the proper alphabetical location:

* * * * *

Limited lockup means a lockup of not more than one wheel per axle or two wheels per tandem."

* * * * *

Peak Friction Coefficient or *PFC* means the ratio of the maximum value of braking test wheel longitudinal force to the simultaneous vertical force occurring prior to wheel lockup, as the braking torque is progressively increased, when measured in accordance with ASTM E1337–90 test procedure and ASTM E1136 tire at 40 mph, without water delivery.

Permissible Wheel Lockup means a lockup of one or more wheels at 100 percent slip for one second or less.

* * * * *

4. In § 571.121, S4 would be amended by deleting the definition for *skid number.*

5. In § 571.121, S5.1.8 would be revised to read as follows:

S5.1.8 *Brake distribution.* Each vehicle shall be equipped with a service brake system acting on all wheels. Each tractor, when in a tractor trailer combination, shall have a threshold pressure of 6.0 ± 0.5 psi when tested according to the Society of Automotive Engineers (SAE) J1505, *Brake Force Distribution Test Code—Commercial Vehicles* (May 1985), *1990 SAE Handbook*, Society of Automotive Engineers, Inc. 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 the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies may be inspected at Docket Room, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 or at the Office of the Federal Register, 800 N. Capitol St., Suite 700, NW., Washington, DC 20002.

6. In § 571.121, S5.2.2 would be revised to read as follows:

S5.2.2 *Brake distribution.* Each trailer shall be equipped with a service brake system acting on all wheels, and having a threshold pressure of 6.0 ± 0.5 psi, when tested in accordance with the Society of Automotive Engineers (SAE) J1505, *Brake Force Distribution Test Code—Commercial Vehicles* (May 1985).

7. In § 571.121, S5.3 would be revised to read as follows:

S5.3 *Service brakes—road tests.* The service brake system on each truck and bus shall, under the conditions of S6.1, meet the requirements of S5.3.1, S5.3.3, and S5.3.4 when tested without adjustments other than those specified in this standard. The service brake system on each trailer shall, under the conditions of S6.1, meet the requirements of S5.3.3 and S5.3.4, when tested without adjustments other than those specified in this standard. However, a heavy hauler trailer and the truck and trailer portions of an auto transporter need not meet the requirements of S5.3.

8. In § 571.121, S5.3.1 and Table 1 would be revised in one of two ways set forth below:

Alternative 1. S5.3.1 and Table 1 would be revised to read as follows:

S5.3.1 *Stopping distance—trucks and buses.* When stopped six times for each combination of weight, speed, and road conditions specified in S5.3.1.1, in the sequence specified in Table I, the vehicle shall stop at least once in not more than the distance specified in Table II, measured from the point at which movement of the service brake control begins, without any part of the vehicle leaving the roadway and with limited lockup permitted at speeds above 20 mph and with permissible wheel lockup allowed at any speed, except for lockup of wheels on nonsteerable axles other than the two rearmost nonliftable, nonsteerable axles on a vehicle with more than two nonsteerable axles.

Table I—STOPPING SEQUENCE

1. Burnish
2. Control trailer service brake stops at 60 mph for truck-tractors tested with a control trailer in accordance with S6.1.10.
3. Control trailer emergency brake stops at 60 mph for truck-tractors tested with a control trailer in accordance with S6.1.10.7.
4. Stops with vehicle at gross vehicle weight rating:
   (a) 60 mph service brake stops on a peak friction coefficient surface of 0.9 with loaded control trailer or single unit vehicle.
   (b) 30 mph service brake stops on a peak friction coefficient surface of 0.5 with loaded control trailer or single unit vehicle. (This provision (b) is being considered in context with the ANPRM. While it is included here to explain the complete test sequence, it would only be adopted as part of a separate rulemaking.)
   (c) 60 mph emergency brake stops on a peak friction coefficient surface of 0.9 with loaded control trailer or single unit vehicle.
5. Parking brake test with vehicle loaded to GVWR.
6. Stops with vehicle at unloaded weight plus 500 lbs.
   (a) 60 mph service brake stops on a peak friction coefficient surface of 0.9 with truck tractor or single unit vehicle.
   (b) 30 mph service brake stops on a peak friction coefficient surface of 0.5 with truck tractor or single unit vehicle. (This provision (b) is being considered in context with the ANPRM. While it is included here to explain the complete test sequence, it would only be adopted as part of a separate rulemaking.)
   (c) 60 mph emergency brake stops on a peak friction coefficient surface of 0.9 with truck tractor or single unit vehicle.
7. Parking brake test with vehicle at unloaded weight plus 500 lbs.

Alternative 2: S5.3.1 and Table 1 would be revised to read as follows:

S5.3.1 *Stopping distance—trucks and buses.* When stopped six times for each combination of weight, speed, and road conditions specified in S5.3.1.1, in the sequence specified in Table I, the vehicle shall stop at least once in not more than the distance specified in Table II, measured from the point at which movement of the service brake control begins, without any part of the vehicle leaving the roadway and with limited lockup permitted at speeds above 20 mph and with permissible wheel lockup allowed at any speed, except for lockup of wheels on nonsteerable axles other than the two rearmost nonliftable, nonsteerable axles on a vehicle with more than two nonsteerable axles.

Table I—Stopping Sequence

1. Burnish.
2. Stops with vehicle at gross vehicle weight rating:
   (a) 60 mph service brake stops on a peak friction coefficient surface of 0.9 with loaded unbraked control trailer or single unit vehicle.
   (b) 60 mph emergency brake stops on a peak friction coefficient surface of 0.9 with loaded unbraked control trailer or single unit vehicle.
3. Parking brake test with vehicle loaded to GVWR.
4. Stops with vehicle at unloaded wright plus 500 pounds.
   (a) 60 mph service brake stops on a peak friction coefficient surface of 0.9 with truck tractor or single unit vehicle.
   (b) 60 mph emergency brake stops on a peak friction coefficient surface of 0.9 with truck tractor or single unit vehicle.
5. Parking brake test with vehicle at unloaded to weight plus 500 pounds.

9. In § 571.121, Table II would be revised to appear as follows:

Alternative 1.—With Braked Control Trailer

TABLE II.—STOPPING DISTANCE IN FEET

Vehicle speed in miles per hour	Service brake			Emergency brake	
	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9
	(1)	(2)	(2)	(4)	(5)
20	32	35	38	83	85
25	49	54	59	123	131
30	70	78	84	170	186
35	96	106	114	225	250
40	125	138	149	288	325
45	158	175	189	358	409
50	195	216	233	435	504
55	236	261	281	520	608
60	280	310	335	613	720

NOTE: (1) Loaded truck tractors; loaded and unloaded buses; (2) Loaded single unit trucks; (3) Unloaded truck tractors and single unit trucks; (4) All vehicles except unloaded truck tractors; (5) Unloaded truck tractors.

Alternative 2.—With Unbraked Control Trailer

TABLE II.—STOPPING DISTANCE IN FEET

Vehicle speed in miles per hours	Service brake				Emergency brake	
	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9
	(1)	(2)	(3)	(4)	(5)	(6)
20	32	35	38	40	83	85
25	49	54	59	62	123	131
30	70	78	84	89	170	186
35	96	106	114	121	225	250
40	125	138	149	158	288	325
45	158	175	189	200	358	409
50	195	216	233	247	435	504
55	236	261	281	299	520	608
60	280	310	335	355	613	720

NOTE: (1) Loaded and unloaded buses; (2) Loaded single unit trucks; (3) Unloaded truck tractors and single unit trucks; (4) Loaded truck tractors tested with an unbraked control trailer; (5) All vehicles except unloaded truck tractors; (6) Unloaded truck tractors.

10. In § 571.121, S5.3.1.1 would be revised to read as follows:

S5.3.1.1 Stop the vehicle from 60 mph on a surface with a peak friction coefficient of 0.9 with vehicle loaded as follows: (a) loaded to its GVWR, (b) in the Bobtail configuration (truck-tractors only) plus 500 pounds, and (c) at its unloaded vehicle weight plus 500 pounds (including driver and instrumentation). If the speed attainable in two miles is less than 60 mph, the vehicle shall stop from a speed in Table II that is 4 to 8 mph less than the speed attainable in 2 miles.

11. In § 571.121, S5.3.2, S5.3.2.1, and S5.3.2.2 would be removed and reserved.

12. In § 571.121, S5.7.1. would be revised to read as follows:

S5.7.1 *Emergency brake system performance.* When stopped six times for each combination of weight and speed specified in S5.3.1.1 on a road surface having a PFC of 0.9, with a single failure in the service brake system of a part designed to contain compressed air or brake fluid (except failure of a common valve, manifold, brake fluid housing, or brake chamber housing), the vehicle shall stop at least once in not more than the distance specified in Column 4 of Table II, measured from the point at which movement of the service brake control begins, without any part of the vehicle leaving the roadway, except that a truck-tractor tested at its unloaded vehicle weight plus 500 pounds shall stop at least once in not more than the distance specified in Column 5 of Table II.

13. In § 571.121, S6.1.7 would be revised to read as follows:

S6.1.7 Unless otherwise specified, stopping tests are conducted on a 12-foot-wide level, straight roadway having a peak friction coefficient of 0.9. The vehicle is aligned in the center of the roadway at the beginning of a stop. Peak friction coefficient is measured using an American Society for Testing and Materials (ASTM) E 1136 standard reference test tire, in accordance with ASTM Method E1337–90, at a speed of 40 mph, without water delivery.

14. S6.1.10 through S6.1.10.6 would be amended in one of the two ways set forth below:

Alternative 1. S6.1.10.1, S6.1.10.2, and S6.1.10.6 would be revised to read as follows:

S6.1.10.1 The control trailer shall meet all other FMVSS No. 121 requirements applicable to trailers. The control trailer shall also be equipped with a system that automatically controls slip at the trailer's wheels. The system shall consist of wheel speed sensors located at each wheel and modulator control valves located at each axle. These components shall be connected to an electronic control unit which independently modulates the pressure to the brakes on each axle on the basis of the wheel speed signals in such a way as to maximize brake force on the axle.

* * * * *

S6.1.10.2 The center of gravity height of the ballast on the loaded

control trailer shall be less than 24 inches above the top of the tractor's fifth wheel.

* * * * *

S6.1.10.6 *Test equipment specification.* The control trailer's service brakes are capable of stopping the combination from the maximum speed at which the tractor is tested, under the conditions of S6.1, without assistance from the tractor brakes, in the distance found by multiplying the value 79, 105, 135, 168, 205, 246, or 290 (corresponding to a speed of 30, 35, 40, 45, 50, or 60 mph, as appropriate for the truck tractor tested) by the ratio:

Weight on all axles of combination/weight on trailer axles, with the tractor's fifth wheel adjusted as specified in S6.1.10.5, the trailer service reservoirs pressurized to 100 lb/in^2, and the trailer loaded so that its axle is at gross axle weight rating and its kingpin is at empty vehicle weight. The stopping distance is measured from the point at which movement of the valve controlling the trailer brakes begins, with permissible wheel lockup allowed at any speed. The service brake chambers on the trailer reach 60 lb/in^2 in not less than 0.20 second and not more than 0.30 second, measured from the instant at which movement of the valve controlling the trailer brakes begins.

Alternative 2. S6.1.10 through S6.1.10.4 would be revised to read as follows:

S6.1.10 In a test other than a static parking test, a truck tractor is tested at its gross vehicle weight rating by coupling it to an unbraked flatbed semi-trailer (hereafter, control trailer) as specified in S6.1.10.1 to S6.1.10.4.

S6.1.10.1 The control trailer conforms to the standard.

S6.1.10.2 The center of gravity height of the ballast on the loaded control trailer shall be less than 24 inches above the top of the tractor's fifth wheel.

S6.1.10.3 The control trailer has a single axle with a gross axle weight rating of 18,000 pounds and a length, measured from the transverse centerline of the axle to the centerline of the kingpin, of 258±6 in.

S6.1.10.4 The control trailer is loaded so that its axle is loaded at 4,500 pounds and the tractor is loaded to its gross vehicle weight rating, loaded above the kingpin only, with the tractor's fifth wheel adjusted so that the load on each axle measured at the tire-ground interface is most nearly proportional to the axles' respective gross axle weight ratings.

* * * * *

15. In § 571.121, S6.1.15 would be added to read as follows:

S6.1.15 unless otherwise specified, the initial brake temperature is between 250 °F and 300 °F.

Issued on: February 12, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–3942 Filed 2–22–93; 8:45 am]

BILLING CODE 4910–59M

Notices

Federal Register
Vol. 58, No. 34
Tuesday, February 23, 1993

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

Forest Service

Exemption From Appeal, Franks Timber Salvage Project, Payette National Forest, Idaho

AGENCY: Forest Serivce, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest and reforestation activities, to recover and rehabilitate natural resources from recent wildfire, on the Franks Timber Salvage project, Council Ranger District, Payette National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective on publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Tracy Beck, Environmental Coordinator, Council Ranger District, Payette National Forest, P.O. Box 567, Council ID 83612, telephone: 208–253–4215.

SUPPLEMENTARY INFORMATION: Several years of drought in southwest Idaho have reduced soil moisture, weakened conifer trees, and increased the fire danger. In August of 1992, a lightning-ignited fire burned 17,500 acres of National Forest between Hells Canyon and the community of Cuprum, about 26 miles northwest of the town of Council in southwest Idaho.

As part of the effort to recover and rehabilitate natural resources damaged by the wildfire, Council Ranger District personnel have developed a proposal to harvest burned timber and reforest damaged acres. The Forest Service has completed the Franks Timber Salvage Environmental Assessment (EA), which identifies issues, develops alternatives, and analyzes the effects of implementing timber salvage and other recovery activities on a portion of the burned area.

The analysis area for the Franks Timber Salvage EA is located 26 miles northwest of Council, Idaho. The Forest would salvage harvest burned trees throughout the 840-acre project area and recover approximately 3.54 million board feet (MMBF) of timber. The project would harvest only dead and dying trees using helicopter, tractor, and skyline logging systems. Cutting areas would average 13 acres in size and not exceed 124 acres. Regional Forester approval has been given to the Payette National Forest to exceed the Forest Plan cutting unit size limit due to the catastrophic condition of the timber stands.

Cutover areas greater than five acres would be replanted, and smaller areas may be replanted depending on accessibility. Approximately 328 acres damaged by fire would be replanted with conifer seedlings. There is no road construction proposed for the salvage operations.

Management direction for the two project areas is established in the Payette National Forest Land and Resource Management Plan (Forest Plan) of 1988. The Forest Plan provides for the removal of salvage timber from lands within the project area. In addition, the Forest Plan prescribes standards to protect soil, water, wildlife, visual quality, and other affected resources. The proposed action for the Franks Salvage project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

An interdisciplinary team of Forest Service rehabilitation specialists has studied the burned area and prescribed watershed stabilization measures. Payette Forest and Council District foresters have analyzed the burned area and have found that salvage timber sales would be an economical and practical means to rehabilitate the burned area. This salvage project is the first of two that would: (1) Recover valuable timber that would otherwise deteriorate, (2) clean up burned trees that would otherwise become flammable fuels in the future, and (3) reforest those areas that have been left with little or no tree cover as a result of the fire. It is extremely important to remove the dead and dying timber before it deteriorates and loses its economic value. Through the timber salvage operations, Knutson-Vandenburg (K–V) funds can be generated to use in restoring forest resources that have been damaged by the wildfire.

The Forest Supervisor has determined through scoping and environmental analysis that there is justification to expedite this project.

The decision for the Franks Timber Salvage project will be implemented after publication of this notice in the **Federal Register.** If the project is delayed because of an appeal (delays of 150 days or more are possible), it is possible that the salvage harvest could not be implemented during the 1993 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead and dying timber is $1,062,000. Of this, approximately $265,500 would be returned to counties from 25 percent funds receipts. Delays resulting from appeals could cause the loss of up to two-thirds of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Franks Salvage Project, Council Ranger District, Payette National Forest, from appeal. The Franks Salvage project EA discloses the effects of the proposed action on the environment and addresses issues resulting from the proposal.

Dated: February 28, 1993.

Gray F. Reynolds,

Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 93–4100 Filed 2–22–93; 8:45 am]

BILLING CODE 3410–01–M

Notice of Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Ruby Multi-Product Fire Salvage Timber Sale Decision, Mi-Wok Ranger District, Stanislaus National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision resulting from the Ruby Multi-Product Fire Salvage Timber Sale Environmental Analysis.

The Ruby fire started on September 7, 1992. It burned 3,460 acres. There are 2,883 acres of National Forest System land within the burned area. The Ruby Sale Area includes approximately 795 acres of Capable, Available, and

Suitable land, as described in the Stanislaus National Forest Land and Resource Management Plan. The Forest Service proposes to salvage harvest approximately 12 million board feet (MMBF) of the dead and dying timber within this timber sale area. Terrain is suitable for tractor skidding and cable yarding systems.

Approximately 4.2 miles of new road construction and reconstruction of 2.3 miles of existing roads, will be required.

The objective for this area is to promptly salvage the recently killed trees. Contributing information for this analysis are analyses that were completed during the early to mid 1980's for timber sales in the area, and the recent analysis supporting the decision for the Deer Creek Salvage sale, which is adjacent to this proposed project. The recently completed emergency fire rehabilitation plan provides for methods to maintain productivity in the short-term. Constraints and mitigation measures will ensure compliance with applicable interim California spotted owl direction and other habitat capability requirements. The salvage logging will not affect population viability or habitat distribution for the California spotted owl.

The fire burned intensely, leaving large, contiguous areas of dead trees that will be harvested, leaving only reserved trees. Trees will be designated as reserve trees to provide for wildlife habitat and soil productivity needs. No roadless area, wilderness, or threatened or endangered species would be affected.

The value and volume of lumber recovered from burned timber declines rapidly as the wood deteriorates. Prompt removal of affected timber minimizes value loss. If dead timber is not removed promptly, the decline in value caused by deterioration will prevent economical removal.

If not removed from the forest, the excessive number of dead trees can lead to heavy fuel concentrations, as the trees fall to the ground. This compounds future fire suppression difficulty, which in turn increases the risk of further severe watershed disturbance. Prompt timber harvest can replace some ground cover consumed in the fire with logging slash. Harvest activities also create disturbance that helps break up fire-caused "hydrophobic" soils that inhibit water infiltration. The combination of creating ground cover and increasing the ability of soils to absorb water helps to initiate watershed recovery in the shortest time possible.

A decision on the proposed project, supported by an environmental assessment, is expected in February 1993. Implementation will follow immediately, with salvage harvest operations beginning this spring.

Pursuant to 35 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision relating to the harvest and restoration of lands following fire induced timber mortality within the area analyzed by the Ruby Fire Salvage Environmental Analysis.

EFFECTIVE DATE: This decision will be effective February 23, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or to Janet L. Wold, Forest Supervisor, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370; (209) 533–3671.

Dated: February 12, 1993.

Dale N. Bosworth,

Reviewing Officer, Deputy Regional Forester.

[FR Doc. 93–4096 Filed 2–22–93; 8:45 am]

BILLING CODE 3410–11–M

Sandy River Delta Master Plan, Columbia River Gorge National Scenic Area, Multnomah County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) and master plan which will describe the long term development, restoration, and management of the Sandy River Delta site, located in Oregon, Multnomah County, T.1N, R.3E, sections 13, 14, 24, 25 and T.1N, R.3E, sections 18, 19, 20, 29 and 30, W.M.

The EIS and Master Plan will describe the location of the National Scenic Area's south-west orientation and information gateway facilities, approximately 4 miles of new trails, and landscape restoration opportunities, particularly wetlands. The Master Plan will include design guidelines, and will fulfill National Scenic Area requirements for an open space plan.

Preliminary issues have been identified. Alternative considerations will include the location of gateway facilities and trails, and the type, location and degree of landscape restoration.

A permit from both the Army Corps of Engineers under section 404 of the Clean Water Act and from the Oregon Division of State Lands may be required if ground disturbance of wetlands is proposed.

The agency will give notice of the full environmental analysis and decision making process for the Forest Service proposal in order to provide interested and affected people information about how they may participate and contribute to the planning process.

DATES: Comments concerning the management of the Sandy River Delta should be received by April 1, 1993.

ADDRESS: Submit written comments and suggestions concerning the management of the Sandy River Delta to Arthur J. Carroll, Area Manager, Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Hood River, OR 97031.

FOR FURTHER INFORMATION CONTACT: Please direct questions about the proposed action and EIS to Virginia Pugh, Planning Team Leader, Columbia River Gorge National Scenic Area, 902 Wasco Ave., Hood River, Oregon 97031. telephone (503) 386–2333.

SUPPLEMENTARY INFORMATION: The Forest Service proposed action is to develop a master plan for the Sandy River Delta site which will describe the location of gateway facilities, trails, and landscape restoration opportunities, will include design guidelines, and by providing direction for resource management, protection and enhancement will fulfill the National Scenic Area Management Plan requirements for an open space plan. The Sandy River Delta Site is located 18 miles east of Portland, Oregon, specifically in Multnomah County, T.1N, R.3E, sections 13, 14, 24, 25 and T.1N, R.3E, sections 18, 19, 20, 29 and 30, Willamette Meridian.

Scoping is currently underway. A public site tour occurred on January 23, 1993 and a public workshop on January 28, 1993. Scoping is viewed as an on-going process throughout the preparation of EIS. Scoping is a method of identifying relevant and significant issues related to the proposed action. Public participation will be especially important during the scoping process (40 CFR 1501.7).

The Forest Service proposed action will deal with issues identified during scoping. Public input, as well as Forest Service concerns and management requirements, will determine the full range of alternatives to the proposed action. The effects of these alternatives, the proposed action, and the No-Action alternative will be analyzed.

As a result of on going scoping, the following preliminary issues have been identified:

—Where will the gateway facilities and trails be located?

—What type of vegetation communities will be enhanced or restored and where?

—What types of human use will be allowed (hiking, fishing, bicycles, picnicking, camping, boating, etc.) and where?
—What types of vegetation management techniques will be employed?
—How will access be provided to the site?
—What are potential impacts to floodplains, wetlands, wildlife, plants and cultural resources?

Arthur J. Carroll, Area Manager is the responsible official and Virginia Pugh, Planning Team Leader, is project manager.

The Forest Service is seeking input for individuals, organizations, local and state agencies, tribes, and federal agencies who may be interested or affected by this proposal.

The draft EIS will be completed July 1993. The comment period on the draft EIS will be 45 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 a draft EIS 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 EIS stage but that are not raised until after completion of the final EIS 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 draft EIS 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 EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS 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 EIS, comments will be analyzed and considered by the Forest Service in preparing the final EIS and Master Plan. In the final EIS, the Forest Service is required to respond to comments received (40 CFR 1503.4). The final EIS is scheduled to be completed by December 1993.

The responsible official will consider the comments, responses, and consequences discussed in the EIS, applicable laws, regulations, and policies in making a decision regarding management of the Sandy River Delta site. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated February 10, 1993.

Arthur J. Carroll,

Area Manager.

[FR Doc. 93–4093 Filed 2–22–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

North East Middle Suwannee River Area Watershed, Suwannee County, FL; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture gives notice that an environmental impact statement is not being prepared for the North East Middle Suwannee River Area Watershed, Suwannee County, Florida.

FOR FURTHER INFORMATION CONTACT: T. Niles Glasgow, State Conservationist, Soil Conservation Service, Federal Building, 401 SE. First Ave., room 248, Gainesville, Florida 32601; Telephone: 904–377–0946.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action, developed by the Soil Conservation Service, indicates that the project will not cause significant local, regional, or national impacts on the environment.

As a result of these findings, T. Nile Glasgow, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this Project.

The project concerns a plan to relieve threats to human health and contamination of ground and surface waters by nitrate leaching from intensive agricultural operations. The planned works of improvement consist of agricultural Best Management Practices to safely collect, store, transport and utilize agricultural waste.

This Notice of A Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed for the environmental assessment are on file and may be reviewed by contacting T. Niles Glasgow.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local Officials)

Dated: February 12, 1993.

T. Niles Glasgow,

State Conservationist.

[FR Doc. 93–4044 Filed 2–22–93; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 2102–01]

Decision and Order on Default

In the matter of: Daniel J. O'Hara, Respondent.

Summary

Pursuant to the January 19, 1993, recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Daniel J. O'Hara and all successors, assignees, officers, partners, representatives, agents and employees are hereby denied for a period of twenty-five years from and after January 30, 1987, all privileges of participating directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United

States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR parts 768–799).

Order

On January 19, 1993, the ALJ entered his Recommended Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Dated: February 16, 1993.

Robert F. Kugelman,

Acting Under Secretary For Export Administration.

Appearance for Respondent: Daniel J. O'Hara, 860 Wyoming Avenue, Reno, Nevada 89503, and Post Office Box L, Sparks, Nevada 89432.

Appearance for Agency: Thomas C. Barbour, Esq., U.S. Department of Commerce, Office of Chief Counsel for Export Administration, room H3839, 14th & Constitution Avenue, NW., Washington, DC 20230.

Preliminary Statement

A. The Facts

Counsel for the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department or Agency counsel), has moved upon default by Daniel J. O'Hara, the Respondent in the above captioned case, that I recommend to the Acting Under Secretary for Export Administration that, pursuant to section 13(c) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991) (the Act), and part 788 of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991) (the Regulations) [1], she enter an Order finding that O'Hara committed the violations alleged in a charging letter issued by the Agency on February 18, 1992. In this charging letter, the Agency alleged that O'Hara has failed to pay any part of the $5,000 assertedly due and payable under the terms of a January 30, 1987, Order issued against O'Hara by the then-Assistant Secretary for Trade Administration Paul Freedenberg, affirming a January 8, 1987, order and recommendation by Administrative Law Judge Hugh J. Dolan.[2] Assistant Secretary Freedenberg, in his 1987 order, gave effect to a Consent Agreement entered between the Department and O'Hara, both individually, and doing business as D.J. Associates,[3] which imposed a civil penalty against O'Hara in the amount of $20,000 and which denied O'Hara export privileges for a period of 20 years. Of the civil penalty, $1,000 was due within 20 days of service of the Order, $2,000 was due on November 1, 1987, and $2,000 was due on November 1, 1988. Payment of the remaining $15,000 was suspended for a period of three years from the date of the January 30, 1987, Order, and, absent further violations, was to be waived at the end of that three year period. The Department charges that O'Hara has not paid the $5,000 civil penalty, in whole or in part.

Citing O'Hara's failure to pay any of the civil penalty imposed by the January 30, 1987, Order issued under the Act and Regulations, the February 18, 1992, charging letter alleges that O'Hara, by having violated the terms of such Order, was subject to the sanctions set forth in § 787.1(b) of the Regulations. In accordance therewith, the charging letter further provided notice to O'Hara that an administrative proceeding was being instituted against him for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

Revocation of validated export licenses under § 788.3(a)(1);

General denial of export privileges under § 788.3(a)(2);

Exclusion from practice under § 788.3(a)(3); and/or

Imposition of the maximum civil penalty allowed by law of $10,000 per violation under § 788.3(a)(4).

On April 6, 1992, Judge Dolan issued an Order in which he found that O'Hara was in default for having failed to answer, or to otherwise acknowledge, the February 18, 1992, charging letter, and wherein he directed that Agency counsel submit proposed sanctions and proof that the charging letter had been served upon O'Hara.

B. Agency Counsel's Position

Agency counsel, in his timely May 6 submission in response to Judge Dolan's above Order, seeks that I recommend to the Acting Under Secretary for Export Administration that she enter an order in this proceeding imposing against O'Hara the proposed sanction of a five-year denial of all U.S. export privileges for having violated the terms of the January 30, 1987, Order, as alleged in the recent charging letter. This five-year period, Agency Counsel asserts, should be imposed upon the twenty year denial period previously ordered for a total denial period of twenty-five years, commencing on January 30, 1987. The Department argues that this additional five-year denial period, in the context of O'Hara's failure to pay any of the civil penalty previously ordered, should be implemented in lieu of civil penalty since there is little likelihood that he would pay an additional civil penalty should such a remedy be enjoined. Agency counsel further argues in his June 8 submission,[4] that the Department was not attempting to convert the unpaid civil penalty into a denial period but, rather, was seeking to impose a separate sanction authorized by the Regulations against O'Hara for having committed the violation described in the February 18, 1992, charging letter. In response to questions raised in Judge Dolan's May 19 Order, Agency Counsel cited section 11(f) of the Act [5] in justification of the Department's decision to seek an administrative remedy, rather than to pursue same in the Courts. Agency counsel argues that, under section 11(f), the decision to initiate a proceeding to collect a civil penalty is discretionary within the Department, and that the decision to

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) invoked the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)), continuing in effect the Regulations, and, to the extent permitted by law, the provisions of the Act.

[2] As described in Judge Dolan's above Order, the original charging letter against O'Hara, which issued on April 23, 1986, alleged that he (a) had violated then-section 387.3 of the Regulations by conspiring and acting in concert with another individual to acquire and export two United States-origin automatic projection alignment systems; (b) had violated then-sections 387.4 and 387.6 of the Regulations by exporting those systems without having acquired the export licenses from the Department which he knew were required by then-section 372.1(b) of the Regulations; and (c) had violated then-section 387.5 of the Regulations by causing to be filed with the United States Customs Service three Shipper's Export Declarations which contained false and misleading statements, in order to export one of the automatic projection alignment systems in connection with three separate shipments. Section 387.3, 387.4, 387.6, 372.1(b) and 387.5 remain currently in effect as §§ 787.3, 787.4, 787.6, 772.1(b) and 787.5, respectively, of the Regulations.

[3] D.J. Associates is not referenced in the present proceeding.

[4] Agency counsel's June 8 submission was in response to Judge Dolan's May 19 Order.

[5] Section 11(f) of the Act, Actions for Recovery of Penalties, is as follows:

In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of the liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

seek the administrative remedy requested here reflects O'Hara's demonstrated inability to pay the civil penalty initially applied. Accordingly, the Department had decided, in view of the relatively small dollar amount of the penalty compared with the cost of bringing such action in the U.S. District Court, that it would be the wisest course to save the resources of both the Departments of Commerce and of Justice—a course particularly applicable in the present matter where it appears that collection of any penalty in the present matter would be futile.[6] Although Judge Dolan, in his May 19 Order, had referenced the possibility of collecting the civil penalty against O'Hara by other means, such as administrative offset by the Internal Revenue Service or by other Federal agency, the Department's determination to proceed administratively would preclude such actions since they are dependent upon prior rendering of judgment by an appropriate court.

Conclusion

From the evidence and for the reasons presented by Agency counsel, I conclude that Daniel J. O'Hara has violated the Act and the Regulations promulgated thereunder, as charged. In light of the seriousness of this Respondent's conduct as established, and upon the entire record, noting the unlikelihood that further action to obtain payment of civil penalty would be successful, I agree with Agency counsel that O'Hara should be denied export privileges for a period of five years in addition to the twenty-year denial period previously found in the January 30, 1987, Order, with an effect that he would be denied export privileges for a total of twenty-five years, commencing on January 30, 1987.

Pursuant to the authority delegated to me under part 788 of the Regulations, I issue the following recommended

Order

It is ordered That

1. For a period of twenty-five years, commencing on January 30, 1987, Respondent Daniel J. O'Hara, his successors or assignees, officers, partners, representatives, agents and employees hereby are denied all privileges of participating directly or indirectly in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity:

(a) As a party or as a representative of a party to a validated export license application;

(b) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(c) In obtaining or using any validated or general export license or other export control document;

(d) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported; and

(e) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities or technical data which are subject to the Act and the Regulations.

2. Such denial of export privileges shall extend not only to the Respondent, but also to his agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which the Respondent, if now or hereafter, may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

3. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to, and specific authorization from, the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related party, or whereby the Respondent, or related party, may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part or to be exported by, to, or for any Respondent or related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

4. That the Charging Letter and Orders shall be made available to the public.

This Order, as affirmed or modified, shall become effective upon entry of the Secretary's final action in this proceeding pursuant to section 13(c) of the Export Administration Act, as amended, upon affirmation by the Secretary or her duty-designated representative.

Dated: January 19, 1993.

Robert M. Schwarzbart,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 93–4058 Filed 2–22–93; 8:45 am]
BILLING CODE 3510–DT–M

[6] In this regard, Agency counsel reported that the copies of the February 18, 1992 charging letter were mailed to O'Hara by certified mail, return receipt requested, at addresses previously verified as being his home location and a post office box registered under his name. Although neither the return receipts nor the envelopes containing copies of the charging letter were returned to the Department, I concur with the Agency Counsel that service has been validly made upon O'Hara in accordance with § 788.4(b) of the Regulations.

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with December anniversary

dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: February 23, 1993.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, from interested parties as defined in §§ 353.2(k) and 355.2(i) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements, with December anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than December 31, 1993.

Antidumping duty proceedings and firms	Period to be reviewed
Canada:	
Elemental Sulphur:	
A–122–047	
Alberta Energy Co., Ltd., Allied Corporation, Brimstone Export, Burza Resources, Canamex, Delta Marketing, Drummond Oil & Gas, Ltd., Fanchem, Husky Oil, Ltd., Mobil Oil Canada, Ltd., Norcen Energy Resources, Petrosul, Real International, Saratoga Processing Co., Ltd., Sulbow Minerals	12/1/91–11/30/92
Mexico:	
Porcelain-on-Steel Cooking Ware:	
A–201–504	
Cinsa, S.A. de C.V., Acero Porcelanizado, S.A. de C.V	12/1/91–11/30/92
The People's Republic of China:	
Oscillating Fans:	
A–570–807	
Esteem Industries/HASM Mfg./Holmes Products Corp., Shell Electric Mfg. (China Co.)/SMC Electric Mfg. (Sian Hua) Co./SMC Marketing Corp., Duracraft Corporation	6/5/91–11/30/92
Ceiling Fans:	
A–570–807	
CEC Electrical Mfg. (International) Co./CEC Industries (Shenghen) Ltd., Wing Tat Electric Mfg. Co., Ltd./China Miles Co., Ltd	6/5/91–11/30/92
Sweden:	
Stainless Steel Hollow Products:	
A–401–603	
Sandvik AB, AB Sandvik Steel, Sandvik Steel Company	12/1/91–11/30/92
Taiwan:	
Small Business Telephone Systems and Subassemblies Thereof:	
A–583–806	
Bitronic Telecoms Co., Ltd., Tecom Company Ltd	12/1/91–11/30/92
Countervailing Duty Proceedings:	
None	

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and § 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended 19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1992).

Dated: February 5, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–4056 Filed 2–22–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–820]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 23, 1993.

FOR FURTHER INFORMATION CONTACT: William H. Crow II, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0116.

PRELIMINARY DETERMINATION: We preliminarily determine that certain helical spring lock washers from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on September 28, 1992 (57 FR 45765, October 5, 1992), the following events have occurred:

On October 1, 1992, the American Institute in Taiwan (AIT) sent a cable both to the Department of Commerce (the Department) and to the International Trade Commission (ITC), stating that the three firms listed in the petition were exporters of the subject merchandise. In addition, it was noted that there were four known producers of the subject merchandise. At the request of those producers, the AIT did not identify them by name.

On October 15, 1992, the Department sent a cable to the AIT requesting information on the names of any Taiwanese companies, other than those listed in the petition, that produce and export the subject merchandise to the United States, and the corresponding value and quantity of their sales to the United States for the period April 1, 1992 to September 30, 1992.

On October 23, 1992, the ITC issued an affirmative preliminary injury determination.

On October 27, 1992, a response was received from AIT stating that the three firms listed in the petition did not export during the period of investigation (POI). AIT did not identify additional possible producers/exporters.

On November 3, 1992, the Department requested further clarification from AIT because the U.S. import statistics revealed that some exporters had been active during the POI.

On November 4, 1992, the Department received a response from the AIT in which it indicated that the only available information had been transmitted in its October 1, 1992, and October 27, 1992, cables.

On November 17, 1992, the Department sent an antidumping duty questionnaire to the three companies listed in the petition, requesting value and quantity statistics of the subject merchandise exported to the United States, details on ownership, and relationships among producers and exporters. We received one response to our questionnaire. Siguar Industrial Hardware Co., Ltd. (Siguar) responded that they did not sell or produce the subject merchandise during the POI.

On November 25, 1992, the petitioner informed the Department of another possible respondent, Par Excellence Industrial Co., Ltd. On December 9, 1992, the Department sent this company a questionnaire requesting the same information as in the other questionnaires sent in this investigation.

We received no response from this company.

On January 12, 1993, petitioner sent a request that the Department revert to best information available (BIA) in this investigation because no producer/exporter of the subject merchandise had responded to the Department's requests for information. Also, petitioner stated that the highest margin in the petition should be used as the rate for all types of the subject merchandise from Taiwan. In addition, petitioner requested that a preliminary determination be made that critical circumstances exist.

Scope of Investigation

For purposes of this investigation, certain helical spring lock washers (HSLWs) are circular washers of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non heat-treated, plated or non plated, with ends that are off-line. HSLWs are designed to:

(1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly;

(2) Distribute the load over a larger area for screw or bolts; and

(3) Provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper. The lock washers subject to this investigation are currently classifiable under subheading 7318.21.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is April 1, 1992 through September 30, 1992.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for sales of HSLWs in this investigation. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, the producers/exporters of HSLWs from Taiwan did not do so. The only response came from Siguar which stated that it did not sell to the United States or produce the subject merchandise during the period of investigation.

During the course of this investigation, the Department has encountered serious problems in obtaining responses from Taiwanese manufacturers and exporters for its investigation. As outlined in the "Case History" section of this notice, the Department made repeated attempts to solicit this information, stating that if we did not receive a response to our requests, we might have to make our determination on the basis of BIA. In spite of the Department's attempts, we did not receive a response from any manufacturer or exporter who exported or produced during the POI. Consequently, we have based our preliminary determination in this investigation on BIA for all Taiwan companies. As BIA, we have selected the highest margin listed in this notice of initiation for this investigation, which was based on the petition. A description of how petitioner calculated the margins contained in its petition is included in our notice of initiation (57 FR 45765, October 5, 1992).

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Taiwan. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time:

(1) The volume and value of the imports;

(2) seasonal trends (if applicable); and

(3) the share of domestic consumption accounted for by imports.

In determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping under section 733(e)(1)(A)(ii) for exporters sales price sales, and margins of 25 percent or more for purchase price sales. (See, *e.g.*, Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987). Since the highest margin contained in the petition for HSLWs is above 25 percent, we determine in accordance with section 733(e)(1)(A)(ii) of the Act that there is a reasonable basis to believe or suspect that knowledge of dumping existed for HSLWs from Taiwan.

Because the Department did not receive responses to its questionnaire from any Taiwan companies who produced or exported during the period of investigation, we have relied upon BIA for determining whether there have been massive imports of HSLWs from Taiwan. Because we have not received responses from any producers/exporters in this investigation, we determine as BIA, that imports were massive over a relatively short period of time. Therefore, we preliminarily find that there is a reasonable basis to believe or suspect that imports of HSLWs from Taiwan have been massive over a relatively short period of time. Based on our analysis, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of HSLWs from Taiwan.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are directing the Customs Service to suspend liquidation of all entries of HSLWs from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to 31.93 percent on all entries of HSLWs from Taiwan, as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturers/producers/exporters	Margin percentage
Spring Lake Enterprise Co., Ltd	31.93
Ceimiko Industrial Co., Ltd	31.93
Par Excellence Industrial Co., Ltd	31.93
All Others	31.93

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 18, 1993, and rebuttal briefs no later than March 25, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on April 1, 1993, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: February 16, 1993.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–4175 Filed 2–22–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–813]

Antidumping Duty Order: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 23, 1993.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230: (202) 482–2778.

SCOPE OF ORDER: The products subject to this investigation are certain welded stainless steel butt-weld pipe fittings ("pipe fittings"), whether finished or unfinished, under 14 inches inside diameter.

Pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, and the following five are the most basic: "elbows", "tees", "reducers", "stub ends", and "caps". The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this investigation. The pipe fittings subject to this investigation are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

ANTIDUMPING DUTY ORDER: In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on December 18, 1992, the Department of Commerce (Department) made its final determination that certain welded stainless butt-weld pipe fittings from Korea are being sold at less than fair value (57 FR 61881 December 29, 1992). On February 16, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain welded stainless steel pipes from Korea. These antidumping duties will be assessed on all unliquidated entries of certain welded stainless steel butt-weld pipe fittings from Korea that are entered, or withdrawn from warehouse, for consumption on or after October 21, 1992, the date on which the Department published its preliminary determination notice in the **Federal Register** (57 FR 48018). On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise.

Manufacturer/producer/exporter	Margin percentage
Asia Bend Company Ltd	21.2
All others	21.2

In its final determination, the Department found that critical circumstances exist with respect to exports from Korea by Asia Bend Company Ltd. However, on February 16, 1993, the ITC notified the Department that retroactive assessment of antidumping duties is not necessary to prevent recurrence of material injury from massive imports over a short period. As a result of the ITC's determination, pursuant to section 735(c)(3) of the Act, we shall order Customs to terminate the retroactive suspension of liquidation and to release any bond or other security and refund any cash deposit required under section 733(d)(2) with respect to Asia Bend Company's entry of subject merchandise entered, or withdrawn from warehouse, for consumption prior to October 21, 1992.

This notice constitutes the antidumping duty order with respect to certain welded stainless steel butt-weld pipe fittings from Korea, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: February 18, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–4197 Filed 2–22–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–811]

Final Determination of Sales at Less Than Fair Value; Steel Wire Rope From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Final determination.

EFFECTIVE DATE: February 23, 1993.

FOR FURTHER INFORMATION CONTACT: Amy Beargie, Anna Snider or Richard

Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

Final Determination

We determine that steel wire rope from Korea is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of our affirmative preliminary determination and postponement of the final determination on September 30, 1992 (57 FR 45035), the following events have occurred.

On October 8 and October 9, 1992, the respondents, Korea Iron & Steel Wire, Ltd. (KIS), Man Ho Rope Mfg. Co., Ltd. (Man Ho) and Young Heung Iron and Steel Co., Ltd. (YHC), submitted responses to the cost of production (COP) and constructed value (CV) portion of our questionnaire. We issued supplemental questionnaires covering respondents' October 8 and 9 submissions on November 4, 1992. We received responses to these supplemental questionnaires on December 1, 1992.

We conducted verification of the sales and cost questionnaire responses for all respondents between November 9 and December 18, 1992. Respondents submitted corrections of clerical errors to their sales and cost responses on November 10, November 25, December 8, and December 16, 1992. On November 20, 1992, YHC submitted updated duty drawback information for a small number of sales which we had requested at verification.

On October 13, 1992, petitioner requested a public hearing and respondents indicated their interest in participating in the hearing. On December 2, 1992, we notified interested parties that we were revising the case brief and hearing schedule set forth in the notice of the preliminary determination. We extended the deadlines for case briefs from December 4, 1992 to January 8, 1993, and rebuttal briefs to January 13, 1993. We also rescheduled the public hearing date for January 15, 1993.

On December 29, 1992, petitioner withdrew its request for a hearing, provided that the Department further extend the deadlines for case briefs and rebuttals to January 12 and January 19, 1993, respectively. Respondents objected to petitioner's extension request on December 30, 1992, but did not oppose the cancellation of the hearing.

On January 4, 1993, we notified interested parties that we were extending the deadlines for case briefs to January 11, 1993 and for rebuttals to January 19, 1993. We received no further objections regarding the deadline. Petitioner and respondents filed case and rebuttal briefs on these dates. We did not hold a public hearing to discuss issues raised in these submissions.

Scope of the Investigation

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090.

Excluded from this investigation is stainless steel wire rope, which is classifiable under the HTS subheading 7312.10.6000, and all forms of stranded wire. Although HTS subheadings are provided for convenience and customs purposes, our own written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) extends from November 1, 1991 through April 30, 1992.

Such or Similar Merchandise

We have determined that all products covered by this investigation constitute a single category of such or similar merchandise. For purposes of calculating a dumping margin, the Department compared products sold in the United States with identical or similar products sold in the home market. For model-match purposes, we relied on the following criteria: (1) Type of steel wire, i.e., bright carbon steel or galvanized carbon steel; (2) diameter of wire rope; (3) type of core, i.e., fiber or steel; (4) class of wire rope (number of strands by number of wires), e.g., 6x7, 6x19, 6x37 or 8x19; and (5) other characteristics including grade of steel, number of wires per strand, and design of strands.

Where there were no sales of identical merchandise in the home market with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the criteria described above, ranked in order of importance from 1 through 5. For criterion (5), respondents were instructed to use grade of steel, number of wires per strand, and design of strands in the order they deemed appropriate. We determined that the ranking chosen by respondents was reasonable. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of steel wire rope from Korea to the United States were made at less than fair value, we compared United States price (USP) with the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP using the methodology described in the preliminary determination, with the following exceptions:

1. We revised KIS' credit expense for one U.S. sale. See Comment 15.
2. For each PVC-coated product sold by KIS in the United States, we deducted the PVC-coating expense from the response field "other movement expenses" and added this expense to the corresponding difference-in-merchandise (difmer) amount. Where the U.S. sale of a PVC-coated product could not be matched to a home market item, we added the PVC-coating expense to the CV of the model. See Comment 18.
3. We adjusted KIS' U.S. database to reflect the revised estimate of number of days outstanding for those U.S. sales with credit expenses based on certain payment terms. See Comment 22.

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determination, with the following exceptions:

1. For all respondents, we revised the claimed adjustments for home market credit expenses to exclude the value-added tax (VAT). See Comment 3.

Cost of Production

Based on petitioner's allegations, and in accordance with section 773(b) of the Act, we investigated whether the three respondents had made sales in the home market at less than their respective COP. If over 90 percent of the respondents' sales of a given model were at prices

above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities. If between 10 and 90 percent of a respondent's sales of a given model were at prices above the COP and the below-cost sales occurred in two or more months, we disregarded only the below-cost sales. Where we found that more than 90 percent of a model's sales were at prices below the COP and the below-cost sales occurred in two or more months, we disregarded all sales for that model and calculated FMV based on CV. Respondents provided no evidence that their sales were at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade in accordance with 19 U.S.C. 1677b(b)(2). We calculated the COP based on the sum of the respondents' cost of materials, fabrication, general expenses, and packing. The submitted COP and CV data were relied upon, except in the following instances where the costs were not appropriately quantified or valued:

YHC

1. For both COP and CV, we increased YHC's general and administrative (G&A) expenses to account for expenses incurred as a result of a loan guarantee that was defaulted on by its former parent company. See Comment 12.

2. For both COP and CV, we revised YHC's interest expense calculation to include interest expenses incurred on the purchase of machinery used to produce non-subject merchandise. See Comment 13.

Man Ho

1. For both COP and CV, we set general interest expense equal to zero. See Comment 29.

In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of the company's reported general expenses, adjusted as detailed above, or the statutory minimum of ten percent of the cost of manufacturing. For profit, we used the greater of the company's actual reported profit on home market sales or the statutory minimum of eight percent of the cost of manufacturing plus general expenses. See section 773(e)(1)(B)(ii) of the Act.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents using standard verification procedures, including the examination of relevant sales and financial records, and original source documentation containing relevant information.

Interested Party Comments

Common Issues

Comment 1: Petitioner argues that each of the respondents "knowingly submitted erroneous sales data in their respective responses to Section A of the Department's questionnaire," in that they did not submit volume and value of sales of the subject product in the home and U.S. markets during the POI on a date-of-sale basis, as requested by the Department, but instead submitted this information on a date-of-shipment basis. Petitioner contends that these figures on a date-of-shipment basis are inaccurate. Additionally, petitioner maintains that the August 10 and August 12, 1992 submissions that revised this information to a date-of-sale basis are untimely. In the absence of accurate and timely information, petitioner contends that the Department should proceed on the basis of best information available (BIA).

KIS, Man Ho and YHC argue that petitioner's assertion that respondents "knowingly submitted erroneous sales data" in the Section A responses is without support on the record. Respondents explain that they originally reported quantity and value of sales based upon date of shipment information contained in their existing records and had indicated in Section A that they would submit data on a date-of-sale basis, as required, after they had compiled data for Sections B and C. Respondents note that they did in fact submit this information and their actions "in no way interrupted, limited, jeopardized, or prejudiced the investigation." Consequently, respondents contend, there is no basis for petitioner's assertion that the responses warrant BIA.

DOC Position: We agree with the respondents. The Department agreed to respondents' requests in their Section A responses that they could submit revised quantity and value data after compiling data for Sections B and C. Thus, there would be no grounds to reject respondents' data as proposed by petitioner.

Comment 2: Petitioner argues that the respondents' submissions of corrections to the response found in the course of preparing for the sales and cost verifications are untimely, extensive, and, in the case of YHC, unsupported by source documents.

Regarding untimeliness, petitioner cites 353.31(a)(1)(i) of the Department's regulations, which states that new factual information may not be submitted later than seven days prior to the scheduled starting date of verification. Because these corrections were submitted after this deadline, petitioner maintains that the Department should reject them as untimely.

Petitioner also asserts that these corrections constitute more than corrections of clerical errors. Petitioner argues that the Department should reject respondents' responses and apply BIA. Petitioner cites Circular Welded Carbon Steel Pipes from Thailand: Final Determination of Sales at Less Than Fair Value, 51 FR 3384, 3386 (January 27, 1986), in which the Department determined that "while correction of minor errors is acceptable during verification, as a general matter we will not accept portions of responses (or entire responses) when they are changed in major respects shortly before the start of verification or at the verification site because there is insufficient time for analysis and verification." Petitioner also cites Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value, 54 FR 18992, 19037 (May 3, 1989) (Antifriction Bearings) and Certain Granite Products from Italy: Final Determination of Sales at Less Than Fair Value, 53 FR 27187, 27191 (July 19, 1988) (Granite) in support of this position.

Petitioner also submits that YHC's figure for total value of U.S. sales of the subject merchandise during the POI presented at verification is not indicated in any of the respondent's submissions to the Department. Petitioner maintains that YHC failed to provide verifiable figures pertaining to its sales in the U.S. market. For this reason, petitioner argues that the Department should reject YHC's response.

In response to petitioner's assertions regarding the extensiveness of the corrections, respondents characterize their revisions as minor. They explain that their records did not permit them to respond readily to the antidumping questionnaire. As a consequence, respondents had to create new databases by entering all of their sales data manually into a computer. In this process, they made simple clerical and programming errors which they identified and submitted to the Department prior to verification.

Respondents state that the Department's determinations cited by petitioner in support of its BIA assertions are not applicable in this case. They argue that for the Antifriction Bearings determination to be relevant, the Department would have been required "to correct [the] response during the course of verification," and "to perform the recalculations necessary to develop accurate information." Likewise for Granite, the Department would have "borne the responsibility for attempting to identify and perform numerous and substantial recalculations necessary for the development of accurate sales and cost of production data."

Finally, YHC contests petitioner's claim that its total U.S. sales figure could not be verified. YHC admits that petitioner is correct in stating that its figure for total U.S. sales does not appear in any of its responses. However, respondent notes that the verified total can be reached by simply summing the U.S. sales amounts reported in two different submissions. Specifically, YHC explains that the verified total is the sum of the sales reported in Section C of its response and the three additional sales reported in a subsequent submission to the Department.

DOC Position: We agree with respondents. We do not consider the corrections identified in the course of preparing for verification to be of a frequency or magnitude to warrant rejecting the responses in their entirety and using petitioner's data as BIA. As determined in Circular Welded Carbon Steel Pipes from Thailand and by Department practice, "correction of minor errors is acceptable during verification." We do not agree that Antifriction Bearings and Granite are relevant in this case, as we did not need to perform substantial recalculations in order to obtain verifiable data. Indeed, we examined supporting documentation for the correction reports presented at verification and found that the revisions to the response were justified and did not constitute new factual information. In addition, we dispute petitioner's claim that the figure for total U.S. sales of the subject merchandise during the POI was not verified. As we noted in YHC's verification report, the figure presented by YHC for total U.S. sales tied to monthly trial balances and sales ledgers. Therefore, we have accepted the responses as corrected and verified for the final determination.

Comment 3: Petitioner argues that respondents' calculations of home market credit expenses should not include the VAT. Petitioner also asserts that Man Ho's and YHC's inclusion of the VAT in their respective calculations of the average collection period of accounts receivable is improper and results in "an artificial and arbitrary inflation" of these figures.

Petitioner cites Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 56 FR 16305, 16310 (April 22, 1991) (Pet Film) in which the Department determined that a circumstance-of-sale (COS) adjustment for VAT payments was not warranted because the respondent did not pay the VAT to the government at the time of sale, but instead maintained a rolling account. Petitioner argues that because respondents do not pay the VAT at the time of sale, but have arrangements similar to those of the respondent in Pet Film, the Department should exclude the VAT from the respondents' home market credit calculations.

In rebuttal, respondents argue that the use of a VAT-inclusive price to calculate credit expense is justified. For example, YHC notes that "VAT is part of the actual sales price charged by YHC to its customers. As such, the customer's obligation to YHC for the total sales price, including VAT, attaches on the date of sale. YHC's obligation to pay VAT to the government also attaches on the date of sale."

Respondents explain that they incur an imputed loss because they do not have use of the funds they are entitled to for VAT reimbursement until their customers pay their bills. Furthermore, they argue that, in addition to the credit actually extended to their customers by advancement of VAT on those customers' behalf, they also incur an opportunity cost due to the delay in reimbursement for VAT they are owed by their customers from the date of sale.

Respondents cite Color Television Receivers from Korea: Final Results of Antidumping Administrative Review, 51 FR 41,365, 41,376 (November 14, 1986) (Color TVs), which they claim supports the inclusion of the VAT in the total sales price when calculating credit expense. Specifically, they note that in Color TVs the Department allowed a home market imputed tax adjustment based upon the number of days between tax payment and receipt of payment from the customer.

Man Ho and YHC also disagree with petitioner's assertion that their average collection period methodology is improper, arguing that in order to reflect the actual amount owed to them by their customers in the calculation of credit expense, it is necessary to adjust the average collection period of accounts receivable for the VAT.

DOC Position: We agree with petitioner. It is not the Department's current practice to impute credit expenses related to VAT payments. We find that there is no statutory or regulatory requirement for making the proposed adjustment. While there may be a potential opportunity cost associated with the respondents' prepayment of the VAT, this fact alone is not a sufficient basis for the Department to make an adjustment in price-to-price comparisons. We note that virtually every charge or expense associated with price-to-price comparisons is either prepaid or paid for at some point after the cost is incurred. Accordingly, for each pre- or post-service payment, there may also be an opportunity cost or gain. Thus, to allow the type of adjustment suggested by the respondents would imply that in the future the Department would be faced with the virtually impossible task of trying to determine the potential opportunity cost or gain of every charge and expense reported in the respondents' home market and U.S. databases. This exercise would make our calculations inordinately complicated, placing an unreasonable and onerous burden on both respondents and the Department, without necessarily ensuring a more accurate dumping margin calculation. Consequently, we have not adjusted respondents' FMVs for this imputed VAT credit expense.

Comment 4: The three respondents contend that the final determination should be made without reference to COP since the cost allegations were filed after the regulatory deadline for such allegations. Respondents argue that the Department's action in initiating the COP investigation effectively reads the word "scheduled" out of § 353.31(c)(1)(i) of the Department's regulations. 19 CFR 353.31(c)(1)(i). Respondents assert that the subsequent extension of the preliminary determination does not retroactively render the cost allegations timely.

Petitioner responds that, pursuant to 19 U.S.C. 1677b(b), the Department may initiate a COP investigation on its own accord. Even assuming incorrectly that the Department lacked authority to self-initiate, petitioner maintains that the subject allegations were filed in a timely manner pursuant to 19 CFR 353.31(c)(1)(i). Notwithstanding its timely submission, petitioner states that respondents' relevant questionnaire responses were untimely and incomplete, thereby invoking the exception to the time guidelines set out in the subject regulation.

DOC Position: Section 353.31(c)(1)(i) of the Department's regulations states:

(c) Time limits for certain allegations. (1) The Secretary will not consider any allegation of sales below the cost of production that is submitted by the petitioner or other interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, later than: (i) In an investigation, 45 days before the scheduled date for the Secretary's preliminary determination, unless a relevant response is, in the Secretary's view, untimely or incomplete, in which case the Secretary will determine the time limit;

19 CFR 353.31(c)(1)(i).

By letter of August 4, 1992, petitioner submitted cost allegations against the three respondents. On August 6, 1992, petitioner requested a postponement of the preliminary determination because it needed time to assess and comment on responses to Sections B and C of the Department's questionnaire which were filed by respondents on July 27, 1992. Respondents had been granted a three-week extension to file their responses which reduced the number of days petitioner had to review the information.

On August 24, 1992, in accordance with 19 CFR 353.15(d), the Department granted petitioner's request for an extension of the preliminary determination date from September 16, 1992 to September 23, 1992. On August 25, 1992, the Department initiated a cost investigation.

When the date of the preliminary determination was postponed, the effective deadline for submission of cost allegations became August 10, 1992. Because petitioner's allegations were filed on August 4, 1992, the Department deems them to be submitted in a timely manner pursuant to § 353.31(c)(1)(i) of the Department's regulations. We disagree with respondents' contention that, by accepting the subject allegations as timely, the Department has effectively read the word "scheduled" out of the regulation. The "scheduled date for the Secretary's preliminary determination" refers to the actual anticipated date of the preliminary determination, irrespective of whether or not such date has been rescheduled.

Comment 5: Petitioner claims KIS and Man Ho have improperly allocated depreciation, repairs and other overhead on the basis of weight. Petitioner argues that these costs bear no relation to the weight of the products manufactured and should be allocated on the basis of machine hours.

Respondents counter that their methodology is less distortive than petitioner's. Machine hours are not kept by respondents in their normal accounting system. Respondents argue that heavier ropes are made on larger machines, which incur higher operating expenses and maintenance costs. Therefore, allocating costs based on weight more accurately reflects the true cost of the product. Respondents also note that many of their machines are fully depreciated. If depreciation was based on machine hours, some products would not be burdened with any depreciation because products made on machines which were fully depreciated would have no depreciation allocated to them. Thus, respondents conclude that one avoids this anomaly by basing depreciation on weight.

DOC Position: We agree with respondents. KIS and Man Ho allocated overhead costs on a reasonable basis consistent with their normal accounting systems. During the plant tours at verification, we observed the machines used in the production process and we agree that weight does have a relationship to the indirect labor and overhead costs because the size of the machine dictates the weight of the rope produced. Therefore, we determine that the respondents' allocation method is reasonable.

Company-Specific Issues

YHC

Comment 6: Petitioner asserts that evidence presented at verification contradicts the date-of-sale methodology specified by YHC in its response. Petitioner contends that YHC had indicated in its narrative response that date of sale for home market sales was the same as date of shipment, except in a few specific circumstances.

At verification, YHC revised dates of shipment and dates of sale for a small number of transactions. YHC submitted these revisions to the Department on November 10, 1992. For these sales, dates of sale precede dates of shipment. Petitioner observes that "it does not appear from the verification report or exhibits that these revisions are related to one of the limited instances in which YHC had previously acknowledged that the date of sale would precede the date of shipment." In addition, petitioner notes that for some of YHC's home market sales to a particular customer, the dates of sale and shipment are the same, while for other sales to the same customer the dates differ. Petitioner claims that this finding is evidence that YHC's date-of-sale methodology is suspect.

Petitioner further argues that "[s]ince YHC's declared methodology for determining date of sale could not be verified, and in fact was contradicted by information provided by YHC at verification with respect to two of the ten pre-selected home market transactions, the Department must determine that [YHC's] response could not be verified." Petitioner contends that the Department should apply the highest margin alleged in the petition as BIA for these sales.

In rebuttal, YHC explains that it "did not maintain that shipment date was always the correct date of sale for home market sales." YHC notes that it had reported in the questionnaire response that it "generally uses the date of the sales slip for the date of sale in the home market," and that the date of the sales slip is often the date of shipment. YHC explains that it also indicated in its response that there are situations in which the date of sale precedes the date of shipment, such as for contract sales and sales made pursuant to written purchase orders. YHC maintains that "its methodology for determining date of sale fully complied with the instructions in the Department's questionnaire."

With regard to petitioner's observation that for some home market sales to a particular customer, dates of sale and shipment are the same, while for other sales to the same customer the dates differ, YHC notes the following: Home market sales are generally made from inventory, but on occasion steel wire rope is made to order. In the case of a sale from inventory, dates of sale and shipment would, in most instances, be the same, while dates of sale and shipment for merchandise produced to order would differ.

DOC Position: We do not agree with petitioner's assertion that YHC's data presented at verification contradict its date-of-sale methodology. Instead, we find that YHC's data confirm its methodology. The revisions that YHC presented at verification relate to situations in which YHC previously acknowledged that the date of sale might precede date of shipment. The sales that are the subject of Correction Report VII of the November 10, 1992 submission are sales made to customers for whom YHC had indicated that it would report the date of the purchase order as the date of sale. YHC stated in its response that it would use the date of the purchase order as the date of sale for these customers because the company issues written purchase orders. The remaining sales at issue from Correction Report VIII are sales made under contract. YHC noted in its response that it would report the date of

the contract as the date of sale for these transactions.

At verification, we examined sales documentation that supported YHC's date-of-sale methodology. For numerous home market transactions, we inspected the associated purchase orders, contracts, or sales invoices in order to establish that YHC had correctly reported dates of sale. These documents demonstrated that the dates of sale determined by YHC were the dates on which the essential terms of the transaction were fixed, namely price and quantity. Additionally, we reviewed relevant sales documentation (e.g., delivery slips) which supported YHC's reported dates of shipment. We found that YHC had reported this information accurately. Therefore, we have no justification for applying BIA.

Comment 7: Petitioner maintains that YHC failed to provide any evidence, either in its questionnaire response or at verification, to confirm its date-of-sale methodology with respect to sales of products purchased from Dae Heung Industrial Co., Ltd. (DHC), a related company. Petitioner argues that the Department should determine that the response could not be verified with respect to these transactions and should apply the highest margin alleged in the petition as BIA for these sales.

In rebuttal, YHC explains that its methodology for determining date of sale for DHC products is the same as the overall date-of-sale methodology explained in its questionnaire response. YHC writes that "U.S. sales of DHC products are produced to order" and "home market sales of DHC products are from inventory." Therefore, YHC explains that "for home market sales of DHC products, the sales date and shipment date match because YHC makes these sales of DHC-produced products from inventory. However, for YHC's sales of DHC products to the United States, the date of sale is significantly prior to the date of shipment."

DOC Position: We agree with respondent. We do not find that YHC failed to provide information regarding date-of-sale methodology for sales of DHC products. Instead, we verified that the DHC date-of-sale methodology is the same as the overall methodology we have accepted for all YHC sales. Therefore, there is no reason to apply BIA to these sales.

Comment 8: Petitioner claims that the methodology used by YHC to revise the total home market sales figure at verification is different from that specified in the Section B narrative and constitutes a new response. Petitioner also argues that the total home market sales figure does not tie to YHC's sales ledgers. Petitioner claims that because the Department could not verify the total value of YHC's total home market sales, which was used as the basis for allocating credit expenses, YHC's claimed adjustment for credit expenses must be disallowed.

Respondent contends that "the revised figure was verified, and directly contrary to petitioner's allegation, does reconcile with the supporting documentation submitted by YHC."

DOC Position: We agree with YHC. We believe that YHC justified and fully supported its revised calculation of the total home market sales figure used to calculate home market credit. At verification, YHC deducted from the total home market sales figure sales to a related company of non-subject merchandise (e.g., wire, materials, and lubricant). We examined invoices supporting these deductions and found that they were appropriately excluded from the home market sales total. Additionally, we tied the reported home market sales total to YHC's sales ledgers for finished goods and merchandise. We found no discrepancies. Therefore, YHC's revisions do not constitute a new response and we have no justification for disallowing the credit adjustment.

Comment 9: Petitioner maintains that interest expenses incurred on a general borrowing loan category used to calculate YHC's short-term interest rate could not be verified. Petitioner argues that information gathered in its review of the verification exhibits does not support the expense claimed by YHC in its response for general borrowing during the POI. Petitioner argues that the Department should: (a) Disallow the claimed credit adjustment; (b) use the lowest interest rate available to YHC during the POI to calculate home market credit as BIA; or (c) use the "correct" figure that it has discerned from verification documents for general borrowing interest expense to calculate home market credit.

Respondent argues that "contrary to petitioner's allegation, interest incurred by YHC during the POI for general borrowing was as reported in its Section B response." YHC explains that "the figure petitioner offers as YHC's total interest incurred during the POI * * * is misstated * * * and additionally, fails to account for interest on construction * * * [I]t is the sum of these two figures which is the total general borrowing interest incurred during the POI."

DOC Position: We agree with respondent. At verification, we examined interest expenses incurred on general borrowing in our review of home market credit expenses and found them to be as reported in Section B of YHC's response. In order to verify this element of home market credit expense, we examined actual loan ledgers for general borrowing which supported the terms of the loans, applicable interest rates, cumulative daily balances reported, and interest expenses incurred. Additionally, we tied these interest expenses to YHC's expense ledgers and to the monthly trial balances and found no discrepancies. Therefore, we have no justification for disallowing the adjustment or applying BIA.

YHC Cost Issues

Comment 10: Petitioner asserts that it was improper for YHC to use actual production costs in calculating COP for merchandise purchased from DHC, a related company, since there is not 50 percent direct and/or indirect ownership between these companies. Petitioner argues that the Department permits the use of actual costs instead of transfer prices for COP calculations for related-party purchases only when there is more than 50 percent direct and/or indirect ownership between companies. Petitioner claims that Antifriction Bearings (1989) supports this position. Petitioner contends that we should use transfer prices for these calculations. However, petitioner argues that since YHC did not provide transfer prices, the Department must use BIA for these transactions.

Petitioner also argues that it is improper to use actual production costs for CV purposes. Petitioner notes that the Department generally uses transfer prices for constructed value purposes unless such prices do not "fairly reflect the value in the market under consideration." Petitioner argues that since YHC did not provide transfer prices in the response, the Department should use BIA for these transactions.

YHC contends that the Department's practice is to allow the use of transfer prices for COP and CV of purchases from related suppliers when it can be demonstrated that such prices are at arm's length, but that actual costs are required when it cannot be demonstrated that prices are at arm's length. YHC argues that Antifriction Bearings supports its position, not petitioner's. YHC explains that it could not demonstrate that its purchases from DHC were made at arm's-length prices, therefore, its use of actual cost rather than transfer price was appropriate, if not required.

DOC Position: We agree with YHC that use of actual production costs is appropriate. Section 773(b) of the Act is

clear in its direction that the relevant cost involved in a below-cost investigation is the "cost of producing the merchandise in question." DHC is the producer of the finished product in question here, not YHC. YHC simply purchases the finished product from DHC. Therefore, we believe that it is appropriate to base COP on DHC's actual costs that YHC supplied in its response.

This approach is consistent with Fresh and Chilled Atlantic Salmon from Norway: Final Determination of Sales at Less Than Fair Value, 56 FR 7661, 7672 (February 25, 1991) in which we based the COP of a respondent's resold merchandise on the producer's COP, plus respondent's general, selling and administrative expenses, profit and packing. See also Fresh Kiwifruit from New Zealand: Final Determination of Sales at Less Than Fair Value, 57 FR 13695, 13701–2 (April 17, 1992) and Oil Country Tubular Goods from Canada: Final Results of Administrative Review, 56 FR 38408, 38411 (August 3, 1991).

Comment 11: Petitioner argues that YHC understated its general and administrative expenses (G&A) by basing these expenses on the twelve-month period ending June 30, 1992, rather than its fiscal year, January 1 to December 31, 1991. Petitioner states that the use of the financial statements from the most recent fiscal year is a long-established preference of the Department. Petitioner claims that the Department should disregard YHC's G&A calculation and use BIA.

YHC argues that it endeavored to have its G&A calculation more accurately correspond to the period of investigation. Respondent notes that it reported the period July 1, 1991 to June 30, 1992 and that the Department's November 4, 1992 deficiency letter failed to request the use of financial data from its audited financial statements.

DOC Position: We agree with petitioner in part. The Department's normal practice is to calculate G&A based on a company's most recent audited financial statement. However, at verification, we compared the G&A reported in the Section D response with the amount reported in the audited financial statements and confirmed that there was no substantial difference between the two because the year-end adjustments were included in the reported G&A figure. Therefore, we have used the reported G&A figure which we believe accurately reflects the G&A incurred by the company.

Comment 12: Petitioner argues that YHC improperly excluded certain expenses from its COP. The excluded expenses relate to a liability incurred as a result of a loan guarantee that was defaulted on by its former parent corporation. Petitioner maintains that the circumstances relating to the expense do not extend to what is considered an extraordinary expense under U.S. Generally Accepted Accounting Principles (GAAP). Petitioner argues that the Department has included in COP expenses that respondents have excluded as extraordinary, such as those resulting from strikes, fires, or restructuring. For example, petitioner cites Sweaters Wholly Or In Chief Weight of Man-Made Fiber From Korea: Final Determination of Sales at Less Than Fair Value, 55 FR 32659, 32669 (1990) in which the Department determined that the cost of a strike, which respondent excluded as extraordinary, was not unusual for a manufacturing concern and, therefore, not an extraordinary event, and should be included in COP.

YHC argues that the item is properly treated as an extraordinary item under both Korean and U.S. GAAP and should be excluded from production costs.

DOC Position: We agree with petitioner. The assumption of the loan by the respondent constitutes a normal cost of doing business and, as such, becomes an expense to the respondent. We do not agree with respondent that this item should be treated as extraordinary. For an item to be considered as "extraordinary" under U.S. GAAP, it must be unusual in nature and infrequent in occurrence. See Floral Trade Council v. United States, slip op. 92–213 (CIT December 1, 1992). The assumption of debt by a guarantor is neither unusual in nature nor infrequent and, therefore, not extraordinary under U.S. GAAP. Even if these expenses were considered extraordinary under Korean GAAP, these are costs incurred by YHC as part of its overall operations and, therefore, must be included in the calculation of YHC's COP.

Comment 13: Petitioner asserts that YHC made an improper reduction of interest expenses by decreasing total interest expense for a portion attributed to the purchase of machinery not used in the production of the subject merchandise. In support of its argument, petitioner cites Silicon Metal From Brazil: Final Determination of Sales at Less Than Fair Value, 56 FR 26977, 26987 (June 12, 1992) (Silicon Metal), in which the Department determined that the interest expense of a loan taken by respondent for the purchase of machinery used to produce merchandise not subject to the investigation should be included in COP.

DOC Position: We agree with petitioner that interest expense should not be reduced for amounts claimed to be related to the purchase of machinery used for non-subject merchandise. As stated in Silicon Metal, in determining COP, we regard interest as fungible, and thus, make no distinction regarding the type of interest incurred. Our long-standing practice is to calculate a respondent's total interest expense, offset by short-term interest income, as a percentage of cost of goods sold. Accordingly, we have disallowed this deduction.

Comment 14: Petitioner maintains that respondent improperly deducted interest income on short-term investments from its interest expense. Petitioner claims that YHC has failed to document properly that this income was in fact derived from short-term investment. Petitioner argues that, because this information was not verified, the Department should disallow this deduction.

DOC Position: We disagree with petitioner. We verified that the reported interest income was in fact derived from short-term investments.

KIS

Comment 15: Prior to the preliminary determination, KIS informed the Department that the credit expense for one U.S. observation was significantly overstated due to the fact that the dollar amount of the credit expense had been multiplied by an incorrect exchange rate twice. KIS contends that the Department should revise the subject credit expense to reflect the corrected amount.

Petitioner argues that the Department should use the credit expense originally reported for this sale since respondent offered no explanation as to why the noted error had not been repeated in calculating the credit expense for other U.S. sales. Petitioner further states that the Department did not seek to verify the corrected credit expense.

DOC Position: We have revised the U.S. database to reflect the change requested by KIS. We determine that respondent's explanation is reasonable because the original credit expense reported for the subject observation was grossly inflated compared with that of other sales. Furthermore, at verification we found that respondent did not repeat the noted errors in calculating the credit expense for other U.S. sales.

Comment 16: Petitioner contends that the Department should include in KIS' home market sales listing sales identified at verification that were made under a certain unit price agreement and shipped during the period between respondent's initial response and

supplemental response to the Department's questionnaire. Petitioner states that, given the respondent's lack of candor regarding these home market sales, the Department should apply as BIA the highest margin calculated to each U.S. sale of a such or similar product. Petitioner also states that the Department should estimate the amount of shipments made pursuant to this agreement up until the date of verification and calculate the margins accordingly.

KIS claims that petitioner erroneously refers to the updated shipments as "sales" under an "agreement." Respondent states that the "sale" was the "agreement" and, thus, these were shipments under the "sale." KIS contends that it brought the subject shipments to the Department's attention and provided all information requested by the Department at verification. Respondent also notes that the Department verified the completeness and accuracy of the updated shipment information. Respondent states that there is no basis in the record or in logic for the Department to go beyond the date of KIS' supplemental response and estimate the amount of wire rope shipped under the agreement up until the date of verification.

DOC Position: At verification, KIS identified shipments made pursuant to a contract negotiated during the period of investigation that had occurred subsequent to the date of the questionnaire response. We verified the accuracy and completeness of the additional shipments. The shipments represent a small percentage of respondent's home market database. Accordingly, for this determination, we determine that the addition of such shipments to respondent's home market database is a minor revision and, as such, does not warrant the application of a BIA rate. Furthermore, we are satisfied that respondent provided all information required by the Department.

Comment 17: Petitioner contends that the Department should ensure that the classes of wire rope and designs of strand categorized under "other" are consistent in the matching of such or similar home market merchandise to models sold in the United States.

KIS states that the Department found KIS' model matches consistent with the Department's methodology at verification. Respondent also states that petitioner has failed to make any specific allegations regarding design and strand in KIS' product matches and, therefore, has waived any rights it has to complain on this issue.

DOC Position: We agree with respondent. In the original questionnaire, we identified the hierarchy of criteria to be applied in the matching of similar merchandise. The Department further required that the cost variance for physical differences in merchandise be accounted for and reported under the difmer field. We find KIS' breakdown of each criterion for purposes of matching such or similar merchandise to be reasonable and in accordance with the Department's instructions. Furthermore, we verified that the difmer amounts accurately reflect the cost variance of physical differences in such or similar merchandise and that the cost variances are within 20 percent of the cost of manufacturing of U.S. merchandise, as required by the Department's questionnaire.

Comment 18: Petitioner contends that KIS failed to identify separately all sales of PVC-coated products in both the U.S. and home markets, thereby preventing the Department from making appropriate model matches and from quantifying adjustments for differences in merchandise. Petitioner states that it is inappropriate to bury the cost of a significant manufacturing process that results in a physically different product in a claimed adjustment for "other movement expenses." Petitioner asserts that the Department should apply a BIA rate (the highest margin calculated for any sale by any respondent) to each U.S. sale of a product with the same control number as the PVC-coated products identified by respondent. Petitioner also notes that the PVC contractor could be related to respondent, thereby calling into question the validity of respondent's reported PVC expenses.

Finally, petitioner states that the respondent failed to reveal whether any of its home market sales involved PVC-coated wire rope and, therefore, the Department should reject all information provided by the respondent for its home market sales and use BIA instead.

KIS responds that it properly included the actual PVC-coated fee amount in each relevant U.S. observation on a transaction-by-transaction basis in the field for other movement expenses. Respondent notes that the original questionnaire did not ask respondent to segregate PVC-coating expenses nor did it include PVC-coating in its hierarchy of model match criteria. Respondent states that the Department verified that KIS had no home market sales of PVC-coated steel wire rope during the POI.

DOC Position: In the questionnaire, we did not require respondents to report separately PVC-coating expenses, nor did we include PVC-coating in the criteria for model matches. However, we agree with petitioner that it is inappropriate to account for PVC-coating as an "other movement expense." PVC-coating is a manufacturing expense and, as such, should be accounted for in the difmer amount assigned to each U.S. sale of a PVC-coated product. Therefore, for each PVC-coated product sold in the United States, we have deducted PVC-coating expense from the field "other movement expenses" and added the expense to the corresponding difmer amount. Where the U.S. sale of a PVC-coated product could not be matched to a home market item, we added the PVC-coating expense to the CV of the model. Because this adjustment constitutes a minor revision, we reject petitioner's contention that we apply a BIA rate to each U.S. sale of a product with the same control number as the PVC-coated sales.

We verified that respondent had no sales of PVC-coated products in the home market. We also verified that the outside PVC contractor was not related to respondent. Therefore, we reject petitioner's contention that the Department should reject all information provided by the respondent for its home market sales and use instead the best information available.

Comment 19: Petitioner states that KIS reported nothing more than the maturity date of the discounted promissory notes as the date of payment for home market sales and failed to provide complete details of such notes as required by the Department's supplemental questionnaire. Thus, petitioner contends that the Department should calculate home market credit expense utilizing the shortest number of days outstanding for any home market sale as BIA.

Petitioner also notes that KIS reported credit expenses based on an estimated number of days outstanding for those sales not paid for as of the date of the supplemental questionnaire. Petitioner contends that, at a minimum, the Department should reject respondent's estimate of number of days outstanding and apply the shorter of the average period of time between shipment and payment for (a) that customer or (b) all home market sales.

KIS maintains that it did not simply report the maturity dates of the notes but, rather, that it calculated the date of payment on these notes by applying a FIFO methodology to the maturity dates of the promissory notes to derive a date of payment on a transaction-specific basis. Respondent notes that the Department verified KIS' calculation of

days outstanding and found no discrepancies.

As to sales with no date of payment, respondent contends that the Department verified a chart of pay dates for sales updated since the supplemental questionnaire response and that these verified pay dates should be used for those sales.

DOC Position: Since KIS maintains an open accounts receivable system, such that it is not possible to match invoices to specific payments, we find respondent's reporting of the date of payment based on a FIFO methodology to be reasonable. The Department examined this methodology at verification and found no discrepancies.

At verification, respondent provided the Department with a chart of actual payment dates for sales originally reported with no date of payment. We verified the actual number of days outstanding for sales selected from this chart in order to ascertain the reasonableness of respondent's estimate of number of days outstanding. Because the estimate of credit days fell within the range of the actual days outstanding for the sample sales verified, we consider respondent's estimate of number of days outstanding to be reasonable. Therefore, we have used respondent's estimates of dates of payment in the calculation of home market credit expenses for sales reported with no date of payment.

Comment 20: Petitioner claims that KIS failed to account for the short-term financing it receives from the discounting of letters of credit issued in payment of sales to the United States and other export markets in its calculation of the average interest rate for home market credit expenses. Thus, petitioner contends that the Department should use petitioner's estimated short-term financing interest rate of five percent as the home market interest rate. At a minimum, petitioner asserts that the Department should include the estimated interest rate for short-term financing in the calculation of the average interest rate.

Assuming that the respondent had not availed itself of the estimated five percent financing available, petitioner contends that the Department should use the interest rate which KIS claims to have paid on discounted notes, rather than the interest rate calculated by respondent. Petitioner cites Carbon Steel Wire Rod from Brazil: Final Determination of Sales at Less Than Fair Value (Carbon Steel) to support its argument. 48 FR 43202, 43204 (September 22, 1983).

KIS responds that it properly calculated an average short-term interest rate for home market credit expenses and that the Department verified the accuracy of this calculation. Respondent states that the Department's policy is to use a home market interest rate based on the company's actual home market borrowing practice. KIS contends that there is no basis in fact, law, or logic for substituting or including a U.S. interest rate in the calculation of home market credit expenses when the respondent has actual, arm's-length, verified borrowings in the home market.

Regarding petitioner's argument that the Department should use the interest rate claimed for discounted notes, KIS states that it properly included the interest which it paid on discounted notes in the calculation of a domestic interest rate. Respondent argues that Carbon Steel is inapposite and that the interest rate paid on discounted notes applies only to those notes which are discounted, not to notes which are kept to maturity, or to other payment arrangements.

DOC Position: We agree with respondent. To the extent that interest expense can be isolated for home market sales, we find it inappropriate to include interest expense for export sales in the calculation of a domestic interest rate. Thus, we find respondent's calculation of a domestic interest rate to be reasonable, and found no discrepancies in respondent's methodology at verification.

We agree with respondent that it properly included the interest paid on discounted notes as well as that paid on short-term loans and overdrafts in the calculation of the average short-term interest rate for home market sales, and that the interest on such notes should not be the sole determinant of the domestic interest rate. Carbon Steel is inapposite because, in that case, the Department was able to obtain the actual interest expense for each U.S. sale whereas, here, the respondent is imputing interest expense for each home market sale.

Comment 21: Petitioner contends that respondent failed to account for the period of time between the negotiation of shipping documents and date of shipment in its calculation of the number of days outstanding for U.S. credit expenses. Thus, petitioner concludes that the Department should make an adjustment to credit expense to account for this period. Petitioner further contends that the Department should calculate the credit expense for this period using the reported home market interest rate.

KIS responds that, as verified by the Department, its U.S. credit expense is actual rather than imputed, thereby rendering the time period between shipping and negotiation irrelevant.

DOC Position: We verified that the respondent reported actual credit expenses incurred for sales to the United States. Thus, we agree with respondent that the time period between negotiation and shipment is irrelevant.

Comment 22: Petitioner contends that a revised estimate of the number of days outstanding was not proffered at verification. Thus, petitioner concludes that the Department should calculate credit expenses for these U.S. sales based upon an estimate of 20 credit days.

KIS states that it presented a revised estimate of the number of days outstanding for these U.S. sales at verification.

DOC Position: The respondent presented at verification a revised estimate of the number of days outstanding for U.S. sales with certain payment terms, which we verified and found to be accurate. Accordingly, we have adjusted the U.S. database to reflect KIS' revised estimate of the number of days outstanding for those U.S. sales with certain payment terms.

Comment 23: Respondent reported "less" charges, L/C advice fees, monogram fees, and PVC-coating fees as other movement expenses. "Less" charges are incurred when the L/C opening bank's payment to the L/C advising bank is either untimely or insufficient. Petitioner contends that respondent improperly allocated other movement expenses over the value of total export sales rather than U.S. sales. Petitioner asserts that, at a minimum, the monogram fee should be allocated over U.S. sales.

KIS responds that "less" charges and L/C advice fees apply to all export sales and that the monogram fee applies to export sales other than the those made to the United States. Thus, respondent concludes that these charges and fees were properly allocated over all export sales.

DOC Position: We agree with respondent. We verified that "less" charges and L/C advice fees for all exports were used in the allocation of other movement expenses. Also, the record does not indicate that the subject monogram fee applies solely to products sold in the United States. Therefore, we determine that other movement expenses were properly allocated over all export sales. *See* Comment 18 for a discussion of PVC-coating expenses.

Comment 24: KIS provided estimates of movement charges for those sales not shipped as of the date of the supplemental questionnaire. For those sales with no date of payment, KIS

reported estimated credit expenses. Petitioner contends that, based on the record, respondent's estimated U.S. charges were understated by significant amounts and, therefore, the Department should reject such estimates and apply as BIA the highest reported expense for each U.S. sale.

As to home market sales, petitioner assumes that estimates were overstated to the same degree that U.S. sales were understated. Thus, petitioner concludes that the Department should reject such estimates and apply as BIA the lowest reported expense for each home market sale.

KIS states that estimates are the best approximation which one can make regarding an unknown figure and, based on the record, its estimates were astonishingly close to the actual figures. Respondent also states that the Department verified estimated home market charges and should, therefore, reject petitioner's assertion that the lowest reported expense should be applied to each home market sale.

DOC Position: Based on our verification of estimated expenses for U.S. sales and estimated payment dates for home market sales, we find respondent's estimates to be accurate and, therefore, have employed them in this final determination.

KIS Cost Comments

Comment 25: Petitioner claims that KIS used an incorrect period to report its costs, October 1991 through March 1992, when the period of investigation is November 1991 through April 1992.

KIS states that the primary reason it elected to report costs from October 1991 to March 1992 was to match costs to sales made during the POI. Respondent argues that the inventory holding period of one month from production to shipment was accurately applied to match the cost of production to sales during the POI.

DOC Position: We disagree with petitioner. KIS requested a shift in the reporting period by one month which the Department allowed since there was no indication of inflation or other factors which would impact the manufacturing costs. We reviewed the price level at verification between the two months in question and determined that there was no significant difference in costs for these two months.

Comment 26: Petitioner states that respondent's classification of communication, entertainment, and miscellaneous expenses as fixed overhead is incorrect. Petitioner asserts that these expenses should be classified as G&A.

Respondent contends that the costs and the allocation methodology were verified and petitioner offers no compelling reason why these verified costs should not be classified in KIS's response as they are classified in its normal accounting records which are consistent with Korean GAAP.

DOC Position: We agree with respondent. During verification, KIS explained that costs that did not generally vary with production were classified as fixed overhead costs. KIS classified as general and administrative costs those costs which related to the activities of the company as a whole, rather than solely to the production process. We find these classifications to be reasonable and consistent with KIS' normal accounting system.

Comment 27: Petitioner claims that there is no evidence to support KIS' assertion that subcontract services provided by related parties were provided at arm's-length prices.

Respondent states that the percentage of total material cost purchased from related suppliers during the POI was immaterial and not at prices below those paid to unrelated processors.

DOC Position: Whether the subcontract services provided by related parties were at arm's-length prices is irrelevant. We examined the total amount of materials purchased from related suppliers. We determined that the amount of material input from related suppliers was of such an inconsequential amount relative to the total cost of production, that it could not have had an impact on the final determination.

Man Ho

Comment 28: Petitioner contends that Man Ho failed to explain or account for a revision to total home market sales value submitted subsequent to verification. Petitioner claims that this revision constitutes a new response and that the response should be rejected. Alternatively, because the calculation of credit expense depends in part on total home market sales, petitioner argues that the Department should reject respondent's claimed adjustment for home market credit expenses.

Man Ho states that it explained and accounted for its revised total of home market sales prior to commencement of verification and that the Department verified such revised data.

DOC Position: Upon commencement of verification, Man Ho provided the Department with a list of corrections. Among these corrections was a revised total home market sales value to be used in the calculation of home market credit expenses. This correction was made pursuant to the discovery of a minor clerical error. Man Ho also identified additional shipments, pursuant to a contract negotiated during the POI, that had occurred subsequent to the date of the questionnaire. We verified both the correction and additional shipments. We consider these changes to be minor revisions of the home market database and we do not believe rejection of the response is warranted.

Although the total value of home market sales was not adjusted to account for the additional shipments in the calculation of an accounts receivable turnover rate, we have determined that the addition of such shipments has an insignificant impact on the calculation of credit expenses. Therefore, we have used the accounts receivable turnover rate reported by respondent for purposes of calculating home market credit expenses.

Man Ho Cost Comments

Comment 29: Petitioner states that Man Ho improperly offset the interest component of COP by the amount at which interest income earned from short-term investment of working capital exceeded total interest expense during the fiscal year. Thus, petitioner claims that general interest expense should be set equal to zero for purposes of calculating COP.

Man Ho argues that all interest income from short term investments should be deducted from the calculation of interest expense. Respondent asserts that the mere fact that income happens to exceed expenses is not a reasonable basis for treating a portion of the income differently.

DOC Position: We agree with petitioner. Short-term interest income related to production is an offset to interest expense, not to COP and, therefore, can only be used to reduce total interest expense to not less than zero. See Frozen Concentrated Orange Juice From Brazil: Final Results of Administrative Review, 55 FR 26721, 26723 (1990). Therefore, we have set general interest expense equal to zero for purposes of calculating COP.

Comment 30: Petitioner states that Man Ho improperly identified certain fixed overhead expenses as variable overhead expenses. Petitioner also claims that respondent improperly allocated some of these expenses to G&A.

Respondent maintains that fixed overhead expenses were properly classified in accordance with the Department's cost questionnaire.

DOC Position: We agree with respondent. It is immaterial whether factory overhead expenses are

categorized as fixed or variable because both are ultimately added to COP. During verification, respondent explained that portions of repairs, maintenance, taxes, dues, insurance and vehicle maintenance expenses varied with production. Man Ho classified as fixed overhead, those costs that generally did not vary with production. Man Ho classified general and administrative costs as those costs which related to the activities of the company as a whole rather than solely to the production process. We find these classifications to be reasonable and consistent with Man Ho's normal accounting system under Korean GAAP.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation for Man Ho of all entries of steel wire rope, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after September 30, 1992, the date of publication of our preliminary determination in the **Federal Register**. We are not ordering suspension of liquidation of entries of steel wire rope produced by KIS or YHC. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Korea Iron & Steel Wire, Ltd	0.23 (*de minimis*).
Man Ho Rope Mfg. Co., Ltd	1.51.
Young Heung Iron & Steel Co., Ltd.	0.10 (*de minimis*).
All Others	1.51.

Exclusion of KIS and YHC

Normally, the Department will exclude from the application of an antidumping duty order a producer found to have a *de minimis* or zero weighted-average dumping margin during the POI. 19 CFR 353.21(c). The Department's final determination resulted in *de minimis* dumping margins for KIS and YHC. However, the Department is currently drafting proposed regulations which would eliminate exclusions. In this case, the Department is concerned about the possibility that numerous small producers of Korean steel wire rope could start to funnel sales of their merchandise through KIS or YHC and evade any antidumping order which might result from this investigation. The Department's proposed regulation will address this problem and the practice of excluding firms from an order based on a negative fair value determination for that firm.

In the meantime, the Department wants to make clear that when KIS and YHC are excluded from an antidumping duty order on steel wire rope from Korea, this exclusion will apply only to steel wire rope which is both produced and sold by KIS or YHC to the United States. We will review import statistics and work closely with the U.S. Customs Service to ensure that other producers are not making sales through KIS or YHC to evade an order and to ensure that entry documentation identifies the producer of the steel wire rope.

The Department has the authority to conduct a changed circumstances review to determine whether KIS or YHC is reselling steel wire rope produced by other companies in Korea. We will immediately initiate a review if we have reason to believe that the integrity of the order on Korean steel wire rope is threatened as a result of such evasion. A preliminary or final affirmative finding could result in the suspension of liquidation of all entries of KIS or YHC, as appropriate.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification of Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: February 12, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–4057 Filed 2–22–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing in Boise, Idaho on an application for a permit for scientific research and to enhance the survival of an endangered species and extension of the comment period (P504B).

SUMMARY: On January 26, 1993, (58 FR 6116) NMFS announced the receipt of an application for scientific research and to enhance the survival of an endangered species from the U.S. Army Corps of Engineers (Corps), Walla Walla District. The applicant requests authorization to collect and transport juvenile Snake River sockeye salmon (*Oncorhynchus nerka*) and juvenile Snake River spring/summer and fall chinook salmon (*O. tshawytscha*) around mainstem dams and associated downstream reservoirs on the Snake and Columbia Rivers for the purpose of increasing their chances of survival over the alternative of in-river passage, given current in-river conditions. The Corps proposes to route the fish to raceways and then load them into trucks or barges for transportation and release below Bonneville Dam. Subsets of salmon collected for transportation and additional listed salmon will be used for smolt monitoring and research purposes. Collection and transportation of juvenile salmon is proposed to occur March 25 through October 31 at Lower Granite, Little Goose, and Lower Monumental dams, and March 25 through December 31 at McNary Dam. The requested duration of the permit is March 25 through December 31, 1993.

This hearing is in addition to the public hearing scheduled for February 25, 1993, in Portland, Oregon (58 FR 7213). Anyone wishing to make a presentation at the public hearing should register upon arrival and be prepared to provide a written copy of their testimony at the time of presentation. Depending on the number of persons wishing to speak a time limit may be imposed.

DATES: The public hearing is scheduled for March 10, 1993, from 6 p.m.–9:30 p.m., or until all comments have been heard, at the Boise Interagency Fire Center Auditorium, 3905 Vista Avenue, Boise, Idaho. The comment period on this application is extended to March 13, 1993, to allow commentors the opportunity to respond to concerns voiced at the public hearing.

ADDRESSES: Send written comments to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Office of Protected Resources. Karen Holtz, Environmental and Technical Services Division.

Dated: February 17, 1993.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–4102 Filed 2–18–93; 10:35 am]

BILLING CODE 3510–22–M

National Marine Fisheries Service; Endangered Species; Application for Modification to a Scientific Research Permit; David Nelson, Coastal Ecology Group, Environmental Laboratory, Waterways Experiment Station, U.S. Army Corps of Engineers (Permit No. 777)

Notice is hereby given that an applicant has applied in due form for a Modification to a Scientific Research Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

1. *Applicant:* David A. Nelson, Coastal Ecology Group, Environmental Laboratory, USAE Waterways Experiment Station, Vicksburg, MS 39160.
2. *Type of Permit:* Scientific Research
3. *Name and Number of Species:* 0–10 Kemp's Ridley Sea Turtles, *Lepidochelys kempi* 215 Loggerhead Sea Turtles, *Caretta caretta*
4. *Type of Take:* The applicant proposes to conduct radio and sonic telemetry studies on loggerhead and Kemp's ridley sea turtles to assess the baseline behavior of sea turtles in dredged channels and the behavior of sea turtles relocated from dredged channels in the Southeastern United States. The applicant will also implement a satellite telemetry study to determine the seasonal migration of sea turtles into and out of dredged material channels. The above information will be used to determine behavioral patterns with the potential for prevention of sea turtle impingement by the hopper dredge. Animals will be captured directly with dedicated trawlers, and tows will consist of 30 minutes or less of bottom time.
5. *Location and Duration of Activity:* These telemetric research activities will be conducted in the spring, fall and winter of 1993. All of the investigations during this period will take place in the entrance channels of Charleston, Savannah, and Kings Bay, Georgia, as well as Canaveral, Florida.

Written data or views, or requests for a public hearing on this application should be submitted to the NMFS, U.S. Department of Commerce, 1335 East-West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices: Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, SSMC #1, room 8268, Silver Spring, Maryland 20910, (301/713–2219); and Director, Southeast Region, NOAA, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: February 11, 1993.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 93–4103 Filed 2–22–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Requests to modify permits (P368B) and (P66G).

SUMMARY: Notice is hereby given that the following Permit Holders have requested a modification to their Permit issued under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

James T. Harvey, Ph.D., Assistant Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039–0450 (P368B).

Permit No. 737 issued on May 8, 1991 (56 FR 22402) authorizes the capture, blood sampling, flipper and radio tagging, and the injection of tetracycline on up to 100 harbor seals (*Phoca vitulina*) annually and to incidentally harass up to 550 harbor seals while capturing animals and collecting fecal samples. The Permitee requests a modification to the Permit to allow removal of three small (each 0.10g) biopsy samples. The samples will be used to monitor organic pesticide levels that will compliment those using blood.

Alaska Department of Fish and Game, P.O. Box 3–2000, Juneau, AK 99802 (P66G).

Permit No. 770 issued on March 20, 1992 (57 FR 10649) authorizes up to 200 harbor seals (*Phoca vitulina*) and 100 spotted seals (*Phoca largha*) to be captured, restrained, blood sampled, and flipper tagged. Of these: Up to 100 harbor seals and 50 spotted seals may be equipped with satellite-linked platform transmitter terminals (PTTs) and/or VHF telemetry and released; and up to 10 harbor seals and five (5) spotted seals may be unintentionally killed. Up to 500 harbor seals and 500 spotted seals may be unintentionally harassed over a 4-year period while conducting the authorized activities.

The Permittee requests the following modifications to the Permit: (a) Expansion of the study location to include the waters of southeast Alaska from Cape Spencer to Dixon Entrance; (b) deletion of the permit requirement that not more than 50% of the subject animals be taken in any one year; (c) substitution of Temple tags with miniature VHF radios attached for Allflex tags; and (d) collection of additional samples from 200 harbor seals (i.e., nasal, oral, genital, and rectal swabs; a blubber biopsy; flipper punches; a vibrissae and piece of a claw; urine; and colon contents (by enema) and stomach contents (by lavage) and 100 spotted seals (i.e., a blubber biopsy; flipper punches; a vibrassae and piece of claw); and urine. The Permittee also requests authorization to continue research as required by Special Condition B.1.e. of the Permit.

ADDRESSES: Written data or views, or requests for a public hearing on this

modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice.

Documents submitted in connection with these Permits and modification requests are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 (301/713–2289);

(P368B)—Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4015); and

(P66G)—Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Rd., suite 6, Juneau, AK 99802 (907/586–7221).

Dated: February 12, 1993.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–4098 Filed 2–22–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF ENERGY

Certification of the Radiological Condition of The Albany Research Center in Albany, OR

AGENCY: Office of Environmental Restoration and Waste Management, Department of Energy.

ACTION: Notice of certification.

SUMMARY: The Department of Energy has completed radiological surveys and taken remedial action to decontaminate process buildings and surroundings at the Albany Research Center in Albany, Oregon. The property was found to contain quantities of radiological material from work performed for the Manhattan Engineer District, Atomic Energy Commission, and Energy Research and Development Administration.

FOR FURTHER INFORMATION CONTACT: James J. Fiore, Director, Office of Eastern Area Programs, Office of Environmental Restoration and Waste Management (EM–42), U.S. Department of Energy, Washington, DC 20585. (301) 903–8141.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE), Office of Environmental Restoration and Waste Management, Office of Eastern Area Programs, Division of Off-Site Programs, has implemented a remedial action project at the Albany Research Center (ARC) in Albany, Oregon (City of Albany, Deed Book 161, page 421, #17277), as part of the Formerly Utilized Sites Remedial Action Program (FUSRAP). The objective of the program is to identify and clean up or otherwise control sites where residual radioactive contamination remains from activities carried out under contract to DOE's statutory predecessor agencies, i.e., the Manhattan Engineer District (MED), the Atomic Energy Commission (AEC), and the Energy Research and Development Administration (ERDA). In June 1983, ARC was formally designated by DOE for cleanup under FUSRAP.

ARC was established in 1943 to investigate innovative approaches for developing strategic mineral resources in the United States, reducing costs for metallurgical manufacturing processes, developing materials to fight corrosion, and other activities relevant to metallurgical research.

Various operations involving radioactive materials have been conducted at ARC. From 1948 to 1956, ARC conducted work for AEC involving the melting, machining, welding, and alloying of thorium. Additional work with uranium and thorium was performed at ARC for the Energy Research and Development Administration (ERDA).

During the era of AEC and ERDA contracts (1946–1977), process buildings and surroundings were decontaminated at various times to guidelines then applicable to AEC, ERDA, and DOE. Subsequent decontamination guidelines were stricter, and records relating to the previous decontamination efforts were not adequate to determine whether the buildings and surrounding areas met the new stricter DOE radiological guidelines. As a result, a radiological assessment was initiated in 1978. Subsequent to this assessment, it was advised that although the levels of contamination at ARC did not pose an immediate health hazard, further decontamination of the property should occur. In early 1984, a radiological survey was conducted at ARC to determine actual levels of contamination in each area identified by the 1978 assessment and to define the locations and boundaries of above-guideline contamination.

From 1987 to 1991, the subject property was decontaminated. Post-remedial action surveys have demonstrated, and DOE has certified, that the subject property is in compliance with DOE decontamination criteria and standards established to protect members of the general public and occupants of the site and that future use of the property will result in no radiological exposure above applicable radiological guidelines to the general public or the site occupants. These findings are supported by the DOE Certification Docket for the Remedial Action Performed at The Albany Research Center in Albany, Oregon, 1987–1988 and 1990–1991. Accordingly, this property is released from FUSRAP.

The certification docket will be available for review between 9 a.m. and 4 p.m., Monday through Friday (except Federal holidays) in the U.S. Department of Energy Public Reading Room located in room IE–190 of the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. Copies of the certification docket will also be available in the DOE Public Document Room, U.S. Department of Energy, Oak Ridge Field Office, Oak Ridge, Tennessee, and in the administrative record at the Albany Research Center Library, 1450 Queen Ave., SW., Albany, Oregon, from 9 a.m. to 3 p.m., Monday through Friday.

The Department of Energy has issued the following statement of certification:

Statement of Certification: Albany Research Center, Former MED/AEC/ERDA Operations

The U.S. Department of Energy, Oak Ridge Field Office, Former Sites Restoration Division, has reviewed and analyzed the radiological data obtained following remedial action at the Albany Research Center site. Based on this analysis of all data collected, the Department of Energy (DOE) certifies that the following property is in compliance with DOE decontamination criteria and standards. This certification of compliance provides assurance that future use of the property will result in no radiological exposure above applicable guideline established to protect members of the general public or site occupants. Accordingly, the property specified below is released from DOE's Former Utilized Sites Remedial Action Program.

Property owned by The Bureau of Mines, U.S. Department of the Interior. Albany Research Center, 1450 Queen Avenue, SW., Albany, Oregon, 97321, described in the deed, City of Albany Deed Book 161, page 421, #17277.

Paul D. Grimm,

Acting Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93–4147 Filed 2–22–93; 8:45 am]

BILLING CODE 6450–01–M

Floodplain Statement of Findings for the Proposed Interim Remedial Action at the Jefferson Tennis Court Site

AGENCY: Department of Energy.

ACTION: Floodplain statement of findings.

SUMMARY: The U.S. Department of Energy (DOE) proposes to remediate the effects of mercy contamination by placing 0.5 to 1.0 feet of clean soil over a 1.5-acre portion of parcel 410, a 3.52-acre field near the Jefferson Tennis Courts within the City Limits of Oak Ridge, Tennessee. A portion of this property falls within the 100-year floodplain of East Fork Poplar Creek.

A Floodplain Assessment has been prepared, in accordance with Executive Order 11988 and 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. On the basis of the floodplain assessment, DOE has determined that there is no practicable alternative to the proposed activities taking place within the floodplain ad that the proposed action has been designed to avoid or minimize potential harm to or within the floodplain of East Fork Poplar Creek. The other alternative (no action) considered would not alleviate the potential exposure to mercury contamination to the same degree as the proposed action.

DATES: Comments on the Statement of Findings are due no later than March 10, 1993.

ADDRESSES: Send comments to Mr. Robert Sleeman, Director, Environmental Restoration Division, Oak Ridge Field Office, U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8541 or fax comments to 615–576–6074.

FOR FURTHER INFORMATION CONTACT: For information on the proposed action and a copy of the Floodplain Assessment or the location map, contact the Oak Ridge Field Office at the above address. For information on the DOE floodplain/wetland environmental review requirements, contact Carol Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone 202–586–4600 or 800–472–2765.

SUPPLEMENTARY INFORMATION: Results of a HEC–2 backwater model for base flood and floodway were obtained from the Tennessee Valley Authority by the Corps of Engineers (COE) and used in preparing the Floodplain Assessment. On the basis of this Floodplain Assessment (available from the address above), the proposed action would serve to isolate the contamination and reduce the risks to human health and the environment from the potential exposure to mercury. The proposed action involves the placement of 0.5 to 1.0 feet of clean soil over a 1.5-acre field so the field can be used for recreational purposes.

The proposed action has been designed to conform to applicable Federal and State regulations. Discussions among DOE, U.S. Army COE, and City of Oak Ridge officials have indicated the acceptability of fill placement within the floodplain, and that fill placement in the floodway would not be desirable. Placement of fill in the floodway fringe (i.e., that part of the floodplain that is not floodway) would increase upstream flood elevations less than 1.0 foot. DOE shall endeavor to allow at least 15 days of public review after publication of this Statement of Findings.

Paul D. Grimm,

Acting Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93–4140 Filed 2–22–93; 8:45 am]

BILLING CODE 6450–01–M

Notice of Intent To Issue a Grant in Response to an Unsolicited Proposal

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Intent to issue a grant to the National Council on Radiation Protection and Measurements (NCRP) based on an unsolicited proposal to research and provide an independent and comprehensive report on the environmental, biological, and epidemiological risks of radionuclides of interest to DOE.

SUMMARY: The unsolicited proposal submitted by NCRP has been evaluated using the criteria identified in 10 CFR 600.14(e)(1)(i) and (ii) for acceptance of an unsolicited proposal, and has been determined to be meritorious, and represent a unique and innovative idea. It is anticipated that grant number DE–FG01–93NE32174 will be awarded in March of 1992.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Ms. Kris Wright/PR–322.4, 1000 Independence Avenue SW., Washington, DC 20585.

The point of contact, Ms. Wright, may be reached on (202) 634–4434.

Carol M. Rueter,

Acting Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–4141 Filed 2–22–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–194–000, et al.]

Oklahoma Gas & Electric Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 12, 1993.

Take notice that the following filings have been made with the Commission:

1. Oklahoma Gas and Electric Company

[Docket No. ER93–194–000]

Take notice that on February 8, 1993, Oklahoma Gas and Electric Company (OG&E) filed an amendatory letter requesting February 9, 1993 as the effective date of its membership to the Western Systems Power Pool.

Copies of this filing have been served on the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company, Massachusetts Electric Company, The Narragansett Electric Company

[Docket No. ER93–255–000]

Take notice that New England Power Company, Massachusetts Electric Company and The Narragansett Electric Company on February 8, 1993, tendered for filing an amendment to their combined filing in the above docket. According to the companies, the information submitted responds to staff's request for more data relative to the agreements already tendered in this docket.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company

[Docket No. ER92–853–000]

Take notice that Louisville Gas and Electric Company (LG&E) and Southern Indiana Gas & Electric Company (SIGECO), tendered for filing on February 9, 1993 an amendment to their filing dated September 21, 1992. The original filing was the Seventh Supplemental Agreement to the interconnection agreement between SIGECO and LG&E.

In the filing, Section 2.9 of Service Schedule H was amended to provide that sales made under A.B. Brown unit sales and under this and other agreements which contain prices reflecting the cost of Southern Indiana's A.B. Brown Units 1 and 2 cannot exceed 500 MW.

A copy of the filing was served upon the Kentucky Public Service

Commission and the Indian Utility Regulatory Commission.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–211–000]

Take notice that on February 8, 1993, Consolidated Edison Company of New York, Inc. (Con Edison), in response to a deficiency letter herein, tendered for filing additional information relative to an agreement for the construction of the Ladentown Switching Station for the benefit of Con Edison and Orange and Rockland Utilities, Inc. (Orange and Rockland).

Con Edison states that a copy of this filing has been served by mail upon Orange and Rockland.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company

[Docket No. ER93–360–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on February 8, 1993, tendered for filing a Notice of cancellation of FERC Rate Schedule No. 55.

Wisconsin Electric requests an effective date of December 31, 1987, coincident with its purchase of the assets of Upper Peninsula Generating Company in Docket Nos. EC87–26–000 and EC88–3–000.

Copies of the filing have been served on the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Company

[Docket No. ER93–359–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on February 8, 1993, tendered for filing a request for rate schedule designation and a related Notice of Cancellation. According to data obtained from the Commission's RATIS system, when Wisconsin Electric sought cancellation of FERC Rate Schedule No. 57 in Docket No. ER90–547–000, the standby service rendered to the City of Menasha under a supplement to that agreement continued without proper designation.

Wisconsin Electric requests an effective date of November 1, 1991 for the standby service designation. Wisconsin Electric requests an effective date of May 10, 1993 for the cancellation of the standby service to the City of Menasha, pursuant to the terms of the agreements filed in Docket Nos. ER88–422–000 and ER91–200–000.

Copies of the filing have been served on the City of Menasha and the Public Service Commission of Wisconsin.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Milford Power Limited Partnership

[Docket No. ER93–304–000]

Take notice that Milford Power Limited Partnership (Milford), on February 9, 1993, tendered for filing a further proposed change in its Rate Schedule FERC No. 1.

The further proposed change to Milford's Rate Schedule FERC No. 1 was required to allow Milford to increase the amount of test power that may be sold to NEPCO from the Milford Project. The proposed change does not affect the rate to be paid for test power from the Milford Project.

A copy of the filing was served upon New England Power Company.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–214–000]

Take notice that on February 8, 1993, Consolidated Edison Company of New York, Inc. (Con Edison), in response to a deficiency letter herein, tendered for filing additional information relative to a Rate Schedule and a Supplement constituting agreements for the construction, operation, and maintenance of a 345 kV transmission line from Bowline Point to Ladentown for the benefit of Con Edison and Orange and Rockland Utilities, Inc. (Orange and Rockland).

Con Edison states that a copy of this filing has been served by mail upon Orange and Rockland.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–208–000]

Take notice that on February 8, 1993, Consolidated Edison Company of New York, Inc. (Con Edison), in response to a deficiency letter herein, tendered for filing additional information relative to a Rate Schedule and Supplement constituting an agreement for the ownership, construction, operation and maintenance of the PJM facilities for the benefit of Con Edison and Orange and Rockland Utilities, Inc. (Orange and Rockland).

Con Edison states that a copy of this filing has been served by mail upon Orange and Rockland.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–210–000]

Take notice that on February 8, 1993, Consolidated Edison Company of New York, Inc. (Con Edison), in response to a deficiency letter herein, tendered for filing additional information relative to an agreement for the construction, operation, maintenance, and ownership of certain facilities at its East Fishkill Substation for Central Hudson Gas & Electric Corporation (Central Hudson).

Con Edison states that a copy of this filing has been served by mail upon Central Hudson.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER93–242–000]

Take notice that on February 9, 1993, Tampa Electric Company (Tampa Electric) submitted additional information in support of Tampa Electric's maximum Hourly Charge under the amendment to the Contract for Purchases and Sales of Scheduled Power and Energy between Florida Power & Light Company (FP&L) and Tampa Electric, as tendered by FP&L in this docket on November 27, 1992.

Tampa Electric continues to request that the contract amendment be made effective on February 1, 1993, and therefore requests waiver of the Commission's notice requirements.

Copies of Tampa Electric's submittal have been served on FP&L and the Florida Public Service Commission.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Company

[Docket No. ER93–362–000]

Take notice that on February 9, 1993, New England Power Company (NEP) submitted for filing four proposed power sales contracts with UNITIL Power Corp. (UNITIL). NEP states that the proposed contracts provide for long term unit power sales from five generating units either owned, in whole or in part, by NEP or in which NEP holds entitlements: Ocean State Power Units 1 and 2 (up to 22.2 MW through 10/31/2010), Salem Harbor Unit 3 (up to 9.3 MW through 10/31/2005), Maine Yankee (up to 2.0 MW through 10/31/

2005) and Millstone Power Unit 3 (up to 3.0 MW through 10/31/2005). Each of the sales is at the full cost of service for the respective generating unit(s). NEP requests that the proposed tariff be made effective May 1, 1993.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER93–361–000]

Take notice that on February 9, 1993, Northeast Utilities Service Company (NUSCO), submitted an Interconnection, Operation and Maintenance Agreement between Western Massachusetts Electric Company and Littleville Power Company, Inc.

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule change to become effective on December 31, 1992.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the parties.

NUSCO further states that the filing is in accordance with section 35 of the Commission's regulations.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. The United Illuminating Company

[Docket No. ER93–364–000]

Take notice that on February 9, 1993, The United Illuminating Company (UI) tendered for filing an agreement between UI and UNITIL Power Corp. (UNITIL).

The agreement concerns the delivery through Northeast Utilities of certain capacity entitlements and associated energy that UNITIL is purchasing from UI. That purchase is being made pursuant to UI's Power Purchase Agreement with UNITIL dated February 10, 1992, which was accepted on a market basis in United Illuminating Co., 60 FERC ¶ 61,214 (1992) and which has been designated at UI Rate Schedule FERC No. 97.

The agreement provides for transmission of the capacity and energy in a manner similar to that set out in the Power Purchase Agreement. The agreement, however, includes a provision which can reduce the charges for transmission service below those that UNITIL would have had to pay under the Power Purchase Agreement.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Consumers Power Company

[Docket No. ER93–88–000]

Take notice that on February 9, 1993, Consumers Power Company (Consumers) tendered for filing an amendment of its original filing in the above-referenced docket. The amendment provided additional information requested by Staff and modified certain Service Schedules without increasing rates above those included in the original filing in this docket.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Malacha Hydro Limited Partnership

[Docket No. ER93–358–000]

Take notice that on February 5, 1993, Malacha Hydro Limited Partnership, organized under the laws of the State of Maryland, submitted for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for sales of energy and capacity to Pacific Gas and Electric Company.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. Panther Creek Partners

[Docket No. QF87–59–007]

On January 29, 1993, Panther Creek Partners, c/o Constellation Energy, Inc. of 250 West Pratt Street, 23rd Floor, Baltimore, Maryland 21201, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in the Borough of Nesquehoning, Carbon County, Pennsylvania. The Commission previously certified the facility as an 83 MW anthracite waste-fired small power production facility. The instant request for recertification is due to a change in the facility's fuel supply sources and a change in the ownership structure.

Comment date: 30 days from publication in the **Federal Register**, 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, NW., 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. 93–4065 Filed 2–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–209–000, et al.]

Texas Gas Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corp.

[Docket No. CP93–209–000]

February 11, 1993.

Take notice that on February 9, 1993, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP93–209–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a delivery point to provide natural gas service to Poplar Grove Utility District of Tipton County, Tennessee (Poplar Grove), under Texas Gas' blanket certificate issued in Docket No. CP82–407–000 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.

Texas Gas proposes to construct a delivery point to be known as the Poplar Grove-Atoka Meter Station. Texas Gas states that it would install a 2-inch meter station on a site owned by Texas Gas at Mile Post 0+0000 on Texas Gas' Shelby County-Ripley 4-inch line in Tipton County, Tennessee. Texas Gas explains that firm transportation service pursuant to its FT rate schedule would be provided for Poplar Grove under Texas Gas' blanket transportation certificate. Texas Gas advises that the service would involve the delivery of up to 1,463 MMBtu equivalent of gas per day.

Comment date: March 29, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Co.

[Docket No. CP93–206–000]

February 11, 1993.

Take notice that on February 5, 1993, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93–206–000 a request pursuant to § 157.205 of the Commission's Regulations to construct and operate a new delivery point for Koch Hydrocarbon Company (Koch), in Arapahoe County, Colorado for an interruptible transportation service under CIG's blanket certificate issued in Do. CP83–21–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG proposes to construct and operate the Mitchell Fuel Meter Station (Mitchell) in Arapahoe County, Colorado. CIG states that it would install a two-inch meter on its existing 20-inch mainline to delivery to Koch up to 500 Mcf of Natural gas per day for use as fuel for a natural gas compressor, on an interruptible basis, pursuant to a facilities agreement dated August 28, 1992. CIG states that the estimated cost of these facilities is $20,300. The Mitchell station, which would have a maximum capability of 2,000 Mcf per day, would not have an effect on CIG's peak day and annual deliveries since the transportation service would be on an interruptible basis, it is indicated.

Comment date: March 29, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP93–199–000]

February 11, 1993.

Take notice that on February 4, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed an application with the Commission in Docket No. CP93–199–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon four firm transportation services performed by Tennessee for ANR Pipeline Company (ANR), all as more fully set forth in the application which is open to public inspection.

Tennessee states that it requests permission to abandon four firm transportation Rate Schedules (T–16, T–109, T–111, and T–125), pursuant to which Tennessee has transported gas for ANR.

Tennessee states that it has been authorized to transport 50,000 Mcfd for ANR pursuant to its T–16 Rate Schedule.[1] The transportation is from Lafourche Parish, Louisiana to St. Mary's and Cameron Parishes, Louisiana. Tennessee also states that it has been authorized to transport up to 40,000 Mcfd of gas for ANR from Vermilion Block 242 to Acadia Parish, Louisiana pursuant to its Rate Schedule T–109.[2] In addition, Tennessee states that it is authorized to transport up to 750 Mcfd of gas for ANR from offshore Louisiana to St. Bernard Parish, Louisiana pursuant to its T–111 Rate Schedule.[3] Tennessee also states that pursuant to T–125 Rate Schedule, it transported on an interruptible basis up to 10,000 Mcfd of gas for ANR from West Cameron Block 601 to a point near Egan, Louisiana for redelivery by displacement at the Superior Oil Company's Lowry Plant in Cameron Parish, Louisiana.[4]

Comment date: March 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP93–207–000]

February 12, 1993.

Take notice that on February 4, 1993, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP93–207–000 an application, as supplemented on February 10, 1993, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued sale of natural gas for resale to Prairie View Gas Association (Prairie View) and for authority to operate existing facilities to implement the sale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER states that on October 20, 1992, it commenced emergency sales service to Prairie View under § 284.262, *et seq.*, of the Commission's Regulations. It is indicated that Prairie View is a locally-owned distribution company that serves approximately 65 residential customers in the town of Prairie View, Arkansas. It is also indicated that the town's sole natural gas supply comes from two locally owned and operated natural gas wells. AER states that lightning struck the main well supply, causing a fire and damaging the equipment severely. AER indicates that to assist Prairie View in this emergency, it provided emergency natural gas service through an existing one-inch tap on its Line JT–3 previously installed to provide service to Prairie View under a previous emergency. AER indicates that the emergency service expires on February 17, 1993.

AER states that Prairie View has not completed the necessary repairs. AER requests that the sales to Prairie View continue under section 7 of the Natural Gas Act for a term expiring May 1, 1993. AER also requests that it be authorized to continue to operate the tap facility previously used to provide the emergency sale. AER will charge Prairie View a rate based on AER's Rate Schedule G–2.

Comment date: March 5, 1993, in accordance with Standard Paragraph F at the end of this notice.

5. Williams Natural Gas Co.

[Docket No. CP93–201–000]

February 16, 1993.

Take notice that on February 4, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–201–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by reclaim the Clyde compressor station located in Grant County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes to abandon the 230 horsepower compressor station and appurtenant facilities because WNG has filed, in Docket No. CP92–711–000, a request to abandon the Clyde/Wakita gathering system for which the subject compressor was used. It is stated that the compressor has not been operated since 1989. The cost of the abandonment is estimated at $16,910, with a salvage value of $32,300. It is explained that the compressor station was constructed in 1963 under Commission authorization in Docket No. CP 63–304. It is asserted that the proposed abandonment will have no effect on WNG's system operation and that no customers will lose service as a result of the abandonment.

Comment date: March 9, 1993, in accordance with Standard Paragraph F at the end of this notice.

6. Trunkline Gas Co.

[Docket Nos. CP93–203–000, CP93–204–000, CP92–205–000]

February 16, 1993.

Take notice that on February 5, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed applications pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon

[1] See 47 FPC ¶ 937 (1972).
[2] See 5 FERC ¶ 61,115 (1978).
[3] See 11 FERC ¶ 61,311 (1980).
[4] See 15 FERC ¶ 62,308 (1981).

firm transportation services for Transcontinental Gas Pipe Line Corporation (Transco) and ANR Pipeline Company (ANR), under Rate Schedules, T–4 and T–6, and to abandon interruptible transportation service to Bridgeline Gas Distribution Company (Bridgeline) under Rate Schedule T–91, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Trunkline requests specific authority to abandon the transportation services provided to Transco, Bridgeline, and ANR, effective December 12, 1993, March 13, 1993, and April 28, 1993, respectively. Transco, Bridgeline, and ANR, as indicated by Trunkline, agreed to terminate the transportation services by respective termination notices dated December 9, 1992, January 21, 1993, and May 7, 1992.

Trunkline indicates that the transportation services are no longer desired by the relative parties and that the termination of the respective agreements would relieve both parties from the contractual obligations of such agreements.

Trunkline also contends that there will be no abandonment of facilities nor will the abandonment of the services proposed herein result in any abandonment of service to its other customers.

Comment date: March 9, 1993, in accordance with Standard Paragraph F at the end of the notice.

7. Big Sandy Gas Co.

[Docket No. CP93–198–000]

February 16, 1993.

Take notice that on February 4, 1993, Big Sandy Gas Company (Big Sandy), 15375 Memorial Drive, Houston, Texas 77079, filed in Docket No. CP93–198–000 a petition for declaratory order requesting that the Commission declare that facilities to be acquired from CNG Transmission Corporation (CNGT) are gathering facilities exempt from the Commission's Regulations pursuant to section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Big Sandy states that its parent, Cabot Oil & Gas Corporation (Cabot), and CNGT entered into a June 25, 1992 agreement under which CNGT would sell and Cabot would acquire certain assets and facilities located in Fayette, Logan, Mingo, Wyoming and Boone Counties, West Virginia. It is further stated that Cabot would acquire non-jurisdictional natural gas wells and acreage and approximately 159.26 miles of pipeline with three compressors involving approximately 675 horsepower. Big Sandy indicates that while Cabot is the party having agreed to purchase these assets from CNGT, the parties anticipate that if this Petition is granted, the pipeline and compressor facilities would actually be conveyed to Cabot's subsidiary, Big Sandy, and the reserves and wells would be conveyed to Cabot. Thus, it is stated, the pipeline and compressors to be ultimately acquired by Big Sandy are the subject of the Petition. Big Sandy states that CNGT has filed in Docket No. CP93–200–000 to abandon these certificated facilities by sale to Cabot.

Big Sandy states that by applying the modified primary function test as set forth in Amerada Hess Corp., et al., 52 FERC ¶61,268 (1990), the facilities to be acquired qualify as gathering facilities exempt from Commission Regulation under section 1(b) of the Natural Gas Act.

Comment date: March 9, 1993, in accordance with Standard Paragraph F at the end of this notice.

8. El Paso Natural Gas Co.

[Docket No. CP93–212–000]

February 16, 1993.

Take notice that on February 10, 1993, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP93–212–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a sale of natural gas to Transcontinental Gas Pipe Line Corporation (Transco) which was authorized in Docket No. CP78–447–000,[5] all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso proposes to abandon the sale of gas to Transco that is being provided on a best efforts basis under a letter agreement dated July 13, 1978, which is on file as El Paso's special Rate Schedule Z–5. El Paso reports that the proposal results from its transition from a gas merchant to an open-access transporter of natural gas. El Paso explains that such transition has prompted it and its customers to address, among other things, gas purchase relationship with producers and the need to continue traditional NGA Section 7 certificated services. El Paso states that by letter agreement dated October 23, 1992, El Paso and Transco have agreed to terminate this case-specific, certificated sales service.

El Paso states that no facilities are proposed to be abandoned.

[5] *See* 5 FERC ¶61,112 (1978).

Comment date: March 9, 1993, in accordance with Standard Paragraph F at the end of the notice.

9. CNG Transmission Corp.

[Docket No. CP93–200–000]

February 16, 1993.

Take notice that on February 4, 1993, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP93–200–000 an application pursuant to section 7(b) of the Natural Gas Act seeking authorization to abandon 159.26 miles of pipelines, measurement and regulating stations, three field compressor stations and associated structure and rights-of-way as well as certain sales points to Hope Gas, Inc. (Hope) and firm transportation delivery points for Hope and Albany Cogeneration Associates, (Albany) located in Mingo, Fayette, Logan, Wyoming and Boone Counties, West Virginia by sale to Cabot Oil & Gas Corporation (Cabot), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNGT states that the facilities are currently used to gather and render transportation service to various shippers. In addition, it is stated that sales and transportation agreements for gas are provided by CNGT to Hope, an affiliate of CNGT. CNGT also states that it renders firm transportation for Albany under its open access certificate.

CNGT says that it has required Cabot to charge the same rate to the two transporters on the system through January 10, 1996, the same date the moratorium is in effect for all other producers on CNGT's system.

CNGT indicates that no interruption of Hope consumers' service currently provided by CNGT would occur. CNG states that Hope has consented to the transfer of the facilities which are necessary for Hope to render sales service to its customers. Hope and Cabot have negotiated for services satisfactory to Hope in order for Hope to continue service to its customers, it is stated.

CNGT states that Cabot would provide non-jurisdictional gathering service for other transportation service provided by CNGT to producers on the pipelines sold to Cabot. CNGT further states that Albany would be offered transportation service under special arrangements as agreed in the June 25, 1992, letter agreement with Cabot in the event the Commission grants Cabot's (or Cabot's affiliates's) request for a declaratory order that the facilities are non-jurisdictional gathering facilities.

Comment date: March 3, 1993, in accordance with Standard Paragraph F at the end of this notice.

10. Williams Natural Gas Co.

[Docket No. CP93–211–000]

February 16, 1993.

Take notice that on February 10, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–211–000 a request pursuant to §§ 157.205 and 157.211 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to utilize facilities originally installed for the delivery of NGPA section 311 transportation gas for other purposes, under the authorization issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG proposes to utilize the NGPA section 311 facilities installed to deliver transportation gas to Gas Products & Supply, Inc. for subsequent delivery to the City of Hesston, Kansas, in Harvey County for any purpose. The cost to construct the facilities was $51,580 which was reimbursed by Gas Products & Supply, Inc.

WNG states that this change is not prohibited by an existing tariff, and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: March 29, 1993, 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. 93–4137 Filed 2–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ES93–17–000 and ES93–17–001]

Glen Park Associates Limited Partnership; Issuance of Commission Letter Order and Comment Period

February 16, 1993.

Take notice that on February 12, 1993, the Chief Accountant, pursuant to delegated authority, issued a Letter Order to Glen Park Associates Limited Partnership (Glen Park) conditionally granting blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Glen Park.

The February 12, 1993 Letter Order, in ordering paragraphs (A), (B) and (C), reads as follows:

(A) Within 30 days of the date of this letter order, any person desiring to be heard or to protest this blanket approval of the issuances of securities or assumptions of liabilities by Glen Park 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).

(B) Absent a request for hearing within the period set forth above, Glen Park is authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(C) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Glen Park's issuances of securities or assumption of liabilities.

Notice is hereby given that the deadline for filing a motion to intervene or protest, as set forth above, is March 15, 1993.

Copies of the full text of the Letter Order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4063 Filed 2–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER92–809–000 and ER92–809–001]

Illinois Power Co.; Order Dismissing Rehearing, Directing Summary Disposition, Accepting for Filing and Suspending Rates as Modified, Establish Hearing Procedures, and Granting Waiver of Notice

Issued February 16, 1993.

Background

On August 31, 1992, as completed on December 18, 1992, Illinois Power Company (Illinois Power) filed a proposed Power Coordination Agreement (Agreement) to supersede its existing power coordination agreement with the Illinois Municipal Electric Agency (Illinois Municipal). Under the proposed Agreement, Illinois Power will, among other things, continue to provide most of the services currently

provided under the existing agreement.[1] However, Illinois Power also proposes eliminating Service Schedule A (partial requirements service) and adding Service Schedules I, J and M (various transmission services). Illinois Power requests waiver of the 60-day prior notice requirement to permit an effective date of October 1, 1992.

Notices of Illinois Power's filings were published in the **Federal Register**,[2] with comments, protests and motions to intervene due on or before October 23, 1992.

On October 23, 1992, the Illinois Commerce Commission (Illinois Commission) filed a notice of intervention.

On September 24, 1992, and October 23, 1992, Illinois Municipal filed a motion to intervene and a supplemental pleading, respectively. In its pleadings, Illinois Municipal protests the transmission rates under Service Schedules I, J and M and requests suspension and hearing. Illinois Municipal, however, supports Illinois Power's request for waiver of the 60-day prior notice requirement to permit an October 1, 1992 effective date; Illinois Municipal states that a continuation of the existing agreement would require Illinois Municipal to continue its more expensive partial requirements service beyond October 1, 1992.

Illinois Municipal states that, when the Commission evaluates the reasonableness of Illinois Power's proposed rates, it must consider the inferior quality of the service Illinois Municipal will receive. Illinois Municipal notes that, under the proposed Agreement, Illinois Power retains the discretion to refuse short-term services for any reason and can foreclose other sellers from reaching Illinois Municipal in order that Illinois Power may itself make a sale to Illinois Municipal. Illinois Municipal states that, even if Illinois Power agrees to provide the service necessary for a third party to serve Illinois Municipal, Illinois Power's proposed short-term transmission rate of 10 mills/kWh is so high that it will economically foreclose Illinois Municipal from engaging in many third-party transactions.[3] With respect to long-term services, Illinois Municipal notes that the terms of the proposed Agreement require it to unreasonably make a minimum reservation equal to its maximum noncoincident peak demand at each delivery point (less 85 percent of its on-site generation). Illinois Municipal notes that it must also make separate, additional reservations to the extent it wants to transmit power to the same delivery point from more than one resource. Moreover, Illinois Municipal notes that it is not permitted to transmit power to anyone but an Illinois Municipal member or to transmit power over Illinois Power's interconnections with Iowa-Illinois Gas and Electric Company, Electric Energy, Inc., Tennessee Valley Authority, or the public utility subsidiaries of the American Electric Power Company system. Illinois Municipal states that these service characteristics are inconsistent with the basis used by Illinois Power to develop its rates, because the rates include the costs of delivery points that cannot be used, and the unit charges were designed as if the billing determinants equal Illinois Municipal's coincident peaks rather than Illinois Municipal's noncoincident peaks.

In support of its request for suspension and hearing, Illinois Municipal raises the following cost of service issues: (1) An excessive rate of return on common equity of 13.25 percent, and a failure to reduce debt cost to reflect likely refinancing due to the generally low interest rates available today; (2) an unsupported reclassification of distribution plant as transmission plant; (3) understated transmission revenue credits; (4) excessive cash working capital; (5) an unsupported inclusion of land held for future use; and (6) a failure to use a 13-month average balance for rate base.

Illinois Municipal also makes the following assertions concerning the ratemaking and rate design principles used to develop Illinois Power's rates: (1) Illinois Power's rates for firm transmission service reflect its rolled-in average system costs, yet the rates provide for restricted service; (2) Illinois Power's rates use an average of the 12 monthly coincident peaks (12 CP) as the billing determinants to develop the unit charge instead of the contract demands that will be used for bills; and (3) Illinois Power's proposed rate for short-term, nonfirm transmission service is equivalent to its rate for long-term, firm transmission (although Commission precedent requires that short-term, nonfirm rates should be lower than long-term, firm rates in order to reflect the fact that reserves are not provided for short-term service).[4] Illinois Municipal also argues that Illinois Power inappropriately prices losses on the basis of incremental production costs, rather than average system costs. Illinois Municipal also argues that Illinois Power improperly developed its nonfirm hourly rate under Service Schedule I because the rate reflects less than a full hour's utilization.

Illinois Municipal challenges Illinois Power's inclusion of the cost of various control area services in its transmission rates.[5] Illinois Municipal also objects to the following terms and conditions under the proposed Agreement: (1) A penalty charge of 30 mills/kWh (equal to three times the transmission rate) if Illinois Municipal's transmission loads exceed its reserved amount; (2) onerous termination provisions; and (3) a limitation that service may be only to Illinois Municipal members.

On November 5, 1992, Illinois Power filed an answer to the Illinois Commission's notice of intervention and to Illinois Municipal's pleadings. Illinois Power does not object to the interventions. Illinois Power states that the Commission should accept Illinois Power's filing and allow an effective date, after a nominal suspension, of October 1, 1992, as urged by all parties. Illinois Power further states that the Commission should establish a hearing as to the justness and reasonableness of the rates contained in Service Schedules I, J, and M.

On November 25, 1992, the Director, Division of Applications, Office of Electric Power Regulation (Director) issued a deficiency letter with regard to Illinois Power's filing.

On December 18, 1992, Illinois Power filed a "request for rehearing" of the Director's November 25, 1992 deficiency letter. Illinois Power requests that the Commission reverse the Director's letter order. Illinois Power asks the following specific relief:

1. A determination that the Power Coordination Agreement which was the subject of Illinois Power's filing become effective by operation of law on November 28, 1992, or, in the alternative, that the Commission grant the waiver requested by both Illinois Power and the affected customer (Illinois Municipal) to permit an effective date of October 1, 1992;

2. Acceptance of the Agreement for filing and a hearing on only those

[1] The following services are provided under the proposed agreement: regulating service, dump service, emergency service, standby service, term and economy energy, scheduled capacity, reactive power, and system support.

[2] 57 FR 43718 (September 22, 1992); 57 FR 47846 (October 20, 1992).

[3] Illinois Power has designed the 10 mills/kWh charge on the assumption that the service will be provided only during the 16 peak hours per day. Under the proposed Agreement, service provided for more than 16 hours is capped at the daily rate.

[4] Illinois Municipal's October 23 pleading at 15 (citing, *e.g.*, New England Power Company, 49 FERC ¶ 61,129 at 61,554 (1989)).

[5] The various control area services are: Voltage support, load regulation, spinning and nonspinning reserves, load and frequency control service, and dispatch service.

limited aspects of the Agreement upon which the parties were unable to agree (specifically, the transmission service rates contained in Schedules I, J, and M); and

3. Alternatively, in the event that the Commission does not accept the Agreement without change or condition (except for setting for hearing those matters the parties agreed to submit to hearing), an order either determining now or setting for hearing the merits of the controversy which exists between the parties under the pre-existing Agreement (*i.e.*, whether there exists a continuing obligation on Illinois Municipal's part to make power purchases).

On December 31, 1992, Illinois Power filed a supplement to its December 18, 1992 request for rehearing. Illinois Power stated that the sole purpose of its supplement was to discuss the impact, on Illinois Power's request for rehearing, of the Commission's order issued three days later on December 21, 1992, in Southern Company Services, Inc.[6]

On December 31, 1992, Illinois Municipal filed a response to Illinois Power's December 18, 1992 request for rehearing. Illinois Municipal states that its response is permissible under 18 CFR 385.213(a)(3) since Illinois Municipal is responding only to Illinois Power's motion for a declaratory order or hearing and not to Illinois Power's request for rehearing.

Discussion

1. Preliminary Matters

(a) Intervention

Under Rule 214 of the Commission's Rules of Practice and Procedure,[7] the timely, unopposed motion to intervene and notice of intervention serve to make Illinois Municipal and the Illinois Commission parties to this proceeding.

(b) The Director's November 25, 1992 Letter Order and Illinois Power's "Rehearing"

Before addressing the merits of Illinois Power's filing, we address whether the Director's November 25, 1992 letter order is a final order such that rehearing lies.[8] As discussed below, we conclude that the Director's letter order is interlocutory and, as such, we dismiss Illinois Power's rehearing without prejudice.

The Commission has delegated certain authority to the Director of the Office of Electric Power Regulation, or his designee.[9] The Commission has delegated authority to take final action,[10] as well as actions that are interlocutory in nature.[11] We must decide which category the Director's November 25, 1992 letter order falls within.

Since the proceeding became contested when Illinois Municipal filed as a motion to intervene in opposition on September 24, 1992,[12] the Director's authority to act was limited. The only final action the Director could take on November 25, 1992 was to reject Illinois Power's filing. The Director's November 25 letter order clearly did *not* reject the filing. Accordingly, the Director's letter order could not constitute final agency action, and thus was instead interlocutory.[13]

When the Director issues an interlocutory order, the filing utility *must* respond to that order.[14] Three responses are possible. First, the utility may amend its proposed rates. Second, the utility may provide additional information to support its proposed rates. Third, the utility may respond by informing the Director that it disagrees that any amendment to its proposed rates or further information is necessary.[15]

Here Illinois Power did not respond to the Director; rather it sought "rehearing" with the Commission. Since Illinois Power presumably sought "rehearing" based upon the description of the letter order as a "final agency action", in this instance we will treat Illinois Power's pleading as a response that it disagrees that any amendment to its proposed rates or further information is necessary. Accordingly, we find that Illinois Power's filing was completed on December 18, 1992.

2. Summary Disposition

Illinois Power proposes to design its transmission rates, *i.e.*, to develop a per unit charge for transmission service, by dividing the revenue requirement by what it claims is the average of its 12 monthly coincident peaks. However, Illinois Power proposes to bill Illinois Municipal on the basis of its contract demands, not its coincident peak demands. As we explained in a recent order, Southern Company Services, Inc., 61 FERC ¶ 61,339 at 62,328 & nn. 9 & 10, (1992), to avoid over-recovery from customers when billing is on the basis of contract demands, then the rates should likewise be developed using contract demands.[16] If the customer's actual, and lower, demands are used in the development of the rate, then the rate will result in an over-recovery of costs from the customer. Accordingly, Illinois Power is directed to redesign its rates to compute the per unit charge using Illinois Municipal's billing determinants, *i.e.*, Illinois Municipal's contract demands.[17]

Section 4.5 of the proposed Agreement provides that Illinois Municipal will pay expansion costs (referred to by the parties as "System Advancement Costs") in addition to embedded cost rates. The collection of expansion costs in addition to embedded cost rates violates the Commission's transmission pricing guidelines. Under our precedent, Illinois Power may charge only the higher of its embedded cost rates expansion costs.[18] Therefore, Illinois Power is directed to revise the proposed Agreement, consistent with our precedent, to state the rate as the higher of: (1) Its embedded cost rate; or (2) its expansion cost.[19]

In Service Schedule F, Illinois Power proposes to charge a rate for economy energy, transactions equal to a share of the savings plus its transmission charge of 10 mills/kWh. This is inappropriate. The Commission has long accepted split-savings rates which disregard the fixed costs of the seller, but which ensure that the customer retains at least 50 percent of the transaction savings. Such rates permit the seller to obtain a

[6] 61 FERC ¶ 61,339 (1992).

[7] 18 CFR 385.214.

[8] See 18 CFR 385.713(a)

[9] 18 CFR 375.308.

[10] See 18 CFR 375.308(a) (1), (3) (acceptance and rejection).

[11] See 18 CFR 375.308(d)(2) (deficiency letters).

[12] See 18 CFR 375.301(c).

[13] The letter order included "boilerplate" language incorrectly stating that the action was final.

[14] The filing cannot be complete until the utility responds. Accordingly, the 60-day clock for action under Federal Power Act section 205 cannot commence until a response is received.

[15] If the utility fails to respond within the time period provided by the Director in one of these three ways, the Director may reject the filing.

[16] *Cf.* Central Power and Light Company, Opinion No. 326, 47 FERC ¶ 61,339 at 62,163, 62,164–66, *order on reh'g*, Opinion No. 326–A, 49 FERC ¶ 61,003 at 61,003–05 (1989) (where party is required under contract to pay for, *i.e.*, is billed on, full contract demand regardless of actual demand, rates should be developed based on contract demand rather than actual demand).

[17] In support of its position, Illinois Power cites to the presiding judge's decision in Northern States Power Company, 59 FERC ¶ 63,003 at 65,049 (1992). We note that this initial decision, now pending on exceptions, is of no precedential value for the purposes of this case. More specifically as to the precedential effect of initial decisions, see Century Power Corporation, 56 FERC ¶ 61,087 at 61,298 (1991); Southern California Edison Company, 55 FERC ¶ 61,497 at 62,759 (1991).

[18] *See* Pennsylvania Electric Company, 60 FERC ¶ 61,034 at 61,129–2 & n.49 (1992); see also Pennsylvania Electric Company, 58 FERC ¶ 61,278 at 61,871–75, *reh'g denied*, 60 FERC ¶ 61,034 at 61,123 to 29–2 (1992); see also Public Service Electric & Gas Company, 61 FERC ¶ 61,014 (1993).

[19] *Id.*

contribution to fixed costs in excess of 100 percent, as long as the customer receives at least 50 percent of the savings. Illinois Power's proposed economy energy rate (allowing recovery of both a share of these savings plus a separate transmission charge) violates the Commission's pricing principles. Illinois Power retains over 50 percent of the savings, while Illinois Municipal receives less than 50 percent of the savings. Accordingly, Illinois Power is directed to revise Service Schedule F to eliminate the additional transmission charge.

For power sales from Illinois Power to Illinois Municipal, Illinois Power proposes a ceiling demand charge for production plus 10 mills/kWh for transmission. Illinois Power has provided no cost support for the ceiling demand charge. Illinois Power simply states that the rates are less than those accepted in one of its previous rate filings, Docket No. ER91–535–000.[20] The rates accepted in that case reflected the fixed and variable costs of Illinois Power's Clinton nuclear unit and Illinois Power's average transmission investment.[21] The service schedules proposed here adopt a charge equal to 110 percent of system incremental costs, and require Illinois Municipal to pay separately for transmission under other service schedules. Accordingly, the rates accepted in Docket No. ER91–535–000 are not comparable to those proposed here. Therefore, Illinois Power is directed to include cost data (in the compliance filing, which we order Illinois Power to make below) demonstrating that the demand charge in its power sales rate will produce no more than a 100 percent contribution to the fixed production costs of the generating units likely to be used to price energy.[22] If the rates cannot be supported on this basis, Illinois Power is directed to reduce its rates accordingly.

3. Suspension and Hearing

Our preliminary review of Illinois Power's proposed rates, as modified by the summary dispositions above, indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed rates, as modified by the summary dispositions discussed above, for filing, suspend then, and set them for hearing.[23]

Our preliminary analysis indicates that the proposed rates may produce substantially excessive revenues, and so we would normally suspend the rates for five months.[24] However, a five-month suspension here could force Illinois Municipal to continue taking partial requirements service under the existing (and more expensive) agreement. Therefore, under these circumstances, a nominal suspension is appropriate. Accordingly, we will accept the rates for filing, as modified by summary disposition, suspend the rates for a nominal period, with the rates to become effective October 1, 1992, subject to refund, and set them for hearing.

4. Waiver of Notice

We will grant waiver of the 60-day prior notice requirement because, if the proposed agreement is not permitted to become effective on October 1, 1992, Illinois Municipal will be required to continue purchasing more expensive partial requirements service from Illinois Power. In Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶ 61,106 at 61,338, reh'g denied, 61 FERC ¶ 61,089 (1992), the Commission stated that it would generally grant waiver for a service which allows the customer to avoid purchasing a more expensive service from the same utility. Accordingly, we will grant waiver of notice and allow the proposed Agreement to become effective October 1, 1992, subject to refund.

5. The Energy Policy Act of 1992[25]

Subsequent to the date of the original and supplemental rate filings in this docket, Congress enacted the Energy Policy Act of 1992, which expands the Commission's authority to order transmission services under sections 211 and 212 of the Federal Power Act. We currently are analyzing what impact, if any, the new transmission provisions should have on the transmission pricing policies we have applied in recent cases under sections 205 and 203 of the Federal Power Act. In the meantime, we will continue to apply our current policies. We expect to announce in the next future some procedure for soliciting and obtaining public input on future transmission rate design issues.

The Commission Orders

(A) Illinois Power's rehearing is hereby dismissed as discussed in the body of this order.

(B) Summary disposition is hereby ordered, as discussed in the body of this order. Within 30 days of the date of the issuance of this order, Illinois Power shall file revised rates and cost support reflecting these determinations. However, if a request for rehearing is filed, the compliance filing will be due within 15 days of the date the Commission disposes of rehearing.

(C) Illinois Power's proposed rates, as modified pursuant to Ordering Paragraph (B) above, are hereby accepted for filing, suspended for a nominal period to become effective on October 1, 1992, subject to refund.

(D) Illinois Power's request for waiver of the 60-day prior notice requirement is hereby granted.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Illinois Power's proposed Agreement, as discussed in the body of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding to be held within approximately fifteen (15) days from the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates (including a date for the submission of Illinois Power's case-in-chief), and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

[20] See Illinois Power Company, , 57 FERC ¶ 61,213 (1991).

[21] 57 FERC ¶ 61,697–98, 61,699–700.

[22] See , 57 FERC ¶ 61,699–700.

[23] See Cincinnati Gas and Electric Company, 59 FERC ¶ 61,072 at 61,291 (1992) (hearing is not confined to issues identified and explicitly set for hearing; hearing goes to all issues relevant to assessment of justness and reasonableness).

Service Schedule J, providing for firm long-term transmission service, *inter alia*, limits transmission to another public utility for the sole purpose of serving an Illinois Municipal's member load—and not for resale by Illinois Municipal or that member. See Service Schedule J at page J–2, section J2.2(e). An issue that we believe should be addressed at hearing is whether this limitation is an impermissible resale restriction, *e.g.*, Central Maine Power Company, 18 FERC ¶ 61,126 at 61,251, *reh'g denied*, 19 FERC ¶ 61,041 (1982), or is otherwise unjust, unreasonable or unduly discriminatory or preferential.

[24] See West Texas Utilities Company, 18 FERC ¶ 61,189 (1982).

[25] Pub. L. No. 102–486, 106 Stat. 2776 (1992).

(G) Illinois Power is hereby informed that rate schedule designations will be assigned when the Commission acts on Illinois Power's compliance rates filed pursuant to Ordering Paragraph (B) above.

(H) The Secretary shall publish a copy of this order in the **Federal Register.**

By the Commission. Commissioner Trabandt dissents in part on the issue of pricing for expansion costs and the rejection of Illinois Power's provision in § 4.5 of the proposed Agreement (slip op. at 7) for the reasons stated in his separate opinion in Pennsylvania Electric Company, 60 FERC ¶ 61,034 (1992).

Lois D. Cashell,

Secretary.

[FR Doc. 93–4138 Filed 2–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–10–000]

Southern Natural Gas Co.; Notice of Conference

February 16, 1993.

Take notice that on Friday, February 26, 1993, at 10 a.m., a conference will be convened in the above-captioned docket to discuss those disputed terms and conditions in Southern's Order No. 636 compliance filing that the order on Southern's compliance filing, issued February 11, 1993, does not address. Staff will be sending the parties a tentative list of terms and conditions that will be addressed at the conference.

The conference will be held at the National Guard Association building, One Massachusetts Ave., NW. (intersection of Massachusetts Ave. and North Capitol St., opposite the Post Office Bldg.). All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Al Francese at 202–208–0736.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4064 Filed 2–22–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–03–NG]

Anadarko Trading Co.; Order Granting Blanket Authorization to Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Anadarko Trading Company blanket authorization to export up to 22 Bcf of natural gas to Canada over a two-year term beginning on the date of the first export.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 16, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

BILLING CODE 6450–01–M

[FE Docket No. 93–06–NG]

Aquila Energy Marketing Corp.; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Aquila Energy Marketing Corporation blanket authorization to import up to 200 Bcf of natural gas to Canada over a two-year term beginning on the date of the first import.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 16, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–4143 Filed 2–22–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–17–NG]

Tenngasco Corp.; Authorization to Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tenngasco Corporation blanket authorization to export to Canada up to 100 Bcf of natural gas over a period of two years beginning on the date of the first delivery after February 28, 1993, the date Tenngasco's existing export authorization expires.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 16, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–4144 Filed 2–22–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–15–NG]

TM Star Fuel Co.; Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting TM Star Fuel Company authorization to import from Canada up to 10,000 Mcf of natural gas per day over a period of 15 years beginning on the date of the first delivery (anticipated in April 1993). The gas will be resold as fuel to generate electricity at a cogeneration plant in Anacortes, Washington.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 16, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–4145 Filed 2–22–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–16–NG]

TM Star Fuel Co.; Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice

that it has issued an order granting TM Star Fuel Company blanket authorization to import from Canada up to 15 Mcf of natural gas over a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 16, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–4146 Filed 2–22–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of January 29 Through February 5, 1993

During the week of January 29 through February 5, 1993, the appeals and applications for other relief listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 12, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 29 through February 5, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 29, 1993	Gulf/R.J. Pele & C. Barone Gulf, Knight Gulf Station, Joseph M. Carroll, Cordova, TN.	RR300–226, RR300–227, RR300–228	Request for modification/rescission in the Gulf refund proceeding. If Granted: The September 13, 1991, March 20, 1991, and June 19, 1991 Dismissal Letters (Case Nos. RF300–16765, RF300–11608 and RF300–13020) issued to R.J. Pale & C. Barone Gulf, Knight Gulf Station, and Joseph M. Carroll regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified.
Jan. 29, 1993	OCAW, Miamisburg, OH	LFA–0268	Appeal of an information request denial. If Granted: The January 5, 1993, Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and OCAW would receive access to salaries of the salaried exempt and non-exempt personnel relating to EG&G Mound Applied Technologies.
Feb. 02, 1993	Hanford Education Action League, Spokane, WA	LFA–0269	Appeal of an information request denial. If Granted: The January 12, 1993, Freedom of Information Request Denial issued by the Richard Field Office would be rescinded, and Hanford Education Action League would receive access to DOE information.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/29/93 thru 02/05/93.	Gulf Oil Refund Applications Received.	RF300–20874 thru RF300–20905.
01/29/93 thru 02/05/93.	Crude Oil Refund Applications Received.	RF272–94070 thru RF272–94085.
01/29/93 thru 01/05/93.	Atlantic Richfield Refund Applications Received.	RF304–13561 thru RF304–13578.
01/29/93 thru 02/05/93.	Texaco Oil Refund Applications Received.	RF321–19576 thru RF321–19585.
02/01/93 ..	Tom's Clark #200	RF342–316.
02/01/93 ..	Doug's Clark Super 100.	RF342–317.
02/01/93 ..	West Park Canal	RF346–24.
02/01/93 ..	Morgan City & Patterson Canal.	RF346–25.
02/01/93 ..	East End Canal	RF346–26.
02/01/93 ..	Ville Platte Canal	RF346–27.
02/02/93 ..	Corner Cash & Carry ..	RF343–12

[FR Doc. 93–4148 Filed 2–22–93; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Proposed decision and order.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy solicits comments concerning procedures that OHA proposes to follow in refunding a total of $31,199 obtained from the bankruptcy proceeding of the Lunday-Thagard Oil Company and pursuant to a consent order entered into by William T. Tootle, President of Lotus Petroleum, Inc. The funds were remitted to the DOE in order to resolve allegations of crude oil pricing violations by Lunday-Thagard and Lotus.

DATES AND ADDRESSES: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Numbers LEF–0050 (Lunday-Thagard) or LEF–0051 (Lotus).

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from the Bankruptcy Estate of Thagard Oil Company d/b/a Lunday-Thagard Oil Company, and pursuant to a consent order entered into with William T.

Tootle, President of Lotus Petroleum, Inc. In both cases, the monies remitted to the DOE settle allegations of crude oil pricing violations. The payments are being held in an interest-bearing escrow account pending distribution by the DOE. Distribution of the monies received from Lunday-Thagard and Tootle will be governed by the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, which states that crude oil overcharge monies will be divided among the states, the federal government, and eligible purchasers of refined products. See 51 FR 27899 (August 4, 1987). Proposed claims procedures are explained in the Proposed Decision and Order.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: February 17, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Petitioners: Lunday-Thagard Oil Company, Lotus Petroleum, Inc. and William T. Tootle

Date of Filing: September 17, 1992

Case Numbers: LEF–0050 and LEF–0051

This Proposed Decision and Order considers two Petitions, filed by the Economic Regulatory Administration (ERA), for the Implementation of Special Refund Procedures (Petition) for crude oil overcharge funds. Under the procedural regulations of the Department of Energy (DOE), the ERA may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. See Petition for Implementation of Special Refund Procedures, 10 CFR 205.281. These procedures are used to refund monies to those persons who were injured by actual or alleged violations of the DOE price regulations. We have considered the ERA's September 17, 1992, requests to implement Subpart V procedures with respect to the monies received from Thagard Oil Company d/b/a Lunday-Thagard Oil Company (Lunday-Thagard) and William T. Tootle (Tootle), president of Lotus Petroleum, Inc. (Lotus), and have determined that such procedures are appropriate.

I. Background

On August 17, 1982, the DOE filed a general unsecured claim with the United States Bankruptcy Court for the Central District of California in the Chapter 11 reorganization of Lunday-Thagard. An amended proof of claim was filed on September 2, 1982 by the DOE. During the period of crude oil price controls, Lunday-Thagard was a small and independent refiner. The DOE audited the company's compliance during this period with the Mandatory Petroleum Pricing and Allocation Regulations (the regulations) and issued a Proposed Remedial Order (PRO) to the firm requiring refunds for alleged violations of the Entitlements Program. This PRO arose from the firm's alleged improper reporting of its crude oil runs to stills for purposes of the DOE's Entitlements Program in violation of the regulations codified at 10 CFR part 211. Under the regulations, entitlements violations had the same effect as crude oil overcharges. Thereafter, the firm filed a petition for relief with the above-mentioned Bankruptcy Court. The Bankruptcy Estate has remitted a total of $28,156 in settlement of the DOE's claim against Lunday-Thagard. The Lunday-Thagard Petition requests that the OHA implement a special refund proceeding to distribute these funds, plus accrued interest.

The Lotus Petition requests that OHA implement special refund procedures for monies remitted by Tootle in relation to a Final Remedial Order issued by the OHA on April 23, 1986. Lotus Petroleum, Inc., 14 DOE ¶ 83,020 (1986). Under that Remedial Order, Lotus, Tootle and Lynn O. Castle (Castle) were found to have violated provisions of the Federal petroleum price regulations with respect to the resale of crude oil during the period April 1, 1980 through December 31, 1980 (the audit period).[1] However, on July 24, 1989, Tootle entered into a Consent Order (the Order) with DOE to resolve all of his personal liability in this matter. Consent Order No. 6A0X00330. Under this agreement the DOE compromised its enforcement claim against Tootle on an ability-to-pay basis, and accepted a total amount of $3,043 from Tootle in settlement of its claims against him. In the Lotus Petition, the ERA states that this payment was made solely by Tootle and in no way compromises the DOE's claims against Lotus or Castle.

Lunday-Thagard and Tootle have remitted a total of $31,199 to the DOE. These funds are available for distribution through subpart V and currently are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The general guidelines that govern the OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR part 205, subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Office of Enforcement, 8 DOE ¶ 82,597 (1981).

III. The Proposed Crude Oil Refund Procedures

A. Crude Oil Refund Policy

The monies remitted by Lunday-Thagard and Tootle will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP). See 51 FR 27899 (August 4, 1986). The MSRP was issued as a result of the court-approved settlement agreement in the DOE Stripper Well Exemption Litigation (MDL–378). See In Re: The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108, 3 Fed. Energy Guidelines ¶ 26,563 (D. Kan. 1986). This policy has been utilized in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (the August 1986 Order). Under the MSRP, 40 percent of the crude oil overcharge funds will be refunded to the Federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims by injured parties. The MSRP also specified that, after all valid claims by injured purchasers are paid, any remaining monies will be disbursed to the Federal government and the states in equal amounts.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (the April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973, through January 27, 1981, crude oil price control period; and (2) prove they were injured by the alleged crude oil overcharges. End-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have been injured by the alleged crude oil

[1] Lotus was incorporated in the State of Texas on April 17, 1980. Tootle and Castle were its only shareholders. On May 3, 1984, the ERA issued a PRO alleging that during the audit period, Lotus engaged in the resale of crude oil through the process known as "layering" (Case No. 6A0X00330). The PRO alleged that Lotus charged prices for crude oil in excess of the actual cost of the crude oil without providing any service or function traditionally and historically associated with the resale of crude oil. After considering the objections filed by the PRO recipients, this Office issued the PRO as a Final Remedial Order on April 23, 1986. The Remedial Order found Lotus, Tootle and Castle jointly liable for $11,833,152 in overcharges plus interest.

overcharges and would not be required to submit any additional proof of injury beyond documentation of their purchase volumes. See City of Columbus, Georgia, 16 DOE ¶85,550 (1987).

B. Refund Claims

We propose to adopt the DOE's standard procedures, as set forth in the MSRP, to distribute the crude oil monies obtained from Lunday-Thagard and Tootle. The amount of money covered by this Proposed Decision and Order, as previously stated, is $31,199 plus accrued interest. We have chosen initially to reserve 20 percent of these funds ($6,239 plus interest) for direct refunds to claimants.

The OHA proposes to evaluate crude oil refund claims in a manner similar to that used in subpart V proceedings to evaluate claims based on alleged refined product overcharges. Claimants generally will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations. We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants who were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See Shell Oil Co., 17 DOE ¶85,204 (1988).

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury; they may not rely upon the injury presumptions utilized in some refined product refund cases. *Id.* Finally, if a claimant has executed and submitted a valid waiver, pursuant to one of the escrow accounts established by the Stripper Well Settlement Agreement, then he has waived his right to file an application for subpart V crude oil refund monies. *See Mid-America Dairymen* v. *Herrington*, 878 F.2d 1448, 3 Fed. Energy Guidelines ¶26,617 (Temp. Emer. Ct. App. 1989); In re: Department of Energy Stripper Well Exemption Litigation, 707 F. Supp. 1267, 3 Fed. Energy Guidelines ¶26,613 (D. Kan. 1987).

Refunds to eligible claimants that purchased refined petroleum products will be calculated on the basis of a volumetric amount obtained by dividing the crude oil refund monies involved in this determination ($31,199) by the total U.S. consumption of petroleum products during the price control period. See Mountain Fuel Supply Co., 14 DOE ¶85,475 (1986).

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, e.g., A. Tarricone, Inc., 15 DOE ¶85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The current deadline for filing an Application for Refund is June 30, 1994. See Anchor Gasoline Corp., 22 DOE ¶85,071 (1992). It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1994, at the rate of $0.0008 per gallon. We anticipate that applicants who filed their claims by June 30, 1988, will receive a supplemental refund payment; however, we will decide in the future whether claimants that filed later applications should receive additional refunds. Applicants may be required to submit additional information to support their refund claims for future amounts. Notice of any such additional amounts will be published in the **Federal Register**.

C. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the crude oil violation amounts subject to this Proposed Decision or $24,960 in principal, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds allocated to each state is contained in Exhibit H of the Stripper Well Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within thirty days of its publication in the **Federal Register**.

It is therefore ordered that:

The refund amounts remitted to the Department of Energy by the Lunday-Thagard Oil Company and by William T. Tootle will be distributed in accordance with the foregoing Decision.

[FR Doc. 93–4149 Filed 2–22–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4560–2]

National Emission Standards for Hazardous Air Pollutants; Compliance Extensions for Early Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of complete enforceable commitments received.

SUMMARY: This notice provides a list of companies that have submitted "complete" enforceable commitments to the EPA under the Early Reductions Provisions [section 112(i)(5)] of the Clean Air Act (CAA) as amended in 1990. The list covers commitments determined by the EPA to be complete through January 7, 1993 and includes the name of each participating company, the associated emissions source location, and the EPA Regional Office which is the point of contact for further information. This is one of a series of notices of this type. The most recent notice listed twelve sources which have had commitments deemed complete by the EPA. The EPA will publish additional lists of complete submittals on a monthly basis, as needed.

FOR FURTHER INFORMATION CONTACT: David Beck (telephone: 919–541–5421), Rick Colyer (telephone: 919–541–5262), or Mark Morris (telephone: 919–541–5416), Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 for general information on the Early Reductions Program. For further information on specific submittals received under the Early Reductions Program contact the appropriate EPA Regional Office representative listed below:

Region I—Janet Beloin, (617) 565–2734
Region II—Umesh Dholakia or Harish Patel, (212) 264–6676
Region III—Jim Baker, (215) 597–3499
Region IV—Anthony Toney, (404) 347–2864
Region V—John Pavitt, (312) 886–6858
Region VI—Tom Driscoll or Tanya Murray, (214) 655–7549, (214) 655–7547
Region VII—Carmen Torres-Ortega, (913) 551–7873
Region VIII—Cory Potash, (303) 293–1886
Region IX—Ken Bigos, (415) 744–1240
Region X—Chris Hall, (206) 553–1949

SUPPLEMENTARY INFORMATION: Under section 112(i)(5) of the Clean Air Act (CAA) as amended in 1990, an existing source of hazardous air pollutant emissions may obtain a 6-year extension of compliance with an emission standard promulgated under section 112(d) of the CAA, if the source achieves sufficient reductions of hazardous air pollutant emissions prior to certain dates. On October 29, 1992 the EPA Administrator signed a final rule to implement this "Early Reductions" provision. The final rule was published in the **Federal Register** on December 29, 1992 (57 FR 61970).

Sources choosing to participate in the Early Reductions Program must document base year emissions and post-reduction emissions to show that sufficient emission reductions have been achieved to qualify for a compliance extension. As a first step toward this demonstration, some sources may be required to submit an enforceable commitment containing

base year emission information, or if not required, may voluntarily submit such emission information to the EPA for approval. As stated in the proposed Early Reductions rule, the EPA will review these submittals to verify emission information, and also will provide the opportunity for public review and comment. Following the review and comment process and after sources have had the chance to revise submittals (if necessary), the EPA will approve or disapprove the base year emissions.

To facilitate the public review process for program submittals, the proposed rule contains a commitment by the EPA to give monthly public notice of submittals received which have been determined to be complete and which are about to undergo technical review within the EPA. Members of the public wishing to obtain more information on a specific submittal then may contact the appropriate EPA Regional Office representative listed above.

Eighty-four enforceable commitments have been received by the EPA, and sixteen have been determined to be complete to date. Some of the early reductions submittals received actually contain multiple enforceable commitments; that is, some companies have decided to divide their particular plant sites into more than one early reductions source. Each of these sources must achieve the required emissions reductions individually to qualify for a compliance extension. The purpose of today's notice is to add commitments from Allied-Signal, Texaco-Neches, Wyeth Ayerst, and Marathon Oil to the previously published list of commitments that have been determined to be complete by the EPA under the Early Reductions Program. Since the last notice, the EPA has deemed complete one commitment from Allied-Signal for a source in Philadelphia, Pennsylvania, one from Texaco-Neches in Port-Neches, Texas, one from Wyeth Ayerst in Rouses Point, New York, and one from Marathon Oil in Garyville, Louisiana. As the remaining submittals are determined to be complete, they will appear in subsequent monthly notices.

At a later time (most likely within one to three months of today's date), the EPA Regional Offices will provide a formal opportunity for the public to comment on the submittals added to the list by today's notice. To do this, the Regional Office will publish a notice in the source's general area announcing that a copy of the source's submittal is available for public inspection and that comments will be received for a 30 day period.

The table below lists those companies that have made complete enforceable commitments or base year emission submittals under the Early Reductions Program through January 7, 1993. These submittals are undergoing technical review within the EPA at this time.

TABLE 1.—COMPLETE ENFORCEABLE COMMITMENTS AS OF JANUARY 7, 1993

Company	Location	EPA region
1. Kalama Chemical, Inc ...	Kalama, WA .	X.
2. Amoco Chemical Co. (first source).	Texas City, TX.	VI.
3. Amoco Chemical Co. (second source).	Texas City, TX.	VI.
4. Johnson & Johnson Medical, Inc.	Sherman, TX	VI.
5. PPG Industries	Lake Charles, LA.	VI.
6. Allied-Signal (first source).	Baton Rouge, LA.	VI.
7. Allied-Signal (second source).	Baton Rouge, LA.	VI.
8. Allied-Signal (third source).	Baton Rouge	VI.
9. Allied-Signal (first source).	Ironton, OH ...	V.
10. Allied-Signal (second source).	Ironton, OH ...	V.
11. Monsanto	Sauget, IL	V.
12. Dow Corning	Midland, MI ...	V.
13. Allied-Signal	Philadelphia, PA.	III.
14. Texaco-Neches	Port Neches, TX.	VI.
15. Wyeth Ayerst	Rouses Point, NY.	II.
16. Marathon Oil	Garyville, LA .	VI.

Dated: February 10, 1993.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–4119 Filed 2–22–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4599–9]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; Fairchild Semiconductor Site, San Jose, CA

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the Fairchild Semiconductor site in San Jose, California was executed by the Agency on February 8, 1993. The proposed settlement resolves an EPA claim under section 107 of CERCLA against Fairchild Semiconductor, Inc. The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and requires Fairchild Semiconductor, Inc. to pay $291,930.73 to the Hazardous Substances Superfund. In addition, this settlement requires Fairchild Semiconductor, Inc. to reimburse EPA for all future response costs incurred at or in connection with the Fairchild San Jose site. The response costs incurred by EPA for this site do not exceed $500,000. Therefore, EPA may settle this matter without the prior written approval of the Attorney General.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at: City of San Jose Public Library, located at 180 West San Carlos Street, San Jose, CA 95113; and the U.S. Environmental Protection Agency, 75 Hawthorne Street, 16th Floor, San Francisco, CA 94105 (Attention: Steven Armsey, Regional Hearing Clerk).

DATES: Comments must be submitted on or before March 25, 1993.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency at the address provided above. A copy of the proposed settlement may be obtained from Steven Armsey, U.S. EPA Regional Hearing Clerk (RC–1), 75 Hawthorne, San Francisco, CA 94105. Comments regarding the proposed settlement should be addressed to Steven Armsey at the address provided above, and should reference the Fairchild Semiconductor site located in San Jose, California (EPA Docket No. 93–07).

FOR FURTHER INFORMATION CONTACT: Mardi L. Black (RC–3–4), Assistant Regional Counsel, U.S. Environmental Protection Agency, San Francisco, CA 94105, Telephone: (415) 744–1395.

Dated: February 8, 1993.

Jeff Zelikson,

Director, Hazardous Waste Management Division.

[FR Doc. 93–4116 Filed 2–22–93; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–400075; FRL–4187–6]

Emergency Planning and Community Right-to-Know; Toxic Chemical Release Reporting; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of Form R and Instructions.

SUMMARY: In March 1993, EPA plans to distribute the 1992 reporting form (Form R) and instructions for reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPRCA) and section 6607 of the Pollution Prevention Act (PPA). The 1992 reports are due by July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., Washington, DC 20460, Toll Free: 1–800–535–0202, Washington, DC and Alaska (703) 920–9877.

SUPPLEMENTARY INFORMATION: In March 1993, EPA plans to mail the 1992 Form R and Instructions for reporting under EPCRA section 313 and PPA section 6607 directly to facilities that reported for the 1991 reporting year. Facilities should expect to receive their packages, which will include a magnetic media reporting package, in April. Consultants and others who complete Form Rs for facilities should obtain the package from those facilities. Facilities that do not receive packages from EPA can request copies of the Form R and Instructions from the hotline after EPA's distribution to facilities. Questions about Form R and Instructions can also be directed to the hotline listed above. The Form R and Instructions have been updated to apply to the 1992 reporting year (e.g., by revising dates and addresses that have changed from the previous year). Facilities should therefore, use the 1992 Form R and Instructions for reports due by July 1, 1993. Facilities should not use the 1991 Form R to submit reports for the 1992 reporting year.

Dated: February 16, 1993.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–4121 Filed 2–22–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Regal Cruises Limited, 69 Spring Street, Ramsey, New Jersey 07446.

Vessel: Regal Empress.

Dated: February 17, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–4101 Filed 2–22–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License; A.P.C. International, Inc.

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/Address	Date Reissued
3293–R	ACE Pool Car, Inc. dba A.P.C. International, Inc., 317 W. Lake Street, Northlake, IL 60164.	January 28, 1993.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–4046 Filed 2–22–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

B.H. Cox Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 15, 1993.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. B.H. Cox Trust, San Antonio, Texas, to acquire 15.57 percent; Patricia W. Cox Revocable Trust, San Antonio, Texas, to acquire 19.05 percent; Patricia W. Cox Family Trust, San Antonio, Texas, to acquire 11.54 percent; and Cox Family GST Trust, San Antonio, Texas, to acquire 10.98 percent of the voting shares of Security Bancorp, Inc., San Antonio, Texas, and thereby indirectly acquire Security National Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, February 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-4105 Filed 2-22-93; 8:45 am]

BILLING CODE 6210-01-F

KeyCorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice

in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 19, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. KeyCorp, Albany, New York; to acquire 100 percent of the voting shares of Home Federal Savings Bank, Fort Collins, Colorado, as the result of a merger between Home Federal Savings Bank and Key Bank of Colorado, Fort Collins, Colorado, a proposed *de novo* bank.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Intervest Bancshares Corporation, New York, New York; to become a bank holding company by acquiring 69.56 percent of the voting shares of Countryside Bankers, Clearwater, Florida.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Howard Bancorp, Inc., Glenview, Illinois; to become a bank holding company by acquiring 95 percent of the voting shares of Howard Savings Bank, Glenview, Illinois.

Board of Governors of the Federal Reserve System, February 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-4107 Filed 2-22-93; 8:45 am]

BILLING CODE 6210-01-F

Otto Bremer Foundation and Bremer Financial Corporation; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 4, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Otto Bremer Foundation, St. Paul, Minnesota, and Bremer Financial Corporation, St. Paul, Minnesota; to acquire through its wholly owned subsidiary, First American Insurance Agencies, Inc., St. Paul, Minnesota, the general insurance agency accounts presently owned and/or serviced by Robert W. Becker, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. These activities will be conducted in St. Cloud, Minnesota.

Board of Governors of the Federal Reserve System, February 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-4106 Filed 2-22-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person for serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $11,367,699.81 for section 8(a)(1), and $1,136,769.98 for section 8(a)(2)(A).

EFFECTIVE DATE: February 23, 1993.

FOR FURTHER INFORMATION CONTACT: James Mongoven, Bureau of Competition, Office of Policy and Evaluation, (202) 326–2879.

SUPPLEMENTARY INFORMATION: Section 8 of the Clayton Act, 15 U.S.C. 19, was amended on November 16, 1990. That section, as currently written, requires the Commission to announce the new thresholds by October 30 of each year, for the fiscal year ended September 30. It is impossible for the Commission to comply with that deadline since the final Department of Commerce GNP estimates for the quarter ending September 30 do not become available until late in December of each year. For that reason, the Commission has sent letters to the Chairman and Ranking Minority Members of the Senate and the House Judiciary Committees, and to the Chairman and Ranking Minority Member of the Antitrust, Monopolies and Business Rights Subcommittee of the Senate Judiciary Committee, requesting that Congress amend section 8(a)(5) to require the Commission to announce the new thresholds no later than January 31 of each year.

Authority: 15 U.S.C. 19(a)(5).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–4151 Filed 2–22–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), announces the following meeting.

NAME: Poverty-Associated Mental Retardation (PAMR) Prevention Technical Assistance Workshop for Planning Grant Recipients.

TIME AND DATES: 8:30 a.m.–4:30 p.m., March 10–11, 1993.

PLACE: Terrace Garden Inn-Buckhead, 3405 Lenox Road, NE., Atlanta, Georgia 30326.

STATUS: Open.

SUPPLEMENTARY INFORMATION: The workshop will convene a group of recipients of CDC PAMR Prevention Planning Grants.

Seven of every 1,000 ten-year-old children suffer from mild mental retardation, and three of every 1,000 suffer from more serious mental retardation. Poor children, especially those whose mothers have less than a high school education, are at risk for cognitive delay of as much as one standard deviation of IQ (15 points) at age three. Studies such as the Infant Health and Development Program and the Carolina Abecedarian Project have proven that an intensive early health and development intervention can prevent or reduce as much as two-thirds of PAMR. CDC is actively involved in research and planning to help states develop a community-based program to prevent PAMR.

PURPOSE: The primary purpose of this workshop is to provide technical assistance to recipients of CDC PAMR Prevention Planning Grants. The workshop is not designed to provide general information on mental retardation or on PAMR prevention.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mike Vanchiere, Program Analyst, Developmental Disabilities Branch, Division of Birth Defects and Developmental Disabilities, NCEH, CDC, Mailstop F–15, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724, telephone 404/488–7360.

Dated: February 17, 1993.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–4095 Filed 2–22–93; 8:45 am]

BILLING CODE 4160–18–M

Centers for Disease Control and Prevention

Twenty-Fourth National Meeting of the Public Health Conference on Records and Statistics: Meeting

The National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

NAME: Twenty-Fourth National Meeting of the Public Health Conference on Records and Statistics.

TIMES AND DATES: 9 a.m.–5 p.m., July 19–20, 1993; 9 a.m.–3 p.m., July 21, 1993.

PLACE: Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

STATUS: Open to the public, limited only by the space available.

Preregistration is recommended; however, there is no registration fee. Information regarding registration may be obtained from the contact person listed below.

PURPOSE: Papers presented will address the theme, "Toward the Year 2000—Refining the Measures," and the agenda will focus on health statistics refinements needed for better understanding health status and its determinants for the nation's population.

MATTERS TO BE DISCUSSED: Public health issues to be discussed will consist of increasing the span of healthy life, measuring health disparities, and assessing preventive and primary health services. The agenda will cover a broad spectrum of current and future public health concerns.

CONTACT PERSON FOR MORE INFORMATION: Substantive program and registration information for the meeting may be obtained from Nancy G. Hamilton, Public Health Conference on Records and Statistics, Office of Planning and Extramural Programs, NCHS, room 1100, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7122.

Dated: February 17, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

Food and Drug Administration

Neomycin Sulfate; Regulatory Status of Use in Animals; Clarification and Extension of Timeframe

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing a clarification of its notice concerning the regulatory status of neomycin dosage form drugs under the Federal Food, Drug, and Cosmetic Act (the act). The intent of this document is to make it clear that the manufacture of all dosage forms containing neomycin sulfate that are not the subject of an approved new animal drug application (NADA) will be subject to regulatory action. FDA is extending the dates after which the manufacture, distribution, and shipment of these products will be subject to regulatory action.

FOR FURTHER INFORMATION CONTACT: Edward J. Ballitch, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8726.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 4, 1992 (57 FR 57466), FDA announced the regulatory status of neomycin sulfate-containing dosage form drugs under the act. It was the agency's intent in that notice to address all neomycin sulfate-containing dosage form drugs. As published, however, the notice could be interpreted as being limited to oral dosage form drugs containing neomycin sulfate. FDA therefore is clarifying the regulatory status of these animal drugs and extending the dates after which they will be subject to regulatory action. This notice clarifies that the manufacture and distribution of all dosage form drugs containing neomycin sulfate that are not the subject of an approved NADA will be subject to regulatory action following April 26, 1993. The shipment of bulk neomycin sulfate animal drug substances intended for use in manufacture of dosage form animal drugs to other than holders of approved NADA's will be subject to regulatory action after February 23, 1993.

Dated: February 12, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–4045 Filed 2–22–93; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee

scheduled for February 25 and 26, 1993. The meeting was announced by a notice in the **Federal Register** of January 21, 1993 (58 FR 5398 at 5399).

FOR FURTHER INFORMATION CONTACT: Colin Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1180.

Dated: February 18, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–4232 Filed 2–19–93; 11:53 am]

BILLING CODE 4160–01–F

National Institutes of Health

Establishment: Multidisciplinary Special Emphasis Panel

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92–463, 86 Stat. 770–776] and section 402(b)(6), of the Public Health Service Act, as amended [42 U.S. Code 282(b)(6)], the Director, National Institutes of Health (NIH), announces the establishment of the Multidisciplinary Special Emphasis Panel.

The Multidisciplinary Special Emphasis Panel will advise the Director, National Institutes of Health, regarding research grant and cooperative agreement applications, relating to biomedical and behavioral science.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: February 12, 1993.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 93–4073 Filed 2–22–93; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of the Genome Research Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, March 11 and 12, 1993, at the Embassy Suites Hotel, Chevy Chase Pavilion, 4300 Military Road, NW., Wisconsin at Western Avenue, Washington, DC. This meeting will be open to the public from 8:30 a.m. to 9 a.m. on March 12, 1993 to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10 (d) of Public Law 92–463, the meeting will be closed to the public from 8:30 a.m. to closing on March 11 and from 9 a.m. to adjournment on March 12 for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 604, Bethesda, Maryland 20892, (301) 402–0838, will furnish the meeting agenda, roster of committee members and consultants, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Elsa Weinstein, (301) 402–0838, two weeks in advance of the meeting.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: February 11, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–4078 Filed 2–22–93; 8:45 am]

BILLING CODE 4140–01–M

National Institutes on Deafness and Other Communication Disorders; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussions and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such a patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates of Meeting: March 18–19, 1993.

Time of Meeting: March 18—8 a.m. until recess; March 19—8 a.m. until adjournment.

Place of Meeting: Holiday Inn Chevy Chase, Chevy Chase, Maryland.

Agenda: Review of Small Research Grants.

Contact Person: Dr. Mary Nekola, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400B, Bethesda, Maryland 20892. (301) 496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: February 11, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–4074 Filed 2–22–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of Subcommittee C of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of Subcommittee C of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), on March 4–5, 1993, at the Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814. This meeting will be open to the public on March 4 from 8 a.m. to 8:30 a.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 4 from 8:30 a.m. to recess and on March 5 from 8 a.m. to adjournment for the review, discussion and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide a summary of the meeting and a roster of the committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator, Dr. Daniel Matsumoto at least two weeks prior to the meeting date (301) 496–8830.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: February 11, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–4075 Filed 2–22–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the Board of Scientific Counselors, NIDCD

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIDCD, March 25 and 26, 1993, Building 31C, Conference Room 9, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

This meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on March 25, 1993 to present reports and discuss issues related to committee business. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 9:45 a.m. until recess on March 25, 1993 and from 8:30 a.m. until adjournment on March 26, 1993. The closed portions of the meeting will be for the review, discussion, and evaluation of the Laboratory of Cellular Biology, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Elizabeth A. Guy, address below, in advance of the meeting.

Elizabeth A. Guy, Secretary to the Director, Division of Intramural Research, NIDCD, Building 31, room 3C25, National Institutes of Health, Bethesda, Maryland 20892, 301–402–2829, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: February 11, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–4079 Filed 2–22–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 25 and 26, 1993, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 25, from 8 a.m. to approximately 9 a.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 25, from approximately 9 a.m. until recess, and from 9 a.m. until adjournment on March 26, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, 301–496–4236, will provide a summary of the meeting and a roster of the committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator in advance of the meeting.

Dr. Jon Ranhand, Scientific Review Administrator (Acting), Heart, Lung, and Blood Research Review Committee A, Westwood Building, room 554, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; National Institutes of Health.)

Dated: February 11, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–4076 Filed 2–22–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Obesity Prevention in American Indians/Alaska Natives.

Dates of Meeting: March 2–3, 1993.

Time of Meeting: 7 p.m.

Place of Meeting: Holiday Inn, Bethesda, Maryland.

Agenda: To review and evaluate grant applications.

Contact Person: Dr. Anthony M. Coelho, Jr., 5333 Westbard Avenue, room 648, Bethesda, Maryland 20892, (301) 496–8818.

Name of Panel: NHLBI SEP on Postmenopausal Estrogen and Progestin Interventions Trial 2.

Dates of Meeting: March 3, 1993.

Time of Meeting: 12 p.m.
Place of Meeting: Hyatt Regency Hotel, Bethesda, Maryland.
Agenda: To review and evaluate grant applications.
Contact Person: Dr. C. James Scheirer, 5333 Westbard Avenue, room 548, Bethesda, Maryland 20892, (301) 496–7363.

Name of Panel: NHLBI SEP on RFP for Natural History of Post-transfusion Hepatitis (Telephone Conference Call).
Dates of Meeting: March 12, 1993.
Time of Meeting: 2 p.m.
Place of Meeting: Westwood Building, room 550.
Agenda: To review and evaluate contract proposals.
Contact Person: Dr. Kathryn W. Ballard, 5333 Westbard Avenue, room 550, Bethesda, Maryland 20892, (301) 496–7361.

Name of Panel: NHLBI SEP on RFP for Clinical Coordinating Centers for Angiographic Trials in Women.
Dates of Meeting: March 13–14, 1993.
Time of Meeting: 7:30 p.m.
Place of Meeting: Embassy Suites Hotel, Irvine, California.
Agenda: To review and evaluate contract proposals.
Contact Person: Dr. C. James Scheirer, 5333 Westbard Avenue, room 548, Bethesda, Maryland 20892, (301) 496–7363.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 11, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–4077 Filed 2–22–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Lahontan Cutthroat Trout for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the threatened Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*). This species historically occupied the Lahontan basin in Carson City, Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey and Washoe Counties, Nevada, Alpine, El Dorado, Lassen, Mono, Nevada, Placer and Sierra Counties, California, and Harney and Malheur Counties, Oregon. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before April 26, 1993, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Nevada Ecological Services Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada, 89502 (Phone: 702–784–5227), or Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon, 97232–4181 (Phone: 503–231–6241). Written comments and materials regarding the plan should be addressed to Mr. David L. Harlow, Field Supervisor, at the above Reno, Nevada address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada address.

FOR FURTHER INFORMATION CONTACT: Patrick Coffin at the above Reno, Nevada address (Phone: 702–784–5227).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Lahontan cutthroat trout are endemic to the Lahontan basin in northern Nevada, eastern California, and southern Oregon. Their historic range includes: Carson City, Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey and Washoe Counties, Nevada; Alpine, El Dorado, Lassen, Mono, Nevada, Placer and Sierra Counties, California; and Harney and Malheur Counties, Oregon. The principle causes of decline for this species are habitat modification and nonnative fish introductions. Recovery efforts will focus on maintaining and enhancing 135 stream and two lake populations by increasing the extent of suitable habitat and eliminating threats from nonnative fish species, and reestablishing some populations within historic habitats where limited numbers of populations currently exist. Historic habitat is currently public lands administered by the United States Department of Agriculture, Forest Service, United States Department of Interior, Bureau of Land Management, Indian tribal governments, or private lands. The remaining populations of Lahontan cutthroat trout within historic habitat occur in the Carson, Truckee, Walker, Humboldt, Quinn/Black Rock, and Whitehorse basins. Populations also exist outside the historic range of the species because of introductions.

Public Comments Solicited

The Service solicits written comments on the Lahontan cutthroat trout recovery plan. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 12, 1993.

Marvin L. Plenert,

Regional Director.

[FR Doc. 93–4099 Filed 2–22–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Missouri National Recreational River Advisory Group Meeting

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the first meeting of the Missouri National Recreational River Advisory Group. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

The advisory commission was established by the law that established the Missouri National Recreational River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the Recreational River. The advisory group will report to Don Castleberry, Regional Director of the National Park Service in Omaha, Nebraska. The group will meet with the National Park Service several times a year as plans are developed for the Recreational River. Their duties are solely advisory. The appointments are for a three year period after which new or renewed appointments must be made. The members serve without compensation except for reasonable travel expenses.

Established May 24, 1991, the Missouri National Recreational River is the 39-mile free flowing segment of the Missouri from Fort Randall Dam to the vicinity of Springfield in South Dakota. No boundaries have yet been established and the Recreational River remains largely in private ownership. While the law says that the advisory group will provide advice on the 39-mile segment of the Missouri Recreational River, a 25-mile segment of the Niobrara River and an 8-mile segment of the Verdigre Creek are being studied in the same effort. Much of the advice received will probably apply to those segments as well. Work is underway on a general management plan that will delineate boundaries and establish management policies for the Recreational River. The advisory commission will have a role in reviewing the plan as it progresses.

Agenda topics include: Responsibilities of Federal Advisory Commissions; administrative procedures; the need for standard operating procedures and/or by laws for the commission; public participation in meetings; an update from the National Park Service on projects administered from the Niobrara/Missouri Scenic Riverways office in O'Neill, NE.; and a proposed agenda and date, time, and location of the next meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting. In order to accomplish the agenda for the meeting the Chair may want to limit or schedule public presentations.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, NE.

MEETING DATE AND TIME: March 17, 1993 1:30–4:30 p.m.

ADDRESS: Leona's Cafe, Highway 281, Lake Andes, South Dakota.

(In the event of inclement weather, the meeting will be held the following week, March 24, at 1:30 p.m., at Leona's. Cancellation notice will be communicated over the local radio stations.)

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, (402) 336–3970.

Dated: February 9, 1993.

William H. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 93–4110 Filed 2–22–93; 8:45 am]

BILLING CODE 4310–70–M

Mississippi River Coordinating Commission Meeting

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

The agenda for the meeting consists of continued Commission/staff review and discussion of the draft comprehensive management plan/environmental impact statement for the Mississippi National River and Recreation Area. National Park Service staff will report to the commission on planning input received via internal reviews. Public comments will be taken from 8:45 p.m. to 9:30 p.m.

DATES: April 29, 1993, 6:30 p.m. to 9:30 p.m.

ADDRESSES: Fridley City Hall, 6431 University Avenue NE., Fridley, Minnesota 55432.

FOR FURTHER INFORMATION CONTACT: Superintendent, Mississippi National River and Recreation Area, 175 East 5th Street, suite 418, St. Paul, Minnesota 55101, (612) 290–4160.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, November 18, 1988.

Dated: February 12, 1993.

William H. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 93–4111 Filed 2–22–93; 8:45 am]

BILLING CODE 4310–70–M

Mississippi River Coordinating Commission Meeting

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

The agenda for the meeting consists of continued Commission/staff review and discussion of the draft comprehensive management plan/environmental impact statement for the Mississippi National River and Recreation Area. Public comments will be taken from 8:45 a.m. to 9:30 a.m. and from 4:15 p.m. to 5:00 p.m.

DATES: April 5, 1993, 8:30 a.m. to 5 p.m.

ADDRESSES: Earle Brown Continuing Education Center, University of Minnesota, 1890 Buford Avenue, St. Paul, Minnesota 55108.

FOR FURTHER INFORMATION CONTACT: Superintendent, Mississippi National River and Recreation Area, 175 East 5th Street, suite 418, St. Paul, Minnesota 55101, (612) 290–4160.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, November 18, 1988.

Dated: February 12, 1993.

William H. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 93–4112 Filed 2–22–93; 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 February 13, 1993. 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 March 10, 1993.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

IOWA

Greene County

(Lincoln Highway Marker (1) (Lincoln Highway in Green County MPS), Address Restricted. Jefferson, 93000163

Lincoln Highway Marker (2) (Lincoln Highway in Green County MPS; County Courthouse in Iowa TR), Jct. of Lincoln Way and Chestnut Sts., Jefferson, 93000164

Lincoln Highway—Buttrick's Creek Abandoned Segment (Lincoln Highway in Greene County MPS), Approximately 3.5 mi. E of Jefferson on S side of Buttrick's Cr. bridge, Jefferson vicinity, 93000166

Lincoln Highway—Buttrick's Creek to Grand Junction Segment (Lincoln Highway in Greene County MPS), From Buttrick's Cr. E to 1A 144, Grand Junction vicinity, 93000167

Lincoln Highway—Grand Junction Segment (Lincoln Highway in Greene County MPS), Through and 1 mi. E of Grand Junction, S of Chicago & Northwestern RR tracks, Grand Junction, 93000168

Lincoln Highway—Little Beaver Creek Bridge (Lincoln Highway in Greene County MPS), 2.5 mi. E and 1 mi. N of Grand Junction across Little Beaver Cr., Grand Junction vicinity, 93000170

Lincoln Highway—Raccoon River Rural Segment (Lincoln Highway in Greene County MPS), Co. Rd. E53 approximately 0.1 mi. W of Jefferson City limits, going W across Raccoon R., Jefferson, 93000162

Lincoln Highway—West Greene County Rural Segment (Lincoln Highway in Greene County MPS), N from jct. of 1A 25 and US 30, approximately 0.5 mi. N of Scranton, then W to jct. with US 30. Scranton vicinity. 93000161

Lincoln Highway—West Beaver Creek Abandoned Segment (Lincoln Highway in Greene County MPS), Approximately 1 mi. E of Grand Junction between Chicago & Northwestern RR tracks and US 30. Grand Junction vicinity, 93000169

Lincoln Statue (Lincoln Highway in Greene County MPS; County Courthouses in Iowa TR), Jct. of Lincoln Way and Chestnut Sts., Jefferson, 93000165

OHIO

Erie County

Willdred Flats, 1116 Columbus Ave., Sandusky, 93000152

Fulton County

Lake Shore and Michigan Southern (LS&MS) Railroad Depot—Wauseon, Depot St. S side, between Fulton and Brunell Sts., Wauseon, 93000151

Lucas County

Huron—Superior Streets Warehouse—Produce Historic District, Roughly bounded by Erie, Monroe, Superior and Market Sts., Toledo, 93000153

OKLAHOMA

Cherokee County

Thompson, Joseph M., House, 300 S. College Ave., Tahlequah, 93000155

Okfuskee County

Weleetka Town Hall and Jail, Jct. of OK 75 and Seminole, Weleetka, 93000156

TENNESSEE

Hamilton County

Shavin, Seamour and Gerte, House, 334 N. Crest Rd., Chattanooga, 93000149

Lake County

Caldwell—Hopson House, 431 Wynn St., Tiptonville, 93000150

WISCONSIN

Fond Du Lac County

South Main Street Historic District, Roughly, 71–213 S. Main St., Fond du Lac, 93000160

Marinette County

Bijou Theatre Building, 1722–1726 Main St., Marinette, 93000159

Rock County

Conrad Cottages Historic District, 235–330 Milton Ave., Janesville, 93000157

Vilas County

Presque Isle State Graded School, Jct. of Co. Trunk Hwy. B and School Loop St., Presque Isle, 93000158

Waukesha County

McCall Street Historic District (Boundary Increase), Roughly, Charles and James Sts. from College Ave. to McCall St. and Hartwell Ave. from College to Grove St., Waukesha, 93000154

[FR Doc. 93–4109 Filed 2–22–93; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

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 November 27, 1992, Orpharm, Inc., 728 West 19th Street, Houston, Texas 77008, 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
Alphacetylmethadol (9603)	I
Methadone (9250)	II

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, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: February 5, 1993.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–4115 Filed 2–22–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act Allotments; Wagner-Peyser Act Preliminary Planning Estimates; Program Year (PY) 1993

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces States' Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1993 (July 1, 1992–June 30, 1994) for JTPA Titles II–A, II–C, and III, and for the JTPA Title II–B Summer Youth Program in Calendar Year (CY) 1993; and preliminary planning estimates for public employment service activities under the Wagner-Peyser Act for PY 1993.

FOR FURTHER INFORMATION CONTACT: For JTPA allotments, contact, Mr. Hugh Davies, Acting Director, Office of Employment and Training Programs, room N4703, 200 Constitution Avenue, NW., Washington, D.C. 20210; Telephone: 202–219–5580. For Employment Service planning levels contact Mr. Robert A. Schaerfl, Director, U.S. Employment Service, room N4470, 200 Constitution Avenue, NW., Washington, D.C. 20210; Telephone: 202–219–5257. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) is announcing Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1993 (July 1, 1993–June 30, 1994) For JTPA Titles II–A, II–C, and III, and for the Summer Youth

Program in Calendar Year (CY) 1993 for JTPA Title II–B; and, in accord with section 6 of the Wagner-Peyser Act, preliminary planning estimates for public employment services (ES) activities under the Wagner-Peyser Act for PY 1993. The allotments and estimates are based on the appropriations for DOL for Fiscal Year (FY) 1992 and FY 1993.

Attached are a list of the allotments for PY 1993 for programs under JTPA Titles II–A, II–C, and III; a list of the allotments for the CY 1993 Summer Youth program under Title II–B of JTPA; and a list of preliminary planning estimates for public employment service activities under the Wagner-Peyser Act. The PY 1993 allotments for Titles II–A, II–C, and III and the ES preliminary planning estimates, are based on the funds appropriated by the Department of Labor Appropriations Act, 1993, Public Law 102–394, for FY 1993. The CY 1993 allotments for Title II–B are based on funds appropriated by the Department of Labor Appropriations Act, 1992, Public Law 102–170, for FY 1992.

The allotments for Title II–B total $682,912,000 and are approximately the same as the previous year's level without the Emergency Supplemental appropriations. The Congress provided 1993 Summer Youth funds in two amounts totaling $682,912,000: $495,212,000 are from the PY 1992 appropriation and become available for obligation on July 1,1992; and $187,700,000 were made available for obligation on October 1, 1993, thus it is a FY 1993 appropriation.

These JTPA allotments will not be updated for subsequent unemployment data. The Employment Service preliminary estimates will be updated as final allotments to reflect CY 1992 data and published in the **Federal Register** at a later date.

—Data for areas of substantial unemployment (ASU's) are averages for the 12-month period, July 1991 through June 1992.

—The number of excess unemployed individuals or the ASU excess (depending on which is higher) are averages for this same 12-month period.

—The economically disadvantaged adult data are from the 1990 Census. These data will be made available on diskette to the State JTPA Liaisons.

The allotments for the Insular Areas, including the Freely Associated States, are based on unemployment data from 1990 Census or, if not available, the most recent data available. A 90-percent relative share "hold-harmless" of the PY 1992 Title II–A allotments for these areas and a minimum allotment of $75,000 were also applied in determining the allotments. This minimum amount equals 60 percent of the old Title II–A minimum allotment, since the Job Training Reform Amendments of 1992 divided Title II–A into Titles II–A and II–C, and the Title II–A appropriation is 60 percent of the sum of Titles II–A and II–C.

Title II–A funds are to be distributed among designated Service Delivery Areas (SDAs) according to the statutory formula contained in Section 202(b) of JTPA, as amended by Section 701(c) of the Job Training Reform Amendments of 1992 (1992 Amendments). The formula specified by Section 701(c) of the 1992 Amendments is used since the FY 1993 appropriation level meets the conditions of that Section. This is the same formula which has been used in previous program years.

In determining any necessary hold-harmless levels for SDAs, the States of Kentucky, Minnesota, Montana, and Wisconsin shall not include any additional funds provided for rural concentrated employment programs (RCEPs).

JTPA Title II–B Allotments. Attachment II shows the CY 1993 JTPA Title II–B Summer Youth Program allotments by State based on a total FY 1992 available appropriation of $682,912,000. The data used for these allotments are the same data as were used for Title II–A and II–C allotments, except for the number of economically disadvantaged. The total number of economically disadvantaged individuals (including college and military) from the 1990 Census was used. This follows the "old" definition of "economically disadvantaged" rather than the definition found in the 1992 Amendments which will not be in effect until July 1, 1993, and therefore is not applicable to these Title II–B allotments.

For the Insular Areas and Native Americans, the amount is based on the percentage of Title II–B funds each received during the previous summer.

Title II–B funds for the 1993 Summer Program are to be distributed among designated SDAs in accordance with the statutory formula contained in Section 252(b) of JTPA, prior to the 1992 Amendments. This is the same formula which has been used in previous program years.

In determining any necessary hold-harmless levels for SDA's, the States of Kentucky, Minnesota, Montana, and Wisconsin shall not include any additional funds provided for RCEP's.

JTPA Title II–C Allotments. Attachment III shows the PY 1993 JTPA Title II–C allotments by State on a total appropriation of $2,696,682,000. The amount is composed entirely of PY 1993 formula funds. For all States, Puerto Rico, and the District of Columbia, the data used in computing the allotments are the same data as were used for Title II–A allotments, except that the number of economically disadvantaged youth (ages 16–21, excluding college and military) is used rather than the number of adults.

JTPA Title III Allotments. Attachment IV shows the PY 1993 JTPA Title III Dislocated Worker Program allotments by State, for a total of $517,046,000. The total includes 80 percent allotted by formula to the States ($413,636,800), and 20 percent for the National Reserve, including funds allotted to the Insular Areas.

Title III formula funds are to be distributed to State and substate grantees in accordance with the provisions in Section 302(c) and (d) of JTPA.

Except for the Insular Areas, the unemployment data used for computing these allotments, relative numbers of unemployed and relative numbers of excess unemployed, are averages for the October 1991 through September 1992 period. Long-term unemployed data used were for CY 1991.

Allotments for the Insular Areas are based on the PY 1993 Title II–A allotments for these areas.

A reallotment of these published Title III formula amounts, as provided for by Section 303 of JTPA, will be based on completed program year expenditure reports submitted by the States and received by October 1, 1993. The Title III allotment for each State will be adjusted upward or downward, based on whether the State is eligible to share in reallotted funds or is subject to recapture.

Wagner-Peyser Act Employment Service Preliminary Planning Estimates Attachment V shows planning estimates which have been produced using the formula set forth at Section 6 of the Wagner-Peyser Act, 29 U.S.C. 49e. These preliminary estimates are based on averages for the most current 12 months ending September 1992 for each State's share of the civilian labor force (CLF) and unemployment. Final planning estimates will be issued within 90 days, based on CY 1992 data, as required by the Wagner-Peyser Act.

The total planning estimate does not include $19,138,700 or 2.36 percent of the total amount available. This amount is withheld from distribution to States to finance postage costs associated with

the conduct of Employment Service business. The Department is proposing in a **Federal Register** notice, soon to be published, that it will allocate postage resources to the States effective October 1, 1993. For information purposes, Attachment VI reflects the preliminary planning estimates including postage distribution to States for three quarters of PY 1993 (October 1, 1993-June 30, 1994). A final decision on whether to allocate postage resources to the States will be made prior to the final allocations.

The Secretary of Labor has set aside 3 percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment services, as required under section 6(b)(4) of the Wagner-Peyser Act. In accordance with this provision, $23,754,639 is set aside for administrative formula allocation. These setaside funds are included in the total planning estimate. Setaside funds are distributed in two steps to States which have lost in relative share of resources from the prior year. In step one, States which have a CLF below one million and are below the median CLF density are maintained at 100 percent of their relative share of prior year resources. All remaining funds are distributed on a pro rata basis in step two to all other States losing in relative share from the prior year, but which do not meet the size and density criteria for step one.

Ten percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives for public employment service offices; services for groups with special needs; and for the extra costs of exemplary models for delivering job services.

Signed at Washington, DC, this 9th day of February, 1993.

Carolyn M. Golding,

Acting Assistant Secretary for Employment and Training.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
1993 SUMMER FUND SOURCES

State	PY 1992	FY 1993	1993 SUMMER TOTAL
Alabama	8,950,147	3,392,371	12,342,518
Alaska	1,272,767	482,416	1,755,183
Arizona	6,842,233	2,593,409	9,435,642
Arkansas	5,405,916	2,049,002	7,454,918
California	62,978,533	23,870,728	86,849,261
Colorado	5,428,208	2,057,451	7,485,659
Connecticut	5,209,836	1,974,682	7,184,518
Delaware	1,213,454	459,935	1,673,389
District of Columbia	2,242,378	849,927	3,092,305
Florida	26,098,440	9,892,081	35,990,521
Georgia	9,881,259	3,745,290	13,626,549
Hawaii	1,213,454	459,935	1,673,389
Idaho	1,638,955	621,213	2,260,168
Illinois	23,989,239	9,092,632	33,081,871
Indiana	8,050,262	3,051,288	11,101,550
Iowa	2,944,901	1,116,204	4,061,105
Kansas	1,925,128	729,681	2,654,809
Kentucky	7,764,094	2,942,821	10,706,915
Louisiana	13,583,848	5,148,680	18,732,528
Maine	2,425,072	919,174	3,344,246
Maryland	7,107,380	2,693,908	9,801,288
Massachusetts	13,380,783	5,071,712	18,452,495
Michigan	22,280,488	8,444,964	30,725,452
Minnesota	5,508,819	2,088,005	7,596,824
Mississippi	7,247,917	2,747,175	9,995,092
Missouri	8,527,172	3,232,051	11,759,223
Montana	1,714,043	649,673	2,363,716
Nebraska	1,213,454	459,935	1,673,389
Nevada	1,696,186	642,904	2,339,090
New Hampshire	1,989,689	754,151	2,743,840
New Jersey	13,048,086	4,945,611	17,993,697
New Mexico	3,132,144	1,187,175	4,319,319
New York	35,785,202	13,563,650	49,348,852
North Carolina	9,602,027	3,639,452	13,241,479
North Dakota	1,213,454	459,935	1,673,389
Ohio	18,068,569	6,848,522	24,917,091
Oklahoma	5,455,112	2,067,649	7,522,761
Oregon	5,073,989	1,923,192	6,997,181
Pennsylvania	21,177,464	8,026,886	29,204,350
Puerto Rico	17,708,164	6,711,918	24,420,082
Rhode Island	2,155,435	816,974	2,972,409
South Carolina	5,886,118	2,231,013	8,117,131
South Dakota	1,213,454	459,935	1,673,389
Tennessee	8,710,973	3,301,716	12,012,689
Texas	34,338,530	13,015,319	47,353,849
Utah	1,670,703	633,246	2,303,949
Vermont	1,213,454	459,935	1,673,389
Virginia	9,298,167	3,524,280	12,822,447
Washington	8,220,686	3,115,883	11,336,569
West Virginia	5,447,713	2,064,844	7,512,557
Wisconsin	6,024,731	2,283,552	8,308,283
Wyoming	1,213,454	459,935	1,673,389
American Samoa	37,594	14,249	51,843
Guam	458,497	173,784	632,281
Marshall Islands	13,512	5,121	18,633
Micronesia	32,020	12,136	44,156
Northern Marianas	17,586	6,665	24,251
Palau	5,302	2,010	7,312
Virgin Islands	259,974	98,538	358,512
Native Americans	9,005,831	3,413,477	12,419,308
NATIONAL TOTAL	495,212,000	187,700,000	682,912,000

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1993 JTPA TITLE II–A ALLOTMENTS TO STATES

State	Dollars
Alabama	19,205,450
Alaska	2,759,988
Arizona	14,631,816
Arkansas	11,820,397
California	135,220,051
Colorado	11,894,856
Connecticut	11,231,091
Delaware	2,605,627
District of Columbia	2,950,916
Florida	56,906,155
Georgia	21,193,343
Hawaii	2,605,627
Idaho	3,607,474
Illinois	51,161,245
Indiana	17,268,341
Iowa	6,600,335
Kansas	4,127,490
Kentucky	17,446,665
Louisiana	29,817,839
Maine	5,201,890
Maryland	15,377,131
Massachusetts	28,706,202
Michigan	47,786,871
Minnesota	11,552,830
Mississippi	15,852,904
Missouri	18,290,966
Montana	3,773,659
Nebraska	2,605,627
Nevada	3,812,697
New Hampshire	4,223,565
New Jersey	28,213,441
New Mexico	6,839,541
New York	77,560,655
North Carolina	20,304,963
North Dakota	2,605,627
Ohio	38,399,130
Oklahoma	11,639,178
Oregon	10,977,924
Pennsylvania	45,251,676
Puerto Rico	38,069,506
Rhode Island	4,607,543
South Carolina	12,469,654
South Dakota	2,605,627
Tennessee	18,844,292
Texas	73,235,388
Utah	3,674,395
Vermont	2,605,627
Virginia	19,742,039
Washington	17,555,624
West Virginia	11,957,293
Wisconsin	12,246,955
Wyoming	2,605,627
American Samoa	165,739
Guam	631,051
Marshall Islands	338,783
Micronesia	630,752
Northern Marianas	140,627
Palau	107,525
Virgin Islands	755,770
TOTAL	1,045,021,000

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
JTPA TITLE II–B ALLOTMENTS TO STATES
1993 SUMMER

State	Dollars
Alabama	12,342,518
Alaska	1,755,183
Arizona	9,435,642
Arkansas	7,454,918
California	86,849,261
Colorado	7,485,659
Connecticut	7,184,518
Delaware	1,673,389
District of Columbia	3,092,305
Florida	35,990,521
Georgia	13,626,549
Hawaii	1,673,389
Idaho	2,260,168
Illinois	33,081,871
Indiana	11,101,550
Iowa	4,061,105
Kansas	2,654,809
Kentucky	10,706,915
Louisiana	18,732,528
Maine	3,344,246
Maryland	9,801,288
Massachusetts	18,452,495
Michigan	30,725,452
Minnesota	7,596,824
Mississippi	9,995,092
Missouri	11,759,223
Montana	2,363,716
Nebraska	1,673,389
Nevada	2,339,090
New Hampshire	2,743,840
New Jersey	17,993,697
New Mexico	4,319,319
New York	49,348,852
North Carolina	13,241,479
North Dakota	1,673,389
Ohio	24,917,091
Oklahoma	7,522,761
Oregon	6,997,181
Pennsylvania	29,204,350
Puerto Rico	24,420,082
Rhode Island	2,972,409
South Carolina	8,117,131
South Dakota	1,673,389
Tennessee	12,012,689
Texas	47,353,849
Utah	2,303,949
Vermont	1,673,389
Virginia	12,822,447
Washington	11,336,569
West Virginia	7,512,557
Wisconsin	8,308,283
Wyoming	1,673,389
American Samoa	51,843
Guam	632,281
Marshall Islands	18,633
Micronesia	44,156
Northern Marianas	24,251
Palau	7,312
Virgin Islands	358,512
Native Americans	12,419,308
TOTAL	682,912,000

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1993 JTPA TITLE II–C ALLOTMENTS TO STATES

State	Dollars
Alabama	12,803,658
Alaska	1,839,995
Arizona	10,003,972
Arkansas	7,880,279
California	93,538,095
Colorado	7,929,919
Connecticut	7,450,586
Delaware	1,737,088
District of Columbia	1,952,872
Florida	36,869,872
Georgia	14,128,923
Hawaii	1,737,088
Idaho	2,404,987
Illinois	34,348,407
Indiana	11,512,249
Iowa	4,400,232
Kansas	2,751,665
Kentucky	11,309,285
Louisiana	19,878,597
Maine	3,467,933
Maryland	10,061,975
Massachusetts	19,137,505
Michigan	31,857,975
Minnesota	7,711,810
Mississippi	10,568,623
Missouri	12,194,001
Montana	2,391,710
Nebraska	1,737,088
Nevada	2,517,894
New Hampshire	2,770,289
New Jersey	18,486,324
New Mexico	4,559,703
New York	49,575,373
North Carolina	13,334,469
North Dakota	1,737,088
Ohio	25,552,042
Oklahoma	7,567,858
Oregon	7,186,492
Pennsylvania	29,287,019
Puerto Rico	25,378,260
Rhode Island	2,990,286
South Carolina	8,347,719
South Dakota	1,737,088
Tennessee	12,306,524
Texas	51,086,504
Utah	2,449,602
Vermont	1,737,088
Virginia	13,071,835
Washington	11,809,656
West Virginia	7,872,395
Wisconsin	8,130,180
Wyoming	1,737,088
American Samoa	110,493
Guam	420,702
Marshall Islands	225,856
Micronesia	420,503
Northern Marianas	93,751
Palau	71,683
Virgin Islands	503,847
TOTAL	696,682,000

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1993 JTPA TITLE III ALLOTMENTS TO STATES

State	Dollars
Alabama	6,379,917
Alaska	1,059,592
Arizona	5,073,430
Arkansas	3,654,634
California	59,364,587
Colorado	3,474,271
Connecticut	6,143,535
Delaware	825,522
District of Columbia	1,161,588
Florida	23,759,640
Georgia	7,297,216
Hawaii	430,828
Idaho	1,093,581
Illinois	22,749,098
Indiana	6,121,062
Iowa	1,982,773
Kansas	1,416,096
Kentucky	5,680,018
Louisiana	6,684,536
Maine	2,563,617
Maryland	7,065,512
Massachusetts	15,662,014
Michigan	20,039,145
Minnesota	3,911,499
Mississippi	4,589,454
Missouri	6,757,085
Montana	1,210,271
Nebraska	607,812
Nevada	1,631,330
New Hampshire	2,494,279
New Jersey	15,730,774
New Mexico	2,131,752
New York	35,267,711
North Carolina	7,701,811
North Dakota	404,747
Ohio	16,612,857
Oklahoma	3,918,541
Oregon	4,303,648
Pennsylvania	19,621,195
Puerto Rico	9,733,356
Rhode Island	2,451,597
South Carolina	4,677,957
South Dakota	288,469
Tennessee	6,348,778
Texas	26,115,828
Utah	1,161,930
Vermont	929,368
Virginia	8,654,704
Washington	6,588,228
West Virginia	5,242,689
Wisconsin	4,423,782
Wyoming	443,136
American Samoa	65,777
Guam	250,445
Marshall Islands	134,452
Micronesia	250,326
Northern Marianas	55,810
Palau	42,673
Virgin Islands	299,942
National Reserve	102,309,775
TOTAL	517,046,000

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
PRELIMINARY PY 1993 WAGNER–PEYSER ALLOTMENTS TO STATES

State	Basic Formula	3% Distribution			Total Allotment***
		Step 1*	Step 2**	Total	
Alabama	10,924,906	0	497,098	497,098	11,422,004
Alaska	7,513,758	1,093,717	0	1,093,717	8,607,475
Arizona	9,836,061	0	0	0	9,836,061
Arkansas	6,518,959	0	360,702	360,702	6,879,661
California	90,763,600	0	0	0	90,763,600
Colorado	9,359,705	0	266,472	266,472	9,626,177
Connecticut	10,085,075	0	175,073	175,073	10,260,148
Delaware	2,145,182	0	66,513	66,513	2,211,695
District of Columbia	4,271,128	0	465,524	465,524	4,736,652
Florida	38,656,197	0	0	0	38,656,197
Georgia	17,039,988	0	566,964	566,964	17,606,952
Hawaii	2,702,155	0	0	0	2,702,155
Idaho	6,260,298	911,261	0	911,261	7,171,559
Illinois	35,720,444	0	19,454	19,454	35,739,898
Indiana	15,194,094	0	474,209	474,209	15,668,303
Iowa	7,646,849	0	558,193	558,193	8,205,042
Kansas	6,368,500	0	339,711	339,711	6,708,211
Kentucky	9,790,943	0	578,595	578,595	10,369,538
Louisiana	11,172,882	0	1,068,521	1,068,521	12,241,403
Maine	3,722,940	541,919	0	541,919	4,264,859
Maryland	14,362,221	0	0	0	14,362,221
Massachusetts	18,762,130	0	835,967	835,967	19,598,097
Michigan	28,190,595	0	950,888	950,888	29,141,483
Minnesota	12,339,553	0	540,808	540,808	12,880,361
Mississippi	6,981,361	0	536,120	536,120	7,517,481
Missouri	14,631,554	0	507,937	507,937	15,139,491
Montana	5,115,948	744,687	0	744,687	5,860,635
Nebraska	6,148,363	894,968	0	894,968	7,043,331
Nevada	4,973,240	723,914	0	723,914	5,697,154
New Hampshire	3,594,650	0	99,916	99,916	3,694,566
New Jersey	23,530,707	0	0	0	23,530,707
New Mexico	5,740,993	835,670	0	835,670	6,576,663
New York	50,727,452	0	956,928	956,928	51,684,380
North Carolina	18,513,004	0	214,373	214,373	18,727,377
North Dakota	5,209,564	758,315	0	758,315	5,967,879
Ohio	30,666,122	0	441,810	441,810	31,107,932
Oklahoma	10,062,417	0	1,096,734	1,096,734	11,159,151
Oregon	8,596,500	0	51,346	51,346	8,647,846
Pennsylvania	34,164,997	0	89,856	89,856	34,254,853
Puerto Rico	9,205,719	0	131,466	131,466	9,337,185
Rhode Island	3,143,409	0	47,507	47,507	3,190,916
South Carolina	9,674,579	0	45,171	45,171	9,719,750
South Dakota	4,814,835	700,857	0	700,857	5,515,692
Tennessee	13,386,985	0	292,384	292,384	13,679,369
Texas	49,688,142	0	723,982	723,982	50,412,124
Utah	10,530,630	1,532,859	0	1,532,859	12,063,489
Vermont	2,255,545	328,321	0	328,321	2,583,866
Virginia	18,294,912	0	0	0	18,294,912
Washington	14,340,298	0	0	0	14,340,298
West Virginia	5,511,055	802,200	0	802,200	6,313,255
Wisconsin	13,549,748	0	341,970	341,970	13,891,718
Wyoming	3,735,583	543,759	0	543,759	4,279,342
FORMULA TOTAL	766,136,475	10,412,447	13,342,192	23,754,639	789,891,114
Guam	370,511	0	0	0	370,511
Virgin Islands	1,559,675	0	0	0	1,559,675
Indicia Postage	19,138,700	0	0	0	19,138,700
NATIONAL TOTAL	787,205,361	10,412,447	13,342,192	23,754,639	810,960,000

* Funds are allocated to the 13 States whose relative share decreased from PY 1992 to the PY 1993 basic formula amount and which have a Civilian Labor Force (CLF) below one million and are below the median CLF density. These States are held harmless at 100% of their PY 1992 relative share.

** The balance of the 3% funds are distributed to the remaining 31 States losing in relative share from PY 1992 to their PY 1993 total allotment amount.

*** Hold harmless provisions required under Section 6(B) of the Wagner–Peyser Act, as amended, are maintained at the revised allotment level.

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
PRELIMINARY PY 1993 WAGNER–PEYSER ALLOTMENTS TO STATES

State	WITH * 3/4 POSTAGE	WITHOUT POSTAGE	STATE POSTAGE
Alabama	11,629,060	11,422,004	207,056
Alaska	8,763,510	8,607,475	156,035
Arizona	10,014,367	9,836,061	178,306
Arkansas	7,004,374	6,879,661	124,713
California	92,408,946	90,763,600	1,645,346
Colorado	9,800,678	9,626,177	174,501
Connecticut	10,446,142	10,260,148	185,994
Delaware	2,251,788	2,211,695	40,093
District of Columbia	4,822,517	4,736,652	85,865
Florida	39,356,949	38,656,197	700,752
Georgia	17,926,128	17,606,952	319,176
Hawaii	2,751,139	2,702,155	48,984
Idaho	7,301,564	7,171,559	130,005
Illinois	36,387,785	35,739,898	647,887
Indiana	15,952,336	15,668,303	284,033
Iowa	8,353,782	8,205,042	148,740
Kansas	6,829,817	6,708,211	121,606
Kentucky	10,557,516	10,369,538	187,978
Louisiana	12,463,314	12,241,403	221,911
Maine	4,342,171	4,264,859	77,312
Maryland	14,622,576	14,362,221	260,355
Massachusetts	19,953,368	19,598,097	355,271
Michigan	29,669,756	29,141,483	528,273
Minnesota	13,113,854	12,880,361	233,493
Mississippi	7,653,757	7,517,481	136,276
Missouri	15,413,938	15,139,491	274,447
Montana	5,966,875	5,860,635	106,240
Nebraska	7,171,011	7,043,331	127,680
Nevada	5,800,431	5,697,154	103,277
New Hampshire	3,761,541	3,694,566	66,975
New Jersey	23,957,267	23,530,707	426,560
New Mexico	6,695,884	6,576,663	119,221
New York	52,621,305	51,684,380	936,925
North Carolina	19,066,863	18,727,377	339,486
North Dakota	6,076,063	5,967,879	108,184
Ohio	31,671,852	31,107,932	563,920
Oklahoma	11,361,442	11,159,151	202,291
Oregon	8,804,612	8,647,846	156,766
Pennsylvania	34,875,819	34,254,853	620,966
Puerto Rico	9,506,448	9,337,185	169,263
Rhode Island	3,248,761	3,190,916	57,845
South Carolina	9,895,948	9,719,750	176,198
South Dakota	5,615,680	5,515,692	99,988
Tennessee	13,927,346	13,679,369	247,977
Texas	51,325,986	50,412,124	913,862
Utah	12,282,174	12,063,489	218,685
Vermont	2,630,706	2,583,866	46,840
Virginia	18,626,559	18,294,912	331,647
Washington	14,600,257	14,340,298	259,959
West Virginia	6,427,700	6,313,255	114,445
Wisconsin	14,143,544	13,891,718	251,826
Wyoming	4,356,917	4,279,342	77,575
FORMULA TOTAL	804,210,123	789,891,114	14,319,009
Guam	377,228	370,511	6,717
Virgin Islands	1,587,949	1,559,675	28,274
Indicia Postage	4,784,700	19,138,700	(14,354,000)
NATIONAL TOTAL	810,960,000	810,960,000	0

*Reflects proposal that States will assume responsibility for mail management effective October 1, 1993. The balance of postage reserves totaling $4.785M (July–Sept 1993), will be retained by ETA to finance a portion of the FY 1993 postal bill.

[FR Doc. 93–4136 Filed 2–22–93; 8:45 am]
BILLING CODE 4510–30–C

LEGAL SERVICES CORPORATION

Designate Recipient for the Provision of State Support Services in the Area of Public Utility Law for the Provision of Legal Services in the State of New York

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grant.

SUMMARY: The Legal Services Corporation hereby announces its intention to make a grant to Public Utility Law Project of New York to provide state support services in the area of public utility law to the Legal Services Corporation's recipient programs in the State of New York. This grant will be made effective April 1, 1993.

The grant will be awarded pursuant to authority conferred by section 1006(a)(1)(A) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of 30 days from the date of publication of this notice.

DATES: All comments and recommendations must be received on or before 5 p.m. March 25, 1993.

ADDRESSES: Comments should be sent to the Office of Field Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Jay Brown, Grants Specialist, Grants and Budget Division, Office of Field Services, (202) 336–8828.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal service to the poor. Public Utility Law Project (PULP) has been providing state support services in the area of public utility law in New York as a component of Legal Aid Society of Northeastern New York since 1976. With the consent of Legal Aid Society of Northeastern New York, the state support grant that program has previously received will be made directly to Public Utility Project of New York (PULPNY). PULPNY is a sister corporation to PULP and provides the same kind of legal services as PULP, but with non-LSC funds. PULP and PULPNY are merging and the resulting corporation will receive both the LSC grant and the non-LSC funds to provide state support services in the area of public utility law.

The amount of the 1993 grant to PULPNY will be equivalent to the grant that Legal Aid Society of Northeastern New York would have received for state support in 1993, less the funds already granted to Legal Aid Society of Northeastern New York for the months of January, February, and March 1993. Thus, Public Utility Law Project of New York will receive $165,027 for the remainder of 1993, and its annualized funding level for 1993 will be $220,035.

Dated: February 17, 1993.

Charles T. Moses III,

Deputy Director, Office of Field Services.

[FR Doc. 93–4113 Filed 2–22–93; 8:45 am]

BILLING CODE 7050–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (93–018)]

NASA Advisory Council (NAC) Task Force on National Facilities; Aeronautics R&D Facilities Task Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC Task Force on National Facilities, Aeronautics R&D Facilities Task Group.

DATES: March 11, 1993, 8:30 to 4:30 p.m.; and March 12, 1993, 8:30 a.m. to noon.

ADDRESSES: Matrix Corporation, 2011 Crystal Drive, Crystal Park One, suite 111, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne McKinney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23665, 804/864–8686.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Ad Hoc Group Reports

—Fiscal Year 1994 Budget Planning

—Near Term Plans

Dated: February 16, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–4104 Filed 2–22–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Professional Development/Overview Section) to the National Council on the Arts will be held on March 10–11, 1993 from 9 a.m.–5 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 11 from 11 a.m.–5 p.m. The topics will be program overview, policy discussion, and guidelines review.

The remaining portions of this meeting on March 10 from 9 a.m.–5 p.m. and March 11 from 9 a.m.–11 a.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: February 17, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–4052 Filed 2–22–93; 8:45 am]

BILLING CODE 7537–01–M

Meetings; Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Music Recording Section) to the National Council on the Arts will be held on March 10–11, 1993 from 9 a.m.–5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506. A portion of this meeting will be open to the public on March 11 from 4:30 p.m.–5:30 p.m. for policy discussion and guidelines review. The remaining portions of this meeting on March 10 from 9 a.m.–5:30 p.m. and March 11 from 9 a.m.–4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–4050 Filed 2–22–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Artists' Communities Section) to the National Council on the Arts will be held on March 12, 1993 from 9 a.m.–5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4 p.m.–5:30 p.m. The topic will be policy discussion.

The remaining portion of this meeting from 9 a.m.–4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202–682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: February 17, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–4051 Filed 2–22–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Local Arts Agencies Section) will be held on March 16, 1993 from 9:15 a.m.–5 p.m., March 17 from 9:15 a.m.–5:30 p.m. and March 18 from 9:15 a.m.–12 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will include opening remarks, application review, and policy discussion.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: February 17, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–4053 Filed 2–22–93; 8:45 am]

BILLING CODE 7537–01–M

Meetings; Public Partnership Office Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (State and Regional Section) will be held on March 15, 1993 from 9 a.m.–5:30 p.m. and March 16 from 9 a.m.–5 p.m. in Room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will include introductory remarks, application review, policy discussion, and guidelines review.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100

Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–4049 Filed 2–22–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Theater Companies A Section) to the National Council on the Arts will be held on March 15, 1993 from 9:30 a.m.–8:30 p.m., March 16–18 from 9:30 a.m.–9:30 p.m. and March 19 from 9:30 a.m.–5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 15 from 9:30 a.m.–10:30 a.m. and March 19 from 4 p.m.–5:30 p.m. The topics will be opening remarks, policy discussion, and guidelines review.

The remaining portions of this meeting on March 15 from 10:30 a.m.–8:30 p.m., March 16–18 from 9:30 a.m.–9:30 p.m. and March 19 from 9:30 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: February 17, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–4054 Filed 2–22–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Blue Ribbon Panel on High Performance Computing; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: March 11, 1993: 8:30 a.m. to 5:30 p.m. March 12, 1993: 8:30 a.m. to 2:30 p.m.

Place: Hotel Washington, 15th & Pennsylvania Ave., NW., Washington, DC 20004.

Type of Meeting: Open.

Contact Person: Dr. Melvyn Ciment, Executive Officer, Directorate for Computer and Information Science and Engineering, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357–7936.

Minutes: May be obtained from Odessa Dyson, Administrative Officer, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–7936.

Purpose of Meeting: To assess current knowledge on the state of supercomputing and the contributions of high performance computing to scientific research and education; to help project changes required by developments in this rapidly evolving field; and to provide recommendations to the National Science Board on NSF's possible future role in supercomputing.

Agenda: (1) Invited panelists of computer designers and industry vendors, NSF supercomputer center directors, and other experts will focus on the following questions:

(a) How would you project the emerging high performance computing environment and market forces over the next five years and the implications for change in the way scientists and engineers will conduct R&D, design and productions modelling?

(b) What do you see as the largest barriers to the effective use of these emergent technologies by scientists and engineers and what efforts will be needed to remove these barriers? What is the proper role of government, and, in particular, the NSF to foster progress?

(c) To what extent do you believe there is a future role for government-supported supercomputer centers? What role should NSF play in this spectrum of capabilities?

(d) To what extent should NSF use its resources to encourage use of high performance computing in commercial industrial applications through collaboration between high performance computing centers, academic users and industrial groups?

(2) Identify further needed inputs and sources.

(3) Discuss issues to be addressed.

(4) Discuss timetable and plan future writing assignments and meetings.

The panel welcomes comments from all interested parties. Persons wishing to file written comments should mail (hard copy or electronic) or fax the comments by April 1, 1993, to the Blue Ribbon Panel on High Performance Computing, room 306, National Science Foundation, 1800 G St., NW., Washington, DC 20550. FAX #202–357–0320. E-mail: hpcmail@nsf.gov (Internet) or hpcmail@nsf (Bitnet).

Dated: February 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–4153 Filed 2–22–93; 8:45 am]

BILLING CODE 7555–01–M

Expert Panel of the Federal Coordinating Council for Science, Engineering and Technology (FCCSET), Committee on Education and Human Resources (CEHR); Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Expert Panel of the FCCSET/CEHR.

Dates and Times: March 11, 1993, 8:15 a.m. to 4:30 p.m.; March 12, 1993, 8:15 a.m. to 3 p.m.

Place: Washington, DC. Call contact person for location.

Type of Meeting: Open.

Contact Person: Mr. James S. Dietz, Program Analyst, the Division of Research, Evaluation and Dissemination, the Directorate of Human Resources, National Science Foundation, room 1249, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–7425.

Minutes: May be obtained from the contact person listed above.

Purpose of the Meeting: The National Science Foundation acting through the FCCSET/CEHR established an Expert Panel to review the status of Federal Science, Mathematics, Engineering, and Technology (SMET) programs of member agencies. The Expert Panel provides advice and recommendations to FCCSET/CEHR on the status of Federal SMET education programs.

Agenda: Mission Discussion, Continuation of Panel Discussion on Data Update Mission, Subpanels Discussion for K–12 Programs, Program Evaluation and Undergraduate Programs, Discussion on Reform in Science Education and the Federal Role, Subpanel Discussion on Graduate/Public Literacy Programs, Continuation of Undergraduate SMET Program Review Roundtable Panelists Report on Program Topics, Summary Discussions and Closure.

Dated: February 18, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–4152 Filed 2–22–93; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, March 11, 1993
Thursday, March 25, 1993
Thursday, April 15, 1993
Thursday, April 29, 1993

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street NW., Washington, DC 20415 (202) 606–1500.

Dated: February 16, 1993.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 93–4055 Filed 2–22–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

February 17, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Global Health Sciences Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–10230)
HMO America, Inc.
Common Stock, $.01 Par Value (File No. 7–10231)
Hyperion 1999 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–10232)
Merry Land & Investment Co., Inc.
Common Stock, No Par Value (File No. 7–10233)
Nine West Group, Inc.
Common Stock, $.01 Par Value (File No. 7–10234)
Resurgens Communication Group, Inc.
Common Stock, $.01 Par Value (File No. 7–10235)
Strategic Global Income Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–10236)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 10, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–4068 Filed 2–22–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31866; File No. SR–MSTC–93–02]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Modification of Fee Schedule To Provide Discounts to Primary Users

February 17, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 3, 1993, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MSTC–93–02) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1) (1988).

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 proposed rule change revises MSTC's fee schedule to provide discounts (see Exhibit A) to participants who are primary users[2] of available MSTC services. Eligibility for the discount would be based on a commitment in writing by the participant to continue to use MSTC as the primary provider of safekeeping services for a minimum period of two to three years and at least one year's experience as a participant at MSTC. The effectiveness of the proposed discount fee schedule will terminate on March 4, 1994, unless extended.[3]

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 purpose of the proposed rule change is to provide discounts, in the form of a two tiered fee revision, to participants who use MSTC as their primary securities depository. Under the proposal, participants who make a commitment in writing to continue to use MSTC as their primary custodian for a period of two to three years and who have been participants for at least one year would receive discounted service charges.

The first tier of the proposed discount would be calculated based on a participant's actual annualized revenue level paid to MSTC for the previous twelve month period. A participant who produces a minimum average revenue of $20,000 per month for MSTC would receive a discount of 50% off of each dollar spent in excess of their actual average annualized revenue level. Each year, the participant's actual average would be revised and would remain constant for the next twelve month period.

The second tier of the proposed discount would be based on the total amount of monthly revenues MSTC receives from a participant. In order to qualify for this discount, MSTC must receive monthly revenues at a level equal to or in excess of $20,000 from a participant. At this level, a participant with a two year commitment to use MSTC as its primary custodian would receive a discount of 6% off the total amount of fees the participant must pay to MSTC that month. A participant who makes a three year commitment at this level would receive a discount of 8% off the total amount of fees the participant must pay to MSTC that month. Similarly, participants who produce monthly revenues for MSTC in excess of $50,000 and sign a two year commitment would receive a 12% discount off the total amount of fees the participant must pay to MSTC that month. A participant who makes a three year commitment at this level would receive a discount of 16% off the total amount of fees the participant must pay to MSTC that month.

MSTC believes that the proposed rule change is consistent with the requirements of sections 17A(b)(3) (A) and (F) of the Act,[4] and the rules and regulations thereunder, in that it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MSTC has not solicited written comments with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder, because the proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street 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 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to the File No. SR–MSTC–93–02 and should be submitted by March 16, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

[2] A "primary user" means either (1) a participant who uses MSTC solely as its depository and clearing agent or (2) a participant who is a member of more than one securities depository but who safekeeps the majority of its eligible inventory with MSTC. To document the latter, MSTC may request that participants verify the amount of business conducted at another depository.

[3] The present rule filing replaces an identical proposal filed by MSTC pursuant to Section 19(b)(3)(A) of the Act (Securities Exchange Act Release No. 31748 (January 19, 1993), 58 FR 6318) which was withdrawn by MSTC on February 2, 1993. Letter from J. Craig Long, Vice President, General Counsel and Secretary, MSTC, to Jerry Carpenter, Branch Chief, Division of Market Regulation, Commission (February 2, 1993). In addition, in conjunction with the withdrawal of the previous rule filing, MSTC also has filed an identical proposal which is to be considered pursuant to section 19(b)(2) of the Act. See Securities Exchange Act Release No. 31867 (February 17, 1993). The purpose of these related filings is to assure that the volume discount program, which was effective immediately upon filing with the Commission, will expire on March 4, 1994, unless approved by the Commission pursuant to section 19(b)(2) of the Act.

[4] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[5] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

EXHIBIT A.—DISCOUNT FEE SCHEDULE [1]

Minimum average revenue (per month)	Percent discount	Length of commitment (years)
First tier: [2]		
$20,000 and above.	50% off each dollar spent in excess of actual average annualized revenue level.	
Total MSTC Revenues (per month)		
Second tier: [3]		
$20,000–$50,000	6%	2
	8%	3
$50,001 and above.	12%	2
	16%	3

[1] A commitment in writing to continue to use MSTC as their primary custodian for two to three years and experience of at least one year as a participant at MSTC is required in order for a participant to become eligible to receive discounted service charges under the proposal.

[2] The first tier discount is based on the participant's actual annualized revenue level for the previous twelve month period.

[3] The second tier discount is based on the total amount of monthly revenues MSTC receives from a participant.

[FR Doc. 93–4132 Filed 2–22–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

February 17, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Acceptance Insurance Companies, Inc.
Common Stock, $.40 Par Value (File No. 7–10237)

Acceptance Insurance Companies, Inc.
Rights (Exp. 01/27/93) (File No. 7–10238)

American Re Corp.
Common Stock, $.01 Par Value (File No. 7–10239)

Breed Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7–10240)

Capstead Mortgage Corp.
$1.26 Cumulative Convertible Preferred B, $.10 Par Value (File No. 7–10241)

Caremark International, Inc.
Common Stock, $1.00 Par Value (File No. 7–10242)

First Colony Holding Corp.
Common Stock, No Par Value (File No. 7–10243)

Health Images, Inc.
Common Stock, $.01 Par Value (File No. 7–10244)

Hyperion 1999 Term Trust
Common Stock, $.01 Par Value (File No. 7–10245)

Hyperion 1997 Term Trust
Common Stock, $.01 Par Value (File No. 7–10246)

Jackpot Enterprises, Inc.
Common Stock, $.01 Par Value (File No. 7–10247)

Paragon Trade Brands, Inc.
Common Stock, $.01 Par Value (File No. 7–10248)

Price Communications Corp.
Common Stock, $.01 Par Value (File No. 7–10249)

Wellpoint Health Networks, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–10250)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 10, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–4067 Filed 2–22–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

February 17, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Catellus Development Corporation
$3.75 Series A Cum. Cv. Pfd. Stock, $.01 Par Value (File No. 7–10229)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 10, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–4066 Filed 2–22–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31869; File No. SR–AMEX–92–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Waiver of Transaction Charges for SuperUnits

February 17, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 27, 1992, the American Stock Exchange Inc. ("Amex" or "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 Amex. 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

Until December 31, 1992, the Amex proposes to waive the imposition of

transactions charges for any transactions executed on the Exchange in either the Index Trust SuperUnit or the Money Market Trust SuperUnit (together, the "SuperUnits"). The text of the proposed fee change is available at the office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Until December 31, 1992, the Amex proposes to waive the imposition of transactions charges for any transactions executed on the Exchange in the SuperUnits.

Although the Exchange issued circulars announcing the startup of trading of SuperUnits [1] and held information seminars for floor members and representatives of its member organizations, trading volume to date by both floor professionals and off-floor accounts has been extremely light.

Accordingly, the Exchange has determined to waive its imposition and collection of transaction charges for orders in SuperUnits executed on the Exchange. The Waiver applies to all accounts, *e.g.*, accounts of floor traders, specialists, customers and broker-dealers. The waiver will extend through the close of business on December 31, 1992.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that the waiver of transaction charges for SuperUnits will benefit all market participants who choose to trade these products.

[1] *See* Amex Options Information Circulars #92–50 and #92–200, dated March 18, 1992, and November 4, 1992, respectively.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street 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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the file number in the caption above and should be submitted by March 16, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4134 Filed 2–22–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31867; File No. SR–MSTC–93–03]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing of Proposed Rule Change Relating to Modification of Fee Schedule To Provide Discounts to Primary Users

February 17, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 3, 1993, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MSTC–93–03) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises MSTC's fee schedule to provide discounts (*see Exhibit A*) to participants who are primary users [2] of available MSTC services. Eligibility for the discount would be based on a commitment in writing by the participant to continue to use MSTC as the primary provider of safekeeping services for a minimum period of two to three years and at least one year's experience as a participant at MSTC.[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] A "primary user" means either (1) a participant who uses MSTC solely as its depository and clearing agent or (2) a participant who is a member of more than one securities depository but who safekeeps the majority of its eligible inventory with MSTC. To document the latter, MSTC may request that participants verify the amount of business conducted at another depository.

[3] The present rule filing was submitted in conjunction with an identical proposal which became effective immediately upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act. See Securities Exchange Act Release No. 31866 (February 17, 1993). That filing replaced an identical proposal filed by MSTC pursuant to Section 19(b)(3)(A) of the Act (Securities Exchange Act Release No. 31748 (January 19, 1993), 58 FR 6318) which was withdrawn by MSTC on February 2, 1993. Letter from J. Craig Long, Vice President, General Counsel and Secretary, MSTC, to Jerry

Continued

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 purpose of the proposed rule change is to provide discounts, in the form of a two tiered fee revision, to participants who use MSTC as their primary securities depository. Under the proposal, participants who make a commitment in writing to continue to use MSTC as their primary custodian for a period of two to three years and who have been participants for at least one year would receive discounted service charges.

The first tier of the proposed discount would be calculated based on a participant's actual annualized revenue level paid to MSTC for the previous twelve month period. A participant who produces a minimum average revenue of $20,000 per month for MSTC would receive a discount of 50% off of each dollar spent in excess of their actual average annualized revenue level. Each year, the participant's actual average would be revised and would remain constant for the next twelve month period.

The second tier of the proposed discount would be based on the total amount of monthly revenues MSTC receives from a participant. In order to qualify for this discount, MSTC must receive monthly revenues at a level equal to or in excess of $20,000 from a participant. At this level, a participant with a two year commitment to use MSTC as its primary custodian would receive a discount of 6% off the total amount of fees the participant must pay to MSTC that month. A participant who makes a three year commitment at this level would receive a discount of 8% off the total amount of fees the participant must pay to MSTC that month. Similarly, participants who produce monthly revenues for MSTC in excess of $50,000 and sign a two year commitment would receive a 12% discount off the total amount of fees the participant must pay to MSTC that month. A participant who makes a three year commitment at this level would receive a discount of 16% off the total amount of fees the participant must pay to MSTC that month.

MSTC believes that the proposed rule change is consistent with the requirements of sections 17A(b)(3) (A) and (F) of the Act,[4] and the rules and regulations thereunder, in that it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MSTC has not solicited written comments with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which 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 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to the File No. SR–MSTC–93–03 and should be submitted by March 16, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz

Secretary.

Margaret H. McFarland,

Deputy Secretary.

EXHIBIT A.—DISCOUNT FEE SCHEDULE[1]

Minimum average revenue	Percent discount	Length of commitment (years)
First tier:[2]		
$20,000 and above.	50% off each dollar spent in excess of actual average annualized revenue level.	
Total MSTC Revenues (per month)		
Second tier:[3]		
$20,000–$50,000	6%	2
	8%	3
$50,001 and above.	12%	2
	16%	3

[1] A commitment in writing to continue to use MSTC as their primary custodian for two to three years and experience of at least one year as a participant at MSTC is required in order for a participant to become eligible to receive discounted service charges under the proposal.

[2] The first tier discount is based on the participant's actual annualized revenue level for the previous twelve month period.

[3] The second tier discount is based on the total amount of monthly revenues MSTC receives from a participant.

[FR Doc. 93–4135 Filed 2–22–93; 8:45 am]

BILLING CODE 8010–01–M

Carpenter, Branch Chief, Division of Market Regulation, Commission (February 2, 1993). The purpose of these related filings is to assure that the volume discount program, which was effective immediately upon filing with the Commission, will expire on March 4, 1994, unless approved by the Commission pursuant to section 19(b)(2) of the Act.

[4] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–31868; File No. SR–MBS–93–01]

Self-Regulatory Organizations; MBS Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Modification of Fees in Connection With Recent Computer Systems Modernization

February 17, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 14, 1993, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBS–93–01) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MBS is amending its fee schedule to correspond with its recent systems modernization. The proposed rule change will impose certain new fees and eliminate other fees for services which the systems modernization rendered unnecessary. On October 23, 1992, MBS implemented the first phase of the systems modernization which included, among other things, a new comparison and clearing system for processing eligible securities.[2] Subsequently, on December 31, 1992, MBS implemented new liquidation procedures and a new netting system.[3]

The proposed fee additions are as follows, with additions italicized:

Description of service	*Fee/ charge*
Surcharge for each account aggregate over the standard one per participant	*$35.00*
Broker trade recording fee (per side)	*.25*
Deletion of erroneous uncompared trade, cancel, or Notification of Settlement	*.00*
Hardcopy output charge (per page)	*.10*
Delinquent fees imposed for delinquent DKs, deletes, changes, affirms, and matches	*5.00*

In addition, implementation of the systems modernization has outdated certain services. Accordingly, MBS proposes to delete the fees charged for Special Cashiering and Netting Day Corrections from its schedule of fees and services.

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 purpose of the proposed rule change is to amend MBS' fee schedule to reflect changes resulting from the implementation of MBS' new systems. Under the proposal, MBS will impose certain new fees and eliminate other fees for services which the systems modernization rendered unnecessary.

Specifically, MBS will institute a $35.00 surcharge to recapture processing costs incurred if participants require multiple cash or margin settlements by maintenance of multiple account aggregates. At the present time, standard MBS procedures require that each account held by a broker or dealer be linked to an account aggregate for margin and cash settlement reporting purposes. In addition, a $0.25 per side broker trade recording fee will be instituted to recoup MBS processing costs for comparison of broker trades, and collection/disbursement of broker commissions.

The amended fee schedule also will impose a $1.00 charge for each deletion of an uncompared trade/cancel or Notification of Settlement. The purpose of this charge will be to encourage participants to be responsible for careful maintenance of records with regard to trade and settlement activity and to reflect MBS processing costs for the erroneous original entry and the consequent delete entry. A $0.10 per page hardcopy output charge also will be added under the proposed rule change. This charge will recover MBS costs for production and distribution of paper reports which are available over MBS' terminal system and which may be printed at a printer in a participant's office. Finally, the proposed rule change will establish a $5.00 per pass delinquent fee for DKs, deletes, changes, affirms and matches. The purpose of this charge will be to encourage participants to timely reconcile their unmatched activity with MBS.

In addition to the fee changes, MBS is eliminating the fees charged for Special Cashiering and Netting Day Corrections because these services no longer exist. These services have been replaced by on-line computer communication.

The proposed pricing changes are intended as an interim measure until MBS has had an opportunity to review any incremental activity with the new system in place and what effect it may have on MBS' costs.

MBS believes that the proposed rule change is consistent with the requirements of sections 17A of the Act, and the rules and regulations thereunder, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBS does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed fee schedule was distributed to MBS participants and MBS did not receive any written comments regarding the proposed fee change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder, because the proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

[1] 15 U.S.C. 78s(b)(1).

[2] For further information regarding the first phase of MBS' systems modernization, see Securities Exchange Act Release No. 31352 (October 23, 1992), 57 FR 49728.

[3] For further information regarding implementation of this phase of MBS' systems modernization, see Securities Exchange Act Release Nos. 31680 (December 31, 1992), 58 FR 3312 and 31681 (December 31, 1992), 58 FR 3310.

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 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to the File No. SR–MBS–93–01 and should be submitted by March 16, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4133 Filed 2–22–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31865; File No. SR–NSCC–92–09]

Self-Regulatory Organizations; National Securities Clearing Corp.; Order Approving a Proposed Rule Change Relating to the Elimination of the Stock Loan Rebate Payment and Collection Service

February 17, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to eliminate the Stock Loan Rebate Payment and Collection Service. Notice of the proposed rule change was published in the **Federal Register** on October 19, 1992.[2] No comments were received. This order approves the proposal.

I. Description

The proposed rule change will allow NSCC to eliminate its Stock Loan Rebate Payment and Collection Service ("Service") by removing Rule 53.[3] Rule 53 allows members to submit the name of the member due a rebate and the amount of the rebate. NSCC then produces a report indicating the amount debited or credited, and makes the appropriate adjustments to the member's settlement account on settlement date. Thus, members that have rebate payment obligations to other members under stock loan agreements may process those payments through NSCC. Each member with a rebate payment obligation may instruct NSCC to process payments by submitting to NSCC a "Stock Loan Rebate Debit List" of charges to be debited from its account and members whose account should be credited for rebates.

As members began to use The Depository Trust Company's ("DTC") Payment Order ("PO") function[4] in 1988, use of the Service declined to a monthly volume of under 50 transactions by the end of 1989. There has been no use of the Service since late 1990. The proposed rule change will eliminate a function effectively replaced by the PO function.

II. Discussion

The Commission believes that NSCC's proposed rule change is consistent with section 17A of the Act. Specifically, it is consistent with sections 17A(b)(3) (A) and (F).[5] These sections require a clearing agency to be organized and its rules designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

Although the Service was begun for the specific purpose of facilitating the payment of rebates on stock loan transactions among NSCC participants, that function has now been taken over by DTC's PO function. Consequently, this service has become obsolete. The Commission believes the proposed rule change will eliminate this duplicative and unused service and thus further the goals of section 17A of the Act by facilitating more effective procedures in the national clearance and settlement system and promoting prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the Act, particularly with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4131 Filed 2–22–93; 8:45 am]

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31314 (October 19, 1992), 57 FR 47682.

[3] The Service was introduced in the third quarter of 1986. See SR–NSCC–86–08, Securities Exchange Act Release No. 23539 (August 25, 1986), 51 FR 30278.

[4] DTC's payment order procedures are described in Securities Exchange Act Release No. 15193 (October 10, 1978), 43 FR 46615.

[5] 15 U.S.C. 78q–1(b)(3) (A) and (F)

[Investment Company Act Release No.—IC–19265; 811–2799]

ABC Investment Company; Application for Deregistration

February 16, 1993.

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

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: ABC Investment Company

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company

FILING DATE: The application on Form N–8F was filed on September 1, 1992, and amended on November 23, 1992 and February 11, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 15, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, P.O. Box 104, Georgetown, Georgia 31754.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920; or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office

of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware corporation registered as a closed-end diversified management investment company under the Act. Applicant originally was incorporated under the name American Buildings Company as an operating company engaged primarily in the manufacturing business. In 1977, applicant sold substantially all of its assets, and changed its name to ABC Investment Company. SEC records indicate that applicant filed a notification of registration on Form N–8A on December 30, 1977, pursuant to section 8(a) of the Act. Applicant's registration statement was filed on Form N–8B–1 on March 5, 1978, and became effective on April 21, 1978.

2. At a meeting held on October 10, 1991, applicant's board of directors authorized and recommended the sale of substantially all of its assets to Fidelity Limited Term Municipals ("Fidelity"), pursuant to an agreement and plan of reorganization and liquidation (the "Plan"). Fidelity is a Massachusetts business trust registered under the Act as an open-end diversified management investment company.

3. On June 5, 1992, applicant mailed proxy materials to its shareholders in connection with the Plan. At a meeting of applicant's shareholders held on June 26, 1992, a majority of the outstanding shares of applicant was voted in favor of the sale. As of June 29, 1992, applicant had outstanding 278,677 shares of common stock, with an aggregate net asset value of $4,836,907, and a net asset value per share of $17.36.

4. On June 29, 1992, pursuant to the Plan, applicant transferred $4,802,533.62 in portfolio securities to Fidelity in exchange for 502,357.073 shares of beneficial interest of Fidelity. The number of Fidelity shares transferred was based on the relative net asset value of the shares of applicant and Fidelity immediately prior to such transfer. Applicant retained cash assets of $191,033 to pay its outstanding debts.

5. On June 29, 1992, applicant distributed *pro rata* the Fidelity shares received in the exchange among all shareholders of applicant whose interests in applicant were valued at $1,000 or more as of that date. Such shareholders received approximately $17.27 per share of applicant.

6. On July 10, 1992, pursuant to the Plan, shareholders of applicant whose interests in applicant as of June 29, 1992 were valued at less than $1,000 received a cash distribution of $17.36 per share. Such distribution represented less than 1% of applicant's total outstanding shares.

7. On January 7, 1993, pursuant to the Plan, shareholders who had received Fidelity shares on June 29, 1992 then received cash amounting to a fraction more than $.08 per share of applicant, for an aggregate distribution in excess of $17.35 per share. This second distribution was effected when applicant distributed its remaining cash to Fidelity, which cash was then distributed *pro rata* among such shareholders.

8. Applicant and Fidelity are each responsible for their own expenses incurred in connection with the reorganization, including legal and accounting expenses, and miscellaneous expenses such as printing costs, distributing proxy materials to shareholders, and transfer agency fees incurred in connection with dividend payments.

9. As of the date of the application, applicant has no shareholders, no assets, and no outstanding debts or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant is not now engaged, and does not propose to engage, in business activities other than those necessary for winding up its affairs. Applicant has filed a Certificate of Dissolution with the Delaware Secretary of State.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4069 Filed 2–22–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreement Filed During the Week Ended February 12, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48646
Date filed: February 8, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Telex—Reso 024f Local Currently Fare Changes—Egypt
Proposed Effective Date: April 1, 1993

Docket Number: 48651
Date filed: February 11, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Meet/P0201 dated February 8, 1993, Report—Reso 015n Meeting—USA Add-Ons
Proposed Effective Date: March 1, 1993

Phyllis T. Kaylor,

Chief, Documentary Services Divisions.

[FR Doc. 93–4071 Filed 2–22–93; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 12, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48653.
Date filed: February 11, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 11, 1993.
Description: Application of J.D. Valenciana De Aviacion, C.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit to operate scheduled and charter air services carrying passengers, cargo and mail between the United States and Venezuela.

Docket Number: 48075.
Date filed: February 10, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 10, 1993.
Description: Third Amendment to Application of Laker Airways (Bahamas) Limited, pursuant to section 402 of the Act and subpart Q of the Regulations, amends its currently pending application for a Foreign Air Carrier Permit to permit Laker to add the co-terminal points

Birmingham, AL; Jacksonville, FL; Memphis, TN; and Tampa, FL, to the U.S. co-terminal points Laker has applied to serve from Freeport, Bahamas.

Docket Number: 48641.
Date filed: February 10, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 10, 1993.
Description: Amendment No. 1 to the Application of United Parcel Service Co., pursuant to section 401 of the Act and subpart Q of the Regulations, to its certificate for scheduled foreign all-cargo authority (San Antonio-Guadalajara).

Docket Number: 46352.
Date filed: February 8, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 8, 1993.
Description: Fourth Amendment to the Application of Air Aruba, N.V., pursuant to section 402 of the Act and subpart Q of the Regulations, for a foreign air carrier permit, moves to amend its application in order to serve Boston, Massachusetts.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–4070 Filed 2–22–93; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Robert Mueller Municipal Airport, Austin, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Robert Mueller Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: comments must be received on or before March 25, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. William Perkins, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles Gates, Director of Aviation, City of Austin, Texas at the following address: City of Austin, Texas, Department of Aviation, 3600 Manor Road, Austin, TX 78723.

Comments from air carriers and foreign air carriers may be in the same form as provided to the City of Austin, Texas, Director of Aviation Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. William Perkins, Federal Aviation Administration, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611, (817) 624–5979.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Robert Mueller Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 5, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the city of Austin substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 2, 1993.

The following is a brief overview of the application:
Level of the proposed PFC: $2.00
Proposed charge effective date: August 1, 1993
Proposed charge expiration date: July 31, 1995
Total estimated PFC revenue: $8,300,000.00
Brief description of proposed project(s):

Projects To Impose and Use PFC's

Concourse Safety Gates and Restroom Improvements
Baggage Claim and Main Terminal Lighting Improvements
Overlay Taxiways J and G, Reconstruct Taxiways G, H and P
Reconstruct Intersection of Taxiway H and Runway 17–35
Reconstruct Taxiway E at Cargo Ramp
Overlay Taxiways O and E
Terminal Access Road Overlay
Pavement Evaluation of Runway 13R–31L
Rehabilitate Runway 13R–31L
Terminal Apron Asphalt Rehabilitation
Taxiways C, H, and L Pavement Evaluation and Rehabilitation
Lighting Regulator and Design
Ramp and Road Rehabilitation
Willshire Boulevand Access
Terminal Building Rehabilitation
ARFF/FAA Emergency Alarm System
Passenger Loading Bridge Rehabilitation
Airfield Sweeper
Airfield Pavement Rehabilitation
Terminal Building Roof
Field Maintenance Equipment Building
Runways 13–31 and 17–35 and Taxiways C and D Lighting
Terminal Building Improvements
New Airfield Guidance Signs
Passenger Loading Bridge Replacements
Terminal Chiller Modifications
Aircraft Rescue and Fire Fighting Facility Requirements
Terminal Access Landside Revisions
Noise Monitoring Equipment
Airport Security Improvements

Proposed class or classes of air carriers to be exempted from collecting PFC's:

Part 135 air carriers in the class designation of on-demand air taxi/commercial operators (ATCO) and commuters or small certified air carriers (CAC) that (1) do not enplane or deplane at the Airport's main passenger building and (2) enplane fewer than 500 passengers per year at the airport.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports' office located at:

Federal Aviation Administration, Airports Division, Planning and Programming Branch ASW–610D, 4400 Blue Mound Road, Fort Worth, Texas 76193–0611.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Robert Mueller Municipal Airport.

Issued in Fort Worth, Texas on February 4, 1993.

John M. Dempsey,
Manager, Airports Division.
[FR Doc. 93–4197 Filed 2–22–93; 8:45 am]
BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 92–18; Notice 1]

Receipt of Petition for Determination That Nonconforming 1980 BMW 628 CSi Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1980 BMW 628 CSi passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1980 BMW 628 CSi that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is March 25, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into the sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) has petitioned NHTSA to determine whether 1980 BMW 628 CSi passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1980 BMW 633 CSi. Champagne has submitted information indicating that Bayerische Motoren-Werke A.G., the company that manufactured the 1980 BMW 633 CSi, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 628 CSi is substantially similar to the 633 CSi, and "differs mainly in engine size and minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Bayerische Motoren-Werke A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 628 CSi's absence from the United States market could be attributed to "salability considerations or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1980 model 628 CSi, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1980 model 633 CSi that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1980 model 628 CSi is identical to the certified 1980 model 633 CSi with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 111 Rearview Mirrors, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 114 Theft Protection: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power Window Systems: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection: (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 Side Door Strength: Installation of reinforcing beams.

Standard No. 301 Fuel System Integrity: Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1980 model 628 CSi must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: March 25, 1993.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 17, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–4082 Filed 2–22–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 92–61; Notice 2]

Determination That Nonconforming 1989 Mercedes-Benz 260SE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1989 Mercedes-Benz 260SE passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1989 Mercedes-Benz 260SE passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1989 Mercedes-Benz 300SE), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of the date of its publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to determine whether 1989 Mercedes-Benz 260SE passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on November 12, 1992 (57 FR 53810) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 28 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1989 Mercedes-Benz 260SE (Model ID 126.020) is substantially similar to a 1989 Mercedes Benz 300SE (Model ID 126.024) originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 17, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–4081 Filed 2–22–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–05; Notice 1]

Notice of Receipt of Petition for Determination That Nonconforming 1991 Mercedes-Benz 500SL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1991 Mercedes-Benz 500SL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1991 Mercedes-Benz 500SL that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is March 25, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) has petitioned NHTSA to determine whether 1991 Mercedes-Benz 500SL (Model ID 129.066) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1991 Mercedes-Benz 500SL that was manufactured for importation into, and sale in the United States, and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner contends that it carefully compared the non-U.S. certified 500SL to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 model 500SL, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991 model 500SL is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the non-U.S. certified 1991 model 500SL is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection*: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems*: Rewiring of the power window system so that the window transport is inoperative when the ignition is turned off.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of an ignition switch-actuated seat belt warning buzzer; (b) replacement of the existing Type 1 rear seat belts with U.S. model belts equipped with retractors. The petitioner claims that the non-U.S. certified 1991 model 500SL is equipped with an automatic restraint system consisting of an airbag, sensor, contact components, and knee bolster, which have identical part numbers to those found on the U.S. certified 1991 model 500SL.

Standard No. 214 *Side Door Strength*: Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1991 model 500SL must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 25, 1993.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 17, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–4080 Filed 2–22–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 92–63; Notice 2]

Determination That Nonconforming 1990 Porsche 911C4 Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1990 Porsche 911C4 passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1990 Porsche 911C4 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S. certified version of the 1990 Porsche 911C4), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of the date of its publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to determine whether 1990 Porsche 911C4 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on November 17, 1992 (57 FR 54275) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #29 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1990 Porsche 911C4 not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1990 Porsche 911C4 originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 17, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–4084 Filed 2–22–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 92–57; Notice 2]

Determination That Nonconforming 1992 Mercedes-Benz 600SEL Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1992 Mercedes-Benz 600SEL passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1992 Mercedes-Benz 600SEL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S. certified version of the 1992 Mercedes-Benz 600SEL), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of the date of its publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment

period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Wallace Environmental Testing Laboratories, Inc., of Houston, Texas (Registered Importer R–90–005) petitioned NHTSA to determine whether 1992 Mercedes-Benz 600SEL passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on November 3, 1992 (57 FR 49742) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #27 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1992 Mercedes-Benz 600SEL (Model ID 140.057) not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1992 Mercedes-Benz 600SEL originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 17, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–4083 Filed 2–22–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 17, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0143.
Form Number: IRS Form 2290.
Type of Review: Revision.
Title: Heavy Vehicle Use Tax Return.
Description: Form 2290 is used to compute and report the tax imposed by section 4481 on the highways use of certain motor vehicles. The information is used to determine whether the taxpayer has paid the correct amount of tax.
Respondents: Individuals or households, Farms, Businesses or other for profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 486,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 35 hours, 23 minutes.
Learning about the law or the form: 12 minutes.
Preparing, copying, and sending the form to the IRS: 47 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 17,675,820 hours.
OMB Number: 1545–0854.
Regulation ID Number: LR–1214 Final.
Type of Review: Extension.
Title: Discharge of Liens.
Description: The Internal Revenue Service needs this information to determine if the taxpayer has equity in the property. This information will be used to determine the amount, if any, to which the tax lien attaches.
Respondents: Individuals or households, Farms, Businesses or other for profit.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 24 minutes.
Estimated Total Reporting Burden: 200 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571; 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–4114 Filed 2–22–93; 8:45 am]

BILLING CODE 4830–01–M

Office of the Secretary

[DEPARTMENT CIRCULAR—PUBLIC DEBT SERIES—NO. 9–93]

Treasury Notes of February 28, 1998, Series K–1998 (CUSIP No. 912827 J9 4)

Washington, February 17, 1993.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent to the highest yield bid at which bids were accepted. The interest rate on the Notes and the price equivalent to the highest yield at which bids were accepted will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering

announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR Part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: depository institutions, as described in Section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to Section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6 A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amounts of bids received and accepted, the highest yield accepted, and the interest rate on the notes. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest yield at which bids were accepted will be prorated if necessary. All successful competitive bidders, regardless of the yields they each bid, will be awarded securities at the highest yield at which bids were accepted. After the determination is made as to which bids are accepted, an interest rate will generally be established, at a ⅛ of one percent increment, which produces a price equivalent to the highest yield at which bids were accepted and is closest to, but not above, par. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price equivalent to the highest yield at which bids were accepted will be determined, and each noncompetitive bidder and each successful competitive bidder will be required to pay such price for their securities. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of

noncompetitive bids received would absorb most or all of the public offering, competitive bids would be accepted in an amount determined by the Department to be sufficient to provide a fair determination of the highest yield for the securities being auctioned. Bids received from Federal Reserve Banks for their own account or for foreign and international monetary authorities will be accepted at the price equivalent to the highest yield at which bids were accepted.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the highest yield at which bids were accepted is over par. No later than 12:00 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in Section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.7. must be made or completed on or before the issue date. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted in over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Marcus W. Page,

Acting Fiscal Assistance Secretary.

Attachment A.—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in All Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and subsidiaries*—A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches*—A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches*—A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries*—A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families*—A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is *not* permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *Partnerships*—Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—A guardian, custodian, or

similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions*—(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers*—An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Auction of 2-Year and 5-Year Notes Totaling $26,250 Million

The Treasury will auction $15,250 million of 2-year notes and $11,000 million of 5-year notes to refund $12,511 million of securities maturing February 28, 1993, and to raise about $13,750 million new cash. The $12,511 million of maturing securities are those held by the public, including $564 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

The $26,250 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount.

In addition to the public holdings, Federal Reserve Banks, for their own accounts, hold $1,225 million of the maturing securities that may be refunded by issuing additional amounts of the new securities.

Both the 2-year and 5-year note auctions will be conducted in the single-price auction format. All competitive and non-competitive awards will be at the highest yield of accepted competitive tenders.

Details about each of the new securities are given in the attached highlights of the offerings and in the official offering circulars.

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED MARCH 1, 1993

[February 17, 1993]

Amount offered to the public	$15,250 million	$11,000 million.
Description of Security:		
Term and type of security	2-year notes	5-year notes.
Series and CUSIP designation	Series T–1995 (CUSIP No. 912827 J8 6)	Series K–1998, (CUSIP No. 912827 J9 4).
Maturity date	February 28, 1995	February 28, 1998.
Interest rate	To be determined based on the highest accepted bid.	To be determined based on the highest accepted bid.
Investment yield	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction.
Interest payment dates	August 31 and February 28	The last calendar day of August and February through February 28, 1998.
Minimum denomination available	$5,000	$1,000.
Terms of Sale:		
Method of sale	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full up to $5,000,000	Accepted in full up to $5,000,000.
Accrued interest payable by investor	None	None.
Key Dates:		
Receipt of tenders	Tuesday, February 23, 1993	Wednesday, February 24, 1993.
(a) noncompetitive	Prior to 12:00 noon, e.s.t	Prior to 12:00 noon, e.s.t.
(b) competitive	Prior to 1:00 p.m., e.s.t	Prior to 1:00 p.m., e.s.t.
Settlement (final payment due from institutions):		
(a) funds immediately available to the Treasury	Monday, March 1, 1993	Monday, March 1, 1993.
(b) readily-collectible check	Thurday, February 25, 1993	Thursday, February 25, 1993.

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Office of the Secretary

[Department Circular—Public Debt Series—No. 8–93]

Treasury Notes of February 28, 1995, Series T–1995

(CUSIP No. 912827 J8 6)

Washington, February 17, 1993.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on yield basis. Payment will be required at the price equivalent to the highest yield bid at which bids were accepted. The interest rate on the Notes and the price equivalent to the highest yield at which bids were accepted will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1 The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an

approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amounts of bids received and accepted, the highest yield accepted, and the interest rate on the notes. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest yield at which bids were accepted will be prorated if necessary. All successful competitive bidders, regardless of the yields they each bid, will be awarded securities at the highest yield at which bids were accepted. After the determination is made as to which bids are accepted, an interest rate will generally be established, at a ⅛ of one percent increment, which produces a price equivalent to the highest yield at which bids were accepted and is closest to, but not above, par. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price equivalent to the highest yield at which bids were accepted will be determined, and each noncompetitive bidder and each successful competitive bidder will be required to pay such price for their securities. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb most or all of the public offering, competitive bids would be accepted in an amount determined by the Department to be sufficient to provide a fair determination of the highest yield for the securities being auctioned. Bids received from Federal Reserve Banks for their own account or for foreign and international monetary authorities will be accepted at the price equivalent to the highest yield at which bids were accepted.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting noncompetitive bids will be notified only if the bid is not accepted in full, or when the price at the highest yield at which bids were accepted is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in Section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the

United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in All Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) Bank Holding Companies and Subsidiaries—

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) Banks and Branches—

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) Thrift Institutions and Branches—

A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) Corporations and Subsidiaries—

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) Families—

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is not permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is not recognized as a separate bidder.)

(6) Partnerships—

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) Guardians, Custodians, or Other Fiduciaries—

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) Trusts—

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) Political Subdivisions—

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) Mutual Funds—

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) Money Market Funds—

A money market fund (includes all funds that have a common management).

(12) Investment Agents/Money Managers—

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) Pension Funds—

A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Auction of 2-Year and 5-Year Notes Totaling $26,250 Million

The Treasury will auction $15,250 million of 2-year notes and $11,000 million of 5-year notes to refund $12,511 million of securities maturing February 28, 1993, and to raise about $13,750 million new cash. The $12,511 million of maturing securities are those held by the public, including $564 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

The $26,250 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount.

In addition to the public holdings, Federal Reserve Banks, for their own accounts, hold $1,225 million of the maturing securities that may be refunded by issuing additional amounts of the new securities.

Both the 2-year and 5-year note auctions will be conducted in the single-price auction format. All competitive and non-competitive awards will be at the highest yield of accepted competitive tenders.

Details about each of the new securities are given in the attached highlights of the offerings and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED MARCH 1, 1993

[February 17, 1993]

Amount Offered to the Public	$15,250 million	$11,000 million.
Description of Security:		
Term and type of security	2-year notes	5-year notes.
Series and CUSIP designation	Series T–1995 (CUSIP No. 912827 J8 6)	Series K–1998 (CUSIP No. 912827 J9 4).
Maturity date	February 28, 1995	February 28, 1998.
Interest rate	To be determined based on the highest accepted bid	To be determined based on the highest accepted bid.
Investment yield	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction.
Interest payment dates	August 31 and February 28	The last calendar day of August and February through February 28, 1998.
Minimum denomination available	$5,000	$1,000.
Terms of Sale:		
Method of sale	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full up to $5,000,000	Accepted in full up to $5,000,000.
Accrued interest payable by investor	None	None.
Key Dates:		
Receipt of tenders	Tuesday, February 23, 1993	Wednesday, February 24, 1993.
(a) Noncompetitive	Prior to 12:00 noon, e.s.t	Prior to 12:00 noon, e.s.t.
(b) Competitive	Prior to 1:00 p.m., e.s.t	Prior to 1:00 p.m., e.s.t.

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED MARCH 1, 1993—Continued

[February 17, 1993]

Settlement (final payment due from institutions):		
(a) Funds immediately available to the Treasury	Monday, March 1, 1993	Monday, March 1, 1993.
(b) readily-collectible check	Thursday, February 25, 1993	Thursday, February 25, 1993.

[FR Doc. 93–4168 Filed 2–18–93; 3:36 pm]

BILLING CODE 4810–40–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Notice of the Effective Date, With Respect to the Republic of Belarus, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the Effective Date, with respect to the Republic of Belarus, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics.

SUMMARY: In Proclamation 6352 of October 9, 1991 (56 FR 51317), the President proclaimed that the "Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics" enters into force and nondiscriminatory treatment would be extended to products of the U.S.S.R. in accordance with the terms of the Agreement on the date of exchange of written notices of acceptance in accordance with article XVII of the Agreement. Subsequently, the U.S.S.R. was succeeded by twelve independent states, including the Republic of Belarus. An exchange of diplomatic notes with the Republic of Belarus in accordance with article XVII of the Agreement, as modified by technical adjustments and retitled "Agreement on Trade Relations between the United States of America and the Republic of Belarus," took place in Minsk, Belarus on February 16, 1993. Accordingly, the Agreement became effective on February 16, 1993, with respect to the Republic of Belarus, and nondiscriminatory treatment is extended to products of the Republic of Belarus as of February 16, 1993 in accordance with the Agreement and as provided for in Proclamation 6352 of October 9, 1991.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–4171 Filed 2–22–93; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 34
Tuesday, February 23, 1993

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).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 10:00 a.m.–12:00 Noon.

PLACE: Africare.

DATE: Monday, March 8, 1993.

STATUS: Open.

Agenda

10:00–10:15 President's Report
10:15–10:30 Status of ADF Board Member Selection
10:30–10:45 Advisory Council Update
11:00–11:30 Update on ADF Activities (Headquarters and Field)
11:45–12:00 Personnel Issues/New Structure (Executive Session)

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

Gregory Robeson Smith,
President.
[FR Doc. 93–4269 Filed 2–19–93; 2:42 pm]
BILLING CODE 6116–01–U

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 2, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 93–4310 Filed 2–19–93; 2:49 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Monday, March 1, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 93–4270 Filed 2–19–93; 2:43 pm]
BILLING CODE 6351–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, March 2, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, D.C. 20594.

STATUS: The first two items are open to the public. The last three items are closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

5806A Aviation Accident Report: Controlled Collision With Terrain Involving GP Express, Inc., Flight 861, Beech C99A, Anniston, Alabama, June 8, 1992.
5977 Recommendations to States: Reducing Youth Involvement in Highway Crashes.
5955 Opinion and Order: Administrator v. Kekoa, Docket SE–11328; disposition of respondent's appeal.
5970 Opinion and Order: Administrator v. Nyren, Docket SE–11150; disposition of Administrator's appeal.
5983 Opinion and Order: Administrator v. Stern, Docket SE–11365; disposition of respondent's appeal.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: February 19, 1993.

Bea Hardesty,
Federal Register Liaison Officer.
[FR Doc. 93–4308 Filed 2–19–93; 2:48 pm]
BILLING CODE 7533–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., March 5, 1993
9:00 a.m. to 5:00 p.m., March 6, 1993

PLACE: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Concept paper and application review, and internal Institute business.

PORTIONS OPEN TO THE PUBLIC: Business meeting (except as noted below) and grant decisions.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel discussions.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, Tel.: (703)–684–6100.

David I. Tevelin,
Executive Director.
[FR Doc. 93–4307 Filed 2–19–93; 2:47 pm]
BILLING CODE 6820–SC–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 22, March 1, 8, and 15, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 22

Monday, February 22

9:00 a.m.
Briefing by Advisory Committee on Medical Uses of Isotopes (Public Meeting)
(Contact: John Glenn, 301–504–3415)

Friday, February 26

9:00 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
(Contact: Richard Major, 301–492–8109)
10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Environmental and Resource Conservation Organization's Appeal of LBP–92–23 (Rancho Seco) (Tentative)
(Contact: Margaret Doane, 301–504–2001)
2:00 p.m.
Briefing on Status of Nuclear Safety Issues in Eastern Europe and Former Soviet Union (Public Meeting)
(Contact: Michael Congdon, 301–504–2744)

Week of March 1—Tentative

Wednesday, March 3

10:00 a.m.
Briefing by NARUC on Issues Associated with Nuclear Power Plant Operations and HLW Programs (Public Meeting) (Tentative)
(Contact: Spiros Droggitis, 301–504–2367)
11.30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Activities of Nuclear Waste Technical Review Board (Public Meeting)

(Contact: Seth Coplan, 301–504–1850)
3:30 p.m.
Discussion of Internal Management Issues (Closed—Ex. 2)

Thursday, March 4

2:00 p.m.
Briefing on License Renewal Issues (Public Meeting)
(Contact: William Travers, 301–504–1117)

Friday, March 5

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Week of March 8—Tentative

Monday, March 8

10:00 a.m.
Briefing on NRC Financial Management Matters (Public Meeting)
(Contact: Ron Scroggins, 301–492–4750)
2:30 p.m.
Discussion of NRC Policy Options Concerning Nuclear Safety Issues in Eastern Europe and Former Soviet Union (Public Meeting)
(Contact: Michael Congdon, 301–504–2744)

Tuesday, March 9

10:00 a.m.
Briefing on Activities of the Center for Nuclear Waste Regulatory Analysis (CNWRA) (Public Meeting)
(Contact: Malcolm Knapp, 301–504–3324)
11:00 a.m.
Affirmation/ Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Proposed Rulemaking for Preparation and Use of Radiopharmaceuticals (Public Meeting)
(Contact: Anthony Tse, 301–492–3797)

Week of March 15—Tentative

Monday, March 15

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Comanche Peak (Unit 2) (Public Meeting) (Tentative)
(Contact: Brian Grimes, 301–504–1163)
11:30 a.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 as 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 M. Hill (301)–504–1661.

Date: February 19, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–4300 Filed 2–19–93; 2;46 pm]

BILLING CODE 7590–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, March 1, 1993.

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.

Dated: February 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–4289 Filed 2–19–93; 2:45 pm]

BILLING CODE 6210–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–93–03A; Emergency Notice]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58FR7843—dated February 9, 1993.

CHANGE OF DATE, TIME, AND ADDITION OF AN AGENDA ITEM:

ORIGINAL DATE AND TIME: February 19, 1993 at 2:00 p.m.

NEW DATE AND TIME: March 2, 1993 at 10:00 a.m.

AMENDMENT TO THE AGENDA:

5. Inv. No. 731–TA–643 (Preliminary) (Defrost Timers from Japan)—briefing and vote.

Notice is given that a Commission meeting was scheduled at 2:00 p.m., on February 19, 1993 and in conformity with 19 CFR § 201.37(a), the Commission has voted to change the date and time for the meeting to March 2, 1993 at 10:00 a.m., and to add an item 5 to the agenda. The other agenda items are renumbered accordingly.

Commissioners Nuzum, Crawford, Brunsdale, Rohr, Watson, and Newquist determined by circulation of an action jacket that Commission business requires the change in the date and time, and the addition of Agenda Item 5, and affirmed that no earlier notice of the change was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary (202) 205–2000.

Dated: February 18, 1993.

Paul R. Brados,

Acting Secretary.

[FR Doc. 93–4271 Filed 2–19–93; 2:44 pm]

BILLING CODE 7020–02–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–93–05]

TIME AND DATE: March 4, 1993 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings.
2. Minutes.
3. Ratification List.
4. Invs. Nos. 701–TA–314–317 and 731–TA–552–555 (Final) Certain hot-rolled lead and bismuth carbon steel products from Brazil, France, Germany, and the United Kingdom)—briefing and vote.
5. Outstanding action jacket requests—None.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202)–205–2000.

Issued: February 18, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–4272 Filed 2–19–93; 2:44 pm]

BILLING CODE 7020–02–M

Corrections

Federal Register
Vol. 58, No. 34
Tuesday, February 23, 1993

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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 92-097-1]

Witchweed Quarantine and Regulations

Correction

In rule document 93-65 beginning on page 215 in the issue of Tuesday, January 5, 1993, make the following corrections:

§ 301.80-2a [Corrected]

On page 217, in the second column, in § 301.80-2a, in the fifth paragraph, in the second line, "of Secondary" should read "of State Secondary".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-193-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

Correction

In notice document 93-928 beginning on page 4405 in the issue of Thursday, January 14, 1993, make the following correction:

On page 4406, in the table, in the first column, in the second entry, in the second line, "92-274-05," should read "90-274-05,".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1018 and 1312

[Ex Parte No. 508]

Fee Billing and Debt Collection

Correction

In rule document 93-3074 beginning on page 7748 in the issue of Tuesday, February 9, 1993, make the following corrections:

§ 1018.20 [Corrected]

1. On page 7751, in the first column, in § 1018.20(a)(5), in the second line, "and" should read "the".

§ 1018.50 [Corrected]

2. On page 7754, in the first column, in § 1018.50, in the sixth line, "affect" should read "effect".

§ 1312.4 [Corrected]

3. On page 7756, in the second column, in § 1312.4(b)(2)(ii)(D), in the second line, the sentence beginning with "If" should be a separate paragraph.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8472]

RIN 1545-AL35

Certain Corporate Distributions to Foreign Corporations Under Section 367(e)

Correction

In rule document 93-1398 beginning on page 5927 in the issue of Monday, January 25, 1993, make the following correction:

§ 1.367(e)-1 [Corrected]

On page 5931, in § 1.367(e)-1(c)(3)(ii)(B), in the 3d column, in the 22d line "value of which" should read "value) of which".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8464]

RIN 1545-AQ44

Change in Functional Currency

Correction

In rule document 92-31467 beginning on page 231 in the issue of Tuesday, January 5, 1993, make the following corrections:

PART 1 [CORRECTED]

1. On page 232, in Part 1, in Paragraph 1, in the third line, " "Sections 1.985-OT" should read " "Sections 1.985-0T".

§ 1.985-5 [Corrected]

2. On page 234, in § 1.985-5(f), in *Example 1*, in the table, in the second column, in the eighth entry, "1,00,000" should read "1,000,000".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AE41

Schedule for Rating Disabilities; Endocrine System Disabilities

Correction

In proposed rule document 92-1543 beginning on page 5691 in the issue of Friday, January 22, 1993 make the following correction:

On page 5691, in the third column, in the Dates section the last sentence is corrected to read as follows:

This change is proposed to be effective 30 days after the date of publication of the final rule.

BILLING CODE 1505-01-D

federal register

Tuesday
February 23, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Funding Availability (NOFA) for Fiscal Year 1993 for Indian Applicants Under the HOME Program; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3565; FR–3400–N–01]

Funding Availability (NOFA) for Fiscal Year 1993 for Indian Applicants Under the HOME Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for fiscal Year 1993 for Indian applicants for HOME Investment Partnerships Act (the HOME Act) programs, referred to as the HOME program (Pub. L. 101–625).

SUMMARY: This NOFA announces the availability of $10 million in funding for Fiscal Year (FY) 1993 for the HOME Program for Indian tribes, provides the selection criteria and information on how to apply and how selections shall be made. All eligible applicants are invited to submit applications for HOME funds in accordance with the requirements of this NOFA.

DATES: Applications must be physically received by the Indian Field Office (FO) having jurisdiction over the applicant on or before 3:15 p.m. (FO local time) on July 15, 1993. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department shall treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Facsimile ("FAX") copies shall not be accepted.

FOR FURTHER INFORMATION CONTACT: Prospective applicants may contact the appropriate Indian FO. Refer to Appendix 1 of this NOFA for a complete list of Indian FOs and telephone numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the information collection requirements contained in these application procedures for HOME funds were reviewed by the Office of Management and Budget for the HOME interim rule and approved under OMB control number 2501–0013.

I. Purpose and Substantive Description.
(a) Authority.
(b) Allocation Amounts.
(c) Eligibility.
(d) Threshold Requirements.
(e) Selection Criteria and Ranking Factors.
II. Application Process.
(a) Application Packages.
(b) Submittal of Complete Application.
(c) Application Due Date.
III. Checklist of Application Submission Requirements.
IV. Other Matters.
(a) Environment.
(b) Energy.
(c) Federalism Impact.
(d) Family Impact.
(e) Section 102 of the HUD Reform Act.
(f) Section 103 of the HUD Reform Act.
(g) Section 112 of the HUD Reform Act.
(h) Monitoring.

List of Appendices

Appendix 1. List of Indian Field Offices.
Appendix 2. Summary of 1992 Act Amendments.

I. Purpose and Substantive Description

(a) Authority

The HOME Investment Partnerships Act (title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101–625). The HOME Act creates the HOME Investment Partnerships (or HOME) Program that provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. Interim regulations for the HOME Investment Partnerships Program were published in the **Federal Register** on December 16, 1991 (56 FR 65312) and are codified at 24 CFR part 92. The requirements of 24 CFR part 92, subpart M (§§ 92.600–92.652) apply specifically to the Indian HOME program. Amendments to the interim rule were published on December 22, 1992 (57 FR 60960). Reference in this NOFA to sections and subparts of the rule refer to the interim rule.

The HOME Act was amended October 28, 1992 by the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550). Some provisions of HCDA 1992 directly affect the operation of the HOME program and were effective upon enactment. They apply to grants made available pursuant to this NOFA. A summary of the effective provisions is provided in Appendix 2.

(b) Allocation Amounts

(1) In accordance with section 217(a)(2) of the HOME Act, each Fiscal Year (FY) HUD shall provide funds to Indian tribes, totaling one percent (or such other percentage or amount as authorized by Congress) of the amount appropriated for the HOME program to expand the supply of affordable housing. Following the procedures in the rule, the funds shall be awarded competitively by HUD FOs that have responsibility for the HOME Indian program, unless HUD determines for administrative convenience based on the amount of HOME funds available to hold a nationwide competition. For the fiscal year ending September 30, 1993, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1993, (approved October 6, 1992, Pub. L. 102–389), appropriated a total of $1.0 billion for the HOME program. Thus, the amount of funding available for the HOME Indian program for the fiscal year ending September 30, 1993 is $10 million.

(2) For FY 1993, HUD has determined for administrative convenience based on the amount of HOME funds available to hold a nationwide competition.

(3) Project Grant Amount. There is no maximum grant amount per project.

(4) Section 92.604 of the HOME rule established the selection criteria. Projects will be selected on the basis of those criteria as stated in this NOFA. Projects may be funded at a level less than applied for. Projects with the highest score after environmental review shall be funded in rank order until the funding allocation is exhausted.

(5) For the purposes of this NOFA, all environmental reviews will be performed in accordance with 24 CFR part 50, by HUD Indian field offices, after application rating and ranking, but before selection for award, and the process will permit changes in ranking or disqualification on the basis of the environmental review. Sufficient applications will be rated and ranked to substitute for applications changed in rank or disqualified on the basis of the environmental review.

(6) If the Department does not award the entire $10 million in this funding round because there is not a sufficient number of eligible applications, the amount not awarded shall be awarded at another time.

(c) Eligibility

(1) Eligible Applicants. For the purposes of the HOME program, eligible applicants are defined as any Indian Tribe, band, group, or Nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States that is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C.

1221) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

(2) Projects and Activities. (i) Applications for one or more projects shall be considered under this NOFA. 24 CFR sec. 92.2: "*Project* means a site or entire building (including a manufactured housing unit), or two or more buildings together with the site or sites on which the building or buildings is located, that are under common ownership, management, and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking under this part. Project includes all of the activities associated with the site and building. If there is more than one site associated with a project, the sites must be within a four block area." However, "block" has no meaning for the Indian HOME program and should not be used in determining the extent of the project. As part of the application, the tribe must identify the scale and location of a project and show the project is within the operating area of the tribe. A project may be as small as one site or as large as the operating area of the tribe. 24 CFR 92.604: "There are four categories of projects that may be funded under the HOME Indian program: Housing rehabilitation (moderate and substantial), acquisition of housing, new housing construction, and tenant-based rental assistance." (1) A rehabilitation project consists of only rehabilitation, or includes acquisition of units with rehabilitation, (2) an acquisition project consists of the acquisition of standard units not requiring rehabilitation, (3) a new construction project consists of new construction of housing and may include acquisition and demolition, and (4) a tenant-based rental assistance project consists of tenant-based rental assistance, not tied to specific housing units. Project types (1), (2), and (3) may also include site improvements and relocation. An application may contain any number of projects. Each project must be presented separately and shall be rated and ranked separately. The project may be for rental or homeownership. If one project is needed for the success of a second, the second shall not be funded without the first.

(ii) Eligible activities are described at 24 CFR 92.611 as follows:

"(1) HOME funds may be used by an Indian tribe to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to first-time homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvement, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance; and to pay administrative costs. The specific eligible costs for these activities are set forth in § 92.612.

"(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing, and for which funds for construction have been committed.

"(3) Housing that has received an initial certificate of occupancy or equivalent document within a one-year period before an Indian tribe commits HOME funds to the project is new construction for purposes of this part.

"(4) Conversion of an existing structure to affordable housing is rehabilitation, unless the conversion entails adding a unit beyond the existing walls, in which case, the project is new construction for purposes of this part."

(d) Threshold Requirements

The applicant must ensure that its application meets each of the threshold requirements. The threshold requirements, to be included in the application package, are:

(1) A description of the proposed project. An application must provide a brief narrative summary description of the proposed project that tells HUD what the applicant wants to do with program funds. The applicant must include this brief narrative summary description. While there are no points for this project description requirement, it is a necessary threshold requirement. For an application to be considered for ranking, rating and funding, it must include a brief description of the project or projects proposed for funding.

(2) A description which addresses how the project meets each of the selection criteria. In addition to providing a brief summary project description, an application must tell HUD how each project meets the selection criteria. This NOFA presents the selection criteria in section I.(e), below. The selection criteria are taken from the regulation for the HOME program that was published as an interim rule in the **Federal Register** on December 16, 1991 (pp. 65,312–65,385). For each project, the applicant must tell HUD how its project meets each of the criteria listed in this NOFA. While there are no points for this requirement, it is also a threshold requirement.

(3) Information which demonstrates how the project will contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe. (Indian tribes are not required to submit a Comprehensive Housing Affordability Strategy (CHAS), a Tribal Housing Plan, or a housing strategy to receive HOME funds.)

HUD suggests that each applicant score its own project, even though there is no requirement to do so. This will help to show how a project might be scored by the reviewers. It will also help to show if the application meets the thresholds and the minimum point score requirement (50 points), and where the strengths and weaknesses in a project are located. Then, the applicant can strengthen the weaker parts of a project and use the stronger parts as a model for other projects. Copies of the scoring sheets that will be used by HUD to evaluate a project are available from the FO.

For an application to be considered for rating, ranking, and funding, all threshold requirements must be addressed. After rating, the project must receive at least 50 points to be considered for funding.

(e) Selection Criteria and Ranking Factors

Each project submitted for grant funding shall be evaluated using the three criteria provided in 24 CFR 92.604, as more fully explained is sections I.(e) (1), (2), and (3) of this NOFA, below. See Figure 1. The complete rating and ranking process is described in detail at section I.(e)(4). Remember, the HOME program is for low-income and very low-income persons. Applicants should provide—in the application—the median income amount for the location of the project. If this information is not available, the applicant should obtain it from the FO.

FIGURE 1.—INDIAN HOME PROGRAM SCORING

Selection criteria	Maximum points
Need and design	40
Planning and implementation	40
Leveraging	20

(1) Need and Design—40 points maximum.

The first of the three criteria provided in 24 CFR 92.604 is: The degree to which the proposed project addresses the housing needs of the tribe as

identified in the application and through other information available to HUD in the application, and the degree to which the proposed project is feasible while maximizing benefits to very low and low-income families.

This first criterion is divided into two parts that will be examined and evaluated separately:

(i) Need—20 points maximum. The degree to which the proposed project addresses the housing need(s) of the Indian tribe as identified in the documentation for the project and through other information available to HUD. Tribal need must be documented. This documentation should include current IHA waiting lists, data on the degree of overcrowding, percentage of population in need of housing based upon census data, etc.

(ii) Project feasibility—20 points maximum. Project feasibility as measured here is the degree to which the number and size of the proposed housing units matches the need for low income housing identified in the previous evaluation factor. Examples: There a match between the *size* of the proposed units and the *size* of units needed by the low income families to be housed. There is a match between the *number* of proposed units and the *number* of families to be housed

Documentation for a project must demonstrate that:

—The proposed project is feasible for its community in terms of the degree to which it maximizes benefits to very low and low-income members of the tribe.

—The proposed project shall provide a sufficient number of units of the appropriate size for the need that was identified.

—The units are suitable for occupancy (or shall be made suitable), and

—The units are in compliance with building code requirements (or shall be brought into compliance). Modular and manufactured homes are eligible forms of housing.

(2) Planning and Implementation—40 points maximum.

The second of the three criteria provided in 24 CFR 92.604 is: The degree to which the financial, legal, and administrative actions necessary to undertake the proposed project have been considered and addressed in the documentation for the project, and the degree to which the applicant has the administrative staff to successfully carry out the project.

This section must be concrete and specific about the financial, administrative, and legal actions necessary to carry out the project, and it must address administrative capability—existing or planned. The applicant must demonstrate that the proposed project is feasible and meets the regulatory affordability requirements. This evaluation must include complete cost and revenue estimates for the project.

(i) Financial—15 points maximum.

(ii) Legal and Administrative Actions—10 points maximum.

(iii) Administrative Staffing—15 points maximum.

(3) Leveraging—20 points maximum.

The third of the three criteria provided in 24 CFR 92.604 is: Leveraging of HOME funds. This means HOME funds attracting or bringing in other dollars. Leveraging is the degree to which other sources of assistance, including, but not limited to: Loans, advances, equity investments, interest subsidies, State funds, private contributions, and in-kind contributions are used in conjunction with HOME funds to carry out the proposed project.

Funds from all sources shall be documented by a written commitment and may be contingent on approval of the HOME award. Resources shall be counted only if they are currently available or shall be available within 3 months of grant notification. The degree to which other sources of assistance are used shall be evaluated, and points shall be awarded based upon the additional number of dollars for assisted housing made available by the other sources of assistance divided by the number of dollars for assisted housing in the grant under this program.

(i) Points shall be awarded as presented in Table 1. For example, when fifteen (or more) dollars are made available by other sources of assistance for each one hundred dollars made available by HOME funds, the maximum number of points (20) are awarded. When five dollars are made available by other sources of assistance for each one hundred dollars made available by HOME funds, ten points are earned.

TABLE 1.—SCORING GUIDE LEVERAGING

Ratio	Points	Score
1. 15% or more	20	
2. 10% but less than 15%	15	
3. 5% but less than 10%	10	
4. Greater than 0% but less than 5%	5	
5. None	0	

(ii) Ratio as a percentage is computed by dividing the number of dollars made available by other sources of assistance by the number of dollars made available by HOME funds, and multiplying by 100.

(iii) Applicants must provide documentation of the amount and sources of additional funds, including mortgage insurance, tribal funds, private contributions, tribal in-kind contributions directly related to the activity (labor, material, and equipment, as well as for soft costs, e.g., architectural and engineering costs, administrative costs), etc., which are to be used in conjunction with HOME funds to carry out the proposed project.

(iv) In-kind contributions must be documented. Land already owned by the tribe shall not be counted. In the case of land donated by individuals or entities, it shall be counted if the donation was contingent upon the receipt of the award. All funds, services, and land to be contributed must be documented. Land value shall be counted as a contribution only to the extent of its appraised value. All appraisals shall be in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Donated services shall be accepted, provided: (1) The costs are demonstrated and determined necessary and directly attributable to the actual development of the project; and (2) comparable costs and time estimates are submitted that justify the costs attributable to the donated services or labor. Donated labor shall be valued at a level necessary for the work provided and shall be assessed at the skill level of the individual(s) providing the labor.

(v) The amounts recognized as leverage can include any other Federal grant or assistance program. Loans secured through mortgage loan insurance programs (e.g., section 248 mortgage loan insurance) can be recognized as leverage.

(4) Application Review.

(i) Eligibility, Technical Deficiencies, and Threshold. Upon receipt of the application, the FO shall note the date and time and provide written acknowledgement to the applicant indicating the date and time the application was received. If the applicant proposes to involve the IHA, the IHA must not have been disqualified for funding of new projects, as determined in accordance with 24 CFR 905.135. Each application will be screened at the FO for eligibility and technical deficiencies. For the project to be considered further, the applicant must be eligible and the application must have no technical deficiencies. If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory or the involvement of a disqualified IHA, the FO shall

notify the applicant in writing that the applicant has additional time to submit the missing item or correct the technical mistake. The FO must receive the correction within 14 calendar days from the date of issuance of the HUD notification letter. If the FO does not receive the missing or corrected item within the required time period, the application shall be ineligible for further processing. Completeness will be determined by the FO as to whether the application includes all the items, properly prepared and executed, identified in the Checklist of Application Submission Requirements. Following screening for and correction of technical deficiencies, the application will be reviewed by the FO to determine whether the application includes all the items identified as threshold requirements under the Threshold Requirements heading. No rating or point scoring shall be done. Therefore, FO review does not include determining whether the application meets the minimum point score requirement. After these FO reviews, each application which has no technical deficiencies and passes threshold will be sent with the FO checklist by the FO to the national panel for rating and ranking.

(ii) Rating and Ranking. There will be a single national rating and ranking of projects.

The reviewer should use as a guide Figure 2.—Rating Form for Indian HOME Grant Applications, below, to roll-up the scores for each of the selection criteria.

Figure 2.—Rating Form for Indian HOME Grant Applications

Applicant _____

Reviewer _____

Date _____

Threshold factor	Yes	No
1. Submission of Project Narrative Description.		
2. Submission of How Project Meets Selection Criteria.		
3. Submission of how project contributes to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe.		
Pass all thresholds.		

Point scores for each factor	Maximum points	Project score
1. Need and design	Total 40	
a. Housing need	Subtotal (20)	
b. Project feasibility	Subtotal (20)	
2. Planning and implementation.	Total 40	
a. Financial	Subtotal (15)	
b. Legal and administrative actions.	Subtotal (10)	
c. Administrative staffing.	Subtotal (15)	
3. Leveraging	Total 20	
Project total score	Max. 100	

(A) Merged Ranking. After the projects from all applicants have been rated, their scores will be assembled in a single, merged list of scores for all rated projects.

(B) Computation. Scores for ranking shall be carried out to two decimal places (e.g., 12.34).

(C) Selection. The ranking process shall produce an ordered list of projects that may receive funding. The order is established by the number of points the project received in the rating process. The threshold for further consideration shall be 50 out of 100 points. Project applications scoring lower than 50 points shall be set aside as non-responsive and ineligible. After rating and ranking, HUD Indian field offices will perform an environmental review of applications, and applications may be re-ranked or disqualified on the basis of the environmental review. Of the qualifying applications, the project with the highest ranking after environmental review shall be funded first, the next highest shall be funded second, and so on, continuing through all the projects that have met the threshold requirement or until the funds are exhausted.

(D) Tie Breaker. When rating results in a tie among projects, projects shall be approved in the following order:

(1) Those that can be fully funded over those that cannot be fully funded.

(2) Projects that benefit the most very low and low-income persons.

(3) Projects that benefit the highest percentage of the total population of the tribe.

II. Application Process

(a) *Application Packages.* An application kit, including Application Form 424 may be obtained from any Indian FO listed in Appendix 1.

(b) *Submittal of Complete Application.* Completed applications must be submitted to the Indian FO having jurisdiction for the applicant at the address/location listed at Appendix 1. The application shall be submitted on Form 424 and shall be accompanied by all the legal and administrative attachments required by the form.

(c) *Application Due Date.* An applicant may submit an applicant for a project at any time after the Publication Date of this NOFA, to the Indian FO having jurisdiction over the applicant on or before 3:15 P.M. FO local time, July 15, 1993. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department shall treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Facsimile ("FAX") copies shall not be accepted.

III. Checklist of Application Submission Requirements

Each application must contain the following:

(a) _____Component that addresses the Comprehensive Approach For Expanding The Supply Of Affordable Housing threshold. Indian tribes are not required to submit a Comprehensive Housing Affordability Strategy (CHAS), a Tribal Housing Plan, or a housing strategy to receive HOME funds. However, the application must demonstrate how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe.

(b) _____Component that addresses the summary description of the proposed project threshold.

(c) _____Components that address the selection criteria thresholds. The applicant must provide a narrative and supporting documentation that are responsive to the selection criteria of sections I.(e)(1), (2), and (3) of this NOFA. This includes, but is not limited to, a description of how the HOME funds shall be used, and the various kinds of information that are necessary in order to apply the selection criteria and rating factors.

(d) _____Standard Form 424, Application for Federal Assistance. Complete side one only.

(e) _____HUD Form 4122, Community Development Block Grants for Indian Tribes and Alaskan Native Villages. Project Summary.

(f) _____HUD Form 4123, Community Development Block Grants for Indian Tribes and Alaskan Native Villages. Cost Summary.

(g) _____HUD Form 4125, Community Development Block Grants for Indian Tribes and Alaskan Native Villages. Implementation Schedule.

(h) _____Project location map.

(i) _____HUD Form 2880, Applicant/Recipient Disclosure/Update Report.

(j) The following certifications:

(1) _____A certification that the applicant shall comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies

Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of section 92.634.

(2) _____A certification that the applicant shall use HOME funds in compliance with all the requirements of 24 CFR part 92, the HOME investment partnerships program interim rule.

(3) _____Drug-free workplace. The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F and appendix C.

(4) _____Debarment. The certification that neither the applicant nor its principals are presently excluded from participation in any HUD programs, as required by 24 CFR part 24, appendix A.

IV. Other Matters

(a) *Environment.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

(b) *Energy.* Utility expenses place a heavy burden on Indian housing and often cause abandonment. Applicants are encouraged to address this problem in applications for funding. 24 CFR 92.621: "Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials. Substantially rehabilitated housing must meet the cost-effective energy conservation and effectiveness standards in 24 CFR part 39." See also 24 CFR 905.250(b) and 24 CFR 85.36(b)(7).

(c) *Federalism Impact.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this NOFA shall not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The NOFA is limited to providing funds to Indian tribes in accordance with a program to expand the supply of affordable housing.

(d) *Family Impact.* The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for indirect, although positive, impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA provides funds to Indian tribes in accordance with a program to expand the supply of affordable housing. To the extent that housing for families is increased, the impact on the family is indirect and beneficial. Accordingly, no further review is considered necessary.

(e) *Section 102 of the HUD Reform Act.* Documentation and Public Access Requirements; Applicant/Recipient disclosures:

Documentation and public access requirements. HUD shall ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, shall be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material shall be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD shall include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD shall make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) shall be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—shall be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(f) *Section 103 of the HUD Reform Act.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics shall provide information of a general nature to HUD employees, as well.

(g) *Section 112 of the HUD Reform Act.* Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Forms necessary for compliance with the rule may be obtained from the local HUD office.

(h) *Monitoring.* (1) HUD Monitoring. HUD Monitoring will be in accordance with the provisions at 24 CFR 92.650, Performance Reviews.

(2) Grantee Reports. Grantees must submit performance reports in accordance with 24 CFR 92.649.

(3) Certifications. HUD monitoring will continue until the grant funds are expended and the project is complete. After that, HUD will rely upon an

annual statement from the grantee—throughout the required period—which affirms that the project continues to meet affordability requirements.

Authority: 42 U.S.C. 3535(d) and 12701–12839.

Dated: February 8, 1993.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix 1.—List of Indian Field Offices

Region V—Chicago

Office of Indian Programs, HUD, 77 West Jackson Boulevard, Chicago, Illinois 60606–3507, 312–353–1282 or 1–800–735–3239, TDD Numbers: 1–800–927–9275, 312–886–3741

Region VI—Oklahoma

Indian Programs Division, HUD, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102–3202, 405–231–4101, TDD Numbers: 405–231–4181, 405–231–4891

Region VIII—Denver

Office of Indian Programs, HUD, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349, 303–844–2963, TDD Number: 303–844–6158

Region IX—Phoenix

Office of Indian Programs, HUD, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004–2360, 603–379–4156, TDD Number: 602–379–4461

San Francisco, Office of Indian Programs, HUD, 450 Golden Gate Avenue, 8th Floor, Box 36003, San Francisco, CA 94102–3448, 415–556–9200 TDD Number: 415–556–8357

Albuquerque, Office of Indian Programs, HUD, P.O. Box 1128, 421 Gold Street, Room 304, Albuquerque, NM 87103, 505–766–1372, TDD Number: None

Region X—Seattle

Office of Indian Programs, HUD, Seattle Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000, 206–220–5270, TDD Number: None

Region X—Anchorage

Indian Housing Division, HUD, 701 C Street, Box 64, Anchorage, Alaska 99513–7537, 907–271–4170, TDD Number: 907–271–4328

Appendix 2.—Summary of 1992 Act Amendments

The Housing and Community Development Act of 1992 amended several provisions of the HOME statute. The following sections of the 1992 Act that directly affect the operation of the HOME program were effective upon enactment (October 28, 1992) and are applicable to grants awarded under this NOFA. Conforming changes will be made to the regulations.

Section 204.—Policies and Preferences Rules

The law eliminates the requirement that tenants assisted with HOME tenant based assistance be on the Section 8 waiting list; tenant-based rental assistance may be provided to low- and very low-income families in accordance with written policies and criteria that are "reasonably related to" preference rules established under section 6(c)(4)(A) of the Housing Act of 1937.

[**Note:** the effect is to require 70% of the families assisted with rental assistance to meet a federal preference.]

Section 205.—Use of Home Funds for Homeless Assistance

Permanent housing for disabled homeless persons, transitional housing and single-room occupancy housing are included in the definition of "affordable housing."

[**Note:** the effect is to add transitional housing as an eligible activity; all permanent housing and SROs are currently eligible under the HOME regulation.]

Section 208.—Affordable Housing

Rental housing shall qualify as affordable if the rents are not greater than (i) the Fair Market Rent for comparable units or (ii) a rent that does not exceed 30 percent of the adjusted income of a family at 65 percent of median income for the area, *adjusted for the number of bedrooms in the unit.*

[**Note:** This adjustment replaces the adjustment for smaller and larger families, but should have no effect on the program because the Department has provided rents based on bedroom size.]

Tenants who occupy HOME-assisted housing, who no longer qualify as low-income because of increases in their income shall pay as rent the lesser of 30 percent of the family's adjusted monthly income, as recertified annually, or "the amount payable by the tenant under State or local law."

[**Note:** Only underlined section is new.] For rental housing with Low Income Housing Tax Credits and for units under local rent controls, when a tenant's income increases, that tenant's rent will not have to be adjusted to 30 percent of the family's income.

Rental housing must remain affordable, as outlined in 24 CFR 92.614, except "upon foreclosure by a lender, (or upon other transfer in lieu of foreclosure), if such action recognizes the legal rights of public agencies, nonprofits, or others to take actions that would not avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure, and is not for the purpose of avoiding low-income affordability restrictions."

Section 209.—Homeownership Resale Restrictions

An Indian tribe grantee may meet the resale restrictions created in the original law, "or recapture its HOME investment, provided it uses the recaptured funds to assist other persons in accordance with the requirements of this subsection [in other words, to assist first-time homebuyers], except where there are not net proceeds or where the net proceeds are insufficient to repay the full amount of the assistance."

[**Note:** For Indian tribes who choose this option, the subsidy technique used must permit the recapture of the HOME subsidy amount, in whole or in part, during the period of affordability, although the subsidy amount could be forgiven at the end of the period.]

Section 219.—Eligibility of Manufactured Home Owners as First-Time Homebuyers

The definition of "first-time homebuyer" is amended such that "an individual shall not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual owns or owned, as a principal residence during such 3-year period, a dwelling unit whose structure is—

(i) Not permanently affixed to a permanent foundation in accordance with local or other applicable regulations, or

(ii) Not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure."

This second provision has wider application beyond owners of manufactured housing and applies to individuals living in units not meeting applicable standards which can not be rehabilitated cost-effectively as described in (ii) in the document judgment of the Indian tribe.

[FR Doc. 93–39917 Filed 2–22–93; 8:45 am]

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federal register

Tuesday
Februarv 23, 1993

Part III

Environmental Protection Agency

40 CFR Part 51

Economic Incentive Program Rules; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–4591–8]

RIN 2060–AD58

Economic Incentive Program Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking; Notice of public hearing.

SUMMARY: This action proposes rules for economic incentive programs (EIP's) which either may or must be adopted by States for certain ozone (O_3) and carbon monoxide (CO) nonattainment areas upon the failure of a State to submit an adequate showing that an applicable reasonable further progress (RFP) or a specific emissions reductions milestone has been met (in serious, severe, and extreme O_3 and serious CO nonattainment areas), or upon the failure of a serious CO nonattainment area to attain the National Ambient Air Quality Standards (NAAQS) for CO. Under the Clean Air Act as amended in 1990 (Act), the EPA is required to promulgate final EIP rules for stationary, area, and mobile sources by November 15, 1992; this action is an initial step in that process. The provisions of these proposed rules are also being proposed as guidance for discretionary EIP's that any State may choose to adopt for any criteria pollutant, as explicitly allowed for in the Act. The Agency views this proposed action as an opportunity to encourage the development and early implementation of appropriate EIP's. In so doing, the Agency hopes this proposed rule and guidance will stimulate the adoption of incentive-based, innovative programs, where appropriate, that will assist States in meeting air quality management goals through flexible approaches which allow for less costly control strategies, and which provide stronger incentives for the development and implementation of innovative emissions reductions technology.

DATES: Written comments on the proposed EPA action must be received by the EPA at the address below on or before April 26, 1993. A public hearing will be held in the Research Triangle Park, NC. area, unless there are no requests for such a public hearing. Specific details will be published in a separate **Federal Register** notice. Requests to present oral testimony should be received on or before March 12, 1993.

ADDRESSES: Comments should be mailed (in duplicate if possible) to: EPA Central Docket Section, South Conference Center, room 4, 401 M Street, SW., Washington, DC, 20460.

DOCKET: The public docket for this action, A–91–56, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the address listed below. A reasonable fee for copying may be charged.

FOR FURTHER INFORMATION CONTACT: Mr. Willis P. Beal, U.S. EPA, MD–12, Research Triangle Park, North Carolina 27711, telephone (919) 541–5667. Persons interested in attending the public hearing or wishing to present oral testimony should contact Mr. Michael Sink, Pacific Environmental Services, Inc., 5001 South Miami Blvd. P.O. Box 12077 Research Triangle Park, North Carolina 27709–2077, (919) 941–0333 or via telefax at (919) 941–0234.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background and Purpose

A. Introduction
B. Overview
C. Principles and Regulatory Elements

II. Summary of Proposed Rules and Guidance

A. Applicability
B. Definitions
C. State Program Election and Submittal
D. State Program Requirements
E. Use of Program Revenues

III Discussion of Proposed Rules and Guidance

A Applicability
B Definitions
C. State Program Election and Submittal
D. State Program Requirements
E. Use of Program Revenues

IV Discussion of Issues

A Program Goals
B Interface With RACT Requirements
C. Program Baseline
D. Emission Quantification
E. Monitoring, Recordkeeping, Reporting
F. SIP Creditability
G. Audit/Reconciliation Procedures
H. Penalties for Noncompliance
I. Interface With Existing Emission Trading Policies

V Public Participation

A. Comments and the Public Docket
B. Public Hearing

VI Administrative Requirements

A. Executive Order 12291
B. Paperwork Reduction Act
C. Regulatory Flexibility Act

I. Background and Purpose

A Introduction

The Act, as amended in 1990, broadly encourages the use of incentive-based approaches to control air pollution. This encouragement is reflected not only in the title IV acid rain program, but also in the title I general provisions for State and Federal implementation plans for achieving the NAAQS for criteria pollutants, as well as in the provisions for certain Federal O_3 measures. In title I, incentive-based approaches are encouraged, and, in certain cases, mandated through the use of what has been termed an "economic incentive program." Today's notice proposes rules and guidance for EIP's adopted by the States pursuant to title I of the Act.

The Agency views this proposed action as an opportunity to encourage and provide guidance on the early implementation of appropriate discretionary EIP's, as well as to provide mandated rules for use by States after certain specific failures occur. The Agency hopes that this guidance will stimulate the early adoption of innovative, incentive-based approaches, where appropriate, that will assist the States in avoiding such failures, meeting long-term milestones and goals, and lowering the cost of attaining and maintaining the NAAQS. Through this action, the Agency intends to encourage the development of EIP's which increase flexibility and stimulate the use of less costly strategies, as well as provide stronger incentives for development and implementation of innovative emissions reductions technology and strategies beyond those specifically mandated through State and Federal standards and regulations. However, the Agency believes that EIP's must also meet the standards of accountability and enforceability currently found in traditional regulatory programs.

B. Overview

Today's notice proposes rules for EIP's which may be adopted by an authorized governing body, including States, local governments, and Indian governing bodies (henceforth State), for certain O_3 and CO nonattainment areas pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Act. These sections mandate for certain areas, and identify as one of three options for certain other areas, the use of EIP's in certain cases. An EIP is mandated upon the failure of a State to submit an adequate demonstration showing that the area has met applicable milestones for RFP in extreme O_3 nonattainment areas (section 182(g)(5)). An EIP is identified as one of three options upon such failure in serious and severe O_3 nonattainment areas (section 182(g)(3))[1]. Further, an EIP is also

[1] The other two options are to have the area reclassified to the next higher classification and to implement specific additional measures adequate

mandated upon the failure of a State to submit a milestone demonstration showing adequately that the area has met a required specific emissions reductions milestone, or to attain the CO NAAQS in serious CO nonattainment areas (section 187(d)(3), 187(g)).

Section 182(g)(4)(A) of the Act requires that EIP's adopted by States pursuant to the sections of the Act cited above, characterized in today's notice as statutory EIP's, be consistent with the Agency's final rules for EIP's. This section also requires that such EIP's be nondiscriminatory with regard to applicable laws regarding interstate commerce. In addition, section 182(g)(4)(B) imposes constraints on how any revenues generated by such programs shall be used. The scope of the EIP rules includes programs which may be adopted for "reducing emissions from permitted stationary sources, area sources, and mobile sources."

Other sections of title I also explicitly allow for EIP's to be included as provisions in SIP's in general (section 110(a)(2)(A)), as well as specifically in nonattainment area SIP's (section 172(c)(6)). Economic incentives are allowable in Federal implementation plans (FIP's), by definition (section 302(y)), and in Federal O_3 measures through the system of regulations for control of emissions from consumer or commercial products (section 183(e)(4)). Today's proposal serves as the Agency's interim guidance for EIP's adopted by States pursuant to the sections of the Act relating to general SIP provisions, characterized in today's notice as discretionary EIP's, until final guidance is issued in conjunction with the final EIP rules. Discretionary EIP's may be adopted for any criteria pollutant in both nonattainment and attainment areas.

C Principles and Regulatory Elements

The rules and guidance proposed in today's notice are broadly applicable to any type of statutory or discretionary EIP. The proposal requires that EIP's submitted for approval to the EPA as part of a SIP for a nonattainment area contain design features that will ensure that the program will not interfere with other requirements of the Act, and that emissions reductions credited to the program will be quantifiable; consistent with SIP attainment and RFP demonstrations; surplus to reductions required by, and credited to, other implementation plan provisions to avoid double counting of reductions; enforceable at both the State and Federal levels; and permanent within the timeframe specified by the program. However, the Agency does not intend to limit flexibility and innovation beyond those constraints that are necessary to meet these requirements.

The proposal identifies key program provisions which must generally be included to ensure that the above requirements will be met. Adequate program designs will generally include the following elements: A clearly defined purpose and goals, and an incentive mechanism that can be rationally related to accomplishing the goals; a clearly defined scope, which identifies affected sources and assures that the program will not interfere with any other applicable Federal regulatory requirements; a program baseline from which projected program results (e.g., quantifiable emissions reductions) can be determined; credible, workable, replicable procedures for quantifying emissions and/or emission-related parameters, as appropriate; source requirements, including those for monitoring, recordkeeping, and reporting (MRR), that are consistent with specified quantification procedures and allow for compliance certification and enforcement; requirements for projecting program results and dealing with uncertainty; and an implementation schedule, administrative system, and enforcement provisions adequate for ensuring Federal and State enforceability of the program. All EIP's for which SIP credit is taken in attainment and RFP demonstrations must include additional elements, such as audit procedures to evaluate program implementation and track results, and, in certain cases, reconciliation procedures to trigger corrective or contingency measures to make up any shortfall between projected emissions reductions and emissions reductions actually achieved in practice.

The proposal is, of necessity, general in nature with regard to criteria for designing adequate program elements. This generality arises due to the large variety of EIP types and designs which may be submitted and the Agency's goal of encouraging creativity and innovation on the part of the States developing such programs. There are three broad, highly interrelated aspects of any program design that significantly affect the approveability of an EIP: How the EIP relates to other SIP provisions, the level of certainty in quantifying emissions and projecting EIP results, and the nature and extent of MRR requirements for enabling determinations of compliance. Today's proposal reflects the Agency's current view that the standard of adequacy for any one of these aspects is, to some degree, a function of the way in which the other two aspects are addressed in any given program design. The Agency anticipates preparing additional guidance on adequate program design as it gains experience with EIP's, partly through ongoing program evaluation studies and participation in feasibility and demonstration projects.

Descriptions of a broad range of incentive strategies which exemplify potential EIP's are appended to the proposal. These descriptions identify key provisions which distinguish the different model program types. These examples are general in nature, so as to avoid limiting innovation on the part of the States in developing programs tailored to individual State needs. The EPA is currently preparing support documents which will survey a wide range of EIP's that have actually been implemented, as well as programs in the design stage. The EPA has also issued information and guidance, as required by section 108(f)(1)(A) of the Act, regarding the formulation and emissions reductions potential of various transportation control measures (TCM's).[2]

The EPA is also preparing guidance on the generation of emissions reductions credits (ERC's) from mobile source control programs. This guidance will take two forms: Generic guidance on the generation of ERC's from any "surplus" mobile source control program, and more detailed descriptions of the types of data required and analytical frameworks that can be employed to design approvable mobile source control programs such as vehicle scrappage, clean fuel conversions, and others. Both the generic and the more specific guidance will elaborate on the procedures that will need to be followed to generate approvable ERC's. Those procedures will be consistent with the rules and guidance set forth in this document.

The EPA intends that today's proposal be consistent with other related rules and policies, either in place or under development, such as the Title V operating permits rules, the title VII rules for enhanced monitoring and compliance certification, general guidance on the implementation of title I, and policies on emission trading.

[2] Further information on potential TCM's and other mobile source measures is also contained in a staff memorandum, "Preliminary Mobile Source Economic Incentive Program Strategies," from P Okurowski to P. Lorang, March 30, 1992, which is available in the docket.

.. to meet the next milestone as provided in the applicable contingency plan.

II. Summary of Proposed Rules and Guidance

A. Applicability

The rules proposed in today's notice apply to any statutory EIP submitted to the EPA as a SIP revision to comply with sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act, which either may or must be adopted by States upon the failure of a State either to meet or to submit an adequate showing that an applicable RFP or a specific emissions reductions milestone has been met (in serious, severe, and extreme O_3, and serious CO nonattainment areas), or upon the failure of a serious CO nonattainment area to attain the NAAQS for CO. The provisions contained in these proposed rules, except as explicitly exempted, also serve as the Agency's interim policy guidance on any discretionary EIP's submitted as SIP revisions.

B. Definitions

Consistent with section 182(g)(4)(A) of the Act, for purposes of today's rulemaking, "EIP" is defined to mean a program which may include "State established emission fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to O_3 formation, or any combination of the foregoing or other similar measures. In addition, the Act expands this definition to include any of the TCM's identified in section 108(f) of the Act.

C. State Program Election and Submittal

Under today's proposed rules, statutory EIP's submitted as SIP revisions, when applicable, must be sufficient, in combination with other elements of the plan, to achieve the next applicable milestone (for serious, severe, and extreme O_3 nonattainment areas), or to reduce the total tonnage of emissions of CO in the area by at least 5 percent per year until attainment is achieved (for serious CO nonattainment areas). Discretionary EIP's must not interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the Act.

D. State Program Requirements

Under today's proposed rules, EIP's must be State and federally enforceable, nondiscriminatory (with respect to interstate commerce), and consistent with the timely attainment and maintenance of NAAQS, all applicable RFP and visibility requirements, applicable prevention of significant deterioration (PSD) increments, and all other applicable requirements of the Act. Programs in nonattainment areas for which credit is taken in attainment and RFP demonstrations shall be designed to ensure that the effects of the program are quantifiable, and that the credit taken is limited to that which is surplus to other SIP-credited requirements. Statutory EIP's must be designed to result in quantifiable, significant reductions in actual emissions.

A number of program elements are outlined in the proposal which must be included, as applicable, as part of any EIP design. These elements are required to delineate program scope, to specify credible, workable, replicable emission quantification procedures and all affected source requirements, to project program results, to specify audit and, if appropriate, reconciliation procedures (to evaluate program implementation, track results, and, as appropriate, trigger corrective or contingency measures), and to define an implementation schedule, administrative procedures, and effective enforcement mechanisms.

E. Use of Program Revenues

The proposed rules incorporate statutory restrictions on the use of revenues generated by statutory EIP's. Specifically, any such revenues may be used by a State for providing incentives for achieving emissions reductions, providing assistance (up to 75 percent of the costs) for the development of innovative technologies for the control of O_3 air pollution and for the development of lower-polluting solvents and surface coatings, and funding (with up to 50 percent of the revenues) administrative costs of State programs under this Act. These restrictions on the use of revenues do not apply to discretionary EIP's.

III. Discussion of Proposed Rules and Guidance

This portion of the notice provides more detail on the provisions of the proposed rules and guidance.

A Applicability

Today's proposed rules apply to any EIP submitted by a State pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Act. Such statutory EIP's are those that are elected after certain nonattainment areas (i.e., serious, severe, and extreme O_3 nonattainment areas, and serious CO nonattainment areas) fail either to meet a required progress milestone or to submit an adequate demonstration showing that a progress milestone has been met; or, in the case of serious CO nonattainment areas, fail to attain the NAAQS by the applicable date. In addition, the EPA proposes to apply the provisions of the proposed rules as policy guidance for any other discretionary EIP authorized under general SIP provisions, sections 110(a)(2)(A) and 172(c)(6) of the Act. Further, the EPA proposes to use the provisions contained in these rules as guidance in preparing EIP's, when appropriate, for FIP's necessitated by State failures and for other Federal measures.

The EPA intends to review EIP's submitted as plan revisions based on the general SIP review requirements contained in sections 110(k), 110(l), 182, and 187 of the Act, as applicable, and associated Agency policies. For statutory programs, the Agency intends to review the plan revision and either approve or disapprove all or part of the revision within 9 months after the date of the State's submission of the plan revision, consistent with sections 182(g)(3) and 182(g)(5) of the Act. For discretionary EIP's, Agency action on plan revisions submitted for review will be taken according to the same schedule as is applicable to any other type of plan revision. An EIP submitted as a plan revision will be deemed to be approved only upon an affirmative decision by the Agency.

B Definitions

The definitions in today's proposal include many terms drawn from the Act or other regulations or guidance documents, as well as new terms relating to EIP's. Key new terms are discussed below.

1. Economic Incentive Program

The key new term "EIP", according to section 182(g)(4)(A) of the Act, is taken to mean, for the purposes of this rulemaking, a program which may include "State established emission fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to O_3 formation, or any combination of the foregoing or other similar measures," as well as "incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 108(f)."

For purposes of this rulemaking, this proposal classifies EIP's into three broad categories: Emission limiting, market response, and directionally sound. This categorization is based on whether a quantifiable emission-related requirement is directly specified as an integral element of the program, or whether the program depends upon marketplace decisions, in response to a

program's incentive, to produce the intended emission-related objective of the program. Further, the categorization is a function of whether the results of the program are quantifiable.

Emission-limiting strategies directly specify limits on total mass emissions, emission-related parameters (e.g., emission rates per unit of production, product content limits), or levels of emissions reductions relative to a program baseline that are required to be met by affected sources, while providing flexibility to sources to reduce the cost of meeting such limits. A marketable permits program (i.e., emission trading with source-specific mass emissions limitations, or caps) is a primary example of such a program. If every affected source in such a program complies with its emissions cap (taking into account both emissions generated by the source as well as any emissions trading), the program will necessarily achieve the specified emissions limits.

A market-response strategy creates one or more incentives for affected sources to reduce emissions, without directly mandating emission-related requirements for individual sources or even for all sources in the aggregate. An emission fee program may be an example of a market-response strategy. In such a program, each source might be required to pay a fee on each unit of emissions. The response to the incentive, in terms of actions which affect emissions levels, will be determined by each source according to its abatement opportunities, costs, and other factors. Thus, each source has flexibility in determining its ultimate level of emissions (within any constraints imposed by other regulatory requirements).

A consequence of programs based on market-response strategies is that actual emissions from affected sources may differ from the preimplementation projected emissions level even if every affected source is in full compliance with the EIP requirements. This added degree of uncertainty in program results must be accounted for in designing such a strategy (see paragraph III.D.6.).

Directionally sound strategies do not yield quantifiable emissions reductions creditable towards RFP or attainment demonstrations. Such strategies may be included in an area's attainment plan, without credit, or in a maintenance plan if the strategy contributes to the area coming into or maintaining attainment. Emissions reductions from such programs are not creditable towards RFP or attainment demonstrations because the program lacks one or more of the basic program elements, such as a quantifiable program baseline or adequate emissions quantification procedures. However, a State may want to pursue such a strategy as a part of their overall program to attain and maintain the NAAQS. Directionally sound strategies must not be used as the primary basis for any statutory EIP submitted pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Act.

A number of different types of incentive strategies have been identified upon which EIP's could be based. Appendix W contains descriptions of different types of strategies, together with a listing of the TCM's included in section 108(f) of the Act. There is not, however, in all cases a direct correspondence between a type of strategy and the regulatory categories described above, since program design details can in some cases make a difference in the extent to which program results are quantifiable or dependent on market response. Thus, examples of general types of EIP's cannot be inherently linked to any one of the regulatory categories.

2. Program Baseline

The determination of a program baseline is the first step in projecting program results. Results from EIP's can be measured in terms of quantifiable emissions reductions, or, in the case of directionally sound programs, in terms of other emission-related parameters. Further, some types of incentive strategies depend upon the establishment of a program baseline, in terms of a level of mass emissions or emission-related parameter(s), for each affected source or aggregated over all affected sources, as a starting point for the incentive program mechanism. For example, a marketable emissions permit program could be initialized by a program baseline that allocates to each source a cap on mass emissions that serves as its starting point for any emissions trading transactions or future emissions reductions requirements. For other types of programs, this program baseline could be defined in terms of emission-related parameters, such as average emission rates, solvent content, or vehicle ridership factors.

3. Nondiscriminatory

Section 182(g)(4) provides that statutory EIP's must be "nondiscriminatory," and must be "consistent with applicable law regarding interstate commerce." The EPA interprets these requirements to mean that a statutory EIP must not discriminate in favor of intrastate commerce, and against interstate commerce. In addition, an EIP must meet any other applicable limitations under the Commerce Clause of the U.S. Constitution. For example, State taxes must meet the requirements, to the extent applicable to the tax, set out by the U.S. Supreme Court in *Complete Auto Transit, Inc.* v. *Brady,* 430 U.S. 274 (1977). There, the Court stated that a State tax will pass scrutiny under the Commerce Clause only if "the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." *Id.* at 279. Under the EPA's interpretation, Congress did not intend, by the provisions authorizing EIP's, either statutory or discretionary, to delegate its authority under the Commerce Clause to the States, and thereby release State EIP's from the limitations that would apply under the Commerce Clause had Congress not specifically authorized the EIP; rather, Congress intended to maintain those limitations.

C. State Program Election and Submittal

The mandated schedules for the development, submittal, review/approval, and implementation of EIP's submitted pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Act may leave as little as 6 months for the EIP to be operational prior to the next milestone requirement. Thus, in these cases, the time available to develop, implement, and achieve emissions reductions from an EIP will be extremely limited if a State waits until a milestone failure occurs to initiate the selection and development of an EIP. As a result, the EPA encourages States to initiate development of an EIP as soon as they determine that a milestone failure is likely, or even sooner, as part of their SIP. States are encouraged to consider inclusion of discretionary EIP's, where appropriate, in the SIP's (or SIP revisions) due 2, 3 or 4 years after enactment of the amended Act (under, e.g., sections 182(b)(1) and (c)(2), 187(a)(1)). Submittal at that time would more likely allow sufficient time to develop, implement, and evaluate the effectiveness of the program.

A State may submit a discretionary EIP to the EPA prior to the SIP submittals due 2, 3 or 4 years after enactment of the amended Act. If such an early EIP submittal is made, however, States must account for the effects of the EIP in the subsequent required SIP submittals. Further, nothing in today's proposal precludes a State from revisiting and amending its original EIP, or any other preexisting

rules, as necessary, to ensure consistency with the subsequent required SIP submittals.

The EPA interprets the requirements of sections 182(g)(3) and 182(g)(5) of the Act as applying any time that a State fails to submit an adequate milestone compliance showing, or the EPA determines that a milestone has been missed by an area covered by these provisions. For example, if such a milestone is not met by a serious or severe O_3 nonattainment area, the area may elect among three options, including an EIP. The Act does not provide any additional or different requirements that would apply when a State that missed one milestone, and makes a proper election, misses a subsequent milestone. Accordingly, if a subsequent milestone is missed, the same choices are available, including the election of an EIP. Thus, the imposed requirements or specified options apply not only the first time that a milestone is missed, but also if subsequent milestones are missed even if an EIP had previously been implemented Similarly, the EPA interprets section 187(g) (requiring serious CO nonattainment areas that fail to attain to adopt an EIP) as applying even if the area previously missed a milestone and adopted an EIP pursuant to section 187(d)(3). A second missed-milestone program must provide reductions beyond the reductions from a first statutory program The second EIP may either be a new program or a substantive revision of the first program.

D State Program Requirements

This section briefly describes each of the program elements that must be included, as applicable, in an EIP submitted to the EPA as a plan revision

1. Statement of Purpose, Goals, and Program Description

An acceptable EIP must clearly define the purpose and goals of the program, and provide a rationale relating the program elements to the goals. For instance, a goal might be to achieve a targeted emissions reduction at a lower overall cost, enabling a nonattainment area to meet some part of its RFP milestones. Alternatively, a goal of an EIP in an attainment area might be to lower the cost of maintaining compliance with applicable NAAQS. Other acceptable goals might be to enhance operational flexibility, provide incentives for technological innovation, or encourage reduction of emissions earlier than otherwise required.

A well-designed EIP may have multiple goals. For instance, a marketable emissions permit program, with mass emissions caps declining over time, may achieve several results. The declining cap aspect of the program results in emissions reductions creditable towards RFP milestones (to the extent that actual emissions are reduced). The marketable aspect of the program allows emission sources facing differing costs of further emission control to trade, lowering overall control costs. Such programs also encourage sources already able to meet their mass emissions caps to find ways of further reducing emissions (e.g., through technological innovation or changes in operational procedures).

An EIP should include a rationale for how the incentive mechanism(s) will achieve the stated goal(s). A State can create a better overall program design by carefully examining and explaining the linkage between a program's provisions and the desired outcome. The provisions of a program must be sufficient to ensure the program goals are successfully achieved without creating unintended detrimental side effects.

An EIP description must include all the elements of the incentive program. The description must identify the target pollutant(s) and the nature of the environmental problems addressed (e.g., peak episodes and/or long-term emission loading), specific environmental program objectives (e.g., caps on total mass emissions, reductions in emission-related product content), and the category and type of economic incentive strategy selected to achieve the objective. Proposed criteria for the environmental goals of EIP's are discussed below (see paragraph IV.A.)

2. Program Scope

As with any regulatory program, an EIP must identify the affected sources covered by the program The affected sources may be defined on the basis of source type (e.g., manufacturing operations), activity type (e.g., fuel storage tanks), location, firm size, quantity of emissions, or other such characteristics. In addition, a State may choose to grant exemptions from program requirements to sources meeting specified criteria. For example, States may consider exempting zero-emitting vehicles from a new parking price program. In establishing the affected source criteria, a State must assure that the resultant program is nondiscriminatory within the meaning given that term in this proposal.

The program must establish procedures for dealing with sources entering or exiting affected source categories. In order to promote economic growth consistent with achieving environmental goals, a regulatory program should not create unwarranted barriers to entry for new or expanding business entities.

In addition, the program must establish criteria and procedures for sources voluntarily choosing to opt-in or to be exempted from the program, to the extent that the program design allows for such movement into or out of the universe of affected sources. For example, the title IV acid rain allowance trading program includes provisions for sources not originally in the program to opt-in to the program in order to sell sulfur dioxide (SO_2) emission allowances to sources already in the program. Certain EIP's may also provide criteria for exempting sources such that they can leave the program; such criteria must be described and the procedures for leaving the program must be included in the EIP. Any such procedures must ensure that movement into or out of the program will not result in an increase in areawide emissions that is not reflected in the plan's attainment or RFP demonstrations. Finally, the opt-in program language must specify that it will not allow sources to opt-in if the net result of the opt-in program as a whole is to increase area emissions, unless such increase has been accounted for in the development of the EIP, and is consistent with attainment and maintenance of the NAAQS, RFP, and all other SIP requirements.

Affected sources in an EIP may also be covered by other Federal regulatory requirements. Based on the EPA's interpretation of the Act, EIP's may not interfere with applicable requirements concerning attainment and RFP, or any other applicable requirements of the Act. Thus, the program scope must be defined so as not to interfere with any other Federal regulatory requirements which apply to the affected sources. Such requirements for stationary sources may include, but are not limited to, reasonably available control technology (RACT), PSD and new source review (NSR) offset requirements, lowest achievable emission rate (LAER), best available control technology (BACT), new source performance standards (NSPS), national emissions standards for hazardous air pollutants (NESHAPS), acid deposition program requirements, reasonably available control measures (RACM), and best available control measures (BACM). Such requirements for mobile sources may include, but are not limited to, programs integral to vehicle inspection and maintenance (I/M), clean-fueled fleets, reformulated gasoline, oxygenated fuels, employer-sponsored

trip reductions, TCM's, and Federal motor vehicle controls.

Sources subject to the above listed statutory requirements may participate in emissions trades pursuant to an EIP as long as, apart from their participation in such trades, they continue to meet the statutory requirements. Thus, if these sources reduce their emissions below what the applicable statutory requirements call for, the reductions beyond the requirements may furnish credits for the EIP. Further, where reductions made to meet the statutory requirements are surplus to reductions required by, and credited to, attainment and RFP demonstrations or other SIP requirements, the reductions may also furnish credits for the EIP. However, these sources may not rely on credits furnished through the EIP to exceed the requirements of the applicable statutory provisions.

Following is a more specific discussion of the interplay of several of the statutory provisions listed above with the EIP rules.

RFP requirements. Credits for emissions reductions from stationary, mobile, or area sources may generally be used to meet the "progress" requirements of the nonattainment provisions of the Act. SIP's for O_3 nonattainment areas classified as moderate or higher under section 181(a)(1) are required to provide for reductions in volatile organic compounds (VOC) of at least 15 percent from baseline emissions by 1996, and areas classified as serious or higher are required to provide for reductions of at least three percent each year (averaged over a 3-year period) thereafter until the attainment date [section 182(b)(1), 182(c)(2)(B)]. Emissions reductions from all sources may be used to meet these progress requirements, except for those reductions attributable to Federal motor vehicle programs and RACT and NSR corrections [section 182(b)(1)(C)–(D)].

RACT. Under the EPA's proposed interpretation, an EIP may allow sources subject to the RACT requirement to attain RACT level emissions reductions in the aggregate, and thereby trade among themselves. In addition, an EIP may allow sources subject to the RACT requirement to meet their RACT obligations by acquiring emissions reductions from sources not subject to the RACT requirement.

Under the 1977 Act, the EPA took the position that the RACT requirement found in section 172(b)(3) of part D did not require each affected emissions unit to achieve a prescribed amount of reductions in emissions from its own processes, but rather required the affected sources to provide in the aggregate the reductions that would be achieved if each applied RACT controls to itself. This interpretation, which is reflected in the Emissions Trading Policy Statement (51 FR 43814 (December 4, 1986), the "Bubble Policy"), was upheld in *NRDC* v. *EPA*, 33 ERC 1657 (4th Cir. 1991), an unpublished decision.

Under the 1990 Amendments, the 1977 Act's requirement for RACT was retained in subpart 1 of part D, section 172(c)(1), and RACT requirements specific to ozone nonattainment SIP's were added in subpart 2, particularly section 182(b)(2). Thus, under the 1990 Act, the EPA continues to take the position established under the 1977 Act that RACT applies in the aggregate.

The EPA also interprets the RACT requirement to authorize emissions trading between the stationary sources subject to the RACT requirement ("RACT sources") and any sources (i.e., stationary, mobile, and area sources) not subject to the RACT requirement ("non-RACT sources") when such trading results in an exceptional environmental benefit, e.g., a level of reductions that is significantly greater than RACT-level amounts. With respect to the level of emissions reductions required from the non-RACT sources, as described more fully below, the EPA believes that the appropriate amount of emissions reductions generally should be set at a level that takes into account the severity of the nonattainment status in a given area.

The EPA proposes to use the statutory offset ratios for nonattainment areas as the determinant of the amount of emissions reductions that would be required from non-RACT sources generating credits for RACT sources. The offset ratios are lower for lower-classified areas (e.g., compare section 182(a)(4), with a 1.1 to 1 offset ratio for marginal areas, and section 182(d)(2), with a 1 3 to 1 offset ratio for severe areas). Looking to offset ratios is instructive because offsets are an aspect of emissions trading that is directly addressed in the Act. The offset ratios provide a suitable analogy because they represent the most substantial benefit to the environment for a given area that is required in this statutory context of emissions trading

However, the EPA proposes to approve emissions trading between RACT and non-RACT sources at less than the offset ratios if exceptional environmental benefits are otherwise demonstrated. For example, the EPA would look favorably upon an emissions trade that promoted the market penetration of emissions reduction measures for non-RACT sources, such that future emissions reductions from the universe of non-RACT sources would be expected to increase over time. Such measures could include new vehicle technologies that utilize alternative fuels, provided that such technologies meet all relevant EPA standards and guidelines. Where a lower trading ratio is authorized in order to promote the market penetration of an environmentally beneficial new control measure, EPA is proposing a lower bound for the trading ratio of 1.1 to 1 to assure that in all events some additional benefit accrue to the environment. In setting the appropriate ratio for trades between RACT and non-RACT sources, the EPA is also proposing to allow States to take into account additional State and federally enforceable emissions reductions that are achieved as a result of other exceptional environmental features of an EIP (such as a separate "environmental bonus" provision, as discussed in EPA's Proposed Interim Guidance on the Generation of Mobile Source Emissions Reduction Credits). In no case, however, can a trading ratio be lower than 1 to 1, and in no case can the effective trading ratio be less than the appropriate offset ratio (or such ratio, as low as 1.1 to 1.0, as may be authorized to promote the market penetration of environmentally beneficial new control measures) For further discussion of related issues, refer to paragraph IV.B.

Offsets Credits for emissions reductions generated by stationary, mobile, or area sources may be used for purposes of meeting the offset requirement, so long as they meet the restrictions imposed on offsets by section 173 of the Act. Under the nonattainment provisions, new or modified major stationary sources may not receive permits for construction and operation in a nonattainment area unless, among other things, their new emissions are offset by reductions from other sources in the area [section 172(c)(5), 173(a)(1)(A)]. For O_3 nonattainment areas, minimum offset ratios range from 1.1 to 1 for marginal areas to 1.5 to 1 for extreme areas [section 182(a)(4), 182(b)(5), 182(c)(10), 182(d)(2), 182(e)(1)]

Section 173(c) places a number of restrictions on the types of emissions reductions which can be used for offsets, including requirements that the offsetting reductions be secured through enforceable emissions reductions, which are in effect at the time the new source commences operations, and which are calculated on the basis of "actual" emissions reductions In addition, emissions reductions

"otherwise required by the Act" shall not be creditable as emissions reductions for offsets.

However, the Act does not require that offsets be secured by the new source Rather, any portion of the necessary offsets may be generated by the local air quality district or by the State. In other words, a jurisdiction may set up an offset "bank" to supply new sources with sufficient emissions reductions to satisfy their offset obligations. To satisfy the requirements set forth in section 173, each time a new source commences operations, the jurisdiction must have already generated the necessary emissions reductions (meeting the specifications listed above) to offset the new emissions. This means that the jurisdiction must be able to demonstrate, at any point in time, that the program has secured sufficient excess emissions reductions to offset all new emissions at the proper ratio. If the source itself is only held responsible for securing emissions reductions in an amount equal to its new emissions (i.e., a 1 to 1 ratio), the SIP must generate sufficient reductions to cover the extra reductions required (e.g., 1.2 to 1 in serious O_3 nonattainment areas).

As noted, the Act limits offsets to emission reductions not "otherwise required by this Act." As part of the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," which the EPA incorporates into this notice of proposed rulemaking, the EPA described certain circumstances under which reductions would not be creditable for offset purposes because those reductions are required by other provisions of the Act [57 FR 13498, 13553 (April 16, 1992)]. In addition, the EPA expects to provide additional guidance regarding this requirement specifically, as well as offsets generally, in a NSR regulatory update package which will be proposed in the near future.

BACT and LAER. Both the PSD program and the nonattainment NSR program contain technology-based emission limitations that are source specific. The Act expressly requires that these emissions limitations (i.e., BACT in the case of PSD, and LAER in the case of NSR) be met by the proposed major new source or major modification itself as a condition of permit issuance. Consequently, neither of these requirements can be met through emissions trading.

Regarding BACT, section 165(a) of the Act provides that no major new source or major modification may be constructed in a PSD area unless the requirements in section 165(a)(1)–(8) are met. Section 165(a)(1) specifies that among these requirements is a permit setting forth emission limitations for such facility which conform to the requirements of this part. Section 165(a)(3)(C) further specifies that the proposed facility must demonstrate that emissions from the facility will not exceed any applicable emission standard under the Act.[3] The applicable emissions limitations are those provided in section 165(a)(4), which provides that the proposed facility must be subject to the best available control technology for each pollutant subject to regulation under this Act emitted from, or which results from, such facility.[4]

The Act sets forth a similar statutory scheme with respect to LAER. Section 173(a) provides that the permit program applicable to major new sources or major modifications, which is required to be included in Part D SIP's under section 172(b)(5),[5] shall provide that permits to construct and operate may be issued only if the requirements set forth in section 173(a)(1)–(5) are met. Among these enumerated requirements is section 173(a)(2), which specifies that the proposed source is required to comply with the lowest achievable emission rate.[6]

The statutory provisions addressing both BACT and LAER clearly require the permitting authority to set, and the source owner to comply with, the applicable technology-based emission limitation. There is no provision in the statute for lawfully avoiding BACT or LAER through emissions reductions at other sources that would result in an equivalent reduction of emissions or ambient concentrations. Indeed, this possibility is implicitly precluded by other PSD and NSR provisions that independently require new sources to conform to air quality planning goals. Thus, in addition to complying with BACT, proposed PSD sources must demonstrate that they will not cause or contribute to a NAAQS or PSD increment violation (section 165(a)(3)(A) and (B)).[7] Similarly, under nonattainment NSR, in addition to the LAER requirement, a proposed new source must obtain sufficient emissions offsets such that its construction and operation results in a net decrease in actual emissions in the area (section 173(a)(1)(A) and 173(c)(1)).

Employer trip reduction programs. Section 182(d)(1)(B) requires States with severe O_3 nonattainment areas to submit SIP revisions requiring employers in such areas to implement programs to reduce work-related vehicle trips and miles traveled by employees. Such revisions shall be developed in accordance with guidance issued by the Administrator pursuant to section 108(f) and shall, at a minimum, require that each employer of 100 or more persons in such areas increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods by not less than 25 percent above the average vehicle occupancy for all such trips in the area at the time the revision is submitted.

Section 187(b)(2) requires this same program in serious CO nonattainment areas. The EPA is interpreting this requirement to allow employers within a nonattainment area to trade trip reduction credits for reducing employee trips. The EPA believes that the statutory language is susceptible to a reading that an employer may obtain reductions in commuting trips from any employee in the area, not only from its own employees.

Also, the EPA interprets the term "vehicle" in the statutory phrase "average passenger occupancy per vehicle" to mean conventional "dirty vehicles." Therefore, zero emission vehicles, bicycles, mass transit and pedestrians are considered a zero in the employer's vehicle count. In addition, the EPA intends to allow States to include in their employer trip reduction (ETR) programs a factor (e.g., one-half vehicle) to be applied to certified alternative fueled vehicles. In this manner, shifts from commuting in conventional "dirty" vehicles to methods of low emission commuting would count towards meeting the ETR requirement.

[3] Section 302(k) of the Act defines the terms emission limitation and emission standard interchangeably

[4] Section 169(3) in turn defines BACT as an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility.

[5] Section 173(a) incorrectly refers to the permit program required by section 172(b)(6). Section 172(b)(6) was renumbered as § 172(b)(5) by the 1990 Amendments. Apparently, this change was not picked up by the drafters of revised § 173.

[6] Section 171(3) defines LAER as that rate of emissions which reflects either the most stringent emission limitation which is contained in any SIP for such class or category of source, or the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

[7] This requirement can be met, for example, by the proposed new source obtaining sufficient emission reductions from another source to compensate for its adverse ambient impact, such that the combined emissions of both plants do not violate PSD increments. See 40 CFR 51.165(b)(3).

The ETR provision may not be read to authorize ETR credits from any source other than reductions in employee commuting trips. Employers may not use credits generated from stationary or area source emission reductions, or from other mobile source program reductions, to comply with the ETR requirements. Similarly, a SIP provision that required more than the minimum requirement for clean fuel vehicles could not, in and of itself, be used to meet the ETR requirement, only changes in commuting involving alternative fuel vehicles could contribute emissions reduction credits towards meeting the employer trip reduction requirement.

To the extent that employers generate emissions reductions from increasing average passenger occupancy in excess of the level required to comply with the ETR program, such credits could be traded towards compliance with any other statutory requirement that can be met through acquisition of credits generated by other programs.

Inspection and maintenance programs. The EPA interprets the I/M provisions to require a vehicle I/M program that meets specified performance standards. The requirements of the I/M provisions cannot be met by obtaining ERC's from sources other than vehicles, or from vehicles through means other than inspection and maintenance of the vehicle. An EIP may not substitute entirely for an enhanced or basic periodic vehicle I/M program.

The EPA bases this view on the provisions of the Act that set forth requirements for a basic I/M program, as well as certain provisions relating to enhanced I/M programs. Sections 182(a)(2)(B)(i) (I/M "fix-ups" for O_3 nonattainment areas classified marginal and higher), 182(b)(4) (I/M "catch-ups" for O_3 nonattainment areas classified moderate and higher), and 187(a)(4) (I/M "fix-up" requirement for CO nonattainment areas classified moderate and higher) each require a SIP revision that includes provisions for a "vehicle inspection and maintenance program" that meets a specified performance standard.

The provision for an enhanced I/M program for CO nonattainment areas classified as moderate and with a design value higher than 12.7 ppm, or classified as serious, requires the SIP to include provisions for "an enhanced vehicle inspection and maintenance program as required in section 182(c)(3) (concerning serious O_3 nonattainment areas)" [section 187(a)(6)]. This provision confirms that the required I/M program is in fact a vehicle I/M program. The primary provision for an enhanced I/M program for O_3 nonattainment areas classified as serious or higher does not include a comparable "inspection and maintenance" phrase (i.e., requires the SIP "to provide for an enhanced program to reduce hydrocarbon emissions and NO_x emissions from in-use motor vehicles"), but it further includes specific requirements for various types of testing, inspections, etc. that make clear that the program must obtain reductions from vehicle I/M [section 182(c)(3)]. The title of section 182(c)(3) also makes this point clear.

Nevertheless, both the basic I/M program and the enhanced I/M program requirements authorize a substantial degree of flexibility in program design. The Act directs the EPA to require a specific amount of emissions reductions, but also authorizes the State to design the program in a manner that meets the EPA established performance standard through different means. The EPA's final rule on I/M programs describes the EPA's performance standards and the ways that States can meet those standards [57 FR 52950–53014]. In so doing, the State can take advantage of economic efficiencies (e.g., have a better test on more older cars to get greater performance, in exchange for some relaxation in another element). In addition, States could address mal-maintenance in the vehicle fleet in part by including an old car scrappage program as an element of the overall package used to meet the performance standard. However, the SIP must include a vehicle inspection program.

3 .Program Baseline

An EIP baseline must be fully defined within the EIP, and used as a basis for projecting program results and, if applicable, for initializing the incentive mechanism. For EIP's submitted in conjunction with, or subsequent to, the submission of an RFP plan (showing areawide reductions in VOC emissions of at least 15 percent from RFP baseline emissions [section 182(b)(1)(B)]), as applicable, and/or an attainment demonstration, a State has flexibility in defining the program baseline. Prior to the submission of a required RFP plan or attainment demonstration, States also have flexibility in defining the program baseline for EIP's that implement new RACT requirements (either for a previously unregulated source category or for sources for which an existing RACT rule is being newly imposed), provided the following conditions are met. For EIP's that allow trading with respect to new RACT requirements for previously unregulated source categories, the new RACT requirements must be based upon an analysis that considers the incentive mechanism upon which the EIP is based. For EIP's that allow trading with respect to newly imposed RACT requirements on previously unregulated sources in a previously regulated source category (e.g., sources newly covered by lower applicability cut-offs), the EIP must, in the aggregate, yield reductions in actual emissions at least equivalent to those which would result from source-by-source compliance with the existing RACT limit for that source category. This equivalency requirement can be satisfied by using existing data on actual and allowable emissions from the previously regulated sources in the affected source category.

In all such cases, the program baseline may be based on actual, allowable, or some other intermediate or lower level of emissions, provided the program baseline is consistent with and reflected in the associated RFP plan, attainment demonstration, or RACT rule. Further, for EIP's submitted prior to the submittal of an attainment demonstration, the State must include with its EIP submittal a commitment that its subsequent attainment demonstration will be consistent with the EIP baseline in effect at that time. However, if the EPA subsequently disapproves the attainment demonstration on the grounds that it does not provide for the required attainment of the NAAQS, the EPA may require the State to incorporate in the EIP a program baseline set no higher than the lower of actual or allowable emissions.

Conversely, for EIP's that do not meet the above conditions, the program baseline must be set no higher than the lower of actual or allowable emissions. Actual emissions are to be taken from the most appropriate inventory, such as the 1990 actual emission inventory (due for submission in November 1992), and allowable emissions are the lower of SIP allowable emissions or the level of emissions consistent with source compliance with all Federal requirements related to attainment and maintenance of the NAAQS.

The EPA's rationale for these baseline proposals is as follows. In considering emissions trading, the EPA continues to focus on the aspect of trading that involves the relaxation of a control requirement on a particular emissions-producing unit (or units) (the credit-receiving unit). Under trading programs, this relaxation is offset by tightening the control requirements on another emissions-producing unit (or units) (the credit-generating unit). Under section 110(1), this relaxation is authorized only

if it, taken in conjunction with the tighter control requirements, does not interfere with the ability of the SIP to meet the various requirements of the Act—most importantly, for present purposes, the RACT requirement and the requirements for RFP (i.e., for O_3 nonattainment areas, 15 percent reductions in VOC emissions by 1996; and 3 percent-per-year over each 3-year period until the attainment date), as well as attainment requirements (section 182(b)(1), 182(c)(2)). The EPA is aware that when the credit-generating unit's actual emissions are below the level mandated by the applicable control requirement, relaxing a control requirement on the credit-receiving unit in exchange for tightening the requirement on the credit-generating unit may result in an increase in aggregate actual emissions. Under these circumstances (i.e., trading from an allowables baseline), the relaxation and its resulting increase in actual emissions could, in some circumstances, jeopardize RFP and attainment.

As described above, the EPA is proposing to permit EIP's that authorize trading from an allowables baseline when the EIP is submitted in conjunction with, or following, the submission of the 15 percent RFP SIP revision, and the allowables baseline is consistent with that SIP revision. Under these circumstances, it is clear that trading on the basis of allowables would not jeopardize the 15 percent RFP requirement. The EPA acknowledges that, even with such a rule, trading may occur on the basis of allowables prior to submission of the attainment demonstration SIP (which is required to include, in the case of O_3 nonattainment areas classified serious or higher, the 3 percent-per-year RFP showing). However, the EPA believes that once the State has submitted the 15 percent RFP SIP, the State has made significant progress towards continued RFP (the 3 percent-per-year requirement) and eventual attainment. This significant progress, coupled with the sanctions provisions that provide strong safeguards that the State will develop a SIP requiring the 3 percent-per-year RFP and an attainment demonstration, lead the EPA to conclude that an EIP authorizing an allowables baseline submitted in conjunction with a 15 percent SIP revision will not jeopardize continued RFP or attainment.

In addition, as described above, the EPA is proposing to permit EIP's that authorize trading from an allowables baseline in the case of source categories, or portions of source categories, that are newly subjected to the RACT requirement under the RACT "catch-up" provisions of section 182(b)(2). Under these circumstances, the imposition of RACT-level controls is expected to result in emissions reductions with respect to the affected source categories or sources taken as a whole, even if some of the affected sources conduct emissions trades based on allowables. The fact that overall emissions from these source categories or sources will be reduced indicates that progress is being made towards attainment. This progress gives the EPA adequate assurance that any trades on an allowables basis will not jeopardize RFP or attainment requirements.

A State may define a program baseline to address a variety of equity considerations, such as differing degrees of emission control among affected sources prior to the start of the EIP. While emissions reductions creditable towards a specific required demonstration will be calculated according to the requirements for that demonstration, the EIP may use a different baseline. For example, a declining value marketable permits program, submitted in conjunction with an areawide RFP or attainment plan, could initially allocate mass emissions caps on the basis of allowable emissions. However, to the extent that such a program baseline exceeds the aggregate actual emissions for the sources covered by the program, the EIP baseline allocation would be required to decline at a rate consistent with achieving the areawide RFP milestone as measured against the RFP baseline (refer to paragraph IV.C.).

The EIP must clearly specify whether the program baseline applies to aggregate emissions from all affected sources (similar to the RFP baseline), or to individual sources (similar to source-specific LAER requirements, for example). If historic emissions are relevant in setting the program baseline, the time period must be specified in the program. Provisions must be made for determining baselines for sources not active during the specified baseline time period. Also, the averaging time associated with a program baseline for emissions must be specified.

4. Quantification Procedures

The EIP must describe how emissions and changes in emissions will be quantified for SIP credit. If other measurable factors are essential to an EIP, the quantification procedures for those must be specified in the program. For instance, if emissions reductions are generated by reducing total usage of a type of solvent, procedures for measuring solvent usage are critical. The program must specify the minimum required credible, workable, replicable procedures for quantifying emissions, which could include emission factor calculations, direct emission monitoring, calculation procedures which are a function of process parameters, production practices or volume, or inventory usage, or other procedures, as appropriate. Criteria for selecting quantification methods and time-averaging considerations are discussed in paragraph IV.D.

States must carefully consider matching the environmental goals with the various aspects of the program when determining adequate quantification procedures. For example, a procedure wholly adequate for determining compliance with long-term mass emissions caps may be clearly inadequate for a program aimed at limiting peak daily emissions.

An EIP must establish procedures for quantifying emissions reductions arising from sources that shut down or curtail production. A State may not take credit for such emissions reductions as part of an EIP if the same reductions have already received credit in the SIP's attainment or RFP demonstrations. For example, SIP demonstrations may include assumptions about equipment turnover rates and normal operating levels which may already credit some assumed rate of source shutdowns and curtailments. Credit also cannot be taken for shutdowns or curtailments that do not result in a decrease in an area's aggregate emissions. Changes in emissions at one source may merely increase emissions at another. For example, if one retail operation goes out of business, the total level of retail business will not necessarily change. Instead, customers may shift their business to other merchants in the area. The effect on aggregate emissions of such "demand shifting" will depend upon the nature of the business, and should be considered in the design of the EIP.

An EIP also must establish procedures for quantifying emissions from sources with uneven emission patterns due to batch, seasonal or cyclical operations. The appropriate procedure for handling these expected fluctuations in emissions will depend in part on the emissions averaging time upon which the EIP is based.

An economic incentive strategy for mobile sources must consider the factors which will affect or determine the level of participation in a transportation program. Any assumptions or models which States may use to predict behavioral modifications as a result of the implementation of an economic

incentive strategy must be presented as support information with the EIP submittal.

5. Source Requirements

Each affected source in an EIP must comply with requirements imposed by the program, and must initiate and subsequently maintain the MRR procedures necessary to provide State and Federal enforceability. Requirements imposed by an EIP could include meeting mass emissions limits (either directly or through trading marketable permits), paying an emission fee, using specified products or procedures, providing product content labeling, or other measures specified by the program. All source-specific program requirements must be structured in such a way that both inspectors and facility owners can judge the compliance status of a facility at any time, or, in the case of long-term emissions limits, at the end of the compliance period. This will require an authoritative, reliable repository of all relevant information at each facility (refer to section IV.E.).

6. Projected Results and Audit/ Reconciliation Procedures

A SIP revision that contains an EIP must include projections of the emissions reductions the State expects to achieve through the implementation of the program. The projections may be based on federally enforceable limits on mass emissions or on other emission-related parameters, estimates of market response, economic modelling, or other relevant information. The State does not have to project emission changes for each source, unless that is how the State chooses to estimate the emissions reduction from the program. All EIP submittals must include documentation which clearly states how sources in an EIP are or will be addressed in the emissions inventory, RFP plan, and attainment or maintenance plan, as applicable. This documentation should include a description of the assumptions used in estimating emissions and emissions reductions from affected sources.

For determining credit in a State plan, the projected emissions reductions must be adjusted to reflect the uncertainties inherent in EIP's. This adjustment is currently done for traditional stationary source control measures through the use of a rule effectiveness factor, developed from experience with traditional regulatory control programs.

For EIP's, the State must use two uncertainty adjustment factors, as appropriate, to calculate creditable emissions reductions. The sources of uncertainty that must be accounted for are the extent to which sources will actually comply with program requirements; and programmatic uncertainties, such as the extent to which voluntary market responses to incentives actually occur and the use of relatively "soft" quantification methods used for compliance determinations. These sources of uncertainty must be accounted for through the use of a rule compliance factor and a program uncertainty factor, respectively.

For EIP's, the State must specify values for rule compliance and program uncertainty factors, based on program elements such as the quantification and enforcement procedures, and on the predictive quality of the information used by the State to develop the projected emissions reductions. Inherent in the way in which these factors are defined, the value of either factor must be less than or equal to one. The State must include with its EIP submittal a justification for the values assigned to these factors, to the extent that they differ from any presumptive norms, and must use these factors in determining the SIP credit for the program (refer to paragraph IV.F.).

Unless otherwise provided in program-specific guidance issued by the EPA, EIP's for which SIP credit is taken must also contain program audit procedures designed to evaluate program implementation and track program results in terms of the actual emissions reductions obtained during program implementation. The auditing methods and the timing of the audits must be specified in the EIP (refer to paragraph IV.G.). Further, the State must provide timely post-audit reports to the EPA. For emission-limiting EIP's, program audit provisions must include a State commitment to ensure timely implementation of programmatic revisions or other measures which the State, in response to the audit, deems necessary for the successful operation of the program.

Program audit provisions for market-response EIP's must be accompanied by reconciliation procedures, designed to compare credited emissions (i.e., adjusted projected emissions) with actual emissions achieved through the implementation of the program. The reconciliation procedures must specify a range of appropriate actions (e.g., invoke part of a general SIP contingency plan or a program-specific contingency), revisions to the program requirements (e.g., increase the fee, include more sources) that will make up for any shortfall between credited and actual emissions revealed by the audit, or reductions in the credit taken for the EIP in the SIP (provided that RFP and attainment requirements continue to be satisfied area-wide based on such reduced EIP credits in combination with the effects of all other SIP programs). Such measures must be automatically executing to the extent necessary to make up the shortfall, with State action required only to identify which of the specified actions are necessary to make up the shortfall. Such measures must not require a revision to the implementation plan to be effectuated once identified by the State; rather, the measures must be built into the original EIP design (or incorporated by reference).

It is not the EPA's intent, however, necessarily to impose greater burdens on EIP's, compared to traditional regulatory programs, by virtue of the audit and reconciliation requirements. These audit and reconciliation procedures are consistent with the general approach to implementing the Act being taken by the EPA, as illustrated in the Agency's recently issued rule for vehicle I/M (November 5, 1992 at 57 FR 52950) and the Agency's recently proposed rule for reformulated gasoline (July 9, 1991 at 56 FR 31176; and April 16, 1992 at 57 FR 13416), and in the Agency's general guidance on the implementation of Title I dealing with the rule effectiveness of stationary source control measures. Further, in appropriate cases, routine ongoing air program management procedures may be sufficient to fulfill the audit and reconciliation requirements. In designing audit procedures, the State should consider the relative uncertainty associated with the EIP and specify the scope and extent of the audit procedures to be commensurate with that level of uncertainty.

7. Implementation Schedule

An EIP must contain a schedule for implementing the program. The schedule must include dates for notifying potentially affected sources, as early as possible, about the impending EIP; program initialization and start-up procedures; submittal requirements from affected sources; and the reconciliation process and any subsequent actions required to make up for any shortfall that occurs.

8. Administrative Procedures

As part of any EIP design, the State must establish appropriate administrative procedures, specific to the type of incentive strategy, necessary to implement all of the elements of the EIP. For example, in a fee program a State must assure the proper administration of the fee collection

process, and if rebate provisions are included, the administration of the rebate distribution process.

Administrative procedures specific to marketable emissions permit programs which the State must address in a program design are the mechanisms required for conducting, approving, verifying, recording, and tracking trades. The EIP must clearly describe the administrative system, and any State commitments to implement and maintain the system, that enables market participants to conduct valid and legally protected transactions. The State must design the program to ensure that all program requirements are met by sources involved in trades, such that the trades result in enforceable changes in allowable emissions levels. A well-designed EIP will include the minimum amount of transactional oversight, approval, recording, and tracking provisions necessary to create a verifiable and enforceable system. Unnecessary or excessive administrative requirements in a trading system increase the cost of the program and inhibit trading. An active trading market increases the opportunities for cost-savings. However, a State must establish sufficient administrative procedures to ensure that the environmental goals of the EIP are met, and that the program is adequately enforceable (refer to the discussion of emissions trading markets in Appendix W).

9. Enforcement Mechanisms

An EIP must include adequate enforcement consequences for noncompliance with any source requirements, including MRR requirements. Both Federal and State enforcement penalties must be included, such that the level of deterrence embodied in traditional regulatory programs is preserved.

Traditional regulatory programs provide for enforcement against noncompliance with emissions limits at both the Federal and State/local levels. The statutory maximum Federal penalties under the Act are $25,000 per day per source in violation. To preserve the existing level of deterrence under the Act, an EIP that imposes multiday and/or multisource emission limits must define violations of those limits in such a way that the violations will translate into sufficient numbers of source-days of violation. Further, the program must include provisions such that State/local penalties create a deterrent effect comparable to that of traditional regulatory programs. One possible approach would be for the EIP to authorize predetermined penalties based on the amount of an exceedance of such a cap, provided the predetermined amounts are sufficiently large.

Today's proposed rules also require EIP's that impose multisource emissions limits to require facilities to develop enforceable plans for remedying noncompliance in those cases where facilities have exceeded emissions limits for the specified averaging period. Such plans must identify appropriate and enforceable control measures or other procedures or strategies sufficient to achieve and maintain compliance with applicable emissions limits. Further, for sources subject to title V requirements, the elements of such plans must, at a minimum, be consistent with any applicable title V permit requirements concerning compliance plans.

Compliance with MRR requirements is generally critical to the integrity and success of EIP's. Thus, an EIP must include enforcement provisions which establish a regulatory structure which clearly and effectively deters inadequate or improper MRR, providing for both State/local and Federal penalties. Such provisions should preserve the Federal civil penalties and criminal sanctions (for knowing violations) authorized in the Act for violations of MRR requirements per se. Further, the enforcement provisions must include methods for determining required data when MRR violations result in missing, inadequate, or erroneous monitoring and recordkeeping data. These methods must ensure that sources have a sufficiently strong incentive to properly perform monitoring and recordkeeping in the first place (refer to paragraph IV.H.).

E. Use of Program Revenues

This section of the proposed rule incorporates the restrictions mandated by section 182(g)(4)(B) of the Act on the use of revenues generated by statutory EIP's submitted pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Act. The revenues may be used to provide incentives for achieving emissions reductions; provide assistance (up to 75 percent of development costs) for the development of innovative O_3 control technologies and lower-polluting solvents and surface coatings; and fund administrative costs of State programs under the Act (using no more than 50 percent of such revenues). Revenues may be generated by an EIP from a wide variety of fees or charges, including emission or permit fees, fees associated with approving and recording trades, application fees associated with labelling or sources opting into an EIP, and fees or charges associated with TCM's.

The EPA proposes to limit these constraints on the use of revenues to only statutory programs, submitted pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Act, for which the Act explicitly requires that these rules apply. Thus, discretionary programs would be exempt from these constraints.

Because the use of revenues from discretionary programs is not constrained, some or all of the revenues generated by discretionary EIP's may be rebated in order to create a revenue-neutral program, or one with less revenue retained by the State. Rebate provisions of revenue-generating EIP's can be designed to reduce the total cost to the affected sources without diminishing the incentive to reduce emissions created by the EIP. For example, an emission fee program could place a fee on total emissions from affected sources, and rebate an amount based on average emissions or percentage emissions reductions of the affected sources. In a program with a large number of sources, each source would only have a minor influence on the average emissions. Thus, the rebate is not dependent on a source's own actions, and would not distort the incentive of the fee on every unit of emissions created by the source.

IV. Discussion of Issues

In developing today's proposal, the Agency needed to address two important goals: ensuring environmental protection with an adequate degree of accountability, and, at the same time, fostering the development of innovative and flexible programs. The EPA believes that today's proposal appropriately addresses both goals. Through today's notice, the EPA encourages comments regarding areas where additional regulatory flexibility may be possible for either statutory or discretionary EIP's without sacrificing environmental protection. Conversely, comments are also requested regarding areas where additional safeguards may be needed to ensure that flexible approaches to environmental protection will be implemented with adequate accountability.

A. Program Goals

1. Statutory Programs

Statutory EIP's are those programs submitted pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Act, generally as a result of failures in achieving required emissions reductions. However, the Act

does not specify the extent to which the EIP must, in and of itself, make up for the specific failure in achieving the emissions reductions necessary to meet the next milestone requirement. Rather, the provisions specify only that the EIP "shall be sufficient, in combination with other elements" of the plan or together with a "transportation control plan," to achieve the necessary reductions.

The EPA interprets these provisions as requiring that a statutory EIP make a significant contribution to the required reductions, while not necessarily bearing the full burden of achieving all the required reductions. Thus, for example, a program producing no emissions reductions or one based solely on a directionally sound strategy, without quantifiable benefits, would not satisfy the criteria for an acceptable statutory EIP.

Alternatively, the EPA is considering whether to require that some specified minimum percentage of the required reductions be met by a statutory EIP. The EPA solicits comments on this option through today's notice.

2. Discretionary Programs

In explicitly allowing for discretionary (i.e., nonstatutory) EIP's to be included as SIP provisions, the Act does not impose any specific emissions reductions requirements on such programs [sections 110(a)(2)(A) and 172(c)(6)]. Thus, today's proposed guidance imposes no specific emissions reductions requirements on discretionary EIP's, consistent with the flexibility accorded the States in incorporating discretionary nonincentive based programs in their SIP's. The EPA relies upon the new State planning, quantitative progress, and attainment requirements in the Act to ensure expeditious attainment of the NAAQS regardless of the type of programs that States may choose to include in their SIP's.

However, the EPA is aware of an alternative view that any savings in compliance costs resulting from discretionary EIP's (relative to nonincentive based programs) should be shared between the regulated sources and the environmental goals of the Act by requiring more rapid progress toward attainment. Through today's notice, the EPA solicits comments on this alternative view, and, in particular, on whether such requirements are more relevant prior to the approval of an attainment demonstration.

B. Interface With RACT Requirements

Today's proposal is based on an interpretation of the statutory RACT requirement that RACT sources are authorized to meet their RACT obligations by acquiring emissions reductions from non-RACT sources when such trading results in an exceptional environmental benefit (as discussed in paragraph III.D.2.). The EPA acknowledges that the statute permits different interpretations of the RACT requirement. Alternative interpretations could lead to differing views as to whether such trading is allowable, and, if so, under what conditions.

Through today's notice, the EPA solicits comment on the proposed interpretation of the RACT requirement. Further, the EPA solicits comment on alternative interpretations and on alternative conditions under which trading between RACT and non-RACT sources may be permitted. Alternative conditions might include different trading ratios (e.g., less than or greater than the proposed offset ratios). Other approaches might include dropping the requirement for extra emissions reductions (i.e., by going to a 1 to 1 trading ratio) at some future point in time (e.g., upon approval of the attainment demonstration or RFP plan) for all sources or some subset of sources (e.g., stationary sources). Comment is also solicited on approaches which States might use to allow RACT/non-RACT trading at a 1 to 1 ratio prior to the approval of an attainment demonstration or RFP plan. The EPA solicits comments on the implications of such approaches for SIP planning and on how States could assure that such trading remained consistent with RFP plans and attainment demonstrations.

C. Program Baseline

Today's proposal is based on the premise that a State can only take credit in attainment and RFP demonstrations for emissions reductions from EIP's that go beyond what is otherwise required and credited to other elements of a federally-approved SIP. This restriction is necessary to ensure that a State does not double count emissions reductions in SIP demonstrations. The requirements for program baselines included in today's proposal are intended to ensure that such double counting does not occur, while providing as much flexibility as possible.

Today's proposal allows States flexibility in setting program baselines for EIP's submitted in conjunction with, or subsequent to, the submission of an RFP plan, if applicable, an attainment demonstration, or new RACT requirements, provided certain conditions are met (as discussed in paragraph III.D.3.). States may exercise this flexibility to allocate to sources baseline emissions that are greater than the sources' actual emissions in order to address equity concerns. For instance, a State may decide that sources that have already implemented substantial emission controls should not be placed at a relative disadvantage to other sources as a result of being included in an EIP. Conversely, today's proposal requires the use of a lower-of-actuals-or-allowables baseline for EIP's which do not meet the conditions in paragraph III.D.3. for which flexibility in setting a program baseline is provided.

If a State chooses to use flexibility in setting a program baseline higher than the level of actual emissions (i.e., an "allowable" baseline), a question arises as to how the State can assure that the EIP will not interfere with any applicable RACT requirements, the RFP 15 percent plan, or subsequent 3 percent demonstrations (section 182(c)(2)(B)), and attainment requirements. This question arises in particular if a State initializes an EIP, such as a marketable permits program, with an aggregate program baseline that is greater than the sum of the actual emissions from all affected sources (i.e., sources covered by the EIP). In this case, the EIP could result in an increase in actual emissions from the program as a whole if a decrease in allowable emissions from one source could be traded for an increase in actual emissions from other sources. This question would not arise, however, if some individual sources are given higher-than-actual emissions limits, but the aggregate program baseline is no greater than the sum of the actual emissions from all affected sources.

For O_3 nonattainment areas, consistency with an applicable RFP 15 percent plan and 3 percent demonstration would require a showing by the State that an allowable program baseline does not interfere with satisfying the areawide RFP milestones and annual progress requirements. The EPA interprets the RFP requirements to mean that areawide actual emissions may not increase during any year prior to attainment and that the emissions reductions milestones are achieved areawide. Thus, consistency with RFP requirements could be achieved by an EIP (designed to meet some or all of the RFP requirements) using an allowable program baseline, provided that compensating reductions in actual emissions were achieved by sources outside of the EIP and/or sufficient constraints were imposed on trading within the EIP, to ensure that areawide RFP milestones and annual progress requirements were met.

Further, consistency between an EIP (designed to contribute to attainment of the NAAQS) using an allowable program baseline and an attainment demonstration could be achieved if the allowable baseline used for the EIP is consistent with the emissions inventory for the affected sources used in the attainment demonstration. However, if actual emissions were used in the attainment demonstration, the State would have to show that the EIP or the SIP included sufficient constraints on trading to ensure the necessary consistency. One such approach could be to restrict the use of emissions reductions credits resulting from the difference between an actual and an allowable EIP baseline. For example, such credits might only be allowed to be used by a source to satisfy its own future emission reduction requirements, such as those imposed by emissions limits which decline over time, but not to be traded or used to increase its own actual emissions.

Similarly, for EIP's designed to allow for flexibility in meeting a new RACT rule, a flexible program baseline could be used, provided the EIP was submitted in conjunction with, or subsequent to, the submission of a SIP revision for the entire new RACT rule, and the affected sources in the EIP were limited to sources newly covered by the rule. Any EIP's involving RACT sources submitted prior to the entire new RACT rule SIP submission must be based on the use of a lower-of-actuals-or-allowables baseline.

Through today's notice, the EPA solicits comments on the proposed conditions under which States should have the flexibility to use an "allowable" baseline. In particular, comments are solicited on the proposed approach to accept an "allowable" baseline in an EIP submitted in conjunction with the submission of the 15% RFP plan, prior to the submission of an attainment demonstration. Further, comments are solicited on approaches to achieving consistency between EIP's with "allowable" program baselines and statutory RACT, RFP, and attainment requirements.

D. Emission Quantification

1. Criteria for Adequacy of Approach

Today's proposal is based on the premise that the development and use of credible, workable, and replicable methods to quantify emissions are necessary elements of any quantifiable EIP. Replicability (i.e., different people applying the same methods would arrive at the same result) allows for the flexibility upon which most EIP's depend. Without replicable methods, a State could potentially need to conduct a case-by-case review of every operational change affecting emissions from any single emission point to ensure accountability. States must include quantification methods that address such items as the general conceptual approach to emissions quantification, the time averaging of the emissions, and the means to account for shutdowns, curtailments, batch, seasonal, and cyclical operations. Further, States must identify appropriate sources of data and criteria for assessing the adequacy of the quality of the data sources used to set program baselines and to project emissions reductions.

Today's proposal explicitly allows States to develop alternative approaches to emissions quantification, except for source categories for which the EPA prescribes specific quantification methods. The development of quantification methodologies by States must necessarily include consideration of the type of affected sources included in the program and other program design elements. The EPA recognizes that no one approach is the most appropriate, or even technically feasible, for all types of sources that may be included in any EIP.

An issue arises with regard to the criteria that a State should use to select the required quantification approach for each affected source category. One very general approach is for a State to select the most effective approach for each source category that is technically feasible and economically reasonable. The EPA anticipates the need to prepare future guidance on selection criteria, and through today's notice solicits comments on such criteria. In particular, the Agency requests comments on how the criteria for specifying adequate quantification approaches may differ for various types of source categories.

2. Extended Averaging Times

Historically, a 24-hour averaging time is generally used to construct attainment demonstrations in O_3 nonattainment plans. More specifically, the EPA requires that "typical summer day" emissions be used, which is a seasonally-adjusted, average-weekday measure of emissions for individual sources. States usually derive this value by applying a conversion factor to annual emissions estimates for each source in the area's emissions inventory.

However, in cases where the EPA has granted the use of a long-term averaging period (i.e., longer than 24 hours) to a source, the EPA has generally required that the State also impose a meaningful daily mass emissions cap on that source. In such cases, the source's daily cap is to be used in lieu of its typical summer day emissions in the State's RFP and attainment demonstrations.

As a result of this approach, the granting of long-term averaging would make it increasingly difficult for States to develop approvable RFP and attainment demonstrations. This approach requires a State to secure additional reductions from other sources to compensate for the higher assumed emissions from the sources given long-term averages.

The EPA has traditionally viewed long-term averaging as a significant relaxation of RACT or other types of emissions standards that require compliance on a daily basis. The RACT limits are typically expressed as an emission rate or solvent content limit (i.e., as a function of production or throughput, such as lb/gal), rather than as a total quantity of emissions per unit of time (i.e., lb/day). Since the EPA does not require States to regulate production and throughput, emissions from sources controlled by such rate-based limits can fluctuate and grow, sometimes substantially, even if the source continuously meets its emission rate limit.

The EIP's which include total mass emissions caps on affected sources (e.g., marketable emissions permit programs) have the potential to control growth-related increases that can result from traditional regulatory approaches, and affect real reductions in total emissions. State EIP's which place all affected sources under total mass emissions caps that decline over time could potentially mitigate the type of rule relaxation that has historically been associated with long-term averaging. As a result, in addressing such EIP's through this proposed rulemaking, the EPA is reconsidering its historical restrictions on the use of long-term averaging.

Today's proposal reflects a more flexible approach to the question of long-term averaging in the context of EIP's which aggregate the effects of a potentially large number of sources complying with total emissions caps or average emission rate limits. In such programs, unlike historical emissions trading programs which focus case-by-case on trades typically involving only two sources, the daily fluctuations in emissions that are likely to occur from any given source may tend to be compensated for by the canceling effect of daily fluctuations from other sources. Thus, to the extent that including many sources in such a program may allow for a statistical showing that long-term

average caps are not inconsistent with demonstrations of RFP and the attainment of short-term NAAQS, a more flexible approach is warranted. This approach is intended to provide increased flexibility to sources and to States in their plan development without undermining the EPA's traditional control programs or the validity of RFP or attainment demonstrations.

Through today's notice, the EPA proposes to require that any State that wishes to use long-term averaging must include, with the plan revision submittal, a statistical showing that the aggregate effect of the specified averaging time is consistent with attaining the O_3 NAAQS and satisfying applicable RFP requirements on a typical summer day basis; and, if applicable, a statistical showing that aggregate daily emissions from all affected sources covered by a Federal RACT requirement (net of any RACT/non-RACT trades) are no greater than the aggregate daily emissions from such sources that would result from the implementation of all applicable source-specific RACT requirements.

If a State chooses to design an EIP with long-term averaging that allows for source-by-source RACT requirements to be met by alternative approaches or in the aggregate, a showing of equivalency must be made. One approach to making such a showing would be for the EPA to determine appropriate adjustment factors for RACT emission rate limits that would reflect equivalent emissions from RACT sources as a function of the time period over which the emission rate limit is met. Based on a limited analysis of a small number of RACT source categories, the EPA is considering setting 70 percent as a presumptive norm for an adjustment factor of RACT limits averaged over 30 days. Alternatively, the EPA is also considering allowing States the flexibility to determine RACT-equivalency adjustment factors using EPA-developed equivalency procedures, set at a percentage of the RACT-allowable emission rate limit, contingent upon a showing by the State that the adjusted limit is equivalent to the daily RACT limit. Another approach might be to include additional safeguards, such as a short-term mass emissions cap in conjunction with long-term caps or emission rate limits. Through today's notice, the EPA solicits comments on these approaches.

The EPA anticipates the need to prepare additional guidance on criteria for equivalency demonstrations for both attainment demonstrations and RACT. Such guidance should outline the type of data and analysis procedures that a State would need to demonstrate statistical associations between short- and long-term averaging times. Through today's notice, the EPA solicits comments on such criteria.

E. Monitoring, Recordkeeping, Reporting

Today's proposal is based on the premise that EIP's, being inherently more flexible and less prescriptive than traditional technology or performance standards, depend more strongly than traditional control programs on MRR to ensure compliance and to allow for adequate enforcement. The EPA recognizes that while a wide range of monitoring methods are available that can be used to show compliance for different types of sources, no one approach is the most appropriate, or even technically feasible, for all types of sources that may be included in any EIP. Thus, the EPA is explicitly including alternative monitoring methods in today's proposal.

An issue arises with regard to the criteria that a State should use to specify monitoring methods and recordkeeping and reporting requirements for each affected source category in its program design. The EPA anticipates the need to prepare future guidance on criteria for MRR, and through today's notice solicits comments on such criteria.

F. SIP Creditability

Credit given in an SIP for traditional source-specific technology or performance standards begins with detailed evaluations of the emissions reductions that will be achieved by complying sources. The results of this analysis are then modified or adjusted to account for the lower reductions that will result from an anticipated level of less-than-complete compliance. For stationary sources, this adjustment is generally accomplished through the use of a rule effectiveness factor. For mobile sources, multiple adjustments to account for in-use effectiveness are included as an integral part of the analysis, rather than as a single exogenous factor.

Additional types of uncertainty arise in EIP's beyond that associated with less-than-complete compliance. One type of programmatic uncertainty arises in the case of EIP's that depend upon market incentives to motivate changes in behavior which affect total emission levels. For such programs it is inherently not possible to specify, prior to the implementation of such a strategy, the emissions reductions that will be achieved even if all sources comply with all relevant requirements of the program. Nevertheless, as part of designing such an EIP, the State should be able to project the emissions reductions that are likely to occur. (If such a projection cannot be made, then the strategy is, by definition, categorized only as directionally sound.)

Another type of programmatic uncertainty arises in the case of EIP's that depend upon the use of relatively "soft" quantification methods to produce the records upon which decisions about program compliance will be based. Examples of such programs might include programs that impose mass emission caps on fugitive emission sources, which are inherently difficult to quantify, or that involve certain types of requirements on mobile sources.

These compliance and programmatic uncertainties raise questions concerning to what extent, and when, the EPA should allow a State to take SIP credit for emissions reductions projected by a State to result from EIP's. Today's proposal addresses these questions through the introduction of two factors: a rule compliance factor and a program uncertainty factor. The EPA intends these factors to address the issues of less-than-complete compliance and the inherent programmatic uncertainties in EIP's, respectively.

Today's proposal allows credit to be taken upon approval of an EIP, with the level of credit based on emissions reductions projections which incorporate these two uncertainty factors. However, historical data upon which to base presumptive norms for these factors for EIP's are lacking. Thus, today's proposal requires States to develop a justification for the values of the factors used in the projections for their specific program design. The EPA has identified other options, involving the use of presumptive norms for uncertainty factors, and solicits comments through today's notice on the following approaches to setting such norms for EIP's.

For the rule compliance factor, a presumptive norm for EIP's could be based on historical compliance with traditional programs, as appropriate for the scope of the EIP. The historical stationary source rule effectiveness factor of 80 percent is one such option. Other options include selecting another single norm, or selecting different norms for different types of EIP's based on EPA projections of expected source compliance.

Similarly, for the program uncertainty factor, presumptive norms for EIP's could be set as a function of the nature of the uncertainty and the type of incentive strategy. For example, for market-response strategies, a

presumptive norm could be set to reflect a general lack of experience with such programs and the inherently uncertain techniques available for assessing market response. However, depending upon the type of program and the type of affected sources covered by the program, the availability of market-response data could vary significantly, from extensive to minimal to none. Thus, the use of a single presumptive norm would not reflect the highly variable nature of the information available used as a basis for a projection of EIP results.

For emission-limiting strategies, presumptive norms for EIP's could be set for program uncertainty factors as a function of the accuracy and precision of the emission quantification methodology required by the program. For EIP's that incorporate sufficiently accurate and precise methods, such as some types of continuous emission monitors, the presumptive norm might be 100 percent, since the entire uncertainty in the program could be limited to the extent to which sources comply with their caps (as reflected in the rule compliance factor). Under this option, the State could address the potential for program failure due to a breakdown of the administrative system needed to implement such a program through the required audit process.

An additional issue is what criteria the EPA should use to evaluate the adequacy of a State's justification for uncertainty factors calculated specific to its own program. Through today's notice, the EPA solicits comments on appropriate criteria. The Agency also solicits comments on any differences in the need for, or application of, these uncertainty factors to various types of source categories. In particular, the Agency anticipates the need to develop further guidance on SIP creditability for EIP's involving mobile sources.

G. Audit/Reconciliation Procedures

The frequency with which audits and reconciliations are required must be specified as part of the program design and submitted as part of the EIP. An issue which arises is how frequently should the EPA require that such audits and reconciliations be done. Today's proposal specifies that the audits and reconciliations be made at time intervals consistent with RFP milestones and other emission inventory requirements, which is generally once every 3 years. Alternatively, the State could specify a shorter period, so as to allow time to make programmatic corrections or adjustments (in either direction) to SIP credited emissions reductions, before an RFP milestone is reached. Through today's notice, the EPA solicits comment on this issue.

An additional issue is how the audit and reconciliation requirements may be applied to various types of EIP's, especially those involving mobile sources. Through today's notice, the EPA solicits comments in particular on the applicability of audit and reconciliation requirements for EIP's involving mobile sources.

H. Penalties for Noncompliance

The determination of appropriate penalties for noncompliance is significantly complicated in the case of EIP's that incorporate multisource emissions caps and/or long-term averaging times, since Federal statutory maximum penalty authority is specified on a per-day, per-source basis. At issue is how to apply Federal enforcement authority to instances of noncompliance with emissions limits specified on a multiday, multisource basis.

Today's proposal requires States, in designing EIP's for which such a concern is relevant, to include procedures for determining the number of days of violation and the number of sources in violation when multiday, multisource emission limits are violated. Today's proposal imposes the general criteria that such procedures shall not lessen the incentive for source compliance as compared to a program applied on a source-by-source, daily basis. The EPA anticipates the need to prepare more specific criteria and guidance for the development of such procedures, and through today's notice solicits comments on such criteria.

Further, today's proposal also requires the State to require plans for remedying noncompliance from facilities in cases where a facility has exceeded its multisource emission cap for a specified averaging period. The EPA anticipates the need to prepare specific criteria and guidance on the scope and content of such plans (taking into account, among other things, the extent and nature of the underlying exceedance), and through today's notice solicits comments on this issue.

I. Interface With Existing Emission Trading Policies

Today's proposal applies to a wide variety of EIP's, including, but not limited to, those that incorporate emission trading strategies as elements of a SIP. Existing Agency guidance on emission trading is primarily contained in the Emissions Trading Policy Statement (ETPS) (51 FR 43831, Dec. 4, 1986) and the appendices to the ETPS (e.g., Appendix D on averaging times for VOC emissions trades). Today's proposal and current Agency policies on emissions trading are predicated on the same general principles—that SIP-credited trading activity must be quantifiable, enforceable, surplus, permanent within the timeframe specified by the program, and consistent with all other statutory and Federal regulatory requirements.

Today's proposal is, of necessity, general in nature, requiring program elements that are broader, yet in some instances, less specific or constraining on individual sources than related provisions in current policies. The EPA believes that the levels of accountability and flexibility provided by today's proposal are an appropriate extension of the levels of accountability and flexibility found in existing emission trading policies. However, since the same type of trading that has historically been addressed by existing policies will now be covered by this new interim guidance, the EPA recognizes the need to clearly define the relationship between today's proposal and the existing ETPS.

Through today's notice, the EPA proposes that the provisions of the ETPS which apply to trading between existing sources, (i.e., the bubble and generic bubble provisions) would represent one particular model for how States could choose to design an EIP for emission trading between existing sources which would be approvable under today's proposal. Specifically, the bubble and generic bubble provisions of the ETPS provide guidance on source-specific trades of emission reduction credits, implemented through a process involving case-by-case State and EPA review and SIP revisions, as applicable. States choosing to adopt EIP's based on this bubble strategy could use the ETPS bubble provisions as a guide to designing an approvable EIP. In particular, for EIP's which satisfy all relevant ETPS bubble provisions, the audit procedures in today's proposal could be satisfied in appropriate cases by source-specific enforcement actions. Further, for such programs, the provisions relating to long-term averaging and equivalency showings in today's proposal could be satisfied through compliance with all provisions of Appendix D of the ETPS.

Today's proposal, however, in no way constrains EIP's involving emission trading to the specific ETPS bubble approach discussed above. Through today's notice, the Agency solicits comments on this proposed relationship between today's proposal and existing policies on emission trading.

V. Public Participation

A. Comments and the Public Docket

The EPA welcomes comments on all aspects of this proposed rulemaking. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–91–56.

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by labeling proprietary information "Confidential Business Information," and sending proprietary information directly to the contact person listed and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants the EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by the EPA, the submission may be made available to the public without notifying the commenters.

B. Public Hearing

Specific details will be published in a separate **Federal Register** notice. Requests to present oral testimony should be received on or before [March 12, 1993. Anyone who wants to present oral comments about this proposal at the public hearing should, if possible, notify the public hearing contact person at least 7 days prior to the day of the hearing. This notification should include an estimate of the time required for the presentation of the comments and identification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the coordinator earlier. This testimony will be scheduled on a first-come, first-serve basis to follow the previously scheduled testimony.

The EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, the EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least 1 week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the public hearing contact person.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A–91–56.

The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the public hearing contact person.

VI. Administrative Requirements

A. Executive Order 12291

Under Executive Order 12291, the EPA must judge whether a proposed rule is "major" and, therefore, subject to the requirement that a Regulatory Impact Analysis (RIA) be prepared. The proposed rule will apply to EIP's which may be adopted by States pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Act, which either mandate, or identify as an option, the use of an EIP upon failure of a State to meet certain further progress milestones or attainment requirements in extreme, severe, and serious O_3 nonattainment areas or in serious CO nonattainment areas. Further, this rule is intended to serve as guidance to States in their development of any discretionary EIP's, as well as in the development of any EIP's which may possibly be included in FIP's or other Federal measures. This proposed rule does not of itself require that any EIP be developed unless, in very limited cases, air quality RFP milestones are missed (by extreme O_3 or serious CO nonattainment areas) or timely attainment by serious CO nonattainment areas of the CO ambient air quality standard is not achieved. Thus, any impacts from this proposed rule would only be felt if and when such failures occurred, or States or the EPA exercised their discretion to choose to develop an EIP.

Although impacts of this proposed rule may result in the future, the impacts are impossible to gauge since it is not known what, if any, relevant milestone or attainment failures will occur, or whether any State or the EPA will choose to exercise their discretion to develop an EIP. Further, it is not known what type of EIP would be implemented. Regardless of these unknown factors, to the extent that programs for which this proposed rule applies are implemented, the impact from such programs is anticipated to be no greater, and potentially less than, the impact from noneconomic incentive programs designed to achieve an equivalent environmental effect.

The Administrator finds that this proposed rule 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; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule will result in no adverse environmental or energy impacts. Thus, this proposed rule does not qualify as a major rule, and is, therefore, not subject to the requirement of a RIA.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from the OMB and any EPA response to those comments are in the public docket for this rulemaking.

B. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to review by the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of Federal rules upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

This proposed rule does not of itself impose any requirements on small entities, nor require or exclude small entities from any EIP's which may be implemented in the future. As a result, the EPA has determined that this proposed rule will not have a significant impact on a substantial number of small entities.

Therefore, as required under section 605 of the RFA, 5 U.S.C. 601 *et seq.*, I certify that this proposed rule does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 51

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 20, 1993.

William K. Reilly,

Administrator

For reasons set out in the preamble, 40 CFR part 51 is proposed to be amended as set forth below.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Part 51 is amended by adding a new subpart U, consisting of §§ 51.490 through 51.494, to read as follows:

Subpart U—Economic Incentive Programs

Sec

51.490 Applicability.
51.491 Definitions.
51.492 State program election and submittal.
51.493 State program requirements.
51.494 Use of program revenues.

Subpart U—Economic Incentive Programs

§ 51.490 Applicability.

(a) The rules in this subpart apply to any statutory economic incentive program (EIP), submitted to the EPA as an implementation plan revision to comply with sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act. Such programs may be submitted by any authorized governmental organization, including States, local governments, and Indian governing bodies.

(b) The provisions contained in this subpart, except as explicitly exempted, shall also serve as the EPA's policy guidance on discretionary EIP's submitted as implementation plan revisions for any purpose other than to comply with the statutory requirements specified in paragraph (a) of this section.

§ 51.491 Definitions.

Act means the Clean Air Act as amended November 15, 1990.

Actual emissions means the emissions of a pollutant from an affected source determined by taking into account actual emission rates and actual or representative production rates (i.e., capacity utilization and hours of operation).

Affected source means any stationary, area, or mobile source of a criteria pollutant(s) to which an EIP applies. This term applies to sources explicitly included at the start of a program, as well as sources that voluntarily enter (i.e., opt into) the program.

Allowable emissions means the emissions of a pollutant from an affected source determined by taking into account the most stringent of all applicable SIP emissions limits and the level of emissions consistent with source compliance with all Federal requirements related to attainment and maintenance of the NAAQS and the production rate associated with the maximum rated capacity and hours of operation (unless the source is subject to federally enforceable permit limits which restrict the operating rate, or hours of operation, or both).

Area sources means stationary and nonroad sources that are too small and/or too numerous to be individually included in a stationary source emissions inventory.

Attainment area means any area of the country designated or redesignated by the EPA at 40 CFR part 51 in accordance with section 107(d) as having attained the relevant NAAQS for a given criteria pollutant. An area can be an attainment area for some pollutants and a nonattainment area for other pollutants.

Attainment demonstration means the requirement in section 182(b)(1)(A) of the Act to demonstrate that the specific annual emissions reductions included in a SIP are sufficient to attain the primary NAAQS by the date applicable to the area.

Directionally sound strategies are strategies for which adequate procedures to quantify emissions reductions or specify a program baseline are not defined as part of the EIP.

Discretionary economic incentive program means any EIP submitted to the EPA as an implementation plan revision for purposes other than to comply with the statutory requirements of sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act.

Economic incentive program (EIP) means a program which may include State established emission fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to O_3 formation, or any combination of the foregoing or other similar measures, as well as incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 108(f). Such programs may be directed toward stationary, area, and/or mobile sources, to achieve emissions reductions milestones, to attain and maintain ambient air quality standards, and/or to provide more flexible, lower-cost approaches to meeting environmental goals. Such programs are categorized into the following three categories: emission-limiting, market-response, and directionally sound strategies.

Emission-limiting strategies are strategies that directly specify limits on total mass emissions, emission-related parameters (e.g., emission rates per unit of production, product content limits), or levels of emissions reductions relative to a program baseline that are required to be met by affected sources, while providing flexibility to sources to reduce the cost of meeting program requirements.

Indian governing body means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the U.S. and recognized by the U.S. as possessing power of self-government.

Maintenance plan means an implementation plan for an area designated attainment, or for which the State is seeking designation or redesignation, under section 107(d) of the Act, which provides for the continued attainment of the NAAQS.

Market-response strategies are strategies that create one or more incentives for affected sources to reduce emissions, without directly specifying limits on emissions or emission-related parameters that individual sources or even all sources in the aggregate are required to meet.

Milestones means the reductions in emissions required to be achieved pursuant to section 182(b)(1) and the corresponding requirements in sections 182(c)(2) (B) and (C), 182(d), and 182(e) of the Act for O_3 nonattainment areas, as well as the reduction in emissions of CO equivalent to the total of the specified annual emissions reductions required by December 31, 1995, pursuant to section 187(d)(1).

Mobile sources means on-road (highway) vehicles (e.g., automobiles, trucks and motorcycles) and nonroad vehicles (e.g., trains, airplanes, agricultural equipment, industrial equipment, construction vehicles, off-road motorcycles, and marine vessels).

National ambient air quality standards (NAAQS) means a standard set by the EPA at 40 CFR part 50 under section 109 of the Act.

Nonattainment area means any area of the country designated by the EPA at 40 CFR part 51 in accordance with section 107(d) of the Act as nonattainment for one or more criteria pollutants. An area could be a nonattainment area for some pollutants and an attainment area for other pollutants.

Nondiscriminatory means that a program in one State does not result in discriminatory effects on other States or sources outside the State with regard to interstate commerce.

Program baseline means the level of emissions, or emission-related parameter(s), for each affected source or group of affected sources, from which program results (e.g., quantifiable emissions reductions) shall be determined

Program uncertainty factor means a factor applied to discount the amount of emissions reductions credited in an implementation plan demonstration to account for any strategy-specific uncertainties in an EIP.

Reasonable further progress (RFP) baseline means the total of actual volatile organic compounds or nitrogen oxides emissions from all anthropogenic sources in an O_3 nonattainment area during the calendar year 1990 (net of growth and adjusted pursuant to section 182(b)(1)(B) of the Act), expressed as typical O_3 season, weekday emissions

Replicable refers to methods which are sufficiently unambiguous such that the same or equivalent results would be obtained by the application of the methods by different users.

Rule compliance factor means a factor applied to discount the amount of emissions reductions credited in an implementation plan demonstration to account for less-than-complete compliance by the affected sources in an EIP

Shortfall means the difference between the amount of emissions reductions credited in an implementation plan and those that are actually achieved by an EIP, as determined through an approved reconciliation process.

State implementation plan (SIP) means a plan developed by a State or authorized governing body in a nonattainment area to show how the area intends to attain the NAAQS

Stationary source means any building, structure, facility or installation, other than an area or mobile source, which emits or may emit any criteria air pollutant subject to regulation under the Act.

Statutory economic incentive program means any EIP submitted to the EPA as an implementation plan revision to comply with sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act

Surplus means, at a minimum, emissions reductions in excess of an established program baseline which are not required by current SIP requirements (including both Federal and State regulations), relied upon in any applicable attainment plan or demonstration, or credited in any RFP or milestone demonstration, so as to prevent the double-counting of emissions reductions.

Transportation control measure (TCM) is any measure of the types listed in section 108(F) of the Act, or any measure in an applicable implementation plan directed toward reducing emissions of air pollutants from transportation sources by a reduction in vehicle use or changes in traffic conditions.

§ 51.492 State program election and submittal.

(a) *Extreme O_3 nonattainment areas.* (1) A State or authorized governing body for any extreme O_3 nonattainment area shall submit a plan revision to implement an EIP, in accordance with the requirements of this part, pursuant to section 182(g)(5) of the Act, if

(i) A required milestone compliance demonstration is not submitted within the required period

(ii) The Administrator determines that the area has not met any applicable milestone

(2) The plan revision in paragraph (a)(1) of this section shall be submitted within 9 months after such failure or determination, and shall be sufficient, in combination with other elements of the SIP, to achieve the next milestone.

(b) *Serious CO nonattainment areas* (1) A State or authorized governing body for any serious CO nonattainment area shall submit a plan revision to implement an EIP, in accordance with the requirements of this part, if:

(i) A milestone demonstration is not submitted within the required period, pursuant to section 187(d) of the Act.

(ii) The Administrator notifies the State, pursuant to section 187(d) of the Act, that a milestone has not been met.

(iii) The Administrator determines, pursuant to section 186(b)(2) of the Act that the NAAQS for CO has not been attained by the applicable date for that area Such revision shall be submitted within 9 months after such failure or determination.

(2) Submittals made pursuant to paragraphs (b)(1) (i) and (ii) of this section shall be sufficient, together with a transportation control program, to achieve the specific annual reductions in CO emissions set forth in the implementation plan by the attainment date Submittals made pursuant to paragraph (b)(1)(iii) of this section shall be adequate, in combination with other elements of the revised plan, to reduce the total tonnage of emissions of CO in the area by at least 5 percent per year in each year after approval of the plan revision and before attainment of the NAAQS for CO

(c) *Serious and severe O_3 nonattainment areas* If a State, for any serious or severe O_3 nonattainment area, elects to implement an EIP in the circumstances set out in section 182(g)(3) of the Act, the State shall submit a plan revision to implement the program in accordance with the requirements of this part If the option to implement an EIP is elected, a plan revision shall be submitted within 12 months after the date required for election, and shall be sufficient, in combination with other elements of the SIP, to achieve the next milestone.

(d) *Any nonattainment or attainment area* Any State may at any time submit a plan or plan revision to implement a discretionary EIP, in accordance with the requirements of this part, pursuant to sections 110(a)(2)(A) and 172(c)(6) and other applicable provisions of the Act concerning SIP submittals The plan revision shall not interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirements of the Act

§ 51.493 State program requirements.

Economic incentive programs shall be State and federally enforceable, nondiscriminatory, and consistent with the timely attainment of NAAQS, all applicable RFP and visibility requirements, applicable PSD increments, and all other applicable requirements of the Act Programs in nonattainment areas for which credit is taken in attainment and RFP demonstrations shall be designed to ensure that the effects of the program are quantifiable, and that the credit taken is limited to that which is surplus to other SIP-credited requirements. Statutory programs shall be designed to result in quantifiable, significant reductions in actual emissions. The EIP's shall include the following elements, as applicable:

(a) *Statement of purpose and program description* This element shall include a clear statement as to the environmental problem being addressed and the intended environmental and economic goals of the program, a description of the EIP strategy upon which the program is based, and the rationale relating the EIP mechanisms to the program goals Any program shall be described in terms of one of the following three categories:

(1) Emission-limiting strategies, which directly specify limits on total mass emissions, emission-related parameters (e.g., emission rates per unit of production, product content limits), or levels of emissions reductions

relative to a program baseline that affected sources are required to meet, while providing flexibility to sources to reduce the cost of meeting program requirements.

(2) Market-response strategies, which create one or more incentives for affected sources to reduce emissions, without directly specifying limits on emissions or emission-related parameters that individual sources or even all sources in the aggregate are required to meet.

(3) Directionally sound strategies, for which adequate procedures to quantify emissions reductions are not defined.

(b) *Program scope.* (1) This element shall contain a clear definition of the sources affected by the program. This definition shall address.

(i) The extent to which the program is mandatory or voluntary for the affected sources

(ii) Provisions, if any, by which sources that are not required to be in the program may voluntarily enter the program

(iii) Provisions, if any, by which sources covered by the program may voluntarily leave the program.

(2) Any opt-in or opt-out provisions in paragraph (b)(1) of this section shall be designed to provide mechanisms by which such program changes are reflected in an area's attainment and RFP demonstrations, thus ensuring that there will not be an increase in the emissions inventory for the area caused by voluntary entry or exit from the program

(3) The program scope shall be defined so as not to interfere with any other Federal requirements which apply to the affected sources.

(c) *Program baseline.* A program baseline shall be defined as a basis for projecting program results and, if applicable, for initializing the incentive mechanism (e.g., for marketable permits programs) The program baseline shall be consistent with, and adequately reflected in, the assumptions and inputs used to develop an area's RFP plan and attainment and maintenance demonstrations, as applicable The State shall provide sufficient supporting information from the areawide emissions inventory and other sources to justify the baseline used in the EIP.

(1) For EIP's submitted in conjunction with, or subsequent to, the submission of an associated new RACT rule, areawide RFP 15 percent plan, or attainment demonstration, a State may exercise flexibility in setting a program baseline provided the program baseline is consistent with and reflected in the associated RACT rule, RFP 15 percent and/or 3 percent plans, or attainment demonstration. For any EIP submitted prior to the submittal of an attainment demonstration, the State shall include with its EIP submittal a commitment that its subsequent RFP 15 percent and/or 3 percent plans, if applicable, and attainment demonstration will incorporate the EIP baseline. A flexible program baseline may be based on actual, allowable, or some other intermediate or lower level of emissions.

(i) For EIP's that implement new RACT requirements for previously unregulated source categories, the new RACT requirements must be based upon an analysis that considers the incentive mechanism upon which the EIP is based

(ii) For EIP's that impose new RACT requirements on previously unregulated sources in a previously regulated source category (e.g., RACT "catch-up" programs), the new incentive-based RACT rule shall, in the aggregate, yield reductions in actual emissions at least equivalent to that which would result from source-by-source compliance with the existing RACT limit for that source category.

(2) For EIP's not submitted in conjunction with, or subsequent to, the submission of an associated new RACT rule, areawide RFP 15 percent plan, or attainment demonstration, the program baseline shall be based on the lower-of-actual-or-allowable emissions. In such cases, actual emissions shall be taken from the most appropriate inventory, such as the 1990 actual emission inventory (due for submission in November 1992), and allowable emissions are the lower of SIP-allowable emissions or the level of emissions consistent with source compliance with all Federal requirements related to attainment and maintenance of the NAAQS

(3) A program baseline for individual sources shall, as appropriate, be contained or incorporated in federally-enforceable operating permits or a federally-enforceable SIP.

(4) A baseline for TCM's shall be calculated by establishing the preexisting conditions in the areas of interest This may include establishing to what extent TCM's have already been implemented, what average vehicle occupancy (AVO) levels have been achieved during peak and off-peak periods, what types of trips occur in the region, and what mode choices have been made in making these trips. In addition, the extent to which travel options are currently available within the region of interest shall be determined. These travel options may include, but are not limited to the degree of dispersion of transit services, the current ridership rates, and the availability and usage of parking facilities.

(5) Information used in setting a program baseline shall be of sufficient quality to provide for at least as high a degree of accountability as currently exists for traditional control requirements for the categories of sources affected by the program.

(d) *Replicable emission quantification methods.* This program element, for programs other than those which are categorized as directionally sound, shall include credible, workable, and replicable methods for quantifying emissions and projecting program results from affected sources. Such methods, if used to determine credit taken in attainment, RFP, and maintenance demonstrations, as applicable, shall yield results which can be shown to have a level of certainty comparable to that for source-specific standards and traditional methods of control strategy development. Such methods include, as applicable, the following elements:

(1) Specification of quantification methods. This element shall specify the approach or the combination or range of approaches that are acceptable for each source category affected by the program. Acceptable approaches may include, but are not limited to:

(i) Test methods for the direct measurement of emissions, either continuously or periodically.

(ii) Calculation equations which are a function of process or control system parameters, ambient conditions, activity levels, and/or throughput or production rates.

(iii) Mass balance calculations which are a function of inventory, usage, and/or disposal records.

(iv) EPA-approved emission factors, where appropriate.

(v) Any combination of these approaches.

(2) Specification of averaging times. (i) The averaging time for any specified mass emissions caps or emission rate limits shall be consistent with: attaining and maintaining all applicable NAAQS, meeting RFP requirements, and ensuring equivalency with all applicable RACT requirements.

(ii) If the averaging time for any specified VOC mass emissions caps or emission rate limits for stationary sources (and for other sources, as appropriate) is longer than 24 hours, the State shall provide, in support of the SIP submittal· a statistical showing that the specified averaging time is consistent with attaining the O_3 NAAQS and satisfying RFP requirements, as

applicable, on a typical summer day basis; and, if applicable, a statistical showing that the longer averaging time will produce emissions reductions that are equivalent on a daily basis to source-specific RACT requirements.

(3) Accounting for shutdowns and production curtailments. This accounting shall include provisions which ensure that

(i) Emissions reductions associated with shutdowns and production curtailments are not double-counted in attainment or RFP demonstrations.

(ii) Any resultant "shifting demand" which increases emissions from other sources is accounted for in such demonstrations.

(4) Accounting for batch, seasonal, and cyclical operations. This accounting shall include provisions which ensure that the approaches used to account for such variable operations are consistent with attainment and RFP demonstrations.

(5) Procedures for determining the emissions contribution from affected sources for periods for which required data monitoring is not performed, data are otherwise missing, or data have been demonstrated to have been inaccurately determined.

(6) Accounting for travel mode choice options, as appropriate, for TCM's This accounting shall consider the factors or attributes of the different forms of travel modes (e.g., bus, ridesharing) which determine which type of travel an individual will choose. Such factors include, but are not limited to, time, cost, reliability, and convenience of the mode

(e) *Source requirements* This program element shall include all source-specific requirements that constitute compliance with the program Such requirements shall be appropriate, readily ascertainable, and State and federally enforceable, including, as applicable

(1) *Emission limits* For programs that impose limits on total mass emissions or emission-related parameter(s), there must be an appropriate tracking system so that a facility s mass emissions or emission-related parameter limits are readily ascertainable at all times

(2) *Monitoring, recordkeeping, and reporting requirements* Sources must be subject to clearly specified and appropriate MRR requirements Responsible parties at each facility in the program must certify reported information An EIP (or the SIP as a whole) must contain test methods and, at a minimum, general MRR requirements capable of providing a basis for inclusion of source-specific requirements in Title V permits, if appropriate Monitoring methods shall be linked to the emission quantification approaches specified for each affected source category, as appropriate, and may include, but are not limited to:

(i) The continuous monitoring of mass emissions, emission rates, or process or control parameters.

(ii) In situ or portable measurement devices to verify control system operating conditions.

(iii) Periodic measurement of mass emissions or emission rates using reference test methods.

(iv) Operation and maintenance procedures and/or other work practices designed to prevent, identify, or remedy noncomplying conditions.

(v) Manual or automated recordkeeping of material usage, inventories, throughput, production, or levels of required activities.

(vi) Any combination of these methods.

(3) Any other applicable strategy-specific requirements.

(f) *Projected results and audit/reconciliation procedures* (1) The SIP submittal shall include projections of the emissions reductions associated with the implementation of the program These projected results shall be related to and consistent with the assumptions used to develop the area's attainment demonstration and maintenance plan, as applicable For programs designed to produce emissions reductions creditable towards RFP milestones, projected emissions reductions shall be related to the RFP baseline and consistent with the area's RFP compliance demonstration The State shall provide sufficient supporting information that shows how affected sources are or will be addressed in the emissions inventory, RFP plan, and attainment or maintenance plan, as applicable.

(i) For emission-limiting programs, the projected results shall be consistent with the reductions in mass emissions or emissions-related parameters specified in the program design

(ii) For market-response programs, the projected results shall be based on market analyses relating levels of targeted emissions and/or emission-related activities to program design parameters

(iii) For directionally sound programs, the projected results may be descriptive and shall be consistent with the area's attainment demonstration or maintenance plan

(2) Quantitative projected results shall be adjusted through the use of two uncertainty factors, as appropriate, to reflect uncertainties inherent in both the extent to which sources will comply with program requirements and the overall program design

(i) Uncertainty resulting from incomplete compliance shall be addressed through the use of a rule compliance factor.

(ii) Programmatic uncertainty shall be addressed through the use of a program uncertainty factor. Any presumptive norms set by the EPA shall be used unless an adequate justification for an alternative factor is included in supporting information to be supplied with the SIP submittal. In the absence of any EPA-specified presumptive norms, the State shall provide an adequate justification for the selected factors as part of the supporting information to be supplied with the SIP submittal.

(3) Unless otherwise provided in program-specific guidance issued by the EPA, EIP's for which SIP credit is taken shall include audit procedures to evaluate program implementation and track program results. Such audits shall be required at specified time intervals, which are consistent with RFP milestones and other emission inventory submittal requirements, as applicable. The State shall provide timely post-audit reports to the EPA.

(i) For emission-limiting EIP's, the State shall commit to ensure the timely implementation of programmatic revisions or other measures which the State, in response to the audit, deems necessary for the successful operation of the program in the context of overall RFP and attainment requirements.

(ii) For market-response EIP's, reconciliation procedures that identify a range of appropriate actions or revisions to program requirements that will make up for any shortfall between credited results (i.e , projected results, as adjusted by the two uncertainty factors described above) and actual results obtained during program implementation shall be submitted together with the program audit provisions. Such measures must be federally enforceable, as appropriate, and automatically executing to the extent necessary to make up the shortfall within a specified period of time, consistent with relevant RFP and attainment requirements

(g) *Implementation schedule.* The program shall contain a schedule for the adoption and implementation of all State commitments and source requirements included in the program design

(h) *Administrative procedures* The program shall contain a description of State commitments which are integral to the implementation of the program, and the administrative system to be used to

implement the program, addressing the adequacy of the personnel, funding, and legislative authority.

(1) States shall furnish adequate documentation of existing legal authority and demonstrated administrative capacity to implement and enforce the provisions of the EIP.

(2) For programs which require private and/or public entities to establish emission-related economic incentives (e.g., programs requiring employers to exempt carpoolers/multiple occupancy vehicles from paying for parking), States shall furnish adequate documentation of State authority and administrative capacity to implement and enforce the underlying program.

(i) *Enforcement mechanisms.* The program shall contain a compliance instrument(s) for all program requirements, which is legally binding and State and federally enforceable. This program element shall also include a State enforcement program which defines violations, and specifies auditing and inspections plans and provisions for enforcement actions. The program shall contain effective penalties for noncompliance, including:

(1) *Emission limit violations.* (i) Programs imposing limits on mass emissions or emission rates that provide for extended averaging times shall contain procedures for determining the number of days of violation and the number of sources in violation for Federal enforcement purposes when a multisource limit is exceeded for the time period over which averaging is allowed. The State shall demonstrate that such procedures shall not lessen the incentive for source compliance as compared to a program applied on a source-by-source daily basis. For all such programs, the manner of collection of penalties must be specified.

(ii) Programs shall require plans for remedying noncompliance at any facility that exceeds a multisource emissions limit for a given averaging period. These plans shall be enforceable both federally and by the State.

(2) *Violations of MRR requirements.* The MRR requirements shall apply on a daily basis, as appropriate, and violations thereof shall be subject to State enforcement sanctions and to the Federal penalty of up to $25,000 for each day a violation occurs or continues. In addition, knowing violations of such requirements shall be subject to the Act's criminal penalty sanctions of section 113(c)(2), which provides for fines and imprisonment of up to 2 years.

§ 51.494 Use of program revenues.

Any revenues generated from statutory EIP's shall be used by the State for any of the following:

(a) Providing incentives for achieving emissions reductions.

(b) Providing assistance for the development of innovative technologies for the control of O_3 air pollution and for the development of lower-polluting solvents and surface coatings. Such assistance shall not provide for the payment of more than 75 percent of either the costs of any project to develop such a technology or the costs of development of a lower-polluting solvent or surface coating.

(c) Funding the administrative costs of State programs under this Act. Not more than 50 percent of such revenues may be used for this purpose. The use of any revenues generated from discretionary EIP's shall not be constrained by the provisions of this part.

3. Part 51 is amended by adding a new appendix W to read as follows:

Appendix W to Part 51—Examples of Economic Incentive Programs

I. Introduction and Purpose

This Appendix contains examples of EIP's which are covered by the EIP rules in this part. Program descriptions identify key provisions which distinguish the different model program types. The examples provide additional information and guidance on various types of regulatory programs collectively referred to as EIP's. The examples include programs involving stationary, area, and mobile sources. The definition section at 40 CFR 51.491(j) defines EIP as a program which may include State established emission fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to O_3 formation, or any combination of the foregoing or other similar measures, as well as incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 108(f). Such programs span a wide spectrum of program designs.

The EIP's are comprised of several elements that, in combination with each other, must insure that the fundamental principles of any regulatory program (including accountability, enforceability and noninterference with other requirements of the Act) are met. There are many possible combinations of program elements that would be acceptable. For example, a program requiring direct emission monitoring may require less frequent reporting than one which was based on indirect emission calculations. Also, it is important to emphasize that the effectiveness of an EIP is dependent upon the particular area in which it is implemented. No two areas face the same air quality circumstances and, therefore, effective strategies and programs will differ among areas.

Because of these considerations, the EPA is not specifying one particular design or type of strategy as acceptable for any given EIP. Such specific guidance would potentially discourage States (or other entities with delegated authority to administer parts of an implementation plan) from utilizing other equally viable program designs that may be more appropriate for their situation. Thus, the examples given in this Appendix are general in nature so as to avoid limiting innovation on the part of the States in developing programs tailored to individual State needs.

Another important consideration in designing effective EIP's is the extent to which different strategies, or programs targeted at different types of sources, can complement one another when implemented together as an EIP "package." The EPA encourages States to consider packaging different measures together when such a strategy is likely to increase the overall benefits from the program as a whole. Furthermore, some activities, such as information distribution or public awareness programs, while not EIP's in and of themselves, are often critical to the success of other measures and, therefore, would be appropriate complementary components of a program package. All SIP emissions reductions credits should reflect a consideration of the effectiveness of the entire package.

II. Examples of Stationary and Mobile Source Economic Incentive Strategies

There is a wide variety of programs that fall under the general heading of EIP's. Further, within each general type of program are several different basic program designs. This section describes common types of EIP's that have been implemented, designed, or discussed in the literature for stationary and mobile sources. The program types discussed below do not include all of the possible types of EIP's. Innovative approaches incorporating new ideas in existing programs, different combinations of existing program elements, or wholly new incentive systems provide additional opportunities for States to find ways to meet environmental goals at lower total cost.

A. Emissions Trading Markets

One prominent class of EIP's is based upon the creation of a market in which trading of source-specific emissions requirements may occur. Such programs may include traditional rate-based emissions limits (generally referred to as emissions averaging) or overall limits on a source's total mass emissions per unit of time (generally referred to as an emissions cap). The emissions limits, which may be placed on individual emitting units or on facilities as a whole, may decline over time. The common feature of such programs is that sources have an ongoing incentive to reduce pollution and increase flexibility in meeting their regulatory requirements. A source may meet its own requirements either by directly controlling emissions or by trading or averaging with another source. Trading or averaging may occur within the same facility, within the

same firm, or between different firms. Sources with lower cost abatement alternatives may provide the necessary emissions reductions to sources facing more expensive alternatives. These programs can lower the overall cost of meeting a given total level of abatement. All sources eligible to trade in an emissions market are faced with continuing incentives to find better ways of reducing emissions at the lowest possible cost, even if they are already meeting their own emissions requirements.

Stationary, area, and mobile sources could be allowed to participate in a common emissions trading market. Programs involving emissions trading markets are particularly effective at reducing overall costs when individual affected sources face significantly different emissions control costs. A wider range in control costs among affected sources creates greater opportunities for cost-reducing trades. Thus, for example, areas which face relatively high stationary source control costs relative to mobile source control costs benefit most by including both stationary and mobile sources in a single emissions trading market.

Programs involving emissions trading markets may be designed as either a marketable emissions allowance program or as a marketable emissions reductions credit program. Programs based on marketable allowances establish an emission allocation or quota for each source, but give sources an opportunity to adjust their allocations through trading. Each source's actual emissions at some defined point(s) in time must be less than its adjusted allocation. Allowance programs may assign each affected source a certain number of allowances based on a percentage of their historical emissions or some other specified criteria, such as a reduced level of emissions necessary to satisfy a specific environmental goal. To achieve net emissions reductions, the program design could include declining limits over time. Emissions limits could also specify both a mass per unit time limit, and an effective time period. For instance, a source's limit may be 800 pounds per month for 1998, 780 pounds per month in 1999, etc. Sources are given considerable flexibility to decide how to assure their emissions will not exceed their allowances in each period, subject to meeting all other regulatory requirements. If they choose to, sources may buy or sell portions of their allowances for each period. If all sources emit only as much as permitted by the number of allowances they hold (adjusted by trades), the total emissions from all affected sources will not exceed the total emissions allocated for that period. The State or local air pollution authority will need to establish adequate enforceable procedures for tracking allowance trades, and for monitoring and enforcing compliance with the EIP.

In contrast, emission reduction credit (ERC) programs feature trading of emissions reductions, measured against a pre-established emissions baseline, rather than trading of emissions allowances. Each source's initial emissions baseline is established either by the EIP rules or through promulgation of traditional regulations. Sources can generate ERC's by implementing enforceable measures that reduce emissions below the source's emissions baseline. Conversely, sources may exceed their emissions baseline by obtaining sufficient ERC's from other sources. Thus, a major distinction between these two types of trading programs is that ERC trading involves the calculation of a change in emissions as a result of a specific emission reduction measure, whereas allowance trading involves only the calculation of actual emissions at a given point in time.

Since the Agency's existing guidance on emission trading, contained in the 1986 ETPS, is based on this type of trading, most emission trading experience to date has involved ERC trading. The ETPS has generally been applied case-by-case, through the review and approval that a valid credit has been generated, in advance of any individual source-to-source market trade. The ETPS prescribed constraints on how sources could calculate baseline emissions, as well as how the impacts of such trades needed to be taken into account prior to approving a trade. Thus, it is anticipated that the design of EIP's based on ERC trading will feature such pre-trade review and approval steps by the agency administering the program. To administer such a program, the State or local air pollution authority would need to establish adequate enforceable procedures for certifying that a surplus emissions reduction is a valid ERC, for approving and recording ERC trades, and for monitoring and enforcing compliance with the new emissions limits. Thus, another major distinction between ERC and allowance trading programs is that ERC trading is likely to involve a significantly higher degree of administrative intervention prior to sources being allowed to effect market transactions.

The definition of the commodity to be traded and the design of the administrative procedures the buyer and seller must follow to complete a trade are obvious elements that must be carefully selected to help ensure a successful trading market that achieves the desired environmental goal at the lowest cost. An emissions market is defined as efficient if it achieves the environmental goal at the lowest possible total cost. Any feature of a program that unnecessarily increases the total cost without helping achieve the environmental goals causes market inefficiency. Thus, the design of an emission trading program should be evaluated not only in terms of the likelihood that the program design will ensure that the environmental goals of the program will be met, but also in terms of the costs that the design imposes upon market transactions and the impact of those costs on market efficiency.

Transactions costs are the investment in time and resources to acquire information about the price and availability of allowances or ERC's, to negotiate a trade, and to assure the trade is properly recorded and legally enforceable. All trading markets impose some level of transaction costs. The level of transaction costs in an emissions trading market are affected by various aspects of the design of the market, such as uncertainties in the value of the allowance or credit being traded, the legitimacy of the allowance or credit being offered for sale, and the long-term integrity of the market itself. Emissions trading programs in which every transaction is different, such as programs requiring significant consideration of the differences in the chemical properties or geographic location of the emissions, can result in higher transaction costs than programs with a standardized trading commodity and well-defined rules for acceptable trades. Transaction costs are also affected by the relative ease with which information can be obtained about the availability and price of allowances or credits.

While the market considerations discussed above are clearly important in designing an efficient market to minimize the transaction costs of such a program, other considerations, such as regulatory certainty, enforcement issues, and public acceptance, also clearly need to be factored into the design of an emissions trading program.

B. Fee Programs

A fee on each unit of emissions is a strategy that can provide a direct incentive for sources to reduce emissions. Not all emission fee programs are designed to motivate sources to lower emissions. Fee programs using small fees are designed primarily to generate revenue, often to cover some of the administrative costs of a regulatory program. In order to motivate a change in emissions, the fees must be high enough that sources will actively seek to reduce emissions. Ideally fees should be set so as to result in emissions being reduced to the socially optimal level considering the costs of control and the benefits of the emissions reductions.

There are significant variations in emission fee programs. For example, potential emissions could be targeted by placing a fee on an input (e.g., a fee on the quantity and BTU content of fuel used in an industrial boiler) rather than on actual emissions. Sources paying a fee on potential emissions could be eligible for a fee waiver or rebate by demonstrating that potential emissions are not actually emitted, such as through a carbon absorber system on a coating operation.

Some fee program variations are designed to mitigate the potentially large amount of revenue that a fee program could generate. Although more complex than a simple fee program, programs that reduce or eliminate the total revenues may be more readily adopted in a SIP than a simple emission fee. Some programs lower the amount of total revenues generated by waiving the fee on some emissions. These programs reduce the total amount of revenue generated, while providing an incentive to decrease emissions. Alternatively, a program may impose higher per-unit fees on a portion of the emissions stream, providing a more powerful but targeted incentive at the same revenue levels. For example, fees could be collected on all emissions in excess of some fixed level. The level could be set as a percentage of a baseline (e.g., fees on emissions above some percentage of historical emissions), or as the lowest emissions possible (e.g., fees on emissions in excess of the lowest demonstrated emissions from the source category).

Other fee programs are "revenue neutral," meaning that the pollution control agency does not receive any net revenues. One way to design a revenue-neutral program is to have both a fee provision and a rebate provision. Rebates must be carefully designed to avoid lessening the incentive provided by the emission fee. For example, a rebate based on comparing a source's actual emissions and the average emissions for the source category can be designed to be revenue neutral and not diminish the incentive.

Other types of fee programs collect a fee in relation to particular activities or types of products to encourage the use of alternatives. While these fees are not necessarily directly linked to the total amount of emissions from the activity or product, the relative simplicity of a usage fee may make such programs an effective way to lower emissions. An area source example is a construction permit fee for wood stoves. Such a permit fee is directly related to the potential to emit inherent in a wood stove, and not to the actual emissions from each wood stove in use. Fees on raw materials to a manufacturing process can encourage product reformulation (e.g., fees on solvent sold to makers of architectural coatings) or changes in work practices (e.g., fees on specialty solvents and degreasing compounds used in manufacturing).

Road pricing mechanisms are fee programs that are available to curtail low occupancy vehicle use, fund transportation system improvements and control measures, spatially and temporally shift driving patterns, and attempt to effect land usage changes. Primary examples include increased peak period roadway, bridge, or tunnel tolls (this could also be accomplished with automated vehicle identification systems as well), and toll discounts for pooling arrangements and zero-emitting/low-emitting vehicles.

C. Tax Code Provisions

Modifications to the existing State or local tax code can provide an effective economic incentive. Possible tax code revisions to encourage emissions reductions cover a broad span of programs, such as accelerated depreciation of capital equipment used for emissions reductions, corporate income tax deductions or credits for emission abatement costs, property tax waivers based on decreasing emissions, and exempting low-emitting products from sales tax. Mobile source tax code incentive strategies include waiving or lowering any of the following for zero- or low-emitting vehicles: vehicle registration fees, vehicle property tax, sales tax, taxicab license fees, and parking taxes.

D. Subsidies

A State may create incentives for reducing emissions by offering direct subsidies, grants or low interest loans to encourage the purchase of lower-emitting capital equipment, or a switch to less polluting operating practices. Examples of such programs include clean vehicle conversions, starting shuttle bus or van pool programs, and mass transit fare subsidies. Subsidy programs often suffer from a variety of "free rider" problems. For instance, subsidies for people or firms who were going to switch to the cleaner alternative anyway lower the effectiveness of the subsidy program, or drive up the cost of achieving a targeted level of emissions reductions.

E. Transportation Control Measures

The following measures are the TCM's listed in section 108(f):

(i) programs for improved public transit;

(ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;

(iii) employer-based transportation management plans, including incentives;

(iv) trip-reduction ordinances;

(v) traffic flow improvement programs that achieve emission reductions;

(vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit service;

(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

(x) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xi) programs to control extended idling of vehicles;

(xii) programs to reduce motor vehicle emissions, consistent with title II, which are caused by extreme cold start conditions;

(xiii) employer-sponsored programs to permit flexible work schedules;

(xiv) programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) programs for new construction and major reconstructions of paths, tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and

(xvi) program to encourage the voluntary removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model light duty trucks.

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Tuesday
February 23, 1993

Part IV

Environmental Protection Agency

Interim Guidelines on the Generation of Mobile Source Emission Reduction Credits; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4591–2]

Interim Guidance on the Generation of Mobile Source Emission Reduction Credits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim guidance on the creation of emission reduction credits through the surplus control of mobile sources.

SUMMARY: This action proposes interim guidance for States and other interested parties on the general principles for creating emission reduction credits through the surplus control of mobile sources. This guidance addresses key issues involved in the generation of mobile source emission reduction credits, including the calculation of emissions baselines for participating sources, the projection of future emissions levels, and the time-averaging of emission reduction credits that vary over time. This action also provides guidance on the treatment of secondary emissions changes resulting from the subject mobile source controls and the discounting of the credits to reflect the level of uncertainty surrounding the actual level of mobile source emissions reduction likely to be realized by the proposed control program and the use of an environmental bonus to ensure that the production of the mobile source emissions reduction credit yields a direct benefit to the environment.

DATES: Comments on this proposed guidance should be provided by April 26, 1993.

ADDRESSES: Send written comments to Ms. Terri Wilsie, U.S. EPA, ANR–443, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Inquiries regarding the Interim Guidance on the Generation of Mobile Source Emissions Reduction Credits may be directed to: Ms. Terri Wilsie, U.S. EPA, ANR–443, 401 M Street SW., Washington, DC 20460; (202) 260–1360.

For information and copies of the associated technical addendum entitled Guidance for the Implementation of Accelerated Retirement of Vehicles Programs, please contact: Mr. Mark Simons, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4417 or by Fax at (313) 668–4531.

For information and copies of the associated technical addenda entitled (1) Guidance for Emission Reduction Credit Generation by Clean Fuel Fleets and Vehicles or (2) Guidance for Mobile Emission Credit Generation by Urban Buses, please contact: Mr. Glenn Passavant, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4408.

SUPPLEMENTARY INFORMATION: The contents of today's guidance are listed in the following outline:

I. Introduction
II. Elements of a MERC Program
III. Quantification of MERCs
  A. Calculation of Emissions Baseline
  B. Calculation of Projected Emissions Level
  C. Producing a Constant Stream of MERCs
IV. Averaging Times
V. Enforcement Requirements
VI. Secondary Air Quality Effects
VII. Emission Reduction Credit Discount Factors
VIII. Environmental Bonus

I. Introduction

The Clean Air Act, as amended in 1990 (Act), broadly encourages, and in certain cases mandates, market-based approaches for achieving the environmental goals of the Act. At the national level, the Environmental Protection Agency (EPA) has proposed and issued rules and guidance that incorporate the use of market-based economic incentives in Federal air programs, such as the acid rain allowance trading program and programs for alternative motor vehicle fuels, clean fuel fleet vehicle purchases, and emission reductions from urban buses.

Market-based approaches are also encouraged, and, in certain cases, mandated in programs at the State and local levels, and by individual sources, to facilitate the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), and to meet associated emission reduction milestones. To encourage and facilitate the development of State and local economic incentive programs, the Agency is developing comprehensive guidance and rules (as required by the Act) for State/local agencies and individual sources to follow in designing and adopting such programs for inclusion in State Implementation Plans (SIP's). The newly proposed Economic Incentive Program (EIP) Rules[1] provide a broad framework for the development and use of a wide variety of incentive strategies for stationary, area, and/or mobile sources. One such approach is the generation and trading of emission reduction credits (ERCs), which historically has been allowed under guidance provided in the 1986 Emission Trading Policy Statement (ETPS)[2]. The rules and guidance proposed in the EIP draw upon the principles found in the ETPS (summarized in the next section), while providing increased flexibility in designing and implementing such programs.

In particular, for areas which face relatively high stationary source control costs relative to mobile source control costs, there may be significant benefits to creating EIPs which specifically allow for the trading of ERCs from mobile sources to stationary sources. While the general guidance contained in the proposed EIP rules applies to such programs, this supplemental guidance[3] is intended to provide more specific information about how to generate mobile source emission reduction credits (MERCs) for use in mobile/stationary source trading programs. This guidance addresses key issues involved in the generation of MERCs, including the calculation of emissions baselines for participating sources, the projection of future emissions levels, and the time-averaging of emission reduction credits that vary over time. The guidance contained in this document represents EPA's current position with regard to the generation of MERCs. However, EPA is interested in receiving the public's views and comments on these issues, and through today's notice solicits comments on this document.

It is hoped that the issuance of this guidance will encourage the development of MERC programs in cases where such programs can be employed to attain the NAAQS more expeditiously and/or at reduced cost, or to maintain an areas's attainment status. Because of the short-term nature of many MERC programs, the most likely uses of the ERCs generated by such programs are in situations involving delayed compliance or noncompliance penalties.[4] In addition, in accordance with the proposed EIP and other EPA rules and guidance regarding the use of emission reduction credits, MERCs can also be used (1) to satisfy emission reduction requirements beyond the Reasonably Available Control

[1] Proposed elsewhere in this issue of Federal Register.

[2] Emission Trading Policy Statement, 51 FR 43831, December 4, 1986.

[3] This guidance does not establish or affect legal rights or obligations. It does not establish a binding norm and it is not finally determinative of the issues raised. Agency decisions in any particular case will be made by applying the applicable law and regulations to the specific facts of the case. In any proceeding in which the policy may be applied, the Agency will thoroughly consider the policy's applicability to the facts and whether changes should be made in the policy based on submissions made by any person.

[4] Use of MERCs to offset portions of enforcement penalties would be subject to EPA policies regarding such offsets.

Technology (RACT) requirements, (2) to satisfy RACT requirements for existing sources[5] and (3) to meet new source emissions offsets requirements at the offset ratios specified in the Act. Elements and requirements of MERC programs that may be approvable for these uses are summarized in the next section. In addition, Appendix A contains a list of current rules, guidance, and policy statements that should be consulted for more specific requirements and constraints on the generation of MERCs for a specific use, such as for New Source Review (NSR) offsets.

Conversely, MERCs may not be used to satisfy the requirements of Best Available Control Technology (BACT), Lowest Achievable Emission Rate technology (LAER), New Source Performance Standards (NSPS), Federal Inspection and Maintenance (I/M),[6] and Employer Trip Reduction (ETR) programs. The BACT and LAER requirements are technology-based emissions limitations that must be met, where applicable, by specific stationary sources and do not allow emissions trading or averaging. The I/M and ETR programs include provisions which allow for trading and/or averaging of emissions or emission-producing activities, but only within the program. However, MERCs can be generated under the guidance contained in this document if they are based on controls which are surplus to any required controls or any trading activities which are allowed for within the rules and guidance specific to the above-listed, mobile source-related programs.

By providing interested parties with the specific program criteria and descriptions of certain elements of approvable MERC programs, it is expected that this document will serve to facilitate the development of such programs. Further, addenda to this document will elaborate on how MERCs can be generated from specific categories of mobile sources. These addenda are intended to provide both minimum required program elements and detailed descriptions of one particular pathway for designing an approvable MERC program for the subject mobile source category. Addenda on programs involving urban buses, clean fuel fleets, and accelerated vehicle scrappage are included in today's proposal. The EPA is considering preparing additional addenda for other mobile source categories in the future. It should be noted that individual programs can vary from the examples given in these addenda provided the program is consistent with the general requirements in this document, the EIP rules, and any other rules or guidance applicable to the program for which the MERCs are to be used.

II. Elements of a MERC Program

As for any type of EIP, the general principles and program elements that approvable MERC programs must satisfy are contained in the proposed EIP rules. The most basic of the principles that MERC programs must satisfy is that the program must not interfere with other requirements of the Act. The MERCs must also satisfy the minimum requirements of being quantifiable; enforceable at both the Federal and State levels; consistent with SIP attainment and RFP demonstrations; surplus to other Federal and State regulations relied upon in any relevant attainment plan or demonstration, or credited in any RFP or milestone demonstration; and permanent within the time-frame specified by the MERC program.[7]

The following key program elements, defined and discussed in the proposed EIP rules, must generally be included in any MERC program to ensure that the above principles and requirements are met:

(1) A clearly defined purpose and goal, and an incentive mechanism that can be rationally related to accomplishing the goals;

(2) A clearly defined scope, which identifies affected sources and assures that the program will not interfere with any other applicable regulatory requirements;

(3) A program baseline from which projected program results (e.g., quantifiable emissions reductions) can be determined;

(4) Credible, workable, replicable procedures for quantifying emissions and/or emission-related parameters, as appropriate;

(5) Source requirements, including those for monitoring, recordkeeping, and reporting (MRR), that are consistent with specified quantification procedures and allow for compliance certification and enforcement;

(6) Requirements for projecting program results and accounting for compliance and program uncertainty; and

(7) An implementation schedule, administrative system, and enforcement provisions adequate for ensuring Federal and State enforceability of the program.

Unless otherwise specified in program-specific guidance, MERC programs for which SIP credit is to be taken in attainment and RFP demonstrations must include additional elements, such as audit procedures to evaluate program implementation and track results, and, in certain cases, reconciliation procedures to trigger corrective or contingency measures to make up any shortfall between projected emissions reductions and emissions reductions actually achieved in practice. Reconciliation procedures are required for those MERC programs which are categorized as "market-response" programs, i.e., programs that create incentives for participating sources to reduce emissions, without directly specifying either emission-related requirements on individual vehicles or fleets or an enforceable emission reduction target. Conversely, "emission-limiting" programs, which directly specify enforceable limits on total emissions, emissions rates or levels of

[5] Although the Clean Air Act does not address the issue of trading ratios for trades between RACT and non-RACT sources, EPA has proposed to generally to require a ratio identical to the offset ratio specified for new sources in an area by the Clean Air Act. As proposed in the EIP rule and guidance, this trading ratio, which ranges from 1.1/1.0 to 1.5/1.0 in ozone non-attainment areas depending on the severity of the air quality of the area, will be required when trading any ERCs created by controls on non-RACT sources, such as mobile sources, for the emissions reduction that would have been achieved through the application of RACT.

EPA interprets the RACT requirement to authorize emissions trading between RACT and non-RACT sources when such trading results in an exceptional environmental benefit. EPA believes that the use of the offset ratio will ensure this benefit. In this spirit, however, EPA has proposed to allow a ratio as low as 1.1 to 1.0 if a mobile source control program involved the use of a fuel, process or technology whose widespread use held particular promise for significant future environmental benefits and the lower ratio against RACT would facilitate the market penetration of the fuel, process or technology. Furthermore, in setting the appropriate ratio for trades between RACT and non-RACT sources, EPA has proposed to let States take into account additional State and federally enforceable reductions that are achieved as a result of other exceptional environmental features of an EIP (such as the environmental bonus provision under Section VIII of this guidance document). In no case, however, can the trading ratio be lower than 1 to 1, and in no case can the effective trading ratio be less than the appropriate offset ratio (or such ratio, as low as 1.1 to 1.0, as may be authorized to promote the market penetration of environmentally beneficial new control measures).

[6] It should be noted that Accelerated Retirement programs can be used to meet the performance requirements of the federally mandated I/M programs.

[7] Where MERCs are used for NSR offsets, their use must be conditioned upon a permit requirement specifying that continued operation of the new source beyond the time-frame of the MERC program is contingent upon the new source obtaining other offsets that are enforceable by the time that the MERC program ceases to provide the requisite emissions credits. Similarly, where MERCs are used in lieu of RACT, the RACT obligation must be met by other means upon completion of the MERC program.

emissions reductions, do not require reconciliation procedures. For example, an accelerated vehicle retirement program designed to retire a specified number of a specific category of vehicles (by offering whatever price was necessary to acquire the specified number of vehicles) would be an emission-limiting program, for which reconciliation procedures would not be required. On the other hand, if the program offered only a fixed price, such that the resulting number of vehicles retired (and, hence, the resulting reductions in emissions) was dependent upon how the market responded to the fixed incentive, the program would be categorized as a market-response program for which reconciliation procedures would be required. For further discussion of these program categories and the related audit and reconciliation requirements, refer to the proposed EIP rules.

Additional requirements or conditions applicable to MERC programs, beyond those summarized above from the proposed EIP rules, are discussed below.

III. Quantification of MERCs

The quantification of MERCs for each year of the proposed control program is derived from a calculation of the annual difference between an "emissions baseline" and a "projected emissions level" after the mobile source emission control program has been put in place. Emissions levels both before and after the initiation of a control program are generally a function of the degree of use of the mobile source (e.g. vehicle miles travelled per year) and the emissions of that source per unit of use (e.g. grams of pollutant per mile driven). MERCs are generally quantified on an annual basis.

For the purposes of generating MERCs the "emissions baseline" is generally derived for each year of the control program from modeled estimates or actual measurements of the in-use emissions (taking into account all Federal and State requirements) of the sources in the participating group of mobile sources before any measures are taken to modify, replace, repair, eliminate or alter the operation of this participating group. The "projected emissions level" is the measure of emissions that is estimated to be emitted by substitute sources or measures that the control program employs, or projects will be employed, to supply the same level of service, particularly transportation services, as was or would have been supplied by the participating sources. As with the baseline level, the projected emissions level is based on an estimate of the actual emissions levels of the substitute sources.

A. Calculation of Emissions Baseline

For any program to modify, replace, repair, eliminate, fuel or operate a mobile source[8] or a group of mobile sources in a manner which reduces emissions for the purpose of generating MERCs, EPA will require a minimum level of validated data to adequately establish the baseline emissions level of the original set of participating mobile sources. A valid emissions baseline can be calculated using either: (1) Measured emissions of an appropriately sized sample of the participating mobile sources using an approved EPA test procedure or (2) estimated emissions of the participating mobile sources using the most recent edition of EPA's Mobile emissions factor model (or the EMFAC model in California, if approved by EPA) or a simplified model or algorithm approved by EPA which represents the actual emissions of the mobile sources in the baseline.[9] To ensure that MERCs are surplus, baseline emissions estimates for each year of the proposed mobile source control program must be the same as, or lower than, those used, or proposed to be used, in the Implementation Plan of the State in which the control program is proposed. Baseline emissions calculations should include the following information and data as appropriate:

—Emissions standard to which the mobile source is subject or emission performance to which the source is certified;
—Estimated or measured in-use emissions levels per unit of use from all significant emissions sources (exhaust, evaporative, etc);
—The number of sources in the participating group;
—The type, or types, of sources by vintage (or model year);
—The actual or projected activity level, hours of operation or miles travelled by type, and vintage (or model year). If a fraction of mobile source use takes place outside the relevant airshed, the baseline emissions level must be discounted to reflect the fact that these emissions cannot be included in the calculation of the baseline; and
—The projected remaining useful life of the participating group of sources.

Specific examples of the techniques that can be employed to calculate the emissions baseline under alternative types of mobile source control programs and the data EPA will accept to support these calculations are included as addenda to this document. Three addenda ((1) Accelerated Vehicle Retirement, (2) Clean Fuel Vehicle Fleets and (3) Urban Buses) providing guidance on the generation of MERCs through the implementation of specific types of programs are included with this document. Other addenda will be issued as necessary to provide detailed, practical guidance to parties seeking to employ other types of mobile source control programs for the purpose of generating MERCs.

Because of the relatively short (compared to most stationary sources) useful life of mobile sources and because mobile source operations may change significantly over time, baseline emissions of the participating mobile sources will need to be estimated for each year for which credits are to be generated. After the initial year these annual estimates should reflect:

1. The change in the emissions of the participating mobile sources to reflect any deterioration in the emission control performance of the participating sources;
2. The change in the number of mobile sources resulting from normal retirement or attrition, and the replacement of retired mobile sources with newer and/or cleaner mobile sources;
3. The change in usage levels, hours of operation or VMT of the participating population, which tends to fall as a function of age;
4. The change in the expected useful life of the participating population; and
5. The change, by type of source, in the statistical distribution of mobile source vintage (or model year).

B. Calculation of Projected Emissions Level

Having estimated the baseline emissions of the participating group of mobile sources, MERCs are derived from the difference between that baseline and an estimate of the emissions of the new or replacement activities or transportation systems (e.g., new or modified vehicles or engines) that will be used to provide the same or greater level of service to affected consumers or the users of the mobile sources in the participating group. Any estimate of a projected annual emissions level based on an assumption of reduced consumer service or transportation service would not be allowed (i.e., reduced fleet size, reduced VMT or increased passenger

[8] Throughout this document the term "mobile source" will be used rather than "motor vehicle" to clarify that the program can include both road vehicles such as cars and trucks, non-road vehicles such as boats and lawn mowers, and engines.

[9] Baseline emissions must reflect any tampering to the mobile source which has resulted in an emissions increase so as to preclude the generation of MERCs which would result from such tampering.

occupancy) without the support of a convincing analytical justification of the assumption.

The projected emissions levels must be based on the best estimate of the actual in-use emissions of the replacement or substitute vehicles or transportation systems. This estimate can be based on either: (1) Measured emissions of an appropriately sized sample of the replacement or substitute mobile sources or transportation systems using an approved EPA test procedure or (2) estimated emissions of these mobile sources or transportation systems using the most recent edition of EPA's mobile emissions factor model (or the EMFAC model in California, if approved by EPA) or an approved, simplified model or algorithm which represents the actual emissions of the mobile sources or transportation systems. The type of supporting data needed to determine the baseline (the number of mobile sources, their type, vintage, level of use, remaining useful life, etc.) would also need to be provided to support the estimate of the projected emissions level.

In projecting the new level of emissions a number of complicated analytical issues can arise. The addenda to this document, described above, are intended to help identify some of these issues and to provide suggestions of ways to deal with them. Although EPA has developed these analytical addenda for some types of mobile source control programs, it should be noted that these are only examples of acceptable control programs. Ultimately, EPA must rely on the States or other program initiators working through the States to develop credible emissions reduction measurement or estimation methodologies which satisfactorily address the analytical uncertainties of mobile source emissions reduction programs (see Section VII for discussion of uncertainty factors that must be addressed).

C. Producing a Constant Stream of MERCs

Most emissions trades involve a stationary source seeking to obtain a constant stream (over time) of ERCs to fulfill, or delay, an emissions reduction requirement that would have produced a constant stream of emissions reductions over the life of the facility being regulated. However, because of the rapid turnover of mobile sources, relative to stationary sources, the annual level of MERCs created by a mobile source control program [10] will seldom remain steady over time. For some types of control programs the level of MERCs generated may decline with time (as would be typical of a scrappage program) while other programs could create increasing levels of MERCs (as could be expected of an alternative fuels programs with an expanding market). Yet other control programs may result in a variable stream of emissions reductions. To make MERCs more "desirable" or useful in the emissions trading context, therefore, it is important to identify possible techniques for turning the rising, falling and uneven credits into a constant stream. Because of this EPA will approve the use of the following averaging algorithm in the calculation of a constant stream of MERCs:

$MERC = \Sigma R_i(i=1 \ldots N)/N$

Where R_i = emissions baseline in year "i" minus projected emissions level in year "i" where "i" equals 1 in the year the mobile source control program first takes effect.

N = the number of years the mobile source control program will be in effect. "N" could not exceed the number of years over which significant emissions reductions continue to occur.

MERC = constant level of annual emission reduction credits.

The use of such an averaging scheme does raise a number of significant policy issues primarily concerning the "saving" and "borrowing" of ERCs. Although these issues are discussed briefly below and EPA believes that this discussion is adequate to allow the use of "averaged" MERCs in many cases, it is EPA's intention to deal more comprehensively with these issues in separate guidance which it hopes to issue in the near term.

When emissions reduction credits are used in the same year they are created, the emissions "increases" and "decreases" created by the trade contemporaneously offset each other and no further adjustments are necessary by the State in their implementation plan process to accommodate the emissions changes caused by the trade. Because of this, EPA would encourage the use of MERCs in the year they are created or credited. However, EPA recognizes that there are many reasons to believe that MERCs may often be used in trades involving emissions reductions and increases which occur in different years. Because of this EPA will allow the "averaging" (or saving and borrowing) of MERCs as described in the equation above in certain situations to further facilitate and encourage the development of innovative mobile source control programs.

1. Declining Surplus Emission Reductions: With a declining stream of MERCs this averaging approach will permit the "saving" of credits in the early years of the control program, when the surplus emission reductions achieved exceed the credits needed, for use in the latter years, when credits needed in the trade exceed the surplus reductions achieved (see Figure 1). Permitting the use of this averaging technique could encourage "early", environmentally sound emissions reductions, but it does raise the issue of whether the later use of credits "saved" in earlier years is consistent with sound air quality management practices. To encourage the development of mobile source control programs which yield surplus emissions reductions, EPA will allow specific trades which use MERCs "saved" in this way. However, because of its concern over the inappropriate use of averaged credits in those years when credits would exceed surplus emissions reductions, EPA will require, consistent with existing EPA policy as articulated in the Title I General Preamble, that in meeting RFP and attainment demonstration requirements, States must rely on emission reductions in the year in which they occur.

2. Increasing Surplus Emission Reductions: If a mobile source control program results in increasing surplus emissions reductions over time, the same averaging technique shown above could be used to create a constant stream of credits (see Figure 2). However, averaging in this instance would not yield "early" reductions and would allow credits to be taken or "borrowed" before there were equivalent reductions of air pollutants. Since the Clean Air Act requires that emission reductions used as offsets for new sources be in effect at the time a new source commences operation (see section 173(c) of the Clean Air Act), this approach cannot be used to generate emissions offsets under the new source review program. However, for MERCs intended to be used for trades not involving new source offsets, EPA would, at this time, approve the creation of an annual stream of MERCs determined by the equation shown above if the following criteria were met:

(i) The mobile source control program offered significant future environmental benefits because of the innovative control measures or technologies it was sponsoring (e.g. electric and alternative fuel powered fleets);

[10] A "program" is defined as any activity undertaken by a person or organization which produces surplus mobile source emission reductions. A program can be a one-time action, a series of one-time actions or a continuous set of actions as long as they are initiated and controlled by the same individual or organization.

(ii) Auditing and monitoring programs as discussed in the proposed EIP were included as integral elements of the control program to facilitate the measurement of actual emissions reductions over time; and

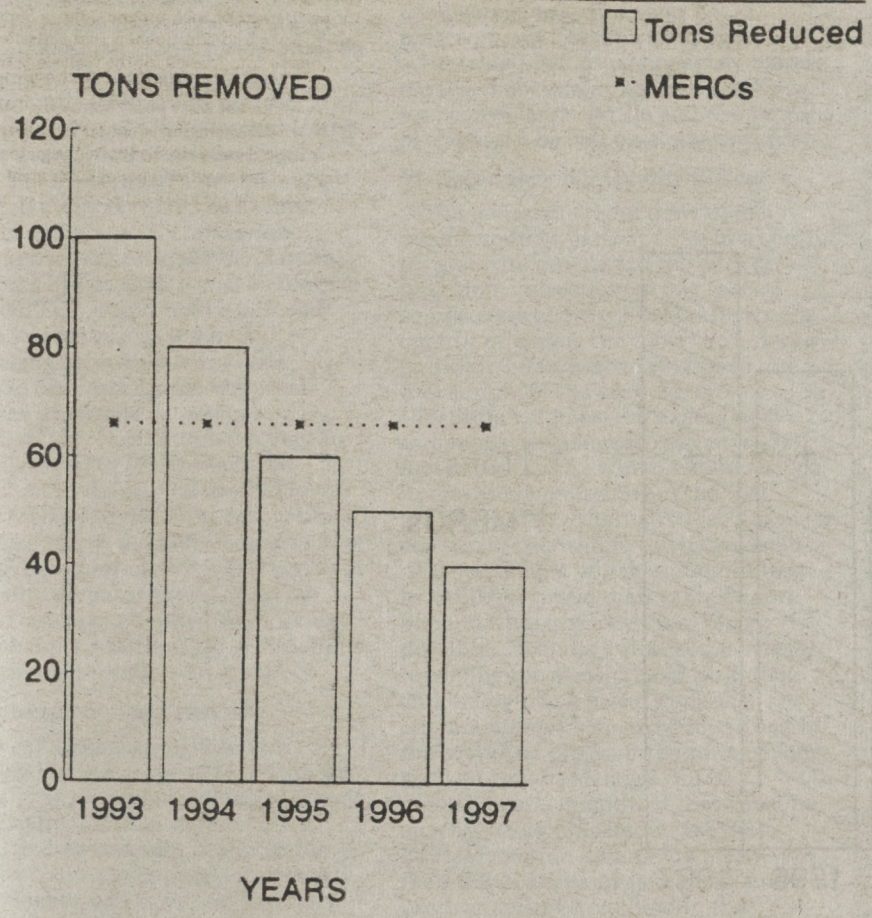
(iii) Reconciliation procedures, which identify and trigger the adoption of corrective or contingency measures to make up for any shortfall in projected emissions reductions, were included in the proposed program. The EIP should be referred to for an elaboration of such requirements.

As with the declining stream EPA would require State RFP and attainment demonstrations to rely on emissions reductions for the year in which they occur. [11]

[11] Programs of this type may be of particular concern in States which face difficult RFP or Attainment deadlines and milestones, and, where in the early years of such program, those States would need to find additional actual emissions reductions to compensate for the emissions increase allowed at sources using this type of MERC. To limit the amount of early year "borrowing", the term "N" in the averaging equation for this type of program should generally be limited, e.g., to the equivalent of the required year of attainment for the area in which the MERC is being created or used.

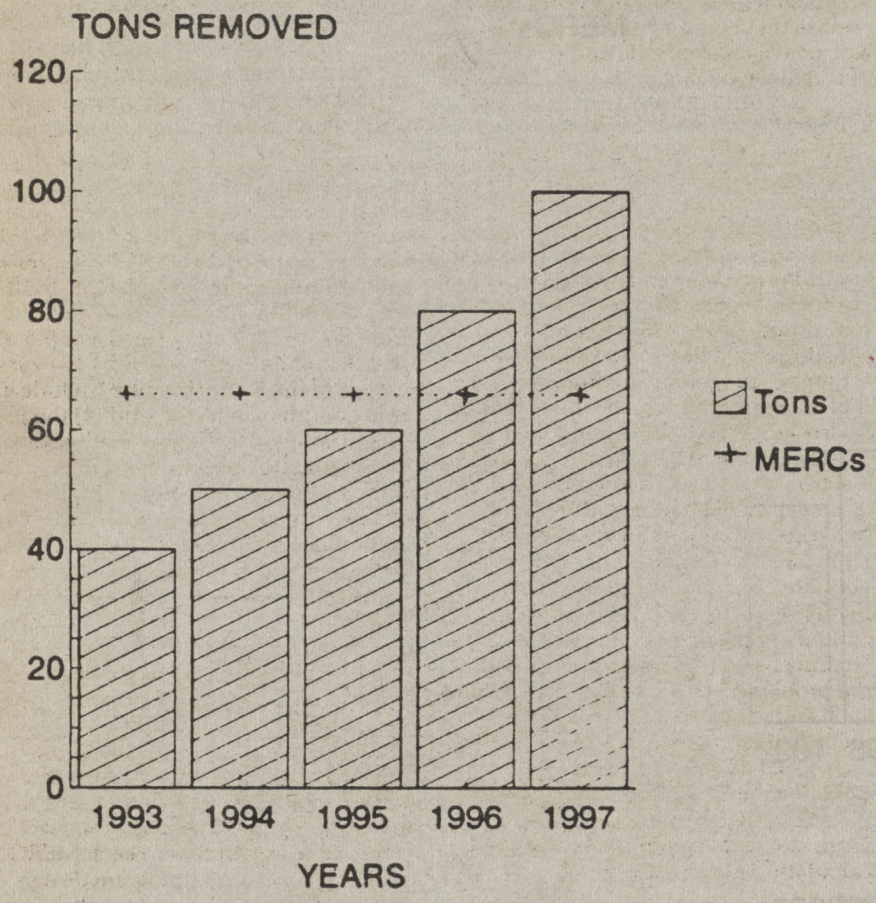
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FIGURE 1
"SAVING" CREDITS



State benefits from early reductions
State must compensate in later years

FIGURE 2
"BORROWING" CREDITS



- State must compensate in early years

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IV. Averaging Times

MERCs will generally be specified as annual emission reductions. However, MERCs will most often be used in trades with sources needing reduction credits of a much shorter time period (most SIP's rely on 24 hour emission limits for sources). Because of this it will often be necessary to convert the annual emission reduction credit derived from a mobile source control program into a shorter averaging period, such as 24 hours. For this type of conversion the preferred method would be a simple pro-rata technique. A conversion technique which resulted in temporal variations of less than a year in the size of the MERCs would not be allowed unless it is (1) supported by a convincing quantitative analysis showing the basis for the temporal variation in mobile source use or emissions (or other factors relevant to the emissions) or (2) shown to be equivalent to the approach used in EPA's Mobile Model in its estimation of the emissions of the mobile source fleet during those periods for which ambient air quality demonstrations must be carried out (e.g., a typical summer day for pollutants contributing to violations of the ambient ozone standard).

V. Enforcement Requirements

The enforcement requirements contained in the proposed EIP rule are generally applicable to MERC programs. Specifically, all sources to which a MERC trading program is applicable must be subject to appropriate, readily ascertainable, and state and federally enforceable, requirements that constitute compliance with the program—such as emission limits (and/or requirements or constraints on emission-related activities) and associated monitoring, recordkeeping and reporting (MRR) requirements.

Applicable source or facility permits will generally specify program requirements (e.g., emission limits, MRR requirements) for stationary sources subject to EIP's. MERC programs will need to address such requirements through enforceable analogues to the stationary source permit requirements, either by specifying such requirements directly in the SIP as part of the MERC program, or by creating a process which results in their inclusion in some other enforceable instrument. For instance, where sources rely on MERCs to meet offset requirements that must be federally enforceable (see, e.g., section 173(a)-(c) of the Clean Air Act), States must ensure that MERC program requirements are reflected in federally enforceable permit conditions (or federally enforceable permit condition analogues) for the sources providing the credit.

For stationary sources subject to EIP's, MRR requirements will generally specify activities to be implemented on an ongoing basis. For some MERC programs, e.g., vehicle scrappage, acceptable MRR provisions may merely require that certain required activities, e.g., conveyance of title and dismantling of a vehicle, be met on a one-time basis.

VI. Secondary Air Quality Effects

The emissions reductions of the mobile sources participating in a control program are not always the only air pollution consequences of a mobile source control program. Mobile source control programs can have secondary air pollution effects, often related to the fuel supply of the targeted and substitute vehicles. For example, a scrappage program can reduce overall fuel consumption which would reduce hydrocarbon emissions in the fuel supply system. Alternative fuels such as electricity can lead to the increased use of power plants which emit pollutants in a different ratio than vehicles and often in different locations. Where possible, secondary emissions changes involving the same criteria pollutant and taking place in the same non-attainment area should be identified in the proposed program submittal. Where such emissions changes can be identified and quantified they must be appropriately reflected in the State Implementation Plan of the area where the MERCs are being generated and used, and can be credited in the calculation of the MERCs.

VII. Emission Reduction Credit Discount Factors

Mobile source emissions reduction estimates are generally considered to be inherently more uncertain than those for large stationary sources because of the decentralized and disparate use and maintenance of mobile sources. In light of this uncertainty, to help ensure that the surplus emissions reductions credited to the control program actually occur, an approvable MERC program must (1) employ appropriate measurement, monitoring and enforcement measures and program auditing, and (2) use commensurate compliance and programmatic uncertainty factors to account for any remaining uncertainty and data bias. These uncertainty factors are discussed in more detail in the proposed EIP rule.

Emission reduction credit programs will generally be required to discount quantified emissions reductions to reflect uncertainties (or biases) inherent in both the extent to which sources will comply with program requirements and the overall program design. Discounting the projected results of regulatory programs for stationary sources to account for uncertainty resulting from incomplete compliance is required by EPA through the application of a rule-compliance factor; a default value of .8 has been adopted by EPA as a presumptive norm. If the baseline and the projected emissions levels are calculated with the same estimation procedure, a MERC rule compliance factor of 1.0 will generally be accepted as the default value because (1) estimated emissions based on EPA's approved Mobile Model (or the EMFAC model if approved by EPA) will already include rule-compliance factors built into the model, (2) measured emissions from an appropriately sized sample of in-use mobile sources will by the very nature of the test procedure include a rule-compliance factor, and (3) the use of emissions standards in both estimates automatically nets out emissions increases due to rule non-compliance. However, emissions estimation techniques other than listed above must include a rule-compliance factor and a justification for the factor used will be required.

Although there are no accepted default values for program design uncertainty factors, any program designed to generate MERCs will be required to address the issue of the uncertainty in the estimation of the MERCs created by the design of the control program. The size of the factor required to be applied to each MERC will be a function of program design elements included to reduce the uncertainty of program performance. Such elements could include

(1) Procedures to discourage emissions tampering in baseline sources,

(2) Sound procedures to determine actual remaining useful life of the participating sources,

(3) Techniques to provide unbiased measures of mobile source use levels in both the baseline and the substitute sources, and

(4) Auditing and enforcement procedures to monitor the performance of the control program over time.

VIII. Environmental Bonus

EPA is firmly committed to trading programs, such as this one, because they offer the greatest environmental benefit for a given level of cost to society (or conversely, the least costly method for achieving a given level of environmental benefit). However, the agency recognizes that, in some cases, local

officials have been reluctant to create broad trading programs because of a lack of public support. The agency is concerned that this reluctance may be even greater where, as in this case, the program involves trading between mobile and stationary sources.

Several organizations, including the Environmental Defense Fund and General Motors, have suggested that States should consider discounting trades involving MERCs by 10 percent, in order to provide an "environmental bonus" from each trade which would promote the market penetration of environmentally beneficial new control measures. If MERC trades were discounted in this way, the "environmental bonus" could help States move more rapidly to attainment of their clean air goals. It is felt that by enlisting more public support for mobile-stationary source trading, such a bonus would encourage more trades and reduce the overall cost of clean air compliance.

On the other hand, others believe that this "environmental bonus" simply represents an inefficient tax on emissions trading. Because it would raise the cost of trading, it could work against the purpose of achieving a given level of emissions reductions at the lowest cost to society. In addition, there is concern that such a bonus would mean that incremental reductions in emissions might not be achieved in a least cost manner.

Although EPA recognizes that, in theory, individual trades without an environmental bonus represent the economically most efficient form of trading, EPA believes that, in practice, the environmental and economic benefits that such a bonus would yield—because of the increased number of trades that will actually take place—tip the balance toward a policy which encourages States to consider the use of an environmental bonus for MERCs. However, EPA does seek further comment on the advantages and disadvantages of such a bonus for mobile source credits.

Appendix A—Bibliography of Relevant Documents

Economic Incentive Program Proposed Rules, published elsewhere in this issue of the **Federal Register**.

Economic Trading Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits; Final Policy Statement and Accompanying Technical Issues Document, 51 FR 43814, (12/4/86) Requirements for Implementation Plans; Air Quality New Source Review, 54 FR 27286, (6/28/89).

Requirements for the Preparation, Adoption and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans, 54 FR 27274 (6/28/89).

Dated: January 20, 1993.

William K. Reilly,

Administrator.

[FR Doc. 93–3683 Filed 2–22–93; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
February 23, 1993

Part V

Department of Agriculture

Cooperative State Research Service

Special Research Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program, Wood Utilization Research for Fiscal Year 1993; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants, Wood Utilization Program for fiscal year 1993.

Authority and Funding

The authority for this program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Public Law 89–106, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624 (7 U.S.C. 450i). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the program discussed below.

Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals from scientists at non-United States organizations will not be considered for support.

Please note that section 726 of Public Law 102–341, an Act Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1993, and for other purposes, prohibits CSRS from using funds available for fiscal year 1993 to pay indirect cost on research grants awarded competitively that exceed 14 per centum of the total Federal funds provided under each award.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The Administrative Provisions governing the Special Research Grants Program, 7 CFR part 3400, as amended (56 FR 58146, November 15, 1991), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to post-award administration of grant projects;

(b) The USDA Uniform Federal Assistance Regulations, 7 CFR part 3015;

(c) The USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016;

(d) The Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended; and

(e) New Restrictions on Lobbying, 7 CFR part 3018.

Introduction to Program Description

CSRS Contact: Dr. Wayne K. Murphey; Telephone: (202) 401–4089.

A total of $1,231,478 will be available for this program for fiscal year 1993. Grants will be awarded to support basic studies in areas of wood science and technology that complement the research being conducted at three universities which are currently receiving special grants. Studies in wood machining by laser, wood chemistry, and wood composites are being conducted on eastern hardwoods at Michigan State University. The Oregon State University program is working with western conifers in harvesting timber, wooden structure engineering, wood chemistry, and wood composites. These same areas of research are being studied at Mississippi State University where southern pines are the species of focus. Special emphasis will be given to proposals dealing with the competitiveness of northern species. Areas of complementary research to be supported are:

Program Area

1.0 Wood Machining—Conduct practical and fundamental research concerned with the interface of the wood cutting tool and workpiece as well as the machine that controls the cutting tool. Cutting tool design involving cutting tool geometry, cutting tool materials, and cutting tool maintenance and their relationships with variables associated with wood are major areas of emphasis.

2.0 Species—Conduct research leading to improved production efficiencies and increased competitiveness of products using species of wood primarily growing in the northeastern United States.

How to Obtain Application Materials

Copies of this solicitation, the Application Kit, and the Administrative Provisions governing this program, 7 CFR part 3400, may be obtained by writing to the address or calling the telephone number below: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, Washington, DC 20250–2200. Telephone: (202) 401–5048.

What to Submit

Submit one original and nine unbound copies of each proposal securely stapled in upper left corner. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form CSRS–661, "Application for Funding." One copy of this form, preferably the original, must contain ink signatures of the principal investigator(s) and the authorized organizational representative. Form CSRS–661 and the other required forms and certifications are contained in the Application Kit. It should be noted that the September 1992 version of the Application Kit must be used, as previous versions are obsolete.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Format for Research Grant Proposals

Members of review committees and the staff expect each project description to be complete. The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, set forth instructions for the preparation of grant proposals. The following proposal format requirements are in addition to or deviate from those contained in 7 CFR 3400.4(c). In accordance with 7 CFR 3400.4(c), to the extent that any of the following additional requirements are inconsistent or in conflict with the instructions at 7 CFR 3400.4(c), the provisions of this solicitation shall apply.

Length of Proposal

Grant proposals must be limited to 15 pages (singled-spaced) exclusive of required forms, the summary of progress for any prior Wood Utilization Research grants, bibliography, vitae of the principal investigator(s), senior associate(s) and other professional personnel, and the NEPA statement with its supporting documentation. Information should be typed on one side of the page only. Reduction by photocopying or other means for the purpose of meeting the 15-page limit is not permitted. Attachment of appendices is discouraged and should be included only if pertinent to understanding the proposal. Reviewers

are not required to read beyond the 15-page maximum to evaluate the proposal.

Application for Funding

Attach a completed and signed "Application for Funding," Form CSRS–661, to the front of the proposal. The Special Research Grants Program should be indicated in Block 7, and "Wood Utilization Research" should be indicated in Block 8.

Prior Wood Utilization Special Research Grants.

Investigators and co-investigators who have received Special Research Grant awards in the Wood Utilization area during the past five years must include a brief summary of progress and a list of publications resulting from such grants.

Budget Form CSRS–55

A copy of the Form CSRS–55, along with instructions for completing it, is included in the Application Kit. Applicants should note the special instructions shown below when completing Form CSRS–55:

Item D., "Nonexpendable Equipment." Requested items of equipment must be itemized (by description and cost) on a separate sheet of paper attached to Form CSRS–55, or in the body of the proposal. The need for all requested equipment must be fully justified in the proposal.

Item F., "Travel." The type and extent of travel and its relationship to project objectives should be described and justified.

Item I., "All Other Direct Cost." Subawards are to be shown on each budget sheet of the primary budget. Subawardee budgets should be provided on separate forms in the same details.

Item K., "Indirect Costs." The recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14% of total Federal funds. This limitation also applies to the recovery of indirect costs under any subawardee or subcontract budget.

Technology Transfer

Plans for the transfer of new technology should be expressed as a portion of each research proposal. Establishing cooperative relationships with industrial research and development programs, conducting seminars and workshops, and defining graduate education and continuing education programs are examples of such plans.

Compliance with the National Environmental Policy Act

As outlined in 7 CFR part 3407 (CSRS's implementing regulations of the National Environmental Policy Act of 1969 (NEPA)), environmental data or documentation for the proposed project is to be provided to CSRS in order to assist CSRS in carrying out its responsibilities under NEPA. The applicant should review the following relevant categorical exclusions (taken from 7 CFR 3407.6(a)) and determine whether the proposed project may fall within one or more of the exclusions.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the functions of programs, such as program budget proposals, disbursement, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSRS Categorical Exclusions

Based on previous experience, the following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSRS to make a determination regarding NEPA, as to whether any further action is required (e.g., preparation of an environmental assessment (EA) or environmental impact statement (EIS)), pertinent information regarding environmental aspects of the proposed project is necessary; therefore, a separate statement must be included in the proposal indicating the applicant's determination whether or not the project falls within one or more of the categorical exclusions listed above. This statement must include the reasons, with appropriate supporting documentation, as to why the proposed project falls within a particular exclusion or exclusions. If the proposed project falls within one or more of the categorical exclusions, the specific exclusion(s) must be identified. The information submitted in association with NEPA compliance should be identified in the Table of Contents as "NEPA Considerations" and the narrative statement with supporting documentation should be placed at the back of the proposal.

Most projects will not need further action regarding environmental considerations. However, CSRS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project, whether or not it falls within the categorical exclusions, should substantial controversy on environmental grounds exist or other extraordinary conditions or circumstances are present that may cause such project to have a significant environmental effect.

Where and When To Submit Applications

All copies of a proposal must be mailed in one package. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the guidelines contained in the Administrative Provisions that govern the Special Research Grants Program, 7 CFR part 3400, as amended.

To be considered for funding under the Special Research Grants Program, Wood Utilization Research, during fiscal year 1993, each completed research application must be postmarked by

March 29, 1993, if submitted by regular mail and sent to the following address: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, Washington, DC 20250–2200.

Please Note: Hand delivered proposals or those delivered by overnight express service should be brought or sent to: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, 901 D Street SW., Washington, DC 20024. Telephone: (202) 401–5048.

Proposals delivered by hand or by overnight express service must be received in the Proposal Services Branch by close of business on March 29, 1993.

SUPPLEMENTARY INFORMATION: The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 12th day of February 1993.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 93–4002 Filed 2–22–93; 8:45 am]

BILLING CODE 3410–22–M

federal register

Tuesday
February 23, 1993

Part VI

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: March 25, 1993.

ADDRESSES: Comments on the master list or any changes to the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Larry Maruskin, Office of Fire Prevention and Arson Control, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and published changes on December 23, 1992, 57 FR 61234 and February 2, 1993, 58 FR 6856.

Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list.

Each update contains or will contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows.

Dated: February 16, 1993.

William C. Tidball,

Acting Director.

Hotel and Motel Fire Safety Act National Master List February 12, 1993 Udpate

ADDITIONS

Arizona

Sheraton San Marcos Golf Resort & Conf Center, 1 San Marcos Place, Chandler, AZ 85224, (602) 963–6655

Tucson East Hilton Towers, 7600 E Broadway, Tucson, AZ 85710, (602) 721–5600

Holiday Inn Express, 831 W Bill Williams Avenue Williams, AZ 86046, (602) 635–9000

California

29 Palms Inn, 73950 Inn Avenue, 29 Palms, CA 92277, (619) 367–3505

Best Western Crystal Suite Hotel, 1752 S Clementine Street, Anaheim, CA 92802 (714) 535–7773

Stardust Motel, 666 E Foothill Blvd, Azusa, CA 91702, (818) 334–0251

Oak Inn, 889 Oak Street, Bakersfield, CA 93304, (805) 324–9686

Blythe Super 8 Motel, 550 W Donlon Street, Blythe, CA 92225, (619) 922–8881

Townhouse Lodge, 135 Main Street, Brawley, CA 92227, (619) 344–5120

The Cain House, 11 Main Street, Bridgeport, CA 93517, (619) 932–7040

Ramada Inn, 21340 Devonshire Street, Chatsworth, CA 91311, (818) 998–5289

Deano's Motel, 3868 S Sepulveda Blvd, Culver City CA 90230, (310) 390–3511

Dana Point Resort, 25135 Park Lantern, Dana Point, CA 92629, (714) 661–5000

Radisson Inn—Diamond Bar, 21725 E Gateway Drive, Diamond Bar, CA 91765, (714) 860–5440

Brunners Motel, 215 N Imperial Avenue, El Centro, CA 92243, (619) 352–6431

Twentieth Century Motor Lodge, 1345 E Alosta Avenue, Glendora, CA 91740, (818) 335–3348

Hemet Super 8 Motel, 3510 W Florida, Hemet, CA 92545, (714) 658–2281

Radisson Hotel—La Jolla, 3299 Holiday Court, LA Jolla, CA 92037, (800) 854–2900

Townhouse Motel, 44125 N Sierra Hwy, Lancaster, CA 93534, (805) 942–1195

Bevonshire Lodge Motel, 7575 Beverly Blvd, Los Angeles, CA 90036, (213) 936–6154

Chesterfield Hotel Deluxe, 10320 W Olympic Blvd, Los Angeles, CA 90064, (310) 556–2777

Blue Heron, 1899 9th Street, Los Osos, CA 93401, (805) 528–1493

Economy Motels Of America, 14684 Aloma Street, Lost Hills, CA 93249, (805) 797–2371

Manteca Inn, 150 Northwoods Avenue, Manteca, CA 95336, (209) 239–1291

Steele Park Resort, Inc., 1605 Steele Canyon Road, Napa, CA 94558, (707) 966–2123

Executive Inn—Embarcadero Cove, 1755 Embarcadero, Oakland, CA 94606, (510) 536–6633

Days Inn, 279 S Main Street, Orange, CA 92668, (714) 771–6704

Quality Inn Pacific Grove, 1111 Lighthouse Avenue, Pacific Grove, CA 93950, (408) 646–8885

Rosedale Inn, 775 Asilomar Blvd, Pacific Grove, CA 93950, (408) 655–1000

Lantern Motel, 5799 Wildwood Lane, Paradise, CA 95969, (916) 877–5553

Sheraton Suites Fairplex, 601 W McKinley Avenue, Pomona, CA 91768, (800) 722–4055

Howard Johnson Lodge, 7432 Reseda Blvd, Reseda, CA 91335, (818) 3440324

Days Inn Riverside, 1510 University Avenue, Riverside, CA 92507, (714) 788–8989

Sheraton Rosemead Hotel, 888 Montebello Blvd, Rosemead, CA 91770, (213) 722–8800

Executive Inn, 2030 Arden Way, Sacramento, CA 95825, (916) 929–5600

Comfort Inn, 144 Kern Street Salinas, CA 93905, (408) 758–8850

Hilton San Bernardino, 285 Hospitality Lane, San Bernardino, CA 92408, (714) 889–0133

Best Western Seven Seas, 411 Hotel Circle S, San Diego, CA 92108, (619) 291–1300

Comfort Inn—Mission Bay, 3747 Midway Drive, San Diego, CA 92110, (619) 225–1295

Comfort Suites, Mission Valley, 631 Camino Del Rio S, San Diego, CA 92108, (619) 294–3444

Corinthian Suites Hotel, 1840 Fourth Avenue, San Diego, CA 92101, (619) 236–1600

Dana Inn And Marina, 1710 W Mission Bay Drive, San Diego, CA 92109, (800) 445–3339

Days Inn—Hotel Circle, 543 Hotel Circle S, San Diego, CA 92108, (800) 227–4743

Humphrey's Half Moon Inn, 2303 Shelter Island Drive, San Diego, CA 92106, (619) 224–3411

Quality Inn Stadium, 5343 Adobe Falls Road, San Diego, CA 92120, (619) 287–1911

Ramada Inn—Hotel Circle, 2151 Hotel Circle S, San Diego, CA 92108, (800) 532–4241

The Horton Grand Hotel, 311 Island Avenue, San Diego, CA 92101, (619) 544–1886

Executive Suites—City Heights, 840 Post Street, San Francisco, CA 94133, (415) 567–5151

Executive Suites—Post Street Towers, 737 Post Street, San Francisco, CA 94133, (415) 567–5151

Executive Suites—St Francis Place, One St Francis Place, San Francisco, CA 94133, (415) 567–5151
Homewood Suites—San Jose, 10 W Trimble Road, San Jose, CA 95131, (408) 428–9900
Holiday Express, 350 Bayshore Blvd, San Mateo, CA 94401, (415) 344–6376
Holiday Inn, 330 Bayshore Blvd, San Mateo, CA 94401, (415) 344–3219
Howard Johnson Lodge, 2700 Hotel Terrace Drive, Santa Ana, CA 92705, (714) 432–8888
Radisson Suite Hotel—Santa Ana, 2720 Hotel Terrace Drive, Santa Ana, CA 92705, (714) 556–3838
Santa Barbara Beach Travelodge, 22 Castillo, Santa Barbara, CA 93101, (805) 965–8527
Sheraton Santa Barbara Hotel & Spa, 1111 E Cabrillo Blvd, Santa Barbara, CA 93103, (805) 963–0744
Resthaven Motel, 815 Grant Street, Santa Monica, CA 90405, (310) 452–3977
Ramada Inn—Solana Beach, 717 S Hwy 101, Solana Beach, CA 92075, (619) 792–8200
El Dorado Hotel, 405 First Street W, Sonoma, CA 95476, (707) 996–3030
Tahoe Valley Motel, 2241 Lake Tahoe Blvd, South Lake Tahoe, CA 96150, (916) 541–0353
Lake Of The Sky Motor Inn, 955 N Lake Blvd, Tahoe City, CA 96145, (916) 583–3305
Holiday Inn Torrance Gateway, 19800 S Vermont Avenue, Torrance, CA 90502, (310) 781–9100
Ramada West Hollywood, 8585 Santa Monica Blvd, West Hollywood, CA 90069, (310) 652–6400
Howard Johnson, 8620 Airport Blvd, Westchester, CA 90045, (310) 645–7700
Cross Roads West Inn, 452 N Humboldt Street, Willows, CA 95988, (916) 934–7026

Colorado

Breckenridge Hilton, 550 Village Road, Breckenridge, CO 80424, (303) 453–4500
Days Inn Fort Collins, 3625 E Mulberry, Fort Collins, CO 80524, (303) 221–5490
Foothills Executive Lodging, 6565 W Jewell Street #4–B, Lakewood, CO 80232, (303) 936–3070

Delaware

ITT Sheraton Suites—Wilmington, 422 Delaware Avenue, Wilmington, DE 19801, (302) 654–8300

Florida

Hojo Inn, 1317 S Orange Blossom Trail, Apopka, FL 32703, (407) 886–1010
Boca Raton Marriott At Crocker Center, 5150 Town Center Circle, Boca Raton, FL 33486, (407) 392–4600
Courtyard By Marriott, 2000 NW Executive Court, Boca Raton, FL 33431, (407) 241–7070
Clearwater Downtown Travelodge, 711 Cleveland Street, Clearwater, FL 34615, (813) 446–913
Courtyard By Marriott, 3131 Executive Drive, Clearwater, FL 34622, (813) 572–8484
Courtyard By Marriott, St. Petersburg/ Clearwater, 3131 Executive Drive, Clearwater, FL 34622, (813) 572–8484
Raddisson Suites—Sand Key, 1201 Gulf Blvd, Clearwater, FL 34630, (813) 586–1100
St. Petersburg Super 8 Motel, 13260 34th Street, Clearwater, FL 34622, (813) 572–8881
Sherton Design Center Hotel, 1825 Griffin Road, Dania, FL 33004, (305) 920–3500
Days Inn South Of Majic Kingdom, 2425 Frontage Road, Davenport, FL 33837, (813) 424–2596
Howard Johnson Lodge, 5225 Us 27 N At I–4, Davenport, FL 33837, (813) 424–2120
Daytona Beach Hilton Resort, 2637 S Atlantic Avenue, Daytona, FL 32118, (904) 767–7350
Daytona Beach Mariott, 100 N Atlantic Avenue, Daytona, Beach FL 32118, (904) 254–8200
Holiday Inn Oceanside, 905 S Atlantic Avenue, Daytona, Beach FL 32118, (904) 255–5432
Indigo Lakes Hilton Golf & Tennis Resort, 2620 Volusia Avenue, Daytona Beach, FL 32114, (904) 258–6333
Indigo Lakes Hilton Golf & Tennis Resort, 2620 Volusia Avenue, Daytona Beach, FL 32114, (904) 258–6333
Ramada Beach Resort, 4060 Galt Ocean Drive, Fort Lauderdale, FL 33308, (305) 565–6611
Fort Myers Travelodge, 2038 W First Street, Fort Myers, FL 33901, (813) 334–2284
Ft Lauderdale Executive Airport Travelodge, 1500 W Commercial Boulevard, Ft Lauderdale, FL 33309, (305) 776–4222
Ft Lauderdale Marriott North, 6650 N Andrews Avenue, Ft Lauderdale, FL 33309, (305) 771–0440
Holiday Inn, Ft Lauderdale, 999 N Atlantic Blvd, Ft Lauderdale, FL 33304, (305) 563–5961
Holiday Inn Ft Myers, US 41 S (Airport), 13051 Bell Tower Drive, Ft Myers, FL 33907, (813) 482–2900
Gainesville Lodge, 413 University Avenue, Gainesville, FL 32601, (904) 376–1224
Fairfield Inn Gainesville, 6901 NW 4th Blvd, Gainesville, FL 32607, (904) 332–8292
Daytona Beach/Holly Hill Travelodge, 749 Ridgewood Avenue, Holly Hill, FL 32017, (904) 255–6511
Courtyard By Marriott Jacksonville/Mayo Clinc, 4600 San Pablo Road, Jacksonville, FL 32224, (904) 223–1700
Doubletree Club Hotel, 4700 Salisbury Road, Jacksonville, FL 32256, (904) 281–9700
Holiday Inn—Jax Airport, 14670 Duval Road, Jacksonville, FL 32218, (904) 741–4404
Travelodge/Baymeadows, 8765 Baymeadows Road, Jacksonville, FL 32206, (904) 731–7317
Courtyard By Marriott Jensen Beach, 10978 S Ocean Blvd, Jensen Beach, FL 34957, (407) 229–1000
Fairfield Inn By Marriott Key West, 2400 N Roosevelt Blvd, Key W, FL 33040, (305) 296–5700
Hyatt Orlando, 6375 W Irlo Bronson Mem Hwy, Kissimmee, FL, 34747, (407) 396–1234
Orlando/Kissimmee Hilton Inn Gateway, 7470 W 192, Kissimmee, FL 34747, (407) 396–4400
Howard Johnson Resort Hotel, 1805 Hotel Plaza Blvd, Lake Buena Vista, FL 32830, (407) 828–8888
Travelodge Hotel/Walt Disney World Village, 2000 Hotel Plaza Blvd, Lake Buena Vista, FL 32830, (407) 828–2424
Holiday Inn, Lake City, PO BOX. 1239 US Hwy 90 W I–75, Lake City, FL 32055, (904) 752–3901
Sheraton Inn & Conference Center, 4141 S Florida Avenue, Lakeland, FL 33813, (813) 647–3000
Holiday Inn Madeira Beach, 15208 Gulf Blvd, Madeira Beach, FL 33708, (813) 392–2275
Courtyard By Marriott/Melbourne, 2101 W New Haven, Melbourne, FL 32904, (407) 724–6400
Fairfield Inn By Marriott Miami West, 3959 NW 79th Avenue, Miami, FL 33166, (305) 599–5200
Grand Bay Hotel, 2669 S Bayshore Drive, Miami, FL 33133, (305) 858–9600
Hyatt Regency Miami, 400 SE 2 Avenue, Miami, FL 33131, (305) 358–1234
Miami Airport Marriott, 1201 NW Lejeune Road, Miami, FL 33126, (305) 649–5000
Howard Johnson Lodge, 221 Ninth Street, S, Naples, FL 33940, (813) 262–6181
Oceania Suite Hotel, 421 S Atlantic Avenue, New Smyrna Beach, FL 32169, (800) 874–1931
North Redington Beach Hilton Resort, 17120 Gulf Blvd, North Redington, FL 33708, (813) 391–4000
North Redington Beach Hilton Resort, 17120 Gulf Blvd, North Redington Bch., FL 33708, (813) 391–4000
Ocala South Travelodge, 1626 SW Pine Avenue, Ocala, FL 32670, (904) 622–4121
Courtyard By Marriott, 7155 N Frontage Road, Orlando, FL 32812, (407) 240–7200
Howard Johnson International Drive, 8020 International Drive, Orlando, FL 32819, (407) 351–1730
Howard Johnson Park Square Inn & Suites, 8501 Palm Parkway, Orlando, FL 32836, (407) 239–6900
Ramada Hotel Resort, 7400 International Drive, Orlando, FL 32819, (407) 351–4600
Travelodge Orlando Centroplex, 409 N Magnolia Avenue, Orlando, FL 32801, (407) 423–1671
Holiday Inn Palm Bay, 1881 Palm Bay Road, NE, Palm Bay, FL 32905, (407) 723–8181
La Brisa Inn, 9424 Front Beach Road, Panama City, FL 32407, (904) 871–2345
La Brisa Inn, 5711 E Hwy 98, Panama City, FL 32404, (904) 871–2345
Courtyard By Marriott Ft. Lauderdale Plantatn, 7780 SW 6th Street, Plantation, FL 33324, (305) 475–1100
Hyatt Sarasota, 1000 Blvd Of The Arts, Sarasota FL 32436, (813) 366–9000
Sarasota Thriftlodge, 270 N Tamiami Trail, Sarasota, FL 32436, (813) 393–0414
Holiday Inn, St. Augustine Beach, 3250 Aia S, St. Augustine, FL 32804, (904) 471–2555
Courtyard By Marriott, 1018 Apalachee Parkway, Tallahassee, FL 32301, (904) 222–8822
Days Inn Downtown, 7221 Apalachee Parkway, Tallahassee, FL 32301, (904) 224–2181
Holiday Inn Northwest, 2714 Graves Road, Tallahassee, FL 32303, (904) 562–2000
Tallahassee Travleodge, 691 W Tennessee Street, Tallahassee, FL 32304, (904) 222–8161
Hyatt Regency Tampa, 211 N Tampa Street, Tampa, FL 33603, (813) 225–1234
Residence Inn By Marriott, 3705 N Rocky Point Drive, Tampa, FL 33607, (813) 281–5677

Shoney's Inn, 8602 Morris Bridge Road, Tampa, FL 33617, (813) 985–8525
Howard Johnson Lodge, 1725 Us 1, Vero Beach, FL 32960, (407) 562–5171

Georgia

Jameson Inn Americus, 1605 Cordele Hwy, Americus, GA 31709, (912) 924–2726
Atlanta Druid Hills #130, 1960 N Druid Hills Road, Atlanta, GA 30329, (404) 321–1653
Atlanta Penta Hotel, 590 West Peachtree Street, NW, Atlanta, GA 30308, (404) 881–6000
Atlanta, Six Flags #123, 4265 SW Shirley Drive, Atlanta, GA 30336, (404) 696–4391
Beverly Hills Inn, 65 Sheridan Drive NE, Atlanta, GA 30305, (404) 233–8520
Biltmore Suites, 30 5th Street, Atlanta, GA 30308, (404) 874–0824
Castlegate Hotel & Conference Center, 1750 Commerce Drive, NW, Atlanta, GA 30318, (404) 351–6100
Comfort Inn Hotel Downtown, 101 International Blvd, Atlanta, GA 30303, (404) 524–5555
Days Inn Lenox, 3377 Peachtree Road, Atlanta, GA 30326, (404) 264–1111
French Quarter Suites Hotel, 2780 Whitley Road NW, Atlanta, GA 30339, (404) 980–1900
Hawthorn Suites Hotel, 1500 Parkwood Circle, Atlanta, GA 30339, (404) 952–9595
Holiday Inn Howell Mill, 1810 Howel Mill Road, Atlanta, GA 30318, (404) 351–3831
Holiday Inn Crowne Plaza Ravinia, 4355 Ashford Dunwoody, Atlanta, GA 30346, (404) 395–7700
Lenox Inn Buckhead, 3387 Lenox Road, Atlanta, GA 30326, (404) 261–5500
Oakwood House Bed & Breakfast, 951 Edgewood Avenue NE, Atlanta, GA 30307, (404) 521–9320
Ritz Carlton Buckhead, 3434 Peachtree Road NE, Atlanta, GA 30326, (404) 237–2700
Shellmont Bed & Breakfast Lodge, 821 Piedmont Avenue NE, Atlanta, GA 30308, (404) 872–9290
Sheraton Colony Square Hotel, 188 Fourteenth Street NE, Atlanta, GA 30361, (404) 892–6000
Sheraton Suites Cumberland, 2844 Cobb Parkway, Atlanta, GA 30339, (404) 955–3900
Stouffer Waverly Hotel, 2450 Galleria Parkway, Atlanta, GA 30339, (404) 953–4500
Swiss 'O' Tell Atlanta, 3391 Peachtree Road NE, Atlanta, GA 30326, (404) 265–6431
Travelodge Atlanta Downtown, 311 Courtland St NW, Atlanta, GA 30303, (404) 659–4545
Partridge Inn, 2110 Walton Way, Augusta, GA 30904, (706) 737–8888
Wheeler Village Inn—Days Inn Augusta, 3654 Wheeler Road, Augusta, GA 30909, (706) 868–8610
Hampton Inn Brunswick, 112 Tourist Drive, Brunswick, GA 31520, (912) 261–0002
Jameson Inn Calhoun, 189 Jameson Street SE, Calhoun, GA 30701, (706) 629–8133
Red Top Mountain State Park Lodge, 653 Red Top Mountain Road, Cartersville, GA 30120, (404) 975–0055
Stonebrook Inn, PO Box 341, Hwy 441, Clayton, GA 30525, (706) 782–2214
Atlanta Airport #096, 2471 Old National Parkway, College Park, GA (404) 761–9701
Days Inn, 4601 Best Road, College Park, GA 30337, (404) 761–6500
Embassy Suites Hotel Atlana Airport, 4700 Southport Road, College Park, GA 30337, (404) 767–1988
Hyatt Atlanta Airport, 1900 Sullivan Road, College Park, GA 30337, (404) 991–1234
Super 8 Motel Atlanta Georgia, 2010 Sullivan Road, College Park, GA 30337, (404) 991–8985
Comfort Inn, 1363 Klondike Road, Conyers, GA 30207, (404) 760–0300
Holiday Inn Conyers, 1351 Dogwood Drive, Conyers, GA 30207, (404) 483–3220
Best Western White Columns Inn Covington, 10130 Alcovy Road, Covington, GA 30209, (404) 786–5800
Jameson Inn Covington, 10225 Hwy 142 N, Covington, GA 30209, (706) 784–1849
Hampton Inn Dalton, 1000 Market Street, Dalton, GA 30720, (706) 226–4333
Holiday Inn I–20 East, 4300 Snapfinger Woods Way, Decatur, GA 30032, (404) 981–5670
Super 8 Motel Douglas, 1610 S Peterson Avenue, Douglas, GA 31533, (912) 384–0886
Jameson Inn Eastman, 103 Pine Ridge Road, Eastman, GA 31023, (912) 374–7925
Jameson Inn Greensboro, 2252 S Main Street, Greensboro, GA 30642 (706) 453–9135
Jameson Inn Hartwell, 941 Anderson Hwy, Hartwell, GA 30643, (706) 376–7298
Jekyll Island Club Hotel, 371 Riverview Drive, Jekyll Island, GA 31527, (912) 635–2600
Jameson Inn Jesup, 205 N Hwy 301, Jesup, GA 31545, (912) 427–6800
Red Roof Inn, 520 Roberts Court, Kennesaw, GA 30144, (404) 429–0323
Red Roof Inn Atlanta (Town Center Mall) #179, 520 Roberts Court NW, Kennesaw, GA 30144, (404) 429–0323
Super 8 Motel Kingsland, I–98 Hwy 40 Exit 2, Kingsland, GA 31548, (912) 729–6888
Lake Lanier Island Hilton Resort, 7000 Holiday Road, Lake Lanier Island, GA 30518, (404) 945–8787
Stouffer Pineisle Resort, 9000 Holiday Road, Lake Lanier Island, GA 30518, (404) 945–8921
Days Inn Lakepark, 4913 Timber Drive, Lake Park, GA 31636, (912) 559–0229
Travelodge Lake Park, 107 Timber Drive, Lake Park, GA 31636, (912) 559–0110
Days Inn Madison, 2001 Eatonton Hwy, Madison, GA 30650, (706) 342–1839
Comfort Inn Marietta, 3000 NW Parkway, Marietta, GA 30067, (404) 952–3000
Hyatt Regency Suites Perimeter, 2999 Windy Hill Road, Marietta, GA 30067, (404) 956–1234
Jameson Inn Milledgeville, 2551 N Columbia Street, Milledgeville, GA 31061, (912) 453–8471
Atlanta South #114, 1348 Southlane Plaza Drive, Morrow, GA 30260, (404) 968–1483
Red Roof Inn #166, 5171 Indian Trail Industrial, Norcross, GA 30071, (404) 448–8944
Villa South Motor Inn P.O. 857, 725 S Harris Street, Sandersville, GA 31082, (912) 552–1234
Budget Inn Savannah, 3702 Ogeechee Road, Savannah, GA 31405, (912) 233–3633
Budgetel Inn, 8484 Abercorn Street, Savannah, GA 31406, (912) 927–7660
Planters Inn, 29 Abercorn Street, Savannah, GA 31401, (912) 232–5678
Atlanta North #088, 2200 Corporate Plaza, Smyra, GA 30080, (404) 952–6966
Jameson Inn Statesboro, 1 Jameson Avenue, Statesboro, GA 30458, (912) 681–7900
Jameson Inn Thomaston, 1010 Hwy 19 N, Thomaston, GA 30286, (706) 648–2232
Evans House Bed & Breakfast, 725 S Hansell Street, Thomasville, GA 31792, (912) 226–1343
Best Western White Columns Inn, 1890 Washington Road, Thomson, GA 30824, (706) 595–8000
Atlanta Tucker #177, 2810 Lawrenceville Hwy, Tucker, GA 30084, (404) 496–1311
Econolodge Union City, 7410 Oakley Road, Union City, GA 30291, (404) 964–9999
Clubhouse Inn, 1800 Clubhouse Drive, Valdosta, GA 31601, (912) 247–7755
Shoney's Inn Valdost, 1828 W Hill Avenue, Valdosta, GA 31601, (912) 244–7711
Ramada Inn Warner Robins, 2725 Watson Blvd, Warner Robins, GA 31093, (912) 953–3000
Jameson Inn Washington, 115 Ann Denard Drive, Washington, GA 30673, (706) 678–7925
Holiday Inn Waycross, 1725 Memorial Drive, Waycross, GA 31501, (912) 283–4490
Pinecrest Motel, 1701 Memorial Drive, Waycross, GA 31501, (912) 283–3580
Jameson Inn Winder, 405 S Broad Street, Winder, GA 30680, (404) 867–1880

Iowa

Ramada Inn, 1522 Lincoln Way, Clinton, IA 52732, (319) 243–8841
Fairfield Inn By Marriott Des Moines, 1600 NW 114th Street, Clive, IA 50325, (515) 226–1600
Fairfield Inn By Marriott Davenport, 3206 East Kimberly Road, Davenport, IA 52807, (319) 355–2264
Fairfield Inn By Marriott Sioux City, 4716 Southern Hills Drive, Sioux City, IA 51106, (712) 276–5600
Sioux City Hilton Hotel, 707 4th Street, Sioux City, IA 51101, (712) 277–4101

Illinois

Days Inn—Arcola, 640 E Springfield Road, Arcola, IL 61910, (217) 268–3031
Red Roof Inn—Arlington Heights, 22 W Algonquin Road, Arlington Heights, IL 60005, (708) 228–6650
Belleville Motel, 931 S Belt W, Belleville, IL 62221, (618) 233–4551
Trails End Motel, 600 Water Street, Cahokia, IL 62206, (618) 337–2010
Best Inns Of America, 1345 E Main, Carbondale, IL 62901, (618) 529–4801
Heritage Motel, 1209 W Main Street, Carbondale, IL 62901, (618) 457–4142
Super 8 Motel—Champaign, 202 Marketview Drive, Champaign, IL 61820, (217) 359–2388
The Stouffer Riviere Hotel, 1 W Wacker Drive, Chicago, IL 60601, (312) 372–7200
Plaza Motel, 3030 S Cicero, Cicero, IL 60650, (708) 656–0300
Best Western Heritage Inn, 2003 Mall Road, Collinsville, IL 62234, (618) 345–5660
Ho Jo Inn, 301 N Bluff, Collinsville, IL 62234, (618) 345–1530
Holiday Inn—Country Side, 6201 Joliet Road, Countryside, IL 60525, (708) 354–5200

Candlelite Motel, 3626 N Vermilion Street, Danville, IL 61832, (217) 442–1988
Super 8 Motel—Danville, 327 Lynch, Danville, IL 61832, (217) 443–4499
Best Western Shelton Motor Inn, 450 E Pershing Road, Decatur, IL 62526, (217) 877–7255
Red Roof Inn—Downers Grove, 1113 Butterfield Road, Downers Grove, IL 60615, (708) 963–4205
Gabriel Motel, 600 N State Street, Freeburg, IL 62243, (618) 539–5588
Motel 6—Galesburg, 1487 N Henderson, Galesburg, IL 61401, (309) 344–2401
Chain Of Rocks Motel, 3228 Chain Of Rocks Motel, Granite City, IL 62040, (618) 931–6600
Land Of Lincoln Motel, 3220 W Chain Of Rocks Road, Granite City, IL 62040, (618) 931–1414
Cardinal Inn, Rt. 40 & 143, Highland, IL 62249, (618) 654–4433
Red Roof Inn #199—Hoffman Estates, 2500 Hassell Road, Hoffman Estates, IL 60195, (708) 885–7877
Lincoln Motel, 918 Woodlawn, Lincoln, IL 62656, (217) 732–2154
Lincoln Motel, Box 14A, Rr 3, Marshall, IL 62441, (217) 826–2941
Budget Inn, S Rt 445, Mattoon, IL 61938, (217) 235–4011
U. S. Grant Motel Ltd. Ptshp., 1313 Lakeland Blvd, Mattoon, IL 61938, (217) 235–5695
Skyline Motel, 8136 Joliet Road, Mc Cook, IL 60525, (708) 447–3566
Metroplis Inn, Rt.3 Box 668, Exit 37 Us 45 & I–24, Metropolis, IL 62960, (618) 524–3723
Super 8 Motel—Mokena, 9485 W 191st Street, Mokena, IL 60448, (708) 479–7808
Fairfield Inn—Moline, 2705 48th Avenue, Moline, IL 61265, (309) 762–9083
Davis Motel, Rt. 1, Hwy Us 36, Newman, IL 61942, (217) 837–2641
Red Roof Inn—Northbrook, 340 Waukegan Road, Northbrook, IL 60062, (708) 205–1755
Tiara Manor, 403 W Court, Paris, IL 61944, (217) 465–1865
Days Inn—Peoria, 2726 W Lake, Peoria, IL 61615, (309) 688–7000
Ho Jo Inn, 202 NE Washington Street, Peoria, IL 61602, (309) 676–8961
The Kaufmann House, 1641 Hampshire, Quincy, IL 62301, (217) 223–2502
Super 8—Rantoul, 207 S Murray, Rantoul, IL 61866, (217) 893–8888
Ramada Inn—Rock Falls, 2105 S 1st Avenue, Rock Falls, IL 61071, (815) 626–5500
Super 8 Motel—Rock Falls, 2100 1st Avenue, Rock Falls, IL 61071, (815) 626–8800
Holiday Inn—Rolling Meadow, 3405 Algonquin Road, Rolling Meadows, IL 60008, (708) 259–5000
Motel 6—Springfield, 3125 Wide Track Drive, Springfield, IL 62703, (217) 789–1063
Red Roof Inn—Springfield, 3200 Singer Avenue, Springfield, IL 62703, (217) 753–4302
Rend Lake Resort, Box 73B, Rt. 1, Whittington, IL 62897, (618) 629–2211

Indiana

Oak Meadow Lodge, 11503 Browning, Evansville, IN 47711, (812) 867–6431
Ramada Inn, 4101 Us 41 N, Evansville, IN 47711, (812) 424–6400
Fort Wayne Hilton, 1020 S Calhoun, Fort Wayne, IN 46802, (219) 420–1100
Hilton Indianapolis, 31 W Ohio Street, Indianapolis, IN 46204, (317) 635–2000
Red Roof Inn, 5221 Victory Drive, Indianapolis, IN 46203, (317) 788–9551
Carlton Lodge Merrillville, 7850 Rhode Island Avenue, Merrillville, IN 46410, (219) 756–1600
Terre Haute Travelodge, 530 S 3rd Street, Terre Haute, IN 47807, (812) 232–7075

Kansas

Wichita East, 549 S Rock Road, Wichita, KS 67207, (316) 686–7131

Kentucky

Roadway Inn & Motel, 656 E Dixie, Elizabethtown, KY 42701

Louisiana

Lafayette Hilton & Towers, 1521 W Pinhook Road, Lafayette, LA 70505 (318) 235–6111
Red Roof Inn #163, 7296 Greenwood Road, Shreveport, LA 71119, (318) 938–5342

Massachussetts

Hyatt Regency Cambridge, 575 Memorial Drive, Cambridge, MA 02139, (617) 492–1234

Maryland

Days Inn, 6700 Security Blvd, Baltimore, MD 21207, (410) 281–1800
Comfort Inn Hotel & Conference Center, 4500 Crain Hwy, Bowie, MD 20718, (301) 464–2200
Econo Lodge Gateway, 4502 Crain Hwy, Bowie, MD 20718, (301) 464–200
Ramada Inn—Camp Spring, 5151 Allentown Road, Camp Spring, MD 20746, (301) 899–7700
Comfort Inn—Clinton, 7979 Malcolm Road, Clinton, MD 20735, (301) 856–5200
Rodeway Inn, 9624 Baltimore Avenue, College Park, MD 20740, (301) 474–2797
Columbia Hilton, 5485 Twin Knolls Road, Columbia, MD 21045, (410) 997–1060
Comfort Inn, 6205 Annapolis Road, Landover Hills, MD (301) 322–6000
Comfort Suites, 14402 Laurel Avenue, Laurel, MD 20707, (301) 206–7600
Quality Inn, 825 Ocean Hwy, Pocomoke, MD 21851, (410) 957–1300

Michigan

Ann Arbor Hilton Inn, 610 Hilton Blvd, Ann Arbor, MI 48108, (313) 761–7800
Hilton Suites, 2300 Featherstone, Auburn Hills, MI 48326, (313) 334–2222
Red Roof Inn—Detroit Airport, 45501 N Expwy Service Drive, Belleville, MI 48111, (313) 697–2244
Red Roof Inn, 24300 Sinacola Court, Farmington Hills, MI 31347–8860, (313) 478–8640
Ramada Inn, 30375 Plymouth Road, Livonia, MI 48150, (313) 261–6800
Red Roof Inn, 32511 Concord, Madison Heights, MI 48071, (313) 583–4700
Red Roof Inn, 39700 Ann Arbor Road, Plymouth, MI 48170, (313) 459–3300
Red Roof Inn, 31800 Little Mack, Roseville, MI 48066, (313) 296–0310
Red Roof Inn, 27660 Northwestern Hwy, Southfield, MI 48034, (313) 353–7200
Red Roof Inn—Taylor, 21230 Eureka Road, Taylor, MI 48180, (313) 374–1150
Red Roof Inn, 26300 Dequindre Road, Warren, MI 48091, (313) 573–4300

Minnesota

Holiday Inn Bloomington Central, 1201 W 94th Street, Bloomington, MN 55431, (612) 884–8211
Holiday Inn, 2115 S 6th Street, Brainerd, MN 56401, (218) 829–1441
Holiday Inn Minneapolis North, 2200 Freeway Blvd, Brooklyn Center, MN 55430, (612) 566–8000
Holiday Inn Duluth, 200 W 1st Street, Duluth, MN (218) 722–1202
Holiday Inn Minneapolis Airport, 2700 Pilot Knob Road, Eagan, MN 55121, (612) 454–3434
Holiday Inn Of International Falls, 1810 Hwy 11 & 71, International Falls, MN 56649, (218) 283–4451
Radisson Hotel Metrodome, 615 Washington Avenue SE, Minneapolis, MN 55414, (612) 379–8888
Holiday Inn New Ulm, 2101 S Broadway, New Ulm, MN 56073, (507) 359–2941
Holiday Inn Winona, 956 Mankato Avenue, Winona, MN 55987, (507) 454–4390
Red Roof Inn, 1806 Wooddale Drive, Woodbury, MN 55125, (612) 738–7110

Missouri

Ben Franklin Motel, 4645 N Linabergh, Bridgeton, MO (314) 731–1010
Days Inn Hotel And Conference Center, 1900 I–70 Drive SW, Columbia, MO 65203, (314) 445–8511
Ramada Columbia, 1100 Vandiver Drive, Columbia, MO 65202, (314) 449–0051
Red Roof Inn, 307 Dum Road, Florissant, MO 63031, (314) 831–7900
Howard Johnson, 4200 S Noland Road, Independence, MO 64055, (816) 373–8856
Motel 6 1168, 808 Stadium Drive, Jefferson City, MO, (314) 634–2848
Days Inn Of Joplin, 3500 Rangeline, Joplin, MO 648044431, (417) 623–0100
Best Western Country Inn—K C I Airport, 11900 Plaza Circle, Kansas City, MO 64153, (816) 464–2002
Best Western Country Inn—North, 2633 NE 43rd Street, Kansas City, MO 64117, (816) 459–7222
Best Western Country Inn—Worlds Of Fun, 7100 NE Parvin Road, Kansas City, MO 64117, (816) 453–3355
Econolodge, 11300 NW Prairie View Road, Kansas City, MO 64153, (816) 464–5082
Quality Inn, 1600 NE Parvin Road, Kansas City, MO 64116, (816) 453–5210
Village Inn Budget Host, 1304 S Baltimore, Kirksville, MO 63501, (816) 665–3722
Rainbow Motel, 308 5th Street, Monroe City, MO 63456, (314) 735–4526
Days Inn N. Kansas City, 2232 Taney Street, North Kansas City, MO 64116, (816) 421–6000
Lake Hills Motel, Old 65 Loop Off New 65, S. Warsaw, MO 65355, (816) 438–5191
Best Inns Of America, 2355 N Glenstone, Springfield, MO 65803, (417) 866–6776
Red Roof Inn #175, 2655 N Glenstone, Springfield, MO 65803, (417) 831–2100
Congress Airport Inn, 3433 N Lindbergh Blvd, St. Ann, MO 63074, (314) 739–5100

Comfort Inn, 2750 Plaza Way Drive, St. Charles, MO 63303, (314) 949–8700
Best Western Inn At The Park, 4630 Lindell Blvd, St. Louis, MO, (314) 367–7500
Clarion Hotel—St. Louis, 200 S Fourth Street, St. Louis, MO 63102, (314) 241–9500
Courtyard By Marriott, 11888 Westline Industrial Dr, St. Louis, MO 63146, (314) 997–1200
Holiday Inn Riverfront, 200 N 4th Street, St. Louis, MO 63102, (314) 621–8200
Holiday Inn Westport, 1973 Craigshire, St. Louis, MO 63146, (314) 434–0100
Oak Grove Inn, 6602 S Lindbergh, St. Louis, MO 63123, (314) 894–9449
Red Roof Inn (Hampton), 5823 Wilson Avenue, St. Louis, MO 63110, (314) 645–0101
Red Roof Inn, Westport, 11837 Lackland Road, St. Louis, MO 63146, (314) 991–4900
Holiday Inn St. Peters St. Charles, PO Box 310, 221 S Outer Road, St. Peters, MO 63376, (314) 928–1500

North Carolina

Days Inn—Blowing Rock, HWY 321 BYP, Blowing Rock, NC 28605, (704) 295–4422
Hilton At University Place, 8629 J M Keynes, Charlotte, NC 28262, (704) 547–7444
Red Roof Inn, 5623 Chapel Hill Blvd., Durham, NC 27707, (919) 489–9421
Holiday Inn—Henderson, I–85 & Parham Road, Henderson, NC 27536, (919) 492–1126
Holiday Inn—Lumberton, 5201 Fayetteville Road, Lumberton, NC 28358, (919) 671–1166
Econo Lodge, 100 Terrace Street, Murphy, NC 28906, (704) 837–8880
Holiday Inn Raleigh Durcham Airport, PO Box 138161—40 Exit 282 At Page Road, Research Triangle, NC 277093816, (919) 941–6000
Rutherford Inn, 210 Reservation Drive, Spindale, NC 28160, (704) 286–3681
The Country Squire Vintage Inn, RT 2 Box130R, Warsaw, NC 28398, (919) 296–1727
Hampton—Wilson, 1801 S Tarboro Street, Wilson, NC 27893, (919) 243–3171

Nebraska

New World Inn, Hwy 30 & 81 S, Columbus, NE 88601, (640) 256–41492

New Jersey

Sheraton Fairfield, 690 Route 46 E, Fairfield, NJ 07004, (201) 227–9200
Hyatt Regency New Brunswick, 2 Albany Road, New Brunswick, NJ 08901, (908) 873–1234
Hilton Meadowlands, 2 Harmon Plaza, Secaucus, NJ 07024, (201) 348–6900

Nevada

Holiday Inn Express, 521 E Front Street, Battle Mountain, NV 89820, (702) 635–5880
Somerset House Motel, 294 Convention Center Drive, Las Vegas, NV 89109 (702) 735–4411

New York

Best Western Golden Arrow Hotel, 150 Main Street, Lake Placid, NY 12946, (518) 523–3353
Days Inn Of Liberty, Rt. 17, Liberty, NY 12754, (914) 292–7600
Days Inn, 845 Union Avenue, Newburgh, NY 12550, (914) 564–7550
Howard Johnson Lodge, Carrier Circle, Syracuse, NY 13206, (315) 437–2711
Syracuse Motel On James Street, 940 James Street, Syracuse, NY 13203, (315) 472–6281
Utica Travelodge, 1700 Genesee Street, Utica, NY 13502, (315) 724–2101

South Carolina

Lodge Alley Inn, 195 E Bay Street, Chas, SC 29401, (803) 722–1611
Crystal Sands, 130 Shipyard Drive, Hilton Head, SC 29928, (803) 842–2400
Holiday Inn Express, 40 Waterside Drive, Hilton Head, SC 29928, (803) 842–8888
Holiday Inn—Spartanburg West, 200 International Drive, Spartanburg, SC 29301, (803) 576–5220

Texas

Harvey Hotel Amarillo, 3100 W I H—40, Amarillo, TX 79102, (806) 358–6161
Arlington Hilton, 2401 E Lamar Blvd., Arlington, TX 76006, (817) 640–3322
Embassy Suites Austin Downtown Town Lake, 300 S Congress, Austin, TX 78704, (512) 469–9000
Holiday Inn Town Lake, 20 N Interregional, Austin, TX 78701, (512) 472–8211
Stouffer Austin Hotel, 9721 Arboretum Blvd., Austin, TX 78759, (512) 219–1448
Beaument—Midtown, 2095 N 11th Street, Beaumont, TX 77703, (409) 892–2222
Sheraton Inn Plaza Royale, 3777 N Expressway, Brownsville, TX 78520, (210) 350–9191
Varsity Motel, PO Box 714, 1004 E 1st Street, Cameron, TX 76520, (817) 697–6446
Bristol Suites Hotel, 7800 Alpha Road, Dallas, TX 75240, (214) 233–7600
Harvey Hotel Addison, 14315 Midway Road, Dallas, TX 75244, (214) 980–8877
Harvey Hotel Dallas, 7815 LBJ Freeway, Dallas, TX 75251, (214) 960–7000
Holiday Inn Northpark Plaza, 10650 N Central Expressway, Dallas, TX 75231, (214) 373–6000
Hyatt Regency Dallas, 300 Reunion Blvd., Dallas, TX 75207, (214) 651–1234
Red Roof Inn, #138 Dallas East, 8108 R L Thornton Freeway, Dallas, TX 75228, (214) 388–8741
Red Roof Inn #153, 10335 Gardner Road, Dallas, TX 75220, (214) 508–8100
Sheraton Suites Market Center, 2101 Stemmons Freeway, Dallas, TX 75207, (214) 747–3000
Howard Johnson Lodge, 8887 Gateway W., El Paso, TX (915) 591–9471
Miss Molly's Hotel, 109½ W Exchange Avenue, Fort Worth, TX 76106, (817) 626–1522
Holiday Inn Greenville, 1215 I 30, Greenville, TX 75401, (903) 454–7000
Harvey Suites Houston Medical Center, 6800 Main Street, Houston, TX 77030, (713) 528–7744
Hobby Airport Hilton, 8181 Airport Hilton, Houston, TX 77061, (713) 645–3000
Holiday Inn—Houston North, 16510 I–45 N., Houston, TX 77090, (713) 821–2570
Holiday Inn Northwest, 14996 NW Frwy, Houston, TX 77040, (713) 939–9955
Omni Houston Hotel, Four Riverway, Houston, TX 77056, (713) 871–8181
Harvey Hotel d F W Airport, 4545 W John Carpenter Frwy, Irving, TX 75063, (214) 929–4500
Harvey Suites d F W Airport, 4550 W John Carpenter Frwy, Irving, TX 75063, (214) 929–4499
Red Roof Inn #129, 8150 Esters Blvd., Irving, TX 75063, (214) 929–0020
Sheraton Grand Hotel, 4440 W John Carpenter Frwy, Irving, TX 75062, (214) 929–8400
Sheraton Inn Plaza, 1721 Central Texas Exprwy, Killeen, TX 76541, (817) 634–1555
Sheraton Inn Lubbock At The Civic Center, 505 Avenue Q, Lubbock, TX 79401, (806) 747–0171
Holiday Inn Country Villa, 4300 W Wall, Midland, TX (915) 697–3181
Midland Hilton And Towers, 117 W Wall Avenue, Midland, TX 79701, (915) 683–6131
Holiday Inn Centre, 6201 E Business I–20, Odessa, TX 79762, (915) 362–2311
Harvey Hotel Plano, 1600 N Central Exprwy, Plano, TX 75074, (214) 578–8555
Renaissance Hotel, 701 E Campbell Road, Richardson, TX 75081, (214) 231–9600
Courtyard By Marriott, 600 Santa Rosa S, San Antonio, TX 78204, (210) 229–9449
Embassy Suites Hotel N. W., 7750 Briarridge, San Antonio TX 78230, (210) 340–5421
Holiday Inn Downtown Market Square, 318 W Durango, San Antonio TX 78204, (210) 225–3211
Holiday Inn Express, 6023 NW Exprwy, San Antonio, TX 78201, (210) 736–1900
Holiday Inn Riverwalk North, 110 Lexington Avenue, San Antonio, TX 78205, (210) 223–9461
Rodeway Inn, 11591 I H 35 N, San Antonio, TX 78233, (210) 646–9400
Rodeway Inn Fiesta Park, 19793 I H 10 W, San Antonio, TX 78257, (210) 698–3991
Sheraton Gunter Hotel, 205 E Houston, San Antonio, TX 78205, (512) 227–3241
Oakridge Motor Inn, I H—10 Hwy 77 NW Corner, Schulenburg, TX 78956, (409) 743–4192
Holiday Inn of Stephenville, 2865 W Washington, Stephenville TX 76401, (817) 968–5256
Sheraton Hotel, 5701 S Broadway, Tyler, TX 75703, (903) 561–5800
Holiday Inn Uvalde, 920 E Main Street, Uvalde TX 78801, (512) 278–4511

Washington

Mariners Cove Inn, 303 Ocean Avenue, Westport, WA 98595, (206) 268–0531

CORRECTIONS

Georgia

Hampton Inn Atlanta North Druid Hill, 1975 N Druid Hill, Atlanta, GA 30329, (404) 320–6600

Indiana

Shelton Inn, 829 W Main, Peru, IN 46970, (219) 472–1925

North Carolina

Fairfield Inn By Marriott Charlotte Northeast, 5415 N I–85 Service Road, Charlotte, NC 28262, (704) 596–2999

DELETIONS

Indiana

Knob Hill Motel, 4530 Paoli Pike, Floyd Knobs, IN 47119

[FR Doc. 93–4026 Filed 2–22–93; 8:45 am]

BILLING CODE 6718–26–U

federal register

Tuesday
February 23 1993

Part VII

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

February 1, 1993.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of nine deferrals contained in two special messages for FY 1993. These messages were transmitted to Congress on October 1, and December 30, 1992.

Rescissions

As of the date of this report, no rescission proposals are pending before the Congress.

Deferrals (Attachments A and B)

Attachment A provides the status of the $3,706.9 million in budget authority being deferred from obligation as of February 1, 1993. Attachment B provides the status of each deferral reported during FY 1993.

Information from Special Messages

The special messages containing information on the deferrals that are covered by this cumulative report are printed in the Federal Registers cited below:

57 FR 46730, Friday, October 9, 1992

58 FR 3368, Friday, January 8, 1993

Leon E. Panetta,

Director.

Attachments

ATTACHMENT A

STATUS OF FY 1993 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President	4,113.4
Routine Executive releases through February 1, 1993	−406.6
Overturned by the Congress	—
Currently before the Congress	3,706.9

ATTACHMENT B

Status of FY 1993 Deferrals—As of February 1, 1993

(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases (−): Cumulative OMB/Agency	Releases (−): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 2–1–93
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D93–1	492,736		10–1–92					
	D93–1A		1,492,774	12–30–92	267,582				1,717,929
Foreign military financing grants	D93–8	1,487,000		12–30–92					1,487,000
Foreign military financing program	D93–9	149,200		12–30–92	138,997				10,203
Agency for International Development									
Demobilization and transition fund	D93–2	13,750		10–1–92					13,750
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D93–3	364,582		10–1–92					364,582
Expenses, brush disposal	D93–4	40,241		10–1–92					
	D93–4A		5,835	12–30–92					46,076
DEPARTMENT OF DEFENSE—CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D93–5	2,175		10–1–92					2,175
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses .	D93–6	7,267		10–1–92					7,267
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D93–7	10,123		10–1–92					
	D93–7A		47,761	12–30–92					57,884
TOTAL, DEFERRALS		**2,567,075**	**1,546,371**		**406,579**	**0**		**0**	**3,706,867**

[FR Doc. 93–4048 Filed 2–22–93; 8:45 am]

BILLING CODE 3110–01–F

federal register

Tuesday
February 23, 1993

Part VIII

Department of Education

34 CFR Parts 608 and 609
Strengthening Historically Black Colleges and Universities and Graduate Institutions Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 608 and 609

RIN 1840–AB74

Strengthening Historically Black Colleges and Universities Program and Strengthening Historically Black Graduate Institutions Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Strengthening Historically Black Colleges and Universities (HBCU) Program and Strengthening Historically Black Graduate Institutions Program. These regulations are needed to implement the recently enacted Higher Education Amendments of 1992.

These programs address National Education Goal 5 that every adult American will possess the knowledge and skills necessary to compete in a global economy and assume the responsibilities of citizenship. The program furthers Goal 5 by assisting institutions in establishing and strengthening their physical plants, academic resources, and student services so that these institutions can provide equal educational opportunity for all adult Americans.

DATES: Comments must be received on or before March 25, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Elwood L. Bland, U.S. Department of Education, 400 Maryland Avenue, SW., room 3042, ROB–3, Washington, DC 20202–5336.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Elwood L. Bland. Telephone (202) 708–9926. Individuals who are hearing impaired 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.

SUPPLEMENTARY INFORMATION: The Strengthening Historically Black Colleges and Universities and Strengthening Historically Black Graduate Institutions Programs are authorized under title III, part B of the Higher Education Act of 1965, as amended (HEA). The programs provide grants to assist eligible institutions in establishing and strengthening their physical plants, academic resources, and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity.

The proposed regulations would implement changes to title III, part B of the HEA. The changes were made by the Higher Education Amendments of 1992, Public Law 102–325, enacted July 23, 1992. The changes require each institution applying for funds to submit a comprehensive development plan describing its goals for financial management and academic programs and how the institution intends to achieve those goals.

The Secretary proposes to require greater accountability for activities under these programs. The Secretary has found that some of the current institutions' plans have not been particularly useful in evaluating the institutions' strategies for strengthening financial management and academic programs with a view toward achieving growth and self sufficiency.

The Secretary is proposing in these amendments a comprehensive development plan that an applicant must submit with its application describing the institution's goals and objectives for its financial management and academic programs. Other minor statutory changes also are reflected in these proposed regulations.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are 105 institutions of higher education. However, the regulations would not have a significant economic impact on the 105 small institutions of higher education because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

Sections 608.20, 608.21, 609.20, and 609.21 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Only 105 institutions of higher education are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 15 hours per response for 105 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collected information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary seeks comments particularly on new §§ 608.21 and 609.21 that outline the goals for financial management and academic programs.

All comments submitted in response to the proposed regulations will be available for public inspection, during and after the comment period, in room 3042, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 608 and 609

Colleges and universities, Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.031B Strengthening Historically Black Colleges and Universities Programs)

Dated: February 10, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 608 and 609 of title 34 of the Code of Federal Regulations as follows:

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

1. The authority citation for part 608 is revised to read as follows:

Authority: 20 U.S.C. 1060 through 1063a, 1063c, 1069c, 1069d, and 1069f, unless otherwise noted.

2. In § 608.20 paragraphs (c) through (g) are redesignated as paragraphs (d) through (h) respectively and a new paragraph (c) is added to read as follows:

§ 608.20 What are the application requirements for a grant under this part?

* * * * *

(c)(1) A comprehensive development plan as described in § 608.21; or

(2) If an applicant has already submitted a comprehensive development plan as described in § 608.21, a description of the progress the applicant has made in carrying out the goals of its plan;

* * * * *

3. A new § 608.21 is added to subpart C to read as follows:

§ 608.21 What is a comprehensive development plan and what must it contain?

(a) A comprehensive development plan must describe an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Financial management;

(2) Academic programs; and

(b) The comprehensive development plan must include the following:

(1) An assessment of the strengths and weaknesses of the institution's financial management and academic programs.

(2) A delineation of the institution's goals for its financial management and academic programs, based on the outcomes of the assessment described in paragraph (b)(1) of this section.

(3) A listing of measurable objectives designed to assist the institution to reach each goal with accompanying timeframes for achieving the objectives.

(4) A description of methods, processes and procedures that will be used by the college or university to institutionalize financial management and academic program practices and improvements developed under the proposed funded activities.

(Authority: 20 U.S.C. 1063a)

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

1. The authority citation for part 609 is revised to read as follows:

Authority: 20 U.S.C. 1063b, 1063c, 1069c, 1069d, and 1069f, unless otherwise noted.

2. Section 609.20 is amended by removing "and" from the end of paragraph (c); removing the period at the end of paragraph (d) and adding a semicolon in its place; removing the period from the end of paragraph (e) and adding "; and" in its place; and adding a new paragraph (f) to read as follows:

§ 609.20 What are the application requirements for a grant under this part?

* * * * *

(f)(1) A comprehensive development plan as described in § 609.21; or

(2) If an applicant has already submitted a comprehensive development plan as described in § 609.21, a description of the progress the applicant has made in carrying out the goals of its plan.

* * * * *

3. A new section 609.21 is added to subpart C to read as follows:

§ 609.21 What is a comprehensive development plan and what must it contain?

(a) A comprehensive development plan must describe an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Financial management;

(2) Academic programs; and

(b) The comprehensive development plan must include the following:

(1) An assessment of the strengths and weaknesses of the institution's financial management and academic programs.

(2) A delineation of the institution's goals for its financial management and academic programs, based on the outcomes of the assessment described in paragraph (b)(1) of this section.

(3) A listing of measurable objectives designed to assist the institution to reach each goal with accompanying timeframes for achieving the objectives.

(4) A description of methods, processes and procedures that will be used by the college or university to institutionalize financial management and academic program practices and improvements developed under the proposed funded activities.

(Authority: 20 U.S.C. 1063a)

[FR Doc. 93–4087 Filed 2–22–93; 8:45 am]

BILLING CODE 4000–01–U

federal register

Tuesday
February 23, 1993

Part IX

Department of Education

34 CFR Part 628
Endowment Challenge Grant Program;
Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 628

RIN 1840–AB70

Endowment Challenge Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Endowment Challenge Grant Program. These final regulations are needed to conform regulatory provisions to recently enacted changes to the statute authorizing the Endowment Challenge Grant Program, Title III of the Higher Education Act (HEA) of 1965, as amended by the Higher Education Amendments of 1992.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 628.20 and 628.32. These actions will become effective after the information collection requirements contained in those sections have been submitted by the U.S. Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the U.S. Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Anne Price-Collins, Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, DC 20026. Telephone: (202) 708–8866. 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.

SUPPLEMENTARY INFORMATION:

A. Background

The Endowment Challenge Grant Program is one of several programs authorized by title III of the HEA. The Endowment Challenge Grant Program provides grants to eligible institutions of higher education to establish or increase endowment funds, thereby providing additional incentives to promote fund-raising activities and fostering increased independence and self sufficiency at these institutions. Grantees must match half of the Federal grant funds that they receive. The Federal grant and the institutional match are called the endowment fund corpus. Institutions must invest and may not spend the endowment fund corpus for a 20-year grant period. When the grant expires, the institution may use the endowment fund corpus for any educational purpose.

By supporting these activities, the program furthers National Education Goal 5. Goal 5 specifically calls for ensuring that our college graduates demonstrate an advanced ability to think critically, communicate effectively, and solve problems; improving the quality of our education programs for part-time and mid-career students; and increasing the rate at which students complete their college programs.

B. Explanation of Changes

The Higher Education Amendments of 1992 (Pub. L. 102–325, enacted July 23, 1992) amended the statute authorizing the Endowment Challenge Grant Program, part C of title III of the HEA. The Secretary amends the regulations to conform them to the amended statute and to correct references to Education Department General Administrative Regulations (EDGAR) and other Department regulations.

The statutory changes include:

- Authorizing grants of up to $500,000 in fiscal years in which the appropriation for the Endowment Challenge Grant Program is less than $15 million; up to $1 million when the appropriation equals or exceeds $15 million but is less than $25 million; and up to $1.5 million when the appropriation equals or exceeds $25 million. Prior to this change, the statute authorized grants of $50,000 to $500,000, or more than $1,000,000 with no restriction on the maximum amount.
- Requiring one matching institutional dollar for every two Federal dollars. Prior to this change, the statute required one matching institutional dollar for every Federal dollar when the grant was $500,000 or less.
- Establishing a "wait out" period—a period of 10 years during which a grantee may not receive another grant—for existing grantees when the program appropriation is equal to or less than $20 million and establishing a five-year "wait out" for existing grantees if the appropriation exceeds $20 million. The trigger date for the "wait out" period is the date on which an institution is awarded a potential grant of money that must be matched, not the date on which the institution receives the grant funds as a result of a match. Moreover, the "wait out" period is measured in terms of fiscal years. Thus, for example, if an institution received a grant of fiscal year 1992 funds, it could not apply for another grant until fiscal year 2003, at the earliest, if the 10-year rule applied, or could not apply for another grant until fiscal year 1998 if the five-year rule applied. Prior to this change, the statute allowed an institution to receive two grants in any five consecutive fiscal years. If, however, an institution received a grant of more than $1,000,000, it had to wait out 10 fiscal years.
- Extending a priority to those applicants who are current grantees, or were grantees within the last five fiscal years preceding the date of application, under the Strengthening Institutions, Special Needs, Hispanic-Serving Institutions, Strengthening Historically Black Colleges and Universities, or Strengthening Historically Black Graduate Institutions Program. Prior to this change, the statute gave priority to those applicants who were grantees under those programs in the same fiscal year in which they were applying for an Endowment Challenge Grant.
- Requiring a narrative outlining short-term and long-term plans for raising and using endowment grant funds. Prior to this change, there was no requirement to submit a short-term or long-term plan.

Waiver of Notice of Proposed Rulemaking: In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedures Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these regulations merely incorporate statutory changes and technical corrections and do not implement substantive policy. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553(b)(B) that public comment on the regulations is unnecessary and contrary to the public interest.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. The changes made in these regulations will impose only the minimal requirements necessary to ensure the proper use of

program funds. The regulations will not impose excessive regulatory burden and will not have a significant economic impact on the small entities affected.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 628

Colleges and universities, Education, Reporting and recordkeeping requirements.

Dated: February 9, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.031G—Endowment Challenge Grant Program)

The Secretary amends part 628 of title 34 of the Code of Federal Regulations as follows:

PART 628—ENDOWMENT CHALLENGE GRANT PROGRAM

1. The authority citation for part 628 is revised to read as follows:

Authority: 20 U.S.C. 1065, unless otherwise noted.

2. In part 628, the authority citation following each section except § 628.47 is revised to read as follows:

(Authority: 20 U.S.C. 1065)

§§ 628.1, 628.2, 628.6, 628.45 [Amended]

3. In part 628, remove the words "of higher education" in the following places:

(a) Section 628.1, in the introductory text.

(b) Section 628.2, in the heading and introductory text.

(c) Section 628.6, in the definition of "Endowment fund" both times it appears.

(d) Section 628.45 (a)(3)(ii) and (a)(3)(iii).

4. Section 628.4 is revised to read as follows:

§ 628.4 What time limitations are placed on grantees applying for another grant?

(a) Except as provided in paragraphs (b) and (c) of this section, an institution that has received a grant under this part may apply for another grant under this part only after 10 fiscal years have elapsed following the fiscal year appropriation from which the institution's grant was awarded (base fiscal year).

(b) An institution that has received a grant under this part may apply for another grant under this part after five fiscal years have elapsed following the base fiscal year if the appropriation for this part exceeds $20 million in any of those five fiscal years.

(c) If an institution has received a grant under this part and the appropriation for this part exceeds $20 million in any of the sixth through tenth fiscal years following the base fiscal year, the institution may apply for another grant under this part in the fiscal year in which the appropriation exceeds $20 million, or any subsequent fiscal year.

(Authority: 20 U.S.C. 1065)

5. Section 628.5 is amended by revising paragraph (b) to read as follows:

§ 628.5 What regulations apply to the Endowment Challenge Grant Program?

* * * * *

(b)(1) The Education Department General Administrative Regulations (EDGAR) as follows:

(i) The regulations in 34 CFR 74.61(h), or 34 CFR 80.26 and the appendix to 34 CFR part 80, as applicable.

(ii) The regulations in 34 CFR 74.80, 74.84, and 74.85.

(iii) The regulations in 34 CFR 75.100 through 75.102, and 75.217.

(iv) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(2) Except as specifically indicated in paragraph (b)(1) of this section, the Education Department General Administrative Regulations do not apply.

* * * * *

6. In § 628.6, the definition of "institution of higher education" is removed, and the definition of "endowment fund corpus" is revised to read as follows:

§ 628.6 What definitions apply to the Endowment Challenge Grant Program?

* * * * *

"Endowment fund corpus" means an amount equal to the endowment challenge grant or grants awarded under this part plus matching funds provided by the institution.

* * * * *

7. Section 628.10 is revised to read as follows:

§ 628.10 What are the characteristics of an endowment challenge grant?

Each endowment challenge grant awarded by the Secretary under this part—

(a) Must be matched by the institution receiving the grant with one dollar of non-Federal funds for every two dollars of Federal grant funds;

(b) Must be invested by the institution; and

(c) Must have a duration of 20 years.

(Authority: 20 U.S.C. 1065)

8. Section 628.20 is amended by revising the introductory text to read as follows:

§ 628.20 What shall an applicant include in an application for an endowment challenge grant?

An applicant shall include in its application the amount of the endowment challenge grant it is requesting, a description of its short-term plan and long-term plan for raising and using endowment challenge grant funds, and information sufficient for the Secretary to—

* * * * *

9. Section 628.32 is amended by revising paragraph (a) to read as follows:

§ 628.32 What funding priorities does the Secretary use in evaluating an application for an endowment challenge grant?

* * * * *

(a) *Recipient or former recipient of a grant under the Strengthening Institutions, Special Needs, Hispanic-Serving Institutions, Strengthening Historically Black Colleges and Universities, or Strengthening Historically Black Graduate Institutions Program.* (Total: 20 points) The Secretary gives 20 points to each applicant who on October 1 of the fiscal year in which the applicant is applying for an endowment challenge grant is a current recipient of a planning or development grant, or was a recipient of a planning or development grant within the five preceding fiscal years, under the Strengthening Institutions, Special Needs, Hispanic-Serving Institutions, Strengthening Historically Black Colleges and Universities, or Strengthening Historically Black Graduate Institutions Program.

* * * * *

10. Section 628.40 is revised to read as follows:

§ 628.40 What are the restrictions on the amount of an endowment challenge grant?

(a) To receive an endowment challenge grant, an institution must raise at least $25,000 in matching funds and qualify for at least a $50,000 grant under paragraph (c) of this section.

(b) If an institution obtains at least $25,000 in matching funds and raises all the nongovernmental funds it proposed to raise in its application, the institution may receive a grant equal to twice the amount of matching funds it raises up to—

(1) $500,000 in any fiscal year in which the amount appropriated for the

Endowment Challenge Grant Program is less than $15,000,000;

(2) $1,000,000 in any fiscal year in which the amount appropriated for the Endowment Challenge Grant Program equals or exceeds $15,000,000 but is less than $25,000,000; or

(3) $1,500,000 in any fiscal year in which the amount appropriated for the Endowment Challenge Grant Program equals or exceeds $25,000,000.

(c) If an institution does not raise all the nongovernmental funds it proposes to raise in its application, the Secretary reduces the institution's grant by multiplying the grant amount requested by the following fraction:

$$\frac{\text{Amount of matching funds raised from nongovernmental sources}}{\text{Amount of matching funds proposed to be raised from nongovernmental sources}}$$

(Authority: 20 U.S.C. 1065)

§ 628.47 [Amended]

11. In § 628.47, paragraphs (d) and (e) are amended by removing "74.62" and adding in its place "80.26 and the appendix to 34 CFR Part 80"; and revising the citation of authority following the section to read as follows:

* * * * *

(Authority: 20 U.S.C. 1065 and 1232f)

[FR Doc. 93–4086 Filed 2–22–93; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
February 23, 1993

Part X

Department of Education

34 CFR Part 770
The Library Services and Construction Act State-Administered Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 770

RIN 1850–AA39

The Library Services and Construction Act State-Administered Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Library Services and Construction Act (LSCA or Act) State-Administered Program to add a definition of the statutory term "State aid." The Secretary takes this action in response to public comment on the proposed regulations for this program. This definition clarifies the meaning of the term "State aid" and, thus, affects the maintenance-of-effort provision prescribed by the Act.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Robert Klassen, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208. Telephone: (202) 219–1303. Individuals who are hearing impaired 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.

SUPPLEMENTARY INFORMATION: The LSCA State-Administered Program provides assistance for libraries in the following program areas: Title I, Public Library Services; Title II, Public Library Construction and Technology Enhancement; and Title III, Interlibrary Cooperation and Resource Sharing.

These programs support the National Education Goals, by seeking to extend and improve public library services, construct and renovate public libraries, and develop and strengthen interlibrary cooperation and resource sharing. The National Education Goals specifically call for:

- Children to start school ready to learn (Goal 1);
- Students to demonstrate competency in challenging subject matter and to learn to use their minds well, so that they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy (Goal 3); and
- Adult Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship (Goal 5).

On October 17, 1990, the Secretary published in the **Federal Register** (55 FR 42152) a notice of proposed rulemaking (NPRM) to implement the LSCA Amendments of 1990 (Pub. L. 101–254). The Secretary published final regulations on March 17, 1992 (57 FR 9350). Among the public comments received on the NPRM of October 17, 1990, were a number of requests for clarification of the term "State aid," which, in turn, affects a new maintenance-of-effort requirement included in the LSCA Amendments of 1990 (section 7(a)(2)(A) of the Act).

The Secretary agreed that a formal definition of the term "State aid" should be included in the regulations for this program. Thus, on March 17, 1992, the Secretary published in the **Federal Register** (57 FR 9374) a notice of proposed rulemaking that would amend the regulations for the program by including this definition. These final regulations result from that NPRM. A more detailed discussion of this issue is included in the Supplementary Information section of the NPRM (57 FR 9374).

As a result of public comment on the NPRM of March 17, 1992, the regulations have been further changed to exclude from the definition of "State aid" funds derived from special purpose nonrecurring State appropriations. As a result of this exclusion, these appropriations will not be subject to the maintenance-of-effort requirement under section 7(a)(2)(A) of the Act.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 12 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Issues are grouped according to subject. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

The Secretary also received a number of requests for administrative guidance or interpretations of the statute or regulations. Administrative guidance and interpretations will be provided by the Secretary on a case by case basis, as necessary.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

This definition has been examined under the Paperwork Reduction Act of 1980 and has been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program. (Please note that Federally recognized Indian tribal governments are not subject to Executive Order 12372.)

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed definition would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 770

Aging—libraries, Child-care centers, Construction—libraries, Correctional institutions—libraries, Drug abuse, Education, Education of disadvantaged, Grant programs—education, Handicapped, Libraries, Limited English-speaking proficiency, Literacy, Mental health programs—libraries, Networks, Penal institutions—libraries, Preservation, Prisons—libraries, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.034 Public Library Services; 84.154 Public Library Construction; 84.035 Interlibrary Cooperation and Resource Sharing)

Dated: February 10, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 770 of title 34 of the Code of Federal Regulations as follows:

PART 770—LIBRARY SERVICES AND CONSTRUCTION ACT STATE-ADMINISTERED PROGRAM

1. The authority citation for part 770 continues to read as follows:

Authority: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

2. Section 770.4 is amended by adding to paragraph (c), in alphabetical order, a definition of the term "State aid" to read as follows:

§ 770.4 What definitions apply to the State-Administered Program?

* * * * *

(c) * * *

State aid means funds that are appropriated by a State legislature for aid to public libraries and to library systems for library services, including funds appropriated for subgrants by the State library administrative agency for those purposes. The term "State aid" does not include—

(1) Funds appropriated for the purpose of defraying the administrative expenses of the State library administrative agency;

(2) Funds expended directly by the State library administrative agency;

(3) Funds for construction;

(4) Funds from special purpose non-recurring appropriations; or

(5) Federal funds received by the State under a categorical assistance program.

* * * * *

Appendix—Analysis of Comments and Changes

(Note: This appendix will not be codified in the Code of Federal Regulations.)

Section 770.4 What Definitions Apply to the State-Administered Program?

Comment: Commenters were concerned with the meaning of the phrase "State and local public libraries" in the first paragraph of the definition of the term "State aid." The commenters noted that the definition of a State library could include many types of libraries operated by a State. Several commenters asked whether all libraries that serve the public and are funded wholly or in part by a State are "public libraries." One commenter recommended that both the word "State" and the word "local" be deleted from the first paragraph of the definition because those words are superfluous in the proposed regulations.

Several commenters also asked what the difference is between a "State library" and a "State library administrative agency." One commenter asked whether funds provided to a library that satisfies the definition of "public library" and is located in a State agency that is not part of either the State library or the State library administrative agency are included in the maintenance-of-effort calculation.

Discussion: The Secretary agrees that, since the intent of this regulation is to refer to all public libraries and library systems in a State, the phrase "State and local public libraries" in the first paragraph of the definition of "State aid" is confusing. Section 7(a)(2)(A) of the LSCA does not use the qualifying phrase "State and local" in setting maintenance-of-effort standards "for State aid to public libraries and library systems."

Further, the term "public library" is defined in section 3(5) of the LSCA without distinguishing between public libraries at the State or local level. Thus, for example, it is possible that a State library could be a public library if it were a general purpose library open to the public free of charge. However, State libraries that are not general purpose libraries would not be considered to satisfy the statutory definition. Section 3(5) of the Act also makes it clear that libraries that serve the public free of charge and receive financial support by a State are considered "public libraries."

The definition of "State library administrative agency" in section 3(10) of the LSCA distinguishes that agency from a State library. As defined, a State library administrative agency is charged by State law with the extension and development of public library services; however, the definition does not include the provision of public library services as that term is defined in section 3(6) of the LSCA, when referring to a public library as defined in section 3(5) of the LSCA.

Finally, for purposes of the maintenance-of-effort calculation, "State aid" may include funds that are not made available through the State library administrative agency, or that are made available to a public library located in a State agency other than the State library administrative agency, provided that the elements of the definition of "State aid" are satisfied.

Changes: The Secretary revises the definition of the term "State aid" in § 770.4(c) by deleting the phrase "State and local" each place it appears in the first paragraph of the definition of "State aid."

Comment: Commenters expressed concern with the meaning of the term "library systems." Commenters wished to know the effect that including the term "library systems" in the definition of State aid would have on maintenance-of-effort calculations. Two commenters asked how the State aid rule applies in instances where multi-type library systems provide services to all types of libraries, rather than just public libraries. One of these commenters inquired whether costs not related to public library services had to be broken out in calculating maintenance-of-effort. A third commenter believes that in many States multi-type library systems fund and engage in programs that are not eligible uses of LSCA Title I funds. The commenter concluded that appropriations of State funds for the multi-type library systems would not be subject to the maintenance-of-effort requirement. The commenter suggested that the term "library systems" be replaced with the term "public library systems".

Discussion: The Secretary interprets section 7(a)(2)(A) to require States to include in their maintenance-of-effort computations State aid to library systems that include public libraries, even if those systems also include libraries that are not public.

The Secretary believes that it would be burdensome and impractical for States to break out library system expenditures not made specifically for public libraries when they make their maintenance-of-effort computations. The Secretary also believes that Congress did not intend to require States to make a separate accounting of these expenditures for this purpose.

The Secretary has determined that the regulations should retain the reference to "public libraries and library systems" because this phrase is used in section 7(a)(2)(A) of the LSCA.

Changes: None.

Comment: One commenter noted a problem with the word "appropriated." Apparently, in the commenter's State government, the word does not have the same meaning that it has in the Federal government. In the commenter's State, the word "appropriated" has the same meaning that "authorized" has in the Federal government. The commenter asked whether the term "appropriated," as used in proposed § 770.4(c) of the LSCA regulations, could be interpreted by States to mean the process used by a State to provide funds for aid to public libraries.

Discussion: The Secretary uses the term "appropriated" as it is used in the Federal government, that is, the process

by which a legislative body provides funds to the government for expenditure.

Changes: None.

Comment: A commenter suggested adding the words "by a State legislature" following the words "including funds appropriated" and adding the words "as aid" following the word "payment" in the first paragraph of the definition. In the commenter's view, this addition distinguishes between appropriations that a State legislature might make to the State library administrative agency for aid to public libraries and library systems, and an appropriation that a State legislature might make to support a contractual arrangement between a State library administrative agency and a public library or library system.

Discussion: The language recommended by the commenter would be unnecessary and redundant. The term being defined is "aid." Therefore, any further mention of the term "aid" would be redundant. Further, funds expended by the State library administrative agency for procurement contracts for goods or services are considered funds spent directly by that agency and, by definition, are not considered "State aid." Funds spent directly by the State library administrative agency, or by that part of the agency charged with the extension and development of public library services throughout the State, are counted in computing maintenance-of-effort under section 7(a)(2)(B), but not section 7(a)(2)(A).

Changes: None.

Comment: Two commenters asked whether the proposed definition of the term "State aid" includes institutional libraries that serve the public and otherwise meet the definition of "public library."

Discussion: It would be unusual that an institutional library would satisfy the statutory definition of "public library" in section 3(5) of the LSCA, since libraries that are not general purpose libraries would not be considered to satisfy this definition. Although libraries serving individuals living in State-supported institutions may be funded under Title I of the LSCA, the libraries in these institutions would not be considered "public libraries" for purposes of the LSCA. Depending on the facts, an institutional library might be a part of a library system or network aid to which is considered "State aid." However, aid to an institutional library that is not a public library or does not receive the aid as part of a library system is not counted as "State aid."

Changes: None.

Comment: A commenter asked whether there are any libraries or library systems that meet the definition of "public library" in section 3(5) of the LSCA and receive funds wholly or in part from a State legislature that are not included in the proposed "State aid" definition and maintenance-of-effort requirements.

Discussion: The definition of "State aid" contains several exclusions. In general, funds received by a public library from a State legislature would not be considered "State aid" if these funds met one of the exclusions under that term. The proposed regulations made no attempt to define "public library" or "library systems." The definition of "public library" is set forth in section 3(5) of the LSCA and the description of "library systems" is set forth in section 102(a)(2) of the LSCA. No library that meets this definition would be excluded from the definition of "State aid."

Changes: None.

Comment: A commenter expressed several concerns about reporting State aid funds available for expenditure and State aid funds actually expended. The commenter asked how to report funds carried over by the State or by subgrantees for expenditure in a fiscal year later than the year that they were appropriated. The commenter pointed out that the State may intend certain funds for State aid to be expended in a year later than the year that they were appropriated. The questions dealt with State funds used to purchase a bookmobile, operating funds for a library from one period to the next, and sinking funds available for expenditure in the State's annual program. Finally, the commenter asked whether State disbursements to subgrantees are expenditures.

Discussion: The State's assurance in the annual program that a given amount of State aid is currently available for actual expenditure is the gauge for computing maintenance-of-effort. The Secretary considers the statutory prerequisite for grant payment to be satisfied if the amount stated in the assurance is at least ninety per cent of the amount reported to the Secretary as the amount actually expended in the "base year" (that is, the second year preceding the year of Federal allotment).

Since maintenance-of-effort calculations are based on actual expenditure and amounts available for expenditure rather than appropriations, it is immaterial when the funds for State aid were appropriated, or whether the funds have been carried over from one year to another. However, if at the time the State makes its assurance in the annual program, it is known that funds appropriated for State aid are not currently available for actual expenditure (for example, if appropriated funds have been subjected to a line item veto or formally earmarked by the State or a subgrantee for expenditure in a subsequent year) those funds should not be included in the annual program assurance. Also, continuous carryovers of funds for State aid could prompt questions from the Secretary's staff and auditors as to whether the funds had in fact been available for expenditure as reported in the annual program.

The State's post award reports to the Secretary should reflect all actual expenditures for State aid, both in the year of allotment and in the base year.

Finally, State disbursements to public libraries and library systems are not considered expenditures until they are expended by the subgrantee. However, for the purpose of assuring maintenance-of-effort in an annual program, disbursement would normally make funds available for expenditure, unless the subgrantee has formally determined that they are to be spent in a subsequent year.

Changes: None.

Comment: A commenter asked how the expenditure of funds under State aid is to be reported in the long-range plan, the annual program, and the annual report. The same commenter asked whether the Secretary expects the same types of evaluation, information sharing, cooperation, and coordination that are required of other LSCA projects.

Discussion: States should refer to the reporting instructions that accompany the forms used for the reports.

The term "State aid" is used only in the section 7(a)(2)(A) maintenance-of-effort requirement and should not be read into other LSCA requirements. State aid as an expenditure category need not be described as such in the basic and long-range programs. To the extent that State aid is relevant in some other reporting content (i.e., as a part of the State match) it should be described or reported as appropriate. A State is not required to account to the Federal government for its use of State aid as if the State aid were Federal grant money. However, the State must be prepared to document to auditors that it complied with section 7 of the LSCA by documenting that the assured amount of State aid was available for expenditure, and, for prior years, that the amount reported in the annual program assurance was actually expended.

Changes: None.

Comment: A commenter perceived that future reporting may be in a

different manner or method and wondered whether State library administrative agencies would be penalized if they submit reports concerning maintenance-of-effort under the proposed definition.

Discussion: The Secretary is bound by the final regulations and would not penalize grantees for following those regulations. Future substantive changes to the maintenance-of-effort reporting requirements would require publication of amended regulations with notice and opportunity for public comment. The Secretary would not issue final regulations that were significantly more restrictive than the proposed regulations. A change in procedure would necessitate another proposed rule with opportunity for public comment.

Grantees must realize, however, that regulations cannot address every question of interpretation that might arise under a program statute. For this reason grantees are urged to seek guidance from the Secretary's staff on a case-by-case basis. The General Education Provisions Act establishes a procedure by which the Secretary provides binding written advice to grant recipients. Grantees cannot be required to return grant funds expended in reliance on that advice. This "mitigating circumstances" procedure is set forth in 34 CFR 81.23.

Changes: None.

Comment. A commenter noted that the definition of "State aid" includes funds appropriated to a State library administrative agency, and asked whether funds appropriated to a State agency that is not the State library administrative agency can be used for maintenance-of-effort purposes.

Another commenter requested that the definition be revised to state that State aid means funds that are appropriated by a State legislature and available to State library administrative agencies for payment to public libraries and public library systems for public library services.

Discussion: Neither the proposed regulations nor these final regulations restrict State aid to aid distributed by the State library administrative agency. Nevertheless, it would be unusual for funds for public libraries and library systems not to be distributed by the State library administrative agency.

Changes: None

Comment: Several commenters recommended that the definition of "State aid" be revised to add that funds for State aid must be available for expenditure. One commenter recommended that the regulation be stated in terms of funds "provided" rather than "appropriated."

Discussion: The Secretary's purpose in publishing these final regulations is to define the statutory term "State aid." It is unnecessary to add language about availability to the definition since the statute and final regulations published March 17, 1992 already provided in § 770.41(a) that "State aid" must be available for expenditure. Appropriated funds for which the executive branch of a State has legally exercised a line item veto authority or other legal authority to reduce appropriations, or has failed to follow a required allocation process are not considered available for expenditure. There is no need to repeat this in the definition of "State aid."

Change: None.

Comment: Several commenters asked whether maintenance-of-effort calculations would be affected by special purpose non-recurring appropriations. First, one commenter asked how maintenance-of-effort would be affected by a special purpose supplemental or "one-time windfall" State aid to public libraries. The same commenter asked how a State would report on a supplemental allocation that did not receive funding.

Second, one commenter noted that a $75 million public library construction bond had been issued in his State a few years ago. The commenter stated that it would be unfair for this action to increase substantially the State's maintenance-of-effort level.

Third, one commenter asked that State funds appropriated for building or repairing public library facilities be excluded from the definition. The same commenter also asked that State funds appropriated for public library operating costs on a nonrecurring basis be excluded from the definition of the term "State aid."

Fourth, a number of commenters recommended that a fourth exclusion be added to the definition of the term "State aid." This additional exclusion would cover (1) general or limited obligation bonds, bonding authority, or appropriations that finance or secure debt obligations or fund capital investment; (2) major special programs for public libraries; or (3) special one-time appropriations to individual public libraries.

Finally, several commenters expressed the view that the actions of State legislatures to provide special one-time aid to public libraries should not be considered as part of general State aid on which the definition is based.

Discussion: The Secretary notes that construction expenditures—which are by their nature subject to year-to-year fluctuations—are not counted for purposes of maintenance-of-effort computation under section 7(a)(2)(A) of the LSCA. A clarifying change has been made to the definition. The exclusion for construction should cover most non-routine capital expenditures. Also, the Secretary notes that an allocation that is not funded would not affect maintenance-of-effort because, as noted above, maintenance-of-effort is concerned only with funds available for expenditure.

The Secretary agrees with the comments that actions of State legislatures to provide special purpose non-recurring appropriations should not affect maintenance-of-effort. States should not be discouraged from making additional funds available to meet one-time special needs. A change has been made to the definition of "State aid." The Secretary, however, has decided not to adopt the specific changes recommended by the commenters.

References to bonds or bonding authority are inappropriate. Section 7(a) of the LSCA is not concerned with whether the appropriations from which State aid is derived are raised from bond issues or from some other source such as tax revenues.

Also, the recommendation to exclude "major special programs" is vague and over-broad, and could be read to include funds appropriated for new ongoing programs. The Secretary is not authorized to interpret the LSCA to freeze, in effect, a State's base expenditure level for maintenance-of-effort. The point is that special purpose, non-recurring expenditures from whatever source should not adversely affect the State's maintenance-of-effort compliance.

Finally, it is not appropriate to limit the exclusion for special purpose non-recurring appropriations to appropriations to individual public libraries (as some commenters recommended).

Changes: The definition of "State aid" has been revised to exclude appropriations earmarked for construction, and to add a provision excluding funds derived from special purpose non-recurring appropriations.

Comment: A commenter asked for an explanation of the difference between payments to local public libraries and to library systems, and funds used for the extension and development of library services for the purposes of maintenance-of-effort. The commenter perceived a duplication of reporting.

Discussion: The commenter seems to be referring to the difference between two maintenance-of-effort provisions under the LSCA. These provisions are based on State aid to public libraries and library systems under section

7(a)(2)(A) and expenditures for a State library administrative agency under section 7(a)(2)(B). The difference between these two provisions is that section 7(a)(2)(A) refers to funds that are distributed, in general through the State library administrative agency, to certain entities as subgrantees, while section 7(a)(2)(B) refers to funds that are expended directly by the State library administrative agency, either for its own operating costs or to assist in providing public library services.

In section 7(a)(2)(B), Congress has used the phrase "for the part thereof charged by State law with the extension and development of public library services throughout the State" to distinguish a particular component of the State library administrative agency from other components of that agency. Although Congress wanted State library administrative agencies to continue to be maintained, Congress apparently did not intend to extend the maintenance-of-effort requirement to library administrative agencies that have no State-wide responsibility to public libraries.

Thus, there should be no duplication of reporting if the difference between the expenditures under sections 7(a)(2)(A) and 7(a)(2)(B), as well as the limitation on maintenance-of-effort under section 7(a)(2)(B), as described above, is understood and implemented.

Changes: The Secretary has modified the regulatory definition by eliminating the reference to the extension and development of library services and by replacing the word "payment" with the word "subgrants." These changes emphasize that the term "State aid" does not include any expenditures incurred directly by the State library administrative agency.

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Part XI

Department of Agriculture

Extension Service

Outreach and Assistance Grants Program for Socially Disadvantaged Farmers and Ranchers; Notice of Application Guidelines for Fiscal Year 1993

DEPARTMENT OF AGRICULTURE

Extension Service

Outreach and Assistance Grants Program for Socially Disadvantaged Farmers and Ranchers

AGENCY: Extension Service (ES), Department of Agriculture.

ACTION: Notice.

SUBJECT: Outreach and Assistance Grants Program for Socially Disadvantaged Farmers and Ranchers; Fiscal Year 1993; Request for Proposals; Application Guidelines.

FOR FURTHER INFORMATION CONTACT: Dr. Ricardo Gomez, 202–720–2471 for program information or the Cooperative Funds Division of the Extension Service—USDA on 202–401–4527 for fiscal or budget information.

Program Description

(a) Purpose

Proposals are requested for fiscal year 1993 under the Outreach and Assistance Grants Program for Socially Disadvantaged Farmers and Ranchers. Competitive grants will be awarded to assist eligible organizations and institutions to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. The authority for this Program is contained in section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, 7 U.S.C. 2279. The program is administered by the Extension Service (ES) of the U.S. Department of Agriculture (USDA). Assistance under the program should include information on application and bidding procedures, farm management, and other essential information to participate in agricultural programs.

(b) Available Funding

For fiscal year 1993, $1 million is available for this program. Individual grants will be awarded in amounts ranging from $25,000 to $50,000.

(c) Eligibility

Proposals are invited from any community-based organization that: (1) Has demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged farmers and ranchers; (2) provides documentary evidence of its past experience in working with socially disadvantaged farmers and ranchers during the 2 years preceding its application for assistance; and (3) does not engage in activities prohibited under section 501(c)(3) of the Internal Revenue Code of 1986. Proposals are also invited from 1890 Land-Grant Colleges, including Tuskegee University, Indian tribal community colleges and Alaska native cooperative colleges, Hispanic serving post-secondary educational institutions, and other post-secondary educational institutions with demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged family farmers and ranchers in their region. In addition to the above, an applicant must qualify as a responsible applicant in order to be eligible for a grant award under the Program. To qualify as responsible, an applicant must meet the following standards:

(1) Adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain same (including any to be obtained through subagreement(s));

(2) Ability to comply with the proposed or required completion schedule for the project;

(3) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets;

(4) Satisfactory record of integrity, judgement, and performance, including, in particular, any prior performance under grants and contracts from the Federal government; and

(5) Otherwise be qualified and eligible to receive a grant under the applicable laws and regulations.

(d) Definitions

For the purpose of awarding grants under this Program, the following definitions are applicable.

(1) *Agricultural programs* means those activities established or authorized by: the Agricultural Act of 1949; the Consolidated Farm and Rural Development Act; the Agricultural Adjustment Act of 1938; the Soil Conservation Act; the Domestic Allotment Assistance Act; and the Food Security Act of 1985;

(2) *Awarding official* means the Administrator of the Extension Service;

(3) *Grant* means the award by the Administrator to a grantee to assist eligible organizations and institutions to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs;

(4) *Grantee* means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded;

(5) *Peer review panel* means the appropriate employees of the U.S. Department of Agriculture;

(6) *Project* means the particular activity within the scope of the Program as identified herein;

(7) *Project director* means the individual who is responsible for technical direction of the project, as designated by the grantee in the grant proposal and approved by the Administrator;

(8) *Project period* means the total time approved by the Administrator for conducting the proposed project as outlined in an approved grant proposal or the approved portions thereof;

(9) *Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group; and

(10) *Socially disadvantaged group* means a group whose members have been subject to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.

Proposal Preparation

(a) Proposal Cover Page

(1) Title of Proposal

The title of the proposal must be brief (80-character maximum) yet represent the major thrust of the project.

(2) Other information

Also include the following information on the proposal cover page:

(a) Name, address, telephone and fax numbers of applicant and project director.

(b) Signatures and date. The cover page must contain the original signatures of the Project Director and the Authorized Organizational Representative who possesses the necessary authority to commit the entity's time and other relevant resources.

(b) Project Summary

Each proposal must contain a project summary which may not exceed 2 pages in length. The project summary should contain the following:

(1) Overall project goal(s) and supporting objectives;

(2) A brief description of the plans to accomplish project goal(s); and

(3) Relevance or significance of the project to enhancing the participation of socially disadvantaged farmers and ranchers in agricultural programs.

(c) Project Description

The specific aims of the project must be included in all proposals. The text of the project description may not exceed 15 pages and must contain the following components:

(1) Introduction

A clear statement of the goal(s) and supporting objectives of the proposed project should preface the project description.

(2) Background and Existing Situation

Provide a detailed description giving rise to the need for the effort in the proposed project.

(3) Objectives

The objectives should be clear, complete, and logically arranged statements of the project goals with specific details of planned accomplishments and how such accomplishments will advance the goal of assisting socially disadvantaged farmers and ranchers in obtaining information on application and bidding procedures, farm management, and other essential information to participate in agricultural programs.

(4) Procedures

Describe the method of implementation or plan of action to be utilized in attaining each of the stated objectives.

(5) Evaluation

Give specific evaluation objectives including impact factors and indicators of effectiveness and efficiency in accomplishing objectives.

(d) Collaborative Arrangements

If the nature of the proposed project requires collaboration or subcontractural arrangements with other entities, the applicant must identify the collaborator/subcontractor and provide a full explanation of the nature of the relationship.

(e) Budget

A budget and a detailed narrative in support of the budget is required. Show all funding sources and itemize costs by the following line items: personnel costs, equipment, material and supplies, travel and all other costs.

Funds may be requested under any of the line items listed above provided that the item or service for which support is requested is identified as necessary for successful conduct of the project, is allowable under the authorizing legislation, the applicable Federal cost principles, and is not prohibited under any applicable Federal statute. Salaries of project personnel who will be working on the project may be requested in proportion to the effort that they will devote to the project.

Proposal Submission

(a) What To Submit

An original and two copies of the proposal must be submitted. Each copy of each proposal must be stapled securely in the upper lefthand corner (Do Not Bind). All copies of the proposal must be submitted in one package.

(b) Where and When to Submit

Proposals submitted through regular mail must be postmarked by April 26, 1993, and sent to the address below. Hand-delivered proposals must be submitted by April 26, 1993, to an express mail or courier service or brought to the following address: Extension Service—USDA, Cooperative Funds Division, Cotton Annex, 2d Floor Mez., 300 12th Street, SW., Washington, DC 20250–0900.

Proposal Review, Evaluation, and Disposition

(a) Proposal Review

All proposals received will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to this solicitation. Proposals that do not fall within the solicitation guidelines will be eliminated from competition. All accepted proposals will be reviewed by a peer review panel and recognized specialists in the areas covered by the proposals received.

The peer review panel will be selected and organized to provide maximum expertise and objective judgment in the evaluation of proposals. Proposals will be ranked and support levels will be recommended by the panel(s) within the limitation of total funding available in fiscal year 1993.

(b) Evaluation Criteria

In evaluating the proposal, the peer review panel will take into account the degree to which the proposal demonstrates the following:

(1) Responsiveness to the need to provide socially disadvantaged farmers and ranchers with information on application and bidding procedures, farm management, and other essential information to enhance participation of agricultural programs.

(2) Potential for encouraging and assisting socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs.

(3) Originality, practicality, and creativity in developing and testing innovative solutions to existing or anticipated issues or problems of socially disadvantaged farmers and ranchers.

(4) Adequacy, soundness and appropriateness of the approach to the solution of the problem.

(5) Experience, qualifications, competence, and availability of personnel to direct and carry out the project.

(c) Proposal Disposition

When the peer review panel has completed its deliberations, the USDA program staff, based on the recommendations of the peer review panel, will recommend to the Awarding Official that the project be (a) approved for support from currently available funds or (b) declined due to insufficient funds or unfavorable review.

USDA reserves the right to negotiate with the Project Director and/or the submitting entity regarding project revisions (e.g., reductions in scope of work), funding level, or period of support prior to recommending any project for funding.

A proposal may be withdrawn at any time before a final funding decision is made. One copy of each proposal that is not selected for funding (including those that are withdrawn) will be retained by USDA for one year, and remaining copies will be destroyed.

Supplementary Information

(a) Grant Awards

Within the limit of funds available for such purpose, the awarding official shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the evaluation criteria and procedures set forth in this solicitation and application guidelines.

The date specified by the awarding official as the beginning of the project period shall be not later than September 30, 1993.

All funds granted under the Program shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the terms and conditions of any resulting award, the applicable Federal cost principles, and the Department's Federal assistance regulations.

(b) Obligation of the Federal Government

Neither the approval of any application nor the award of any grant commits or obligates the United States

in any way to provide further support of a project or any portion thereof.

(c) Other Applicable Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review or grants awarded under the Program. These include, but are not limited to the following:

7 CFR part 1b—USDA Implementation of the National Environmental Policy Act;

7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR part 1.1—USDA implementation of the Freedom of Information Act;

7 CFR part 15, Subpart A—USDA implementation of title VI of the Civil Rights Act of 1964;

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

7 CFR part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

Done at Washington, DC, on December 16, 1992.

Myron D. Johnsrud,

Administrator, Extension Service.

[FR Doc. 93–4163 Filed 2–22–93; 8:45 am]

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Part XII

Department of Transportation

Research and Special Programs Administration

National Solid Wastes Management Association; Application; Notice

DEPARTMENT OF TRANSPORTATION

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

[Preemption Determination No. PD–2(R); Docket No. PDA–5(R)]

Application by National Solid Wastes Management Association for a Preemption Determination Concerning Illinois Environmental Protection Agency's Uniform Hazardous Waste Manifest

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Administrative determination that the Uniform Hazardous Waste Manifest promulgated by the Illinois Environmental Protection Agency (IEPA) is preempted by the Hazardous Materials Transportation Act (HMTA).

Applicant: National Solid Wastes Management Association, on behalf of its Chemical Waste Transportation Institute.

State Requirement Affected: State of Illinois Uniform Hazardous Waste Manifest, EPA Form 8799–22/ IL 532.0610.

Applicable Federal requirements: Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

Mode Affected: Highway.

SUMMARY: To the extent indicated in this decision, the HMTA preempts the Illinois requirement that hazardous waste generators utilize the State of Illinois Uniform Hazardous Waste Manifest, EPA Form 8799–22/ IL532.0610, and IEPA's accompanying requirements that regulate the completion of the IEPA Uniform Hazardous Waste Manifest.

As a shipping document, the IEPA Uniform Hazardous Waste Manifest is a "covered subject" under 49 App. U.S.C. 1804(a)(4)(B), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Pub. L. 101–615. The IEPA Uniform Hazardous Waste Manifest is not "substantively the same as" the Federal Uniform Hazardous Waste Manifest, as required by the HMTA in order for the IEPA Uniform Hazardous Waste Manifest to be an acceptable substitution for the Federal Uniform Hazardous Waste Manifest.

The Federal regulations, 49 CFR 107.202, 171.3(c)(3), and 172.205 state that State requirements for hazardous waste manifests that differ from, or are in addition, to Federal requirements are preempted by Federal law. This explicit declaration of Federal preemption of non-uniform local requirements with regard to hazardous waste manifests is indicative that a State's varying the Federal Uniform Hazardous Waste Manifest's requirements does not meet the "substantively the same as" test and thus is preempted under the HMTA.

The Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 *et seq.*, requires EPA to consult with the Secretary of Transportation to establish standards applicable to the transportation of hazardous wastes. 42 U.S.C. 6823. RCRA specifically requires EPA to consult with the Secretary of Transportation with regard to the requirements of the hazardous waste manifest system. 42 U.S.C. 6923(a)(3). Furthermore, any regulations promulgated by EPA concerning hazardous wastes subject to the HMTA and the HMR must be consistent with the requirements and limitations of the HMTA and the HMR. 42 U.S.C. 6923(b).

Concerning an EPA-approved State hazardous waste program, EPA regulations state that if "an approved State program that has a greater scope of coverage than required by Federal law, the additional coverage is not part of the Federally approved program." 40 CFR 271.1(i)(2). Furthermore, since EPA's regulations concerning hazardous waste manifests are required to be consistent with the HMTA and the HMR, an inconsistent State Uniform Hazardous Waste Manifest, included in an EPA-approved State hazardous waste program, is not "otherwise authorized" by Federal law. The IEPA Uniform Hazardous Waste Manifest, therefore, is not "otherwise authorized" by Federal law and thus is not excluded from preemption under the HMTA.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel, Hazardous Materials Safety & Research and Technology Law, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. (202) 366–4400).

I. Application for Preemption Determination

The April 12, 1990 petition of the National Solid Wastes Management Association (NSWMA), on behalf of its Chemical Waste Transportation Institute (CWTI), sought an administrative determination that the IEPA's Uniform Hazardous Waste Manifest was inconsistent with the HMTA and the HMR. Due to a statutory change in the HMTA, which directly affected the regulatory implementation of the HMTA's preemption provisions on June 12, 1992, NSWMA resubmitted its application for an administrative determination that the HMTA preempts the Uniform Hazardous Waste Manifest promulgated by IEPA. (The applicant is referred to as "CWTI" in the balance of this decision.)

A. Relevant EPA and IEPA's Requirements for the Transportation of Hazardous Wastes

RCRA grants EPA the authority to issue guidelines to assist States in developing their own Federally authorized hazardous wastes programs. RCRA requires, among others, that State hazardous waste programs be "equivalent to the Federal program . . . [and] consistent with the Federal or State programs applicable in other States . . ." in order for a State to be authorized to administer its own hazardous waste program. 42 U.S.C. 6926. Under EPA's regulations specifically pertaining to a State's use of a uniform hazardous waste manifest as part of the State's authorized program, ". . . the State RCRA program must require the use of EPA Manifest Forms 8700–22 and 8700–22A . . ." 40 CFR 271.6(d). "Manifest" is defined by RCRA to mean the "form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage." 42 U.S.C. 6903(12). The manifest form is an essential part of the manifest system about which the EPA must consult with the Secretary of Transportation prior to promulgating regulations with regard to the transportation of hazardous waste.

IEPA requires that the IEPA Uniform Hazardous Waste Manifest be utilized for all shipments of hazardous wastes originating in Illinois and being transported to a State that does not print or supply the IEPA Uniform Hazardous Waste Manifest. The generator of the hazardous waste must complete and certify the manifest as accurate. The transporter of the hazardous waste must acknowledge receipt of the waste described on the manifest and assure that the manifest accompanies the waste during transportation. The transporter must assure that the receiving facility or subsequent transporter acknowledges receipt of the shipment. Finally, the transporter must assure that both the generator and receiving facility receive a copy of the manifest, and also retain a copy of the manifest for its own records.

The IEPA Uniform Hazardous Waste Manifest system diverges from the Federal Uniform Hazardous Waste

Manifest requirements in two distinct areas. First, under EPA's and DOT's regulations, a generator who transports, or offers for transportation, hazardous waste must prepare a Federal Uniform Hazardous Waste Manifest in accordance with the regulations promulgated by EPA. 40 CFR 262.20, 49 CFR 172.205(a). The relevant requirements for the completion of the Federal Uniform Hazardous Waste Manifest require that the total quantity of hazardous waste being transported be entered in Item 13 of the Federal Uniform Hazardous Waste Manifest. 40 CFR part 262, Appendix. However, the corresponding item on the IEPA Uniform Hazardous Waste Manifest instructs the preparer to enter the quantity without using fractions or decimals; thus, the quantity described must be rounded to the nearest whole number.

Second, the Federal Uniform Hazardous Waste Manifest requires the use of a continuation sheet, EPA Form 8700–22A, if more space is necessary to complete the information required for EPA Form 8700–22. 40 CFR 262.20(a). EPA regulations require a generator to use EPA Form 8700–22A, the continuation sheet, when more than two transporters are to be used to transport the hazardous wastes or more space is needed to complete the section pertaining to the DOT description and related information. 40 CFR part 262, appendix. However, the IEPA Uniform Hazardous Waste Manifest prohibits the use of a continuation sheet when more space is needed to record the information required to complete the manifest. Rather, a generator must complete a second separate IEPA Uniform Hazardous Waste Manifest form when the generator otherwise would have utilized a continuation sheet under the Federal requirements. Therefore, IEPA adopted a procedure distinct from the one established by EPA.

It should be noted that CWTI's initial petition for an inconsistency ruling included a third issue. IEPA's instructions with regard to the IEPA Uniform Hazardous Waste Manifest had directed generators to use "1", instead of "G", to indicate gallons and "2" rather than "Y", to indicate cubic yards. "G" and "Y" are required Federal abbreviations for completion of the Federal Uniform Hazardous Waste Manifest. CWTI had petitioned DOT to find IEPA's restriction on the allowable abbreviations preempted under the HMTA. Subsequent to CWTI's application for an inconsistency ruling, IEPA reprinted its Uniform Hazardous Waste Manifest form to allow the abbreviations specified under the Federal regulations. Because this particular concern raised by CWTI is no longer an issue, it will not addressed in this decision.

B. Application of the HMTA and the HMR to Hazardous Wastes

"The term [hazardous materials] includes . . . hazardous wastes, . . ." 49 CFR 171.8 (as amended November 5, 1992, 57 FR 52930, 52935). See also "No person may offer for transportation or transport a hazardous waste . . . in interstate or intrastate commerce except in accordance with the requirements of [the HMR]." 49 CFR 171.3(a). RCRA specifically directs that EPA's regulations applicable to transporters of hazardous wastes "shall be consistent with the requirements of" the HMTA and the HMR. 42 U.S.C. 6923(b). (For purposes of the HMR, a hazardous waste also is a "hazardous substance" when the contents of a single package equal or exceed the "reportable quantity" for that hazardous substance. 49 CFR 171.8 and 172.101, Appendix A.)

The HMR include requirements for hazardous waste manifests. First, the HMR address the acceptable format of the Federal Uniform Hazardous Waste Manifest. The HMR require that EPA Form 8700–22 be used as the Federal Uniform Hazardous Waste Manifest form. If EPA Form 8700–22 does not provide adequate space for the completion of the DOT description, or other informational requirements, the HMR require EPA Form 8700–22A, the Federal Uniform Hazardous Waste Manifest Continuation Sheet, to be used to complete the manifest. 49 CFR 172.205(a). The HMR also specifically authorize the use of continuation sheets as part of shipping papers required for the transportation of hazardous materials. 49 CFR 172.201(c).

Second, the HMR instruct the generator to complete the Federal Uniform Hazardous Waste Manifest in accordance with EPA's regulations governing the Uniform Hazardous Waste Manifest. 49 CFR 172.205(b). Concerning the forms to be used by the preparer of the manifest, EPA's regulations parallel the HMR by requiring the use of EPA Form 8700–22 and EPA Form 8700–22A as the acceptable Federal Uniform Hazardous Waste Manifest forms. 40 CFR 262.20(a); 40 CFR part 262, Appendix. Both EPA's regulations and the HMR demonstrate that continuation sheets are an integral part of the overall Federal Uniform Hazardous Waste Manifest scheme.

Third, the HMR address the acceptable informational items to be entered onto the Federal Uniform Hazardous Waste Manifest by requiring the manifest preparer to comply with EPA's regulations. EPA requires the completion of the manifest and continuation sheets, if any are needed, to be in accordance with the instructions contained in the Appendix to 40 CFR part 262. 40 CFR 262.20(a). EPA's regulations, concerning the reporting of the quantity of hazardous waste being transported, require the *total* quantity of waste described on the Federal Uniform Hazardous Waste Manifest to be entered onto the manifest. 40 CFR part 262, appendix, item 13. Furthermore, the HMR, in describing the requirements of the shipping description of a hazardous material on the Federal Uniform Hazardous Waste Manifest, require the inclusion of the total quantity of the waste to appear adjacent to the shipping description. 49 CFR 172.202(c).

C. CWTI's Petition and Public Notice

CWTI's petition argues that IEPA's Uniform Hazardous Waste Manifest is preempted by Federal law because it constitutes an "obstacle" to the achievement and execution of the HMTA and the HMR and because "dual compliance" with both IEPA and Federal Uniform Hazardous Waste Manifest requirements is not possible. Furthermore, CWTI asserts that IEPA's Uniform Hazardous Waste Manifest is explicitly preempted by the HMTA as a "covered subject" which is not "substantively the same as" the Federal Uniform Hazardous Waste Manifest.

CWTI relies primarily upon the HMTA and the HMR provisions which preempt non-Federal requirements regarding the "preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents" which are not "substantively the same as" the Federal requirements. 49 App. U.S.C. 1804(a)(4)(A), 49 CFR 107.202. CWTI asserts that the IEPA Uniform Hazardous Waste Manifest is not excepted from preemption under the HMTA because the IEPA Uniform Hazardous Waste Manifest is not "otherwise authorized" by Federal law. CWTI elaborates upon its argument by stating that the IEPA Uniform Hazardous Waste Manifest fails to withstand the Federal preemption standards defined in 49 App. U.S.C. 1811(a) and 49 CFR 107.202(b). These preemption standards are: (1) the impossibility of "dual compliance" with both Federal and non-Federal requirements, and (2) the non-Federal requirement constitutes an "obstacle" to

the achievement and the execution of the HMTA or the HMR.

On April 30, 1990, RSPA published a Public Notice and Invitation To Comment on CWTI's Inconsistency Ruling Application (IRA–51). On May 16, 1991, due to the 1990 amendments to the HMTA, advisory inconsistency rulings were changed to legally binding preemption determinations. Consequently, CWTI resubmitted its application and requested a preemption determination concerning the same issues raised in its original petition. RSPA published a Public Notice and Invitation To Comment on CWTI's current application on July 21, 1992. 57 FR 32360. On September 25, 1992, RSPA published a Public Notice Extending Rebuttal Comment Period to clarify the fact that comments previously submitted on CWTI's IRA–51 application would be considered together with any comments submitted on CWTI's current application, PDA–5(R). 57 FR 44402.

In response to these Notices, three industry associations, nineteen companies and one university submitted comments in support of preemption. The IEPA, the Illinois Attorney General, and the Massachusetts Executive Office of Environmental Affairs, on behalf of the International Hazardous Waste Manifest Coordinators Group (IHWMCG), opposed the petition. One commenter did not address the issues raised in the petition. CWTI and IEPA submitted rebuttal comments. IEPA responded to select commenters and CWTI in particular. All of these comments are summarized in Part III below.

II. Preemption Under the HMTA

The HMTA was enacted to give DOT greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. § 1801. It replaced "a patchwork of state and federal laws and regulations concerning hazardous materials with a scheme of uniform, national regulations." *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352, 353 (9th Cir. 1990).

As enacted in 1975, the HMTA preempted "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." HMTA, Pub. L. 93–633, Section 112(a), 88 Stat. 2161 (1975) (amended 1990, *see* 49 App. U.S.C. 1811(a)). This provision was intended by Congress "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1192, 93rd Cong., 2d Sess. 37 (1974), as quoted in Inconsistency Ruling-2 (IR–2) (State of Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, etc.), 44 FR 75566, 75567 (Dec. 20, 1979).

In 1976, DOT's Materials Transportation Bureau (MTB, whose responsibilities are now delegated to RSPA's Associate Administrator for Hazardous Materials Safety) published procedures to implement the preemption language of the HMTA by providing for the issuance of inconsistency rulings. Inconsistency rulings, while advisory in nature, were an alternative to litigation for a determination of the relationship of Federal and State or local relationships, and also a possible "basis for an application for a waiver under the HMTA." *Id.* RSPA's procedures for issuing inconsistency rulings incorporated the following criteria for determining whether a State or local requirement was inconsistent with, and thus preempted by, the HMTA:

> (1) Whether compliance with both the State or political subdivision requirement and the Act or the regulations issued under the Act is possible; and
>
> (2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

41 FR 38167, 38171 (Sept. 9, 1976); 49 CFR 107.209(c) (Oct. 1, 1990 ed.). These "dual compliance" and "obstacle" criteria, respectively, are based on United States Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

In 1980, a preemption provision relating to hazardous wastes was added to the HMR. Subsection (c) of 49 CFR 171.3, unchanged to the present, states that:

> With regard to hazardous waste subject to [the HMR], any requirement of a state or its political subdivision is inconsistent with [the HMR] if it applies because that material is a waste material and applies differently from or in addition to the requirements of [the HMR] concerning—
>
> (1) Packaging, marking, labeling, or placarding;
>
> (2) Format or contents of discharge reports (except immediate reports for emergency response); and
>
> (3) Format or contents of shipping papers, including hazardous waste manifests.

45 FR 34560, 34586 (May 22, 1980). In the preamble to the final rule, RSPA stated that "Section 171.3(c) does not list all the conditions under which it might view a State or local law as 'inconsistent.'" 45 FR at 34567.

The preemption provision in the HMTA was expanded in HMTUSA, in which Congress found that uniform Federal standards for the transportation of hazardous materials were "necessary and desirable" to solve the problem that:

> . . . many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements.

Pub. L. 101–615, Section 2(3), 49 App. U.S.C. 1801 note.

"[U]niformity was the linchpin in the design of" the 1990 HMTUSA amendments. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). The HMTA provides that, "unless otherwise authorized by Federal law" or unless a waiver of preemption is granted by DOT, "any requirement of a State or political subdivision or Indian tribe is preempted" when:

> (1) compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible,
>
> (2) the State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or
>
> (3) it is preempted under section 1804(a)(4) [describing the five "covered subject" areas] . . . or section 1805(b) [with respect to highway routing requirements] . . .

Section 1811(a) adopted the "dual compliance" and "obstacle" criteria and also provided for preemption when non-Federal requirements in five "covered subject" areas are not "substantively the same as" the HMTA or the HMR (or "otherwise authorized by" Federal law). 49 App. U.S.C. 1804(a)(4). The five "covered subject" areas are:

> (i) The designation, description, and classification of hazardous materials.
>
> (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.
>
> (iii) the preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the

number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the intentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the Federal Register on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d).

The 1990 amendments to the HMTA also authorize any "directly affected" person to apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA, 49 App. U.S.C. 1811(c)(1). This administrative determination replaced RSPA's process for issuing inconsistency rulings. The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing (which were delegated to the Federal Highway Administration 49 CFR 1.53(b)). Under RSPA's regulations, 49 CFR 107.201–107.211, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety.

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the HMTA unless it is necessary to do so in order to determine whether a requirement is "otherwise authorized by Federal law." A State, local or Indian tribe requirement is not "otherwise authorized by Federal law" merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n.* v. *Harmon*, 951 F.2d at 1581 n.10.

In making determinations regarding preemption under the HMTA, RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains express preemption provisions, which RSPA has implemented through its regulations.

III. Public Comments

A. Comments Supporting Preemption

The nineteen commenters who support CWTI's petition argue that IEPA's Uniform Hazardous Waste Manifest is "inconsistent" with the HMTA and the HMR and thus fails the preemption test of 49 App. U.S.C. 1804(a)(4). It should be noted that, due to the consolidation of the comments submitted regarding CWTI's application for an inconsistency ruling and its subsequent application for a preemption decision, some of the language utilized in the comments refers to the HMTA's preemption standards prior to the 1990 HMTUSA amendments.

Some commenters elaborate upon their view that IEPA's Uniform Hazardous Waste Manifest requirements are "inconsistent" with Federal requirements. Safety-Kleen and the National Tank Truck Carriers, Inc. (NTTC) are two such commenters. Both commenters state that the IEPA requirements attempted to regulate a "covered subject" under the HMTA and that the IEPA's variations on the Federal Uniform Hazardous Waste Manifest are "substantive." Safety-Kleen cites the fact that DOT and EPA Uniform Hazardous Waste Manifest regulations complement each other and that IEPA's requirements, which expand upon the Federal requirements, constitute variations that are not "substantively the same" as the Federal Uniform Hazardous Waste Manifest system. NTTC contends that IEPA's limitations are not only contrary to the Federal Uniform Hazardous Waste Manifest system, but are also of a substantive nature that are "unacceptable in terms of enforcement" since many people involved in the transportation industry may not be trained as to the distinctions of the IEPA Uniform Hazardous Waste Manifest.

Furthermore, two commenters contend that IEPA's Uniform Hazardous Waste Manifest, as a "covered subject," is not "otherwise authorized" by Federal law, and thus is not excepted from preemption under the HMTA pursuant to 49 App. U.S.C. 1804(a)(4). They respond to the commenters opposing the petition who assert that the IEPA Uniform Hazardous Waste Manifest is authorized by Federal law. The specific Federal law at issue is RCRA. The Hazardous Materials Advisory Council (HMAC) notes that IEPA's Uniform Hazardous Waste Manifest could not be protected by RCRA from preemption under the HMTA because EPA, the agency implementing RCRA, "lacked authority to resolve preemption issues under the HMTA and . . . such matters [are] reserved to DOT." Safety-Kleen agrees with HMAC's assertion by indicating that EPA's regulation of hazardous wastes subject to the HMTA must be consistent with the HMTA. 42 U.S.C. 6923.

HMAC cites a recent EPA interpretation of EPA's power to authorize a State to operate its own hazardous waste program as authority for the argument that EPA is not empowered by RCRA to decide preemption issues under the HMTA. Citing 57 FR 32726 (July 23, 1992), HMAC emphasizes and supports EPA's specific comments that preemption issues under the HMTA are to be resolved through the procedures DOT had established for inconsistency rulings.

Ten of the supporting commenters explain that completion of IEPA's Uniform Hazardous Waste Manifest has created numerous obstacles to the achievement and execution of the HMTA and the HMR. The American Trucking Association (ATA) asserts that the preeminent purpose of a nationally uniform hazardous waste manifest system, as envisioned by the HMTA, was to promote safety in the transport of hazardous wastes. Price Trucking Corporation contends that "the uniform hazardous waste manifest is a key component in the overall safe management of hazardous wastes [and] the confusion created by [IEPA's] regulations has a detrimental effect on the safe management of hazardous waste. . . ."

The commenters echo one another's concern that a multiplicity of requirements would undermine the safe transport of hazardous wastes. Chemical Waste Management, Inc. states that differences between IEPA's requirements and Federal regulations "create confusion on the part of shippers and carriers of hazardous waste and reduce the effectiveness of the [HMR]." Furthermore, NTTC expresses its concern that emergency response personnel may be burdened by having to "decipher" a non-standardized hazardous waste manifest. NTTC states that "not only would time be lost, but an error or misinterpretation [of a non-uniform manifest] could be life-threatening."

Various commenters contend that a goal of the HMTA is the efficient transport of hazardous materials. HMAC relies upon inconsistency rulings that determined that State requirements for additional documentation, beyond the

Federal requirements, create potential delays in transportation. IR–2, 44 FR 75566 (Dec. 20, 1979); IR–3, 46 FR 18918 (Mar. 26, 1981); IR–3(A), 47 FR 18457 (Apr. 29, 1982); IR–6, 48 FR 760 (Jan. 6, 1983); IR–16, 49 FR 20872 (May 20, 1985); IR–22, 52 FR 46574 (Dec. 8, 1987).

ATA buttresses HMAC's argument that the IEPA requirements lead to an inefficient hazardous waste transportation system by stating that the time necessary to obtain, complete, and check two sets of hazardous waste manifests "is in direct conflict with the provisions of 49 C.F.R. § 177.853 that mandate that highway shipments of hazardous materials [wastes] be transported without unnecessary delay." ATA further relies on IR–22, which stated, ". . . hazardous materials transportation delays . . . constitute an independent basis for finding [non-Federal regulations] to be inconsistent with the HMR." 52 FR at 46584.

The University of Washington asserts that IEPA's prohibition against the use of continuation sheets is an "obstacle". It contends that one shipment may involve a multitude of wastes and the "continuation sheet was developed specifically to allow flexibility to manifest large shipments under a single manifest number." Thus, to forbid continuation sheets would require the use of an "inordinate number" of manifests. The NTTC agrees and states that a rejection of the concept of a continuation sheet is "tantamount to a rejection of the paper trail tracking concept" and constitutes an "obstacle" to the accomplishment of the HMTA. Furthermore, ATA relies upon IR–8 (Appeal), 52 FR 13000 (April 20, 1987), to note that, in regard to applying the "obstacle" test, RSPA has determined that there is no *de minimis* exception to the test because thousands of jurisdictions could impose *de minimis* information requirements.

Twelve commenters state that they believe "dual compliance" with the IEPA and Federal requirements is not possible. The most frequently cited aspect of the IEPA's requirements that allegedly makes "dual compliance" impossible is the IEPA prohibition against using a continuation sheet. NTTC concisely states that "should a generator comply with the Federal manifesting requirement with the use of a continuation sheet, it would violate Illinois' requirements."

The University of Washington reiterates the impossibility of "dual compliance" when more than two transporters are used. It states that one premise for the use of continuation sheets was to facilitate the documentation of subsequent transporters because the Federal Uniform Hazardous Waste Manifest, EPA Form 8700–22, only refers to transporter "1" and "2." However, the University contends, that without use of a continuation sheet, the Federal Uniform Hazardous Waste Manifest will have to be defaced in order to properly refer to subsequent transporters.

HMAC refers to the impossibility of following both IEPA and Federal requirements because IEPA restricts the allowable unit entries in item 13 of the IEPA Uniform Hazardous Waste Manifest, with regard to the total quantity of hazardous waste being transported. IEPA specifically forbids the use of decimals or fractions in supplying this information, whereas there is no similar Federal limitation. Buffalo Fuel Corporation states that peculiar State requirements, such as IEPA's, create "confusion and unintentional non-compliance" with the manifesting requirements. Furthermore, Buffalo Fuel projected that if this system of non-uniformity were to continue, "it will be virtually impossible to comply with both state . . . and federal requirements . . . ."

B. Comments Opposing Preemption

IEPA, the Illinois Attorney General and the Massachusetts Executive Office of Environmental Affairs, on behalf of the International Hazardous Waste Manifest Coordinators Group (IHWMCG), a multi-State hazardous waste professional staff association, submitted comments opposing CWTI's preemption application. The commenters, while specifically addressing the instant preemption application, raised issues presented in CWTI's application that allegedly exist in the hazardous waste industry in other States as well.

IEPA and the Illinois Attorney General assert that CWTI lacks standing to petition for a preemption determination. The Illinois Attorney General acknowledges that 49 C.F.R. § 107.203 allows any person "affected" to bring a petition; however, the Attorney General relies upon case law that stands for the premise that an organization can only bring suit on behalf of its members if they "have been injured in fact . . ." *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976). Both commenters argue that CWTI fails to meet this threshold requirement because CWTI represents transporters who are not "affected" by the Uniform Hazardous Waste Manifest since generators must supply and complete the information requested on a manifest.

Beyond the threshold standing requirement, the commenters address the specific issues raised by CWTI in its petition. The Illinois Attorney General, IEPA and the IHWMCG contend that the IEPA Uniform Hazardous Waste Manifest is not an "obstacle" to the achievement and execution of the HMTA and the HMR and that, furthermore, "dual compliance" with both IEPA and Federal requirements is possible. In support of these assertions, the IHWMCG states that IEPA is "more stringent in its requirements" and thus the IEPA Uniform Hazardous Waste Manifest helps to "simplify the completion of the manifest form and avoid confusion and error. . . ." IEPA also believes that full compliance is possible because other sections are provided on the IEPA Uniform Hazardous Waste Manifest to note discrepancies contained within the manifest form.

IEPA notes that, in regard to its decision to prohibit the use of decimals or fractions in reporting the total quantity of hazardous wastes being transported, the Federal regulations "do not comment on the use of decimals or fractions." Furthermore, IEPA acknowledges that although its requirements "may be more restrictive than Federal regulations, they do not conflict with them." The Illinois Attorney General and IHWMCG support IEPA's view.

The IHWMCG states that the IEPA Uniform Hazardous Waste Manifest "represents . . . [an] interpretation of federal guidelines . . ." and lends IEPA support in acknowledging that many other States diverge from Federal Uniform Hazardous Waste Manifest requirements. IHWMCG elaborates on this point by stating that "many states require the use of whole number reporting . . . [and] many states besides Illinois require the use of a second manifest . . ."

In addressing the issue of whether the IEPA Uniform Hazardous Waste Manifest is "otherwise authorized" by Federal law, IEPA and IHWMCG cite an April 30, 1987 letter from Carolyn Barley, EPA Office of Solid Waste and Emergency Response, as approval for IEPA's decision to eliminate the use of continuation sheets. The letter expressed EPA's view of IEPA's decision to require the use of a second Uniform Hazardous Waste Manifest as consistent with the Federal program. IEPA and IHWMCG refer to the curtailment of errors, Illinois' data entry system, and "common business practice" as decisive in IEPA's decision to disallow both the use of continuation sheets and fractions or decimals in the

reporting of the total quantity of hazardous wastes being transported.

C. Rebuttal Comments

In rebuttal, CWTI disputes the opposing commenters' assertion that the IEPA Uniform Hazardous Waste Manifest is not an "obstacle" to the accomplishment and the execution of the HMTA and the HMR. CWTI states that the IEPA Uniform Hazardous Waste Manifest contradicts the Federal Uniform Hazardous Waste Manifest and that its very nature makes "dual compliance" with the Federal requirements impossible. CWTI charges that IEPA's interest in maintaining its present record-keeping system cannot justify its Uniform Hazardous Waste Manifest being inconsistent with the HMTA and the HMR.

CWTI addresses the opposing commenters' challenge to CWTI's standing to petition RSPA for a preemption determination. First, relying on *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977), and *Warth* v. *Seldin*, 422 U.S. 490 (1975), CWTI counters their argument by stating that an association does have standing to represent its members if one of its members has standing to assert its own rights as an individual. Second, CWTI asserts that its members are "affected" by the IEPA Uniform Hazardous Waste Manifest because its members are now being required to utilize the IEPA Uniform Hazardous Waste Manifest. CWTI also contends its members are "affected" because IEPA's prohibition against the use of fractions or decimals in the reporting of the total quantities of hazardous wastes being transported will result in the "rounding up" of the total quantities its members transport. Consequently, CWTI asserts that this "rounding up" of the total quantity would impose additional costs upon transporters in the States that levy taxes based upon the quantity of waste moved.

CWTI agrees with HMAC's assertion that IEPA's Uniform Hazardous Waste Manifest is not "otherwise authorized" by Federal law because it is in direct conflict with the EPA's regulations governing hazardous materials transportation. CWTI cites 40 CFR 271.4(c), which requires State hazardous waste programs to be consistent with similar hazardous waste programs established by other States. CWTI also cites 40 CFR 271.10(h), which requires State hazardous waste programs to be consistent with the HMTA. In a final point, CWTI notes that DOT, not EPA, has the authority to determine if a non-Federal requirement is an acceptable deviation from the Federal Uniform Hazardous Waste Manifest.

CWTI notes that the "rounding" of numbers to the nearest whole number would pose yet another "obstacle" to the accomplishment and execution of the HMTA and the HMR because "accuracy would be discouraged in Federal data collection activities." In particular, CWTI indicates that the EPA biennial report and the figures used by EPA in its Capacity Assurance Plans will suffer because of IEPA's prohibition of the use of fractions and decimals in reporting the total quantity of hazardous wastes being transported.

D. Supplemental Rebuttal Comments

IEPA addresses CWTI's assertion that the "rounding" of numbers fails the "obstacle" test because it would frustrate Federal data reports. IEPA states that only a small percentage of the hazardous wastes generated must be included in such reports and, since the "rounded" numbers will balance out in the total number reported, this practice is of "no consequence" to the Federal reporting programs. Rebutting IEPA's comment, CWTI asserts that any discrepancy in the total quantities reported is "significant" and that IEPA failed to address the proper aspect of the "rounding" issue by focusing on the effects of this requirement and not IEPA's deviation from the Federal requirement of reporting the total quantity.

IV. Discussion

Four grounds are asserted for Federal preemption of the IEPA Uniform Hazardous Waste Manifest: (1) The IEPA Uniform Hazardous Waste Manifest is a "covered subject," and it is not "substantively the same" as the HMR requirements; (2) the IEPA Uniform Hazardous Waste Manifest creates an "obstacle to the accomplishment and execution of" the HMTA and the HMR; (3) compliance with both the IEPA Uniform Hazardous Waste Manifest requirements and the HMR is not possible; and (4) the IEPA Uniform Hazardous Waste Manifest is not "otherwise authorized by" Federal law as part of an EPA-approved State hazardous wastes program under 42 U.S.C. 6926(b). Because discussion of issues (1) and (4) is sufficient to resolve this matter, issues (2) and (3) are not discussed in this decision. Before discussing these two matters, however, it is appropriate to address the separate argument that CWTI lacks standing to request a preemption determination on behalf of its members.

A. CWTI's Standing as a Petitioner

IEPA questions whether CWTI has standing to petition RSPA for a preemption determination concerning IEPA's Uniform Hazardous Waste Manifest. The HMTA, as originally enacted, provided for the preemption of non-Federal requirements that were "inconsistent" with the HMTA or the HMR. HMTA, Public Law 93–633, section 112(a), 88 Stat. 2161 (1975) [amended 1990, *see* 49 App. U.S.C. 1811(a)]. Issues of preemption were decided by RSPA, in accordance with its regulations, through a process which resulted in RSPA issuing inconsistency rulings. The 1990 amendments to the HMTA elevated the regulatory inconsistency ruling process to a statutory preemption determination process. In enacting the 1990 amendments, Congress intended to replace the inconsistency ruling process with a "binding administrative process for determining whether State and local requirements are preempted." H.R. Rep. No. 444, 101st Cong., 2d Sess. 1 (1990).

The HMTA provides that:

> Any person, including a State or political subdivision thereof or Indian tribe, directly affected by any requirement of a State or political subdivision or Indian tribe, may apply to the Secretary, in accordance with regulations prescribed by the Secretary, for a determination of whether that requirement is preempted by [the preemption provisions of the HMTA].

49 App. U.S.C. § 1811(c).

This provision codified, and amended, RSPA's prior practice in considering applications for preemption determinations.

The HMTA standing test is that a person be "directly affected" in order to apply for a preemption determination. Therefore, to resolve the issue of whether a party has met the standing requirement, it must be determined if the party will benefit by having the issues presented in its petition resolved because it is "directly affected" by the non-Federal requirement. In the past, RSPA has liberally construed the threshold requirements for obtaining inconsistency rulings. IR–32, 55 FR 36736 (Sept. 6, 1990); IR–21, 52 FR 37072 (Oct. 2, 1987). RSPA interprets "directly affected" person broadly because "important preemption issues [are raised] under the HMTA, and all parties engaged in hazardous materials transportation or the regulation of that transportation will be served by RSPA's addressing [preemption] issues." IR–32, 55 FR at 36741.

Furthermore, Congress made a number of findings regarding the transportation of hazardous materials

(which includes hazardous wastes) when it enacted the 1990 amendments to the HMTA. In explaining its rationale for the amendments, Congress stated:

> (3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding *shippers* and *carriers* which attempt to comply with multiple and conflicting * * * regulatory requirements.

49 App. U.S.C. 1801 (emphasis added).

The HMTA was enacted and amended, in part, to promote national uniformity of hazardous materials transportation regulation, a uniformity that benefits the Nation as a whole, including shippers and carriers. IEPA challenges CWTI's standing to bring the petition because CWTI does not represent the generators responsible for completing the IEPA Uniform Hazardous Waste Manifest. However, CWTI is an association with constituent members who specialize in the transportation of hazardous wastes and are required to have a Uniform Hazardous Waste Manifest accompany their shipments. Consequently, if CWTI's members do not comply with the IEPA Uniform Hazardous Waste Manifest requirements, they are subject to State enforcement action and to delays of their shipments. Thus, CWTI's members are "directly affected" by the Uniform Hazardous Waste Manifest system, and CWTI has standing to apply for this preemption determination.

B. "Covered Subject" Test

The HMTA specifically preempts non-Federal requirements pertaining to five vital areas of hazardous materials transportation where Congress deemed national uniformity to be critical to the achievement and execution of the HMTA and the HMR. If an area is one of five "covered subjects," a strict standard, whether the non-Federal requirement is "substantively the same as" the Federal requirement, is applied in order to determine if there is preemption under the HMTA. "Substantively the same as" means that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other *de minimis* changes are permissible. 49 CFR 107.202(a); 57 FR 20424, 20425 (May 13, 1992).

The 1990 amendments to the HMTA strengthened Federal preemption of certain "covered subjects." Congress selected five distinct "covered subjects" because Congress recognized the need for Federal primacy in areas deemed to be " critical to the safe and efficient transportation of hazardous materials." H.R. Rep. No. 444, 101st Cong., 2d Sess. 1 (1990). Congress further explained its rationale for the 1990 amendments to the HMTA, which amendments included broad Federal preemption of requirements concerning "covered subjects," by stating that:

> (4) because of the potential risks to life, property, and the environment posed by the unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,
>
> (5) in order to achieve greater uniformity and to promote the public health, welfare and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate and foreign commerce are necessary.

49 App. U.S.C. 1801.

One "covered subject" specifically selected by Congress for broad preemption under the HMTA and the HMR is the "preparation, execution and use of shipping documents * * *." 49 App. U.S.C. 1804(a)(4)(B)(iii); 49 CFR 107.202(a)(3). In selecting shipping documents as a "covered subject", it was recognized by Congress that:

> * * * shipping documents are the most common documents used in the transportation of hazardous materials. The Committee [on Energy and Commerce] believes consistency in all aspects of such documents will promote more precise and easier identification of any hazardous material, improve systems for handling hazardous materials, and enhance capabilities for dealing with emergencies associated with the transportation of hazardous materials.

H.R. Rep. No. 444, 101st Cong., 2d Sess. 1 (1990).

RSPA had determined, prior to the 1990 amendments to the HMTA, that national uniformity with regard to hazardous wastes shipping papers was necessary for the safe transport of hazardous materials. In issuing IR–4, RSPA determined that a State of Washington requirement that hazardous materials shipping papers be red in color or have a red border, was inconsistent with the HMTA, and consequently preempted under the HMTA. 47 FR 1231 (Jan 11, 1982). RSPA, in issuing its ruling, stated that, "shipping paper requirements [are] the type of requirements for which national uniformity is essential * * *." 47 FR at 1233.

Although the HMTA does not define "shipping document," "the terms 'shipping document' and 'shipping paper' are used interchangeably" in describing the parameters of this "covered subject." *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d at 1577. The HMR has regulated shipping documents by specifically addressing the format and contents of shipping papers, particularly hazardous material manifests. With specific regard to Federal regulation of hazardous waste transportation, 49 CFR 171.3(c)(3) provides that:

> * * * any requirement of a state or its political subdivision is inconsistent with [the HMR] if it applies because that material is a waste material and applies differently from or in addition to the requirements of this subchapter concerning: * * * (3) *Format or contents of shipping papers, including hazardous waste manifests.* (Emphasis added).

Therefore, CWTI is correct in its assertion that the IEPA Uniform Hazardous Waste Manifest is a "covered subject," pursuant to 49 CFR 107.202(a).

As discussed above, the HMR, in conjunction with EPA's regulations, regulate the area of hazardous waste manifests. The IEPA has differentiated its hazardous waste manifest requirements from the Federal requirements in two particular areas. First, IEPA requires the preparer of the IEPA Uniform Hazardous Waste Manifest to use a second manifest form when the first manifest does not provide adequate room for the completion of the DOT description or other additional information. IEPA's requirement to use a second manifest form is in direct opposition to the Federal requirement that EPA Form 8700–22A, the continuation sheet, be used when additional space is needed to complete the requisite information for the transport of hazardous materials. Compare 40 CFR 260.20(a); 40 CFR part 262, appendix; 49 CFR 172.201(c), 172.205(a), and 172.205(b).

Second, IEPA's requirements instruct the preparer of the IEPA Uniform Hazardous Waste Manifest to enter the total quantity of each hazardous waste described on the Manifest into item 13 in a different manner than the HMR. IEPA's Uniform Hazardous Waste Manifest directs the preparer to "round to the nearest whole number, do not use decimals or fractions" when entering the quantity. As previously discussed, the HMR regulate the acceptable form of the informational items required on the Federal Uniform Hazardous Waste Manifest. The HMR require that the Federal Uniform Hazardous Waste Manifest and any necessary continuation sheets be completed in accordance with the EPA's regulations for the proper completion of the Federal Uniform Hazardous Waste Manifest. 49 CFR 172.205(b). EPA's regulations require the preparer of the Federal Uniform Hazardous Waste Manifest to

enter into item number 13 the *total* quantity of hazardous wastes described on the manifest. 40 CFR 262.20(a), part 262, appendix. IEPA's prohibition against the use of decimals or fractions in reporting the total quantity of hazardous wastes being transported resulting in the rounding of the quantities to the nearest whole number diverges from the Federal requirement that the total quantity of hazardous waste be recorded on the Federal Uniform Hazardous Waste Manifest. In some cases, the difference could be significant, e.g., rounding down "4.4 tons (T)" to "4 tons."

IEPA's Uniform Hazardous Waste Manifest is not deemed to be "substantively the same" as the Federal Uniform Hazardous Waste Manifest because IEPA's diverging requirements are not *de minimis* and they are not mere editorial changes. Rather, the distinctions IEPA adopted for its Uniform Hazardous Waste Manifest significantly alter the information supplied on the manifest, as well as the format of the manifest itself. IEPA characterizes its requirements as "more restrictive than the Federal rules" and the IHWMCG acknowledges that the IEPA requirements serve as "more stringent criteria" than the Federal standards applicable to the Federal Uniform Hazardous Waste Manifest. Thus, the IEPA Uniform Hazardous Manifest, as a "covered subject" fails to meet the strict standard of being "substantively the same as" the HMR. Consequently, the IEPA Uniform Hazardous Waste Manifest is preempted by the HMTA under 49 App. U.S.C. 1811(a)(3).

C. "Otherwise Authorized by Federal Law"

IEPA and IHWMCG argue that IEPA's requirement of a second IEPA Uniform Hazardous Waste Manifest, as opposed to a continuation sheet, for a single shipment of hazardous wastes, is an improvement of the Federal manifest system and reflects IEPA's interpretation of basic Federal guidelines. Furthermore, these commenters contend the IEPA's prohibition against the use of continuation sheets is part of the EPA-approved State of Illinois hazardous waste program under RCRA. The commenters assert that the IEPA Uniform Hazardous Waste Manifest, therefore, is not preempted under the HMTA because it is "otherwise authorized" by Federal law. 49 App. U.S.C. 1811(a).

EPA is authorized, pursuant to RCRA, to approve State hazardous waste programs which are "consistent with Federal or State programs in other States * * *." 42 U.S.C. 6926. However, the standards applicable to the transportation of hazardous waste must be coordinated with the Secretary of Transportation. 42 U.S.C. 6923(a). In fact, EPA regulations concerning compliance with a hazardous waste manifest system must be promulgated by EPA after consultation with the Secretary of Transportation. 42 U.S.C. 6923(a)(3). RCRA specifically states that "in case of any hazardous waste identified or listed in this subtitle [42 U.S.C. 6921 *et seq.*] which is subject to the Hazardous Materials Transportation Act, the regulations * * * under this section shall be consistent with [the HMTA and the HMR]." 42 U.S.C. 6923(b). Furthermore, if a State's EPA-approved hazardous waste program contains requirements that are beyond the scope of those required by Federal law, the additional State requirements are not part of the Federally approved program. 40 CFR 271.1(i)(2).

EPA acknowledged, in final authorization of California's hazardous waste program, that EPA is empowered to approve a State hazardous waste program; however, EPA "does not believe that it is appropriate to use the authorization process [for State hazardous waste programs] to make the specific determinations of inconsistency where DOT has established procedures * * *." 57 FR 32726, 32727 (July 23, 1992).

Furthermore, EPA stated that "a regulation preempted by any other Federal law is invalid." 57 FR at 32728. In the instant case, the applicable Federal law that does preempt a local requirement is the HMTA.

Furthermore, in a detailed analysis of the far-reaching preemptive effect of the HMTA, RSPA recently issued PD–1. There RSPA concluded that States' requirements for the posting of a monetary bond as a condition for the issuance of a State permit to carry hazardous waste were not "otherwise authorized by Federal law." PD–1, 57 FR 58848, (Dec. 11, 1992). RSPA reached this conclusion even where there was no similar Federal counterpart requiring the posting of a monetary bond and where EPA had approved the States' hazardous waste programs. PD–1 also established that if a State chooses to require additional coverage, beyond what RCRA requires, as part of the State's hazardous waste program, the additional State requirements, beyond the scope of the applicable Federal requirements, are not included in the EPA approval of the State hazardous waste program.

Therefore, neither of the IEPA requirements, to utilize a second Uniform Hazardous Waste Manifest in lieu of a continuation sheet and to "round up" quantities of hazardous wastes, is "otherwise authorized by Federal law" within the meaning of 49 App. U.S.C. 1811(a).

D. "Dual Compliance" and "Obstacle" Tests

As discussed above, the IEPA Uniform Hazardous Waste Manifest, as a "covered subject", does deviate from the Federal Uniform Hazardous Waste Manifest in a non-*de minimis* fashion. Furthermore, the IEPA Uniform Hazardous Waste Manifest is not "otherwise authorized" by Federal law and, is thus preempted under the HMTA. Consequently, it is not necessary to determine whether the IEPA Uniform Hazardous Waste Manifest fails the HMTA's "dual compliance" and "obstacle" preemption tests.

V. Ruling

For the reasons set forth above, RSPA finds that, to the extent that they impose non-Federal Uniform Hazardous Waste Manifest requirements upon parties offering for transportation or transporting hazardous wastes, IEPA's Uniform Hazardous Waste Manifest, EPA Form 8799–22/IL.532.0610, and its accompanying requirements, are preempted by 49 App. U.S.C. 1811(a)(2). Specifically, IEPA's prohibition against the use of continuation sheets and IEPA's prohibition against the use of decimals or fractions in reporting the total quantity of hazardous wastes being transported are preempted under the HMTA because that manifest is a "covered subject" which is not "substantively the same as" the Federal Uniform Hazardous Waste Manifest, and it is not "otherwise authorized" by Federal law.

VI. Petition for Reconsideration/ Judicial Review

In accordance with 49 CFR 107.211(a), "[a]ny person aggrieved" by RSPA's decision on CWTI's petition may file a petition for reconsideration within 20 days of service of this decision. Any party to this proceeding may seek review of RSPA's decision "by the appropriate district court of the United States * * * within 60 days after such decision becomes final." 49 App. U.S.C. 1811(e).

This decision will become RSPA's final decision 20 days after service if no petition for reconsideration of this decision is final within that time. The filing of a petition for reconsideration is

not a prerequisite to seeking judicial review of this decision under 49 App. U.S.C. 1811(e).

If a petition for reconsideration of this decision is filed within 20 days of service, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC on February 5 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety

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Reader Aids

Federal Register

Vol. 58, No. 34

Tuesday, February 23, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

6601–6678.....1
6679–6874.....2
6875–7046.....3
7047–7184.....4
7185–7476.....5
7477–7714.....8
7715–7860.....9
7861–7952.....10
7953–8200.....11
8201–8516.....12
8517–8690.....16
8691–8892.....17
8893–9106.....18
9107–9516.....19
9517–10936.....22
10937–11184.....23

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive orders:
12837.....8205
12838.....8207
12839.....8515
12800 (Revoked by EO 12836).....7045
12818 (Revoked by EO 12836).....7045
12836.....7045

Administrative Orders:

Memorandums:
January 22, 1993.....7455
January 22, 1993.....7457
January 22, 1993.....7459
January 29, 1993.....8201
February 3, 1993.....8203

Proclamations:
6527.....7477
6528.....8691
6529.....10937

5 CFR

Proposed Rules:
410.....8912
970.....7052

7 CFR

52.....7607
301.....8517, 8820, 11099
318.....7953
319.....8524
907.....7964
908.....7964
911.....8533
915.....7972, 8533
916.....8534
918.....8209
925.....8893
927.....8536
932.....8538
948.....8539
1097.....6679
1099.....6679
1106.....8894
1209.....8194
1477.....9107
1478.....9107

Proposed Rules:
52.....7296
275.....7296
283.....7296
907.....8912
908.....8912
932.....8558
1001.....10993
1002.....10993
1106.....8559
1139.....7996

9 CFR

161.....8820

Proposed Rules:
317.....8560
381.....8560

10 CFR

19.....7715
20.....7715
30.....7715
36.....7715
40.....7715
51.....7715
70.....7715
170.....7715
455.....9424

Proposed Rules:
20.....8560
30.....6730
40.....6730
50.....6730, 7757
70.....6730
72.....6730
150.....9552

11 CFR

201.....6875

12 CFR

203.....6601
207.....6602
208.....7973
220.....6602
221.....6602
224.....6602
225.....7973
268.....9517
303.....8210
325.....8220
607.....10939
611.....6604, 10945
612.....6605
615.....10945
618.....10939
625.....10945
627.....10945
796.....6605
1605.....8220

Proposed Rules:
205.....8714
208.....8007
225.....8007
Ch. III.....6903
900.....8563

13 CFR

121.....7479, 9112, 9113

Proposed Rules:
121.....9131

14 CFR

21.....8222

23.....8222
33.....6875
39.....6703–6707, 6877–6881, 7185, 7479–7482, 7737, 7861, 7862, 7982, 7983, 8224, 8693, 9113–9115, 9117
71.....6709, 6884–6886, 7179, 7484, 7738, 8896
73.....6884
95.....6887
97.....6709, 6712, 7485, 7746, 10945, 10947

Proposed Rules:
Ch. I.....8244, 8719
23.....10994
39.....6740, 6742, 6743, 6745, 6746, 6906, 7196, 7494, 7495, 7759, 8719, 8721, 8723, 8914, 8916, 9131, 9133, 9552
61.....7197, 9514
63.....7197
65.....7197
71.....6911, 8244, 8724, 8725, 9134
93.....7950
121.....7197, 8917
129.....8917
135.....7197
142.....9514
300.....7040
399.....7053

15 CFR

Proposed Rules:
1200.....8564

16 CFR

4.....7047

Proposed Rules:
Ch. II.....8013, 8016, 8020, 8023
305.....7852
307.....10997
1210.....8565

17 CFR

1.....10949
4.....8226
30.....10953
140.....6677
145.....7040
150.....6854
200.....8541
270.....7984

Proposed Rules:
1.....6748, 7056
3.....6748
10.....6748
145.....6748

18 CFR

3c.....7486
154.....7984
157.....6893
365.....8897
381.....7488, 8897
385.....7984

19 CFR

Proposed Rules:
10.....6677

20 CFR

416.....9597

21 CFR

73.....9539
177.....8820
520.....7864, 8541
522.....8542
1308.....7186

23 CFR

140.....6713

Proposed Rules:
625.....6914

24 CFR

207.....9541
770.....8186
882.....8186
889.....8186
890.....8186
941.....8186

Proposed Rules:
770.....8187
882.....8187
889.....8187
890.....8187
941.....8187

25 CFR

501.....8449
515.....8449
519.....8449
522.....8449
523.....8449
524.....8449
531.....8449
533.....8449
535.....8449
537.....8449
539.....8449
556.....8449
558.....8449
571.....8449
573.....8449
575.....8449
577.....8449

26 CFR

1.....6678, 7041, 7296, 7747, 7865, 7987, 7988, 8098, 9245, 11099
602.....6678, 7987, 7988, 9245

Proposed Rules:
1.....6854, 6922, 6923, 7179, 7497, 7845, 8027, 9553, 9597, 10997
26.....6854, 7497
31.....8726
52.....8099
301.....6854, 7497, 7761, 8098, 9597

27 CFR

Proposed Rules:
9.....8726

29 CFR

2616.....6605
2617.....6605
2619.....8230
2676.....8231

Proposed Rules:
103.....7199, 10997
402.....9418
403.....9418
2619.....7921
2676.....7921

30 CFR

77.....8543
218.....8907
254.....7489
701.....8655
785.....8655

Proposed Rules:
14.....8028
18.....8028
75.....8028, 9554
870.....7761, 8655

31 CFR

103.....7047

Proposed Rules:
357.....9134

32 CFR

201.....7865
592.....6715
606.....6715
608.....6715
612.....6715
616.....6715
706.....8694

33 CFR

1.....8884
3.....6716
100.....7492, 8543, 9118
110.....9543
117.....6717
150.....7330
154.....7330
155.....7376
165.....8543, 9543
334.....6718

Proposed Rules:
117.....6766, 6767, 7497, 7498
154.....8918
155.....8918
165.....7500
334.....6768

34 CFR

8.....7860
305.....9462
682.....9119

Proposed Rules:
300.....7938
361.....8688, 9458
608.....11158
609.....11158
628.....11162
770.....11166

36 CFR

Proposed Rules:
1191.....6924

37 CFR

301.....8655
304.....7051, 8820
311.....8655
201.....9544

38 CFR

1.....7296

Proposed Rules:
4.....11099

39 CFR

Proposed Rules:
111.....8921
3001.....6769

40 CFR

2.....7187
52.....6606, 8545, 10957–10982
58.....8252
60.....7189
82.....8136, 8820
86.....9468
122.....9404
123.....9404
168.....9062
169.....9062
180.....6893, 8695–8699
232.....8172
233.....8172
257.....9148
260.....8658
261.....6854
264.....8658
265.....8658
266.....6607
268.....8658
270.....8658
271.....6854, 7865, 8232, 8658, 9120
280.....9026
281.....6894
300.....7189, 7492
305.....7704
403.....9248
501.....9404
503.....9248
721.....7190

Proposed Rules:
Ch. I.....6609, 7501, 8565, 9554
51.....11110
52.....7762, 8245, 8247, 8565, 10998
54.....7870
81.....7762
112.....8824
144.....7924, 8028
180.....8728, 8729
191.....7924, 8028
194.....8029
228.....10999
260.....8102
261.....6925, 8102, 8504
262.....8102
264.....8102
265.....8102
268.....8102
270.....8102
273.....8102
372.....6609, 11002
700.....7646
720.....7661
721.....7676
723.....7646, 7679
763.....8926

41 CFR

302–11.....8547

42 CFR

59.....7462
435.....9120
436.....9120
440.....9120

Proposed Rules:
59.....7464
417.....8568
434.....8568
1003.....8568

43 CFR

Public Land Order:
6956.....6719

6957.....7867

44 CFR

64.....9121
65.....8551–8553
67.....8549

Proposed Rules:

67.....8568

45 CFR

303.....7040
1626.....6608

Proposed Rules:

1607.....6611
1609.....6612

46 CFR

525.....10983
530.....10983
571.....7190
586.....7988

Proposed Rules:

315.....9135
502.....7199
505.....7199
510.....7199
514.....7501
540.....7199

47 CFR

0.....9123
1.....6895, 8701, 9128
13.....9123
61.....7867, 8908
69.....7867, 8908, 9550
73.....7194, 7195, 7869, 8233–8235
76.....7990

Proposed Rules:

Ch. I.....6937, 7062, 8248, 8927, 8928
1.....8731
2.....6769, 8731
15.....6769, 7205
43.....7764
64.....9137
73.....6677, 7874, 7875, 8248
76.....7205, 7875
88.....8731
90.....8731
94.....8731

48 CFR

Ch. 20.....8449
552.....8235
701.....8701
706.....8701
716.....8701
719.....8701
726.....8701
733.....8701
752.....8701
925.....8909
952.....8909

Proposed Rules:

Ch. 53.....6771

49 CFR

1.....6896–6898
9.....6719
107.....10985
171.....6864, 10985
172.....6864, 8820
173.....6864
174.....6864
176.....6864
198.....10985
229.....6899
390.....6726
394.....6726
665.....10989
1002.....7748
1017.....7748
1018.....7748
1312.....7748
1313.....7748
1314.....7748

Proposed Rules:

40.....7197, 7506
199.....7197
213.....8928
217.....7197
219.....7197
350.....7197
382.....7197
383.....7197
391.....7197
392.....6937, 7197
395.....6937, 7197
531.....6939
571.....7206, 7506, 11003, 11009
572.....7506
611.....6948
653.....7197
654.....7197
1039.....8030
1056.....6912
1180.....6612

50 CFR

17.....8235
217.....8554
227.....8554
611.....8703
625.....8557
642.....10990
650.....7040
675.....7040, 8703–8712, 9129

Proposed Rules:

17.....8032, 8249, 8250
226.....7206
301.....9138
663.....7525
672.....6677

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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.**

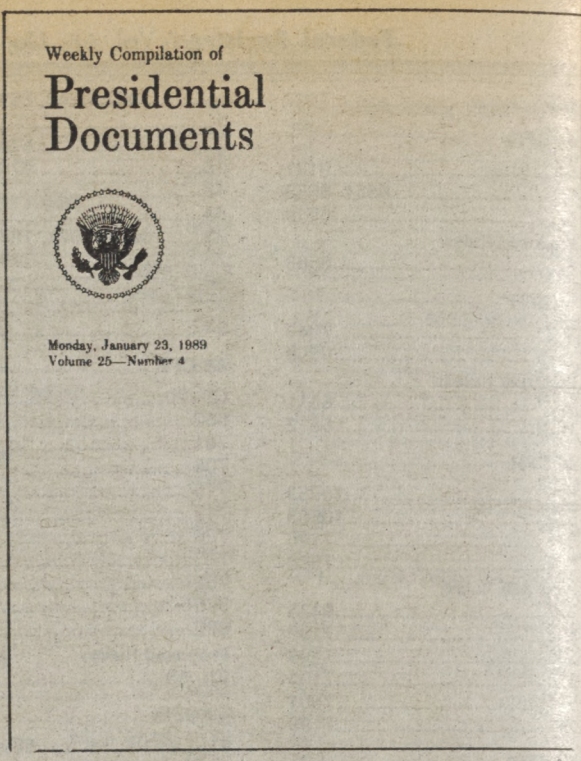
Last List February 11, 1993

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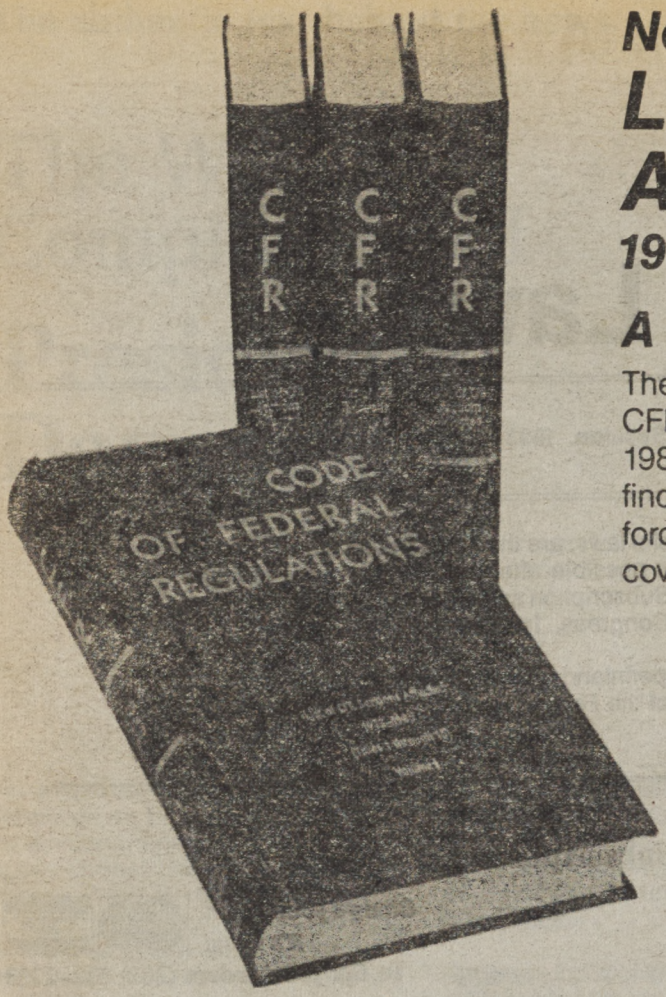
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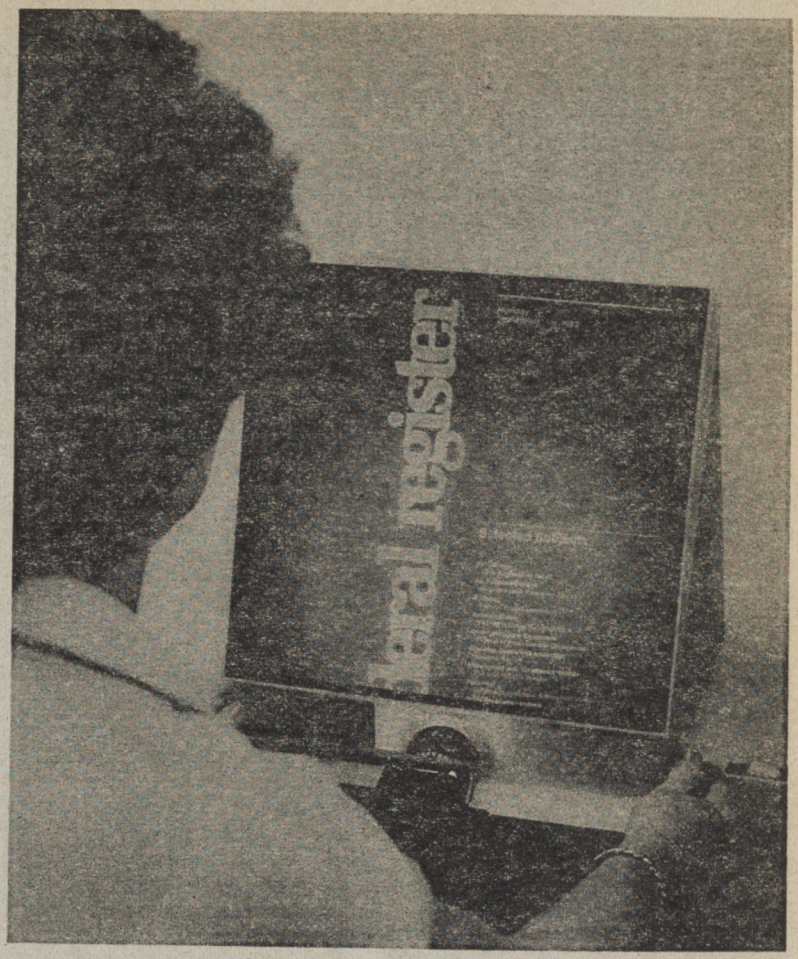
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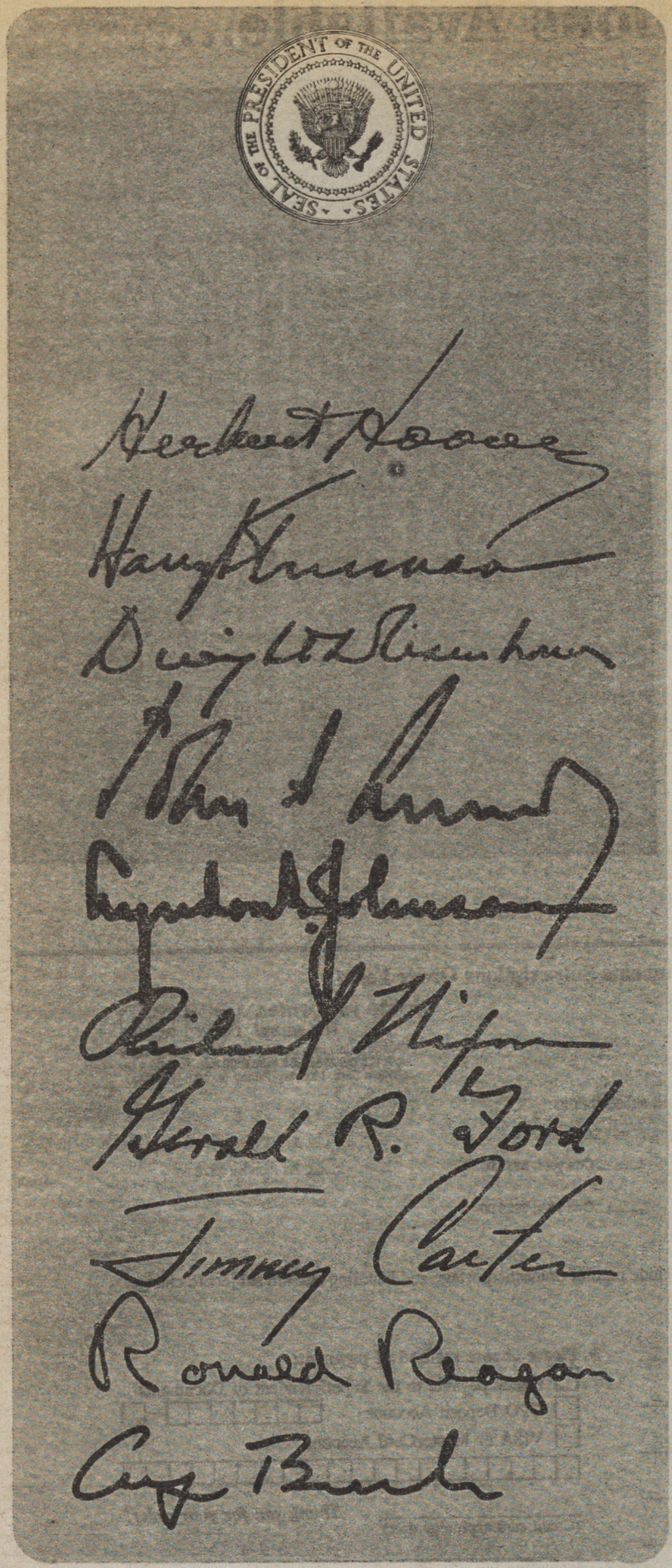
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